

“They Had Access, But They Didn’t Get Justice”: Why Prevailing Access To Justice Initiatives Fail Rural Americans

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In the United States, access to justice (A2J) initiatives are developed by people and institutions in urban areas. Accordingly, A2J supports are often premised on technological, professional, and infrastructural capacities that simply do not exist in many rural regions. Until now, no one has empirically examined the consequences of this metrocentric approach. Drawing on over three years of mixed-methods research across the Upper Midwest, this Article offers an urgent response. Not only are A2J “solutions” intrinsically insufficient in rural areas, but they compound existing stress and are even experienced as humiliating by many low-income rural residents. By introducing the role of dignity—and what, or who, best provides it in the rural A2J context—this Article offers a novel and necessary intervention in access to justice scholarship and policies.

Uniting empirical data and policy analysis, this Article argues that prevailing A2J initiatives are flawed at three primary levels: (1) a failure to meaningfully recognize the limits of rural infrastructural capacity and the complex barriers low-income rural residents in particular navigate; (2) a presumption that anyone in a crisis situation, let alone someone facing these barriers, can effectively be their own attorney; and (3) a professional understanding of justice that is critically at odds with rural individuals’ own expectations. Our response is not to offer one more rural A2J “silver bullet” initiative, though the Article discusses what A2J options may offer more locally relevant experiences of justice. Instead, this Article highlights broader tensions that emerge when dominant narratives around “access” are held against the lived expertise of those who daily experience rural attorney shortages and other

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***Jon Bredeson is a Research Assistant and Project Manager for the Northland Project, www.northlandproject.org. The research on which this article is based was generously funded by the National Science Foundation (award #1729117). We are grateful for helpful feedback on this project at the 2020 Rural Legal Scholars Workshop and owe special thanks to Lisa Pruitt for her perceptive and generous commentary on the paper. We also thank Steve Aggergaard, Kari Beaudry, Mike Carlson, Ann Eisenberg, Bert Kritzer, Fred Friedman, Hannah Haksgaard, Associate Justice Anne K. McKeig, Lauren Sudeall, and Kathryn Young for their thoughtful insights and ongoing guidance, and for shaping our thinking in important ways. We dedicate this article to the rural community members who so generously shared their time, legal experiences, and lived expertise with us over the course of our research and work.

structural inequities. As the Article demonstrates, this profound mismatch of expectations is hugely consequential, resulting in forms of “access” that are in rural areas experienced as barriers to justice.

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I. INTRODUCTION

[E]ach woman and each man craves what it cannot have, not universal love but to be loved alone.¹

Procedurally, probably still not acceptable, but pragmatically, the procedure should not stand in the way of a just result, and I am confident we have vindicated and protected the rights of those we should be concerned.²

In rural Minnesota, a custody case came before the district court where both parties were unrepresented. The father was successful in navigating the court’s online forms, even to the point that he perfected an ex parte motion and another

1. W.H. Auden, *September 1, 1939*, POETS, <https://poets.org/poem/september-1-1939> (last visited May 5, 2021). During a panel discussion of self-help options available to pro se litigants at the 2019 Minnesota Legal Services Coalition Statewide Conference, a legal aid attorney from Minnesota’s Iron Range noted, “It makes me think of the Auden line: No one wants universal love, but ‘to be loved alone.’” Ultimately, this is the premise from which we have written this article: Amid so many well-intentioned, “universal,” and often hopelessly intricate self-help options for low-income rural litigants, there is simply no substitute for the intimate presence of direct representation. The authors thank Bill Maxwell for so beautifully making this critical point.

2. E-mail, from Judge Robert Friday, to Court Administration (Sept. 30, 2020) (on file with author).

subsequent motion. The mother answered via the available forms, and both parties appeared at multiple hearings. The case was complicated and included young children, domestic abuse as to both parties, chemical dependency as to both parties, and mental health issues as to both parties. Even with the encouragement of the court, the parties could not reach a resolution, and the matter was set for trial.

Recognizing that neither party was represented by an attorney, the court provided both parties a copy of the Minnesota Statute that lists the twelve factors the court must consider, and must make findings upon, in determining an award of custody. The matter came on for trial, and after advising the father of how he was to testify by narrative since there was no attorney present to conduct the questioning, this exchange followed:

The Court: All right then, [name], when you are ready, you can proceed to tell the Court what it is that you wish the Court to know.

Father: It is truly in my best interests solely for the boys that they remain under my care and my custody. I feel like I provide a very safe, healthy environment for them. All their needs are met. They are very loved. The boys have been thriving. Since “mom” has moved out of our home, I have felt a sense of calmness and peace in our house. That’s it, your Honor.³

This was all of the testimony he would offer. When the mother testified, she did not give much more than this. Both parties utilized court self-help forms to get the matter before the court. The court even took the additional step to provide both parties with exactly what the court must consider in deciding their case: a full and fair hearing with an unbiased application of the law to the facts presented. In this situation, and as provided by the Minnesota Rules of Evidence,⁴ the Judge asked the necessary questions to elicit testimony regarding the factors. The parties were heard.

However, the court did not know the parties, their personal histories, the impacts of chemical dependency on their lives, the nature of the incidents of domestic violence, their children, or their mental health struggles. The court was without any documentary evidence, medical reports, or discharge summaries. If one party had an attorney, the court would have received significantly more information. However, as is the case in an adversarial proceeding, it would have been one-sided. The unrepresented party would not be able to navigate the labyrinth of procedural rules to offer evidence or, more than likely, properly examine a witness either on direct or cross-examination. Having only one party represented would also limit the ability of the court in its inquiry. If both parties were represented, the court would receive significant information from both parties, and, while still imperfect, the court could render a fair and impartial decision based on the application of the law to the facts presented. As is required, a decision was issued in this case. Based on the limited information received by

3. Jacobson v. Laulunen, No. 69VI-FA-13-205 (D. Minn., Feb. 27, 2020).

4. MINN. R. EVID. 614(b) (1977), MINN. CT. RULES, https://www.revisor.mn.gov/court_rules/ev/id/614/ (“The court may interrogate witnesses, whether called by itself or by a party.”).

the court, the decision, if incorrect, will significantly and negatively impact the lives of a 4-year-old and a 2-year-old.

This case is an example of something that occurs with increasing frequency across the United States. In one sense, following the expectations behind prevailing civil access to justice initiatives, these parties were “successful.” They were able to locate court forms, follow the instructions, and perfect a lawsuit. They had access to the court and the adjudicative process. In another sense, however, critical questions remain—both for the court, which in its efforts to explain law and process and elicit information typified “active judging” as an A2J intervention,⁵ and likely for the parties involved. The absence of counsel is intimately felt and of profound consequence, impacting procedural and substantive dimensions of the courtroom encounter. For these reasons, there is no substitute for direct representation. And yet, the *experience* of not being alone, the intimacy and dignity of having counsel, is another critical aspect of “success”—and one that until now has not been explicated in the rural A2J context.

After all, A2J “success” remains very uncertain in rural regions—even amid established self-help supports and emerging technological innovations. Rural access is not only impeded by well-documented phenomena such as rural distance and limited or nonexistent broadband, but also less examined challenges like rural legal deserts.⁶ Below, this Article uses mixed-methods data collected in the northern Minnesota and Wisconsin regions to illuminate how these barriers—along with the A2J initiatives designed to mitigate them—are experienced by low-income rural residents.⁷ The Article introduces a novel and sobering dimension of A2J, namely that so many supposed “solutions” are themselves often viewed as barriers by the rural individuals they are presumed to help. What’s more, the low-income rural residents who A2J solutions are directed toward regard the inaccessibility of A2J supports as *unsurprising*, reflecting an intimate familiarity with long-standing inequities in critical resource allocations, economic marginalization,⁸ and the broader impacts of pervasive distributive injustice across rural U.S. regions.⁹

5. Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647 (2017).

6. Lisa R. Pruitt et. al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15, 16 (2018); Michele Statz & Paula Termuhlen, *Rural Legal Deserts are a Critical Health Determinant*, 110 AM. J. OF PUB. HEALTH 1519, 1519 (2020).

7. Our data primarily concern civil matters within the context of rural tribal and state courts. To that end, our manuscript prioritizes civil access to justice issues with relevance to these courts but also offers insights that extend to criminal matters and rural individuals’ limited ability to access federal courts.

8. Ann M. Eisenberg, *Distributive Justice and Rural America*, 61 B.C.L. REV. 189, 191 (2020); Robert Litan, *Meeting the Automation Challenge to the Middle Class and the American Project*, BROOKINGS (June 21, 2018), <https://www.brookings.edu/research/meeting-the-automation-challenge-to-the-middle-class-and-the-american-project/>; ANN TICKEMYER ET. AL., RURAL POVERTY IN THE UNITED STATES (2017); Nicole Turner Lee, *Closing the Digital and Economic Divides in Rural America*, BROOKINGS, <https://www.brookings.edu/longform/closing-the-digital-and-economic-divides-in-rural-america/> (last visited May 3, 2021).

9. Ann Eisenberg argues, “rural socioeconomic challenges and failures in public services did not simply result from the passive, benign evolution of economic forces. Instead, these challenges, whether new or longstanding, result at least in part from the law’s contribution to or failure to address different forms of distributive injustice, defined as the inequitable distribution of society’s burdens and benefits... It is, in fact, not difficult to establish that rural residents throughout the United States suffer from inequitable allocations of various critical resources. Some of these resource allocations, such as severe

This context makes it increasingly difficult to recruit and retain attorneys, and many rural regions have few if any private practitioners.¹⁰ Consider, for instance, that in northern Minnesota and Wisconsin, the region on which this Article is based, rural-dominated sectors like mining, timber, and agriculture have drastically reduced employment in recent decades, yet have not been replaced by new industries.¹¹ Resulting out-migration leads to diminished tax revenue, which in turn contributes to cuts in education, health care, infrastructure, and other critical services—gaps that put individuals at high risk for legal need.

Given these phenomena, which are common in rural U.S. spaces more broadly, it is, perhaps, unsurprising that only 14% of rural Americans receive assistance for their civil legal issues, a rate less than half of the national average.¹² Rural criminal defendants often fare no better, especially in Wisconsin where low pay for attorneys results in defendants waiting as long as four months for a public defender.¹³ In rural tribal courts, many of which cannot afford to provide public defenders to tribal defendants, individuals are almost always pro se.¹⁴

shortages of doctors and lawyers, public decisionmakers have overlooked, while others, such as inequitable education and infrastructure spending, they have created.” Eisenberg, *supra* note 9, at 194.

10. Pruitt et al., *supra* note 7; Jessica Pishko, *The Shocking Lack of Lawyers in Rural America*, ATLANTIC (Jul. 18, 2019), <https://www.theatlantic.com/politics/archive/2019/07/man-who-had-no-lawyer/593470/>. Not only are there fewer private practitioners in rural regions, but, accordingly, there are even fewer specialists in family law, criminal law, elder law, and so on. A number of the legal professionals in our research additionally described the challenge of locating individuals able and willing to serve as mediators or guardians ad litem (GALs).

11. Bill Hanna, *Iron Range Unemployment Numbers Keep Growing*, MESABI TRIBUNE (Mar. 6, 2016), https://www.mesabtribune.com/news/local/iron-range-unemployment-numbers-keep-growing/article_6c8e2f4b-ee0c-544b-a1c9-04cbfea5d869.html; Hope Kirwan, *Wisconsin Lost Record-Breaking Percent Of Dairy Farms in 2018*, WISCONSIN PUB. RADIO (Dec. 17, 2018, 4:05PM), <https://www.wpr.org/wisconsin-lost-record-breaking-percent-dairy-farms-2018>; TESSA CONROY ET. AL., UNIV. OF WIS. – MADISON/EXTENSION, PATTERNS IN WISCONSIN MANUFACTURING: RURAL AND URBAN AREAS 1-2 (2018), <https://aae.wisc.edu/thewisconsineconomy/wp-content/uploads/sites/11/2018/05/Mfg-factsheet-two-rural-urban-1.pdf>.

12. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 48 (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report> [hereinafter LSC THE JUSTICE GAP].

13. Peter Coutou, *Where the Lawyers Aren’t: Attorney Shortage in Rural Wisconsin Compounds Opioid Crisis*, ISTHMUS (Jan. 18, 2018), <https://isthmus.com/news/cover-story/attorney-shortage-in-rural-wisconsin-compounds-opioid-crisis/>.

14. The right to counsel is not identical across federal, state and tribal court systems in the United States. In particular, tribal courts are not bound by the U.S. Constitution; instead, federal statutes set minimum requirements for appointment of counsel in tribal courts. The current federal statute provides a right to counsel for Indian defendants in tribal court only if the tribe imposes a sentence of more than one year. A tribe can expand the right to counsel at their discretion. See Samuel Macomber, *Disparate Defense in Tribal Courts: The Unequal Right to Counsel as a Barrier to Expansion of Tribal Court Criminal Jurisdiction*, 106 CORNELL L. REV. (forthcoming Nov. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3644025. As others note, however, it is a historical lack of funding, rather than statutes, that most constrains tribal courts’ ability to support criminal defendants. Lindsay Cutler writes, “the decision not to extend a statutory right to appointed counsel in tribal courts was driven by a recognition of tribal sovereignty, but perhaps more so by a concern about federal funding.” Lindsay Cutler, *Tribal Sovereignty, Tribal Court Legitimacy and Public Defense*, 63 UCLA L. REV. 1752, 1756 (2016). Barbara Creel similarly notes that tribes operating an Anglo-American adversary system need more training opportunities and funding for court personnel. Barbara Creel, *The Right to Counsel for Indians Accused of Crime: A Tribal and Congressional Imperative*, 18 MICH. J. RACE & L. 319, 358 (2013); See also Barbara Creel, *Tribal Court Convictions and the Federal Sentencing Guidelines: Respect for Tribal Courts and Tribal People in Federal Sentencing*, 46 U.S.F.L.

The rural A2J crisis is compounded by limited or absent treatment facilities, immigration assistance, public transit, and childcare;¹⁵ health and financial precarity associated with the coronavirus (COVID-19);¹⁶ and by A2J initiatives that are developed in and largely for urban spaces, consequently neglecting the unique challenges posed by rurality.¹⁷ While firmly acknowledging that low-income Americans struggle to access justice across the urban to rural continuum,¹⁸ in rural and remote regions, inequitable access to justice distinctively impacts *everyone*, from judges who actively assist pro se litigants amid lawyer shortages to the low-income rural residents who must confront so many justiciable problems without any professional assistance or, at best, A2J supports designed with urban populations in mind.¹⁹

Drawing on extensive mixed-methods data, this Article offers the first sustained empirical consideration of the consequences of urbanormative²⁰ state-sponsored access to justice supports in rural communities. This Article is written in full acknowledgement of the important intentions and commitment with which these initiatives are developed. At the same time, this Article is rooted in urgent accountability to the experiences of the rural residents who participated in the mixed-methods research, as well as those whom one of the authors, the Hon. Robert Friday, encounters daily on the bench.

Part II introduces the rural Northland context and the research on which this Article is largely based. While acknowledging the regionally-specific nature of the research, this Article nonetheless argues that collected data offer compelling, generalizable insights for rural access to justice in the U.S. Of equal, if not more, consequence, these data critically complicate and even contradict professional and policy understandings of “justice.”

Part III provides an overview of primary access to justice trends as put forth in A2J scholarship and relevant policies: A2J technologies; direct representation and

REV. 37, 37 (2011); Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Tribal Courts*, 22 AM. INDIAN L. REV. 285, 288 (1998).

15. Pruitt et al., *supra* note 7 at 22.

16. Statz & Termuhlen, *supra* note 7.

17. Gregory M. Fulkerson & Alexander R. Thomas, *Urbanization, Urbanormativity, and Place-Structuration*, in STUDIES IN URBANORMATIVITY: RURAL COMMUNITY in URBAN SOCIETY 5-30 (Gregory Fulkerson & Alexander R. Thomas eds., 2013).

18. See generally Naomi Nichols, *The Social Organization of Access to Justice for Youth in ‘Unsafe’ Urban Neighbourhoods*, 27 SOC. & LEGAL STUDS. 79 (2018); Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People’s Courts*, 22 GEO. J. ON POVERTY L. & POL’Y 473, 493 (2015); John Pierre & Robert Fournier, *The SULC Urban Law, Technology, & Research Academy Initiative*, 50 U. TOL. L. REV. 315, 315 (2019).

19. See ELI CLARE, EXILE AND PRIDE: DISABILITY, QUEERNESS, AND LIBERATION 42, 44 (2015), who rightly laments that the people and institutions defining social identities and needs and organizing on behalf of them are urban: “[But] if we do choose to engage in rural organizing... [a]t the heart of this work needs to be a struggle against economic injustice, since most people—queer and straight—living in rural communities... are poor and working class.”

20. In this Article, the authors mindfully prioritize “urbanormative” over other concepts like “metrocentric” as the former underscores and examines the consequences of a cultural ideology that privileges urban over rural people. Scholarship on urbanormativity highlights urban-rural disparities in law and politics and calls for a rural justice approach that revalues the rural socially, politically, and economically. See Gregory M. Fulkerson and Alexander R. Thomas: “[N]ormal life has come to imply urban.” GREGORY M. FULKERSON & ALEXANDER R. THOMAS, URBANORMATIVITY: REALITY, REPRESENTATION, and EVERYDAY LIFE 2 (2019).

law school involvement; non-lawyers and unauthorized practice; unbundled legal services; and new spaces for legal activity. Each subsection evaluates the extent to which these initiatives are present in the Minnesota and Wisconsin research regions. This Part also introduces and integrates relevant empirical data as a deliberate choice. Rather than discuss the data in a separate section, the authors feel that interweaving each A2J initiative with how or whether it is employed in the Northland and intimately experienced “on the ground” offers, and in a sense demands, deeper reflection and accountability.

It is worth noting that many of the discussed initiatives do not expressly consider rurality. Even among those that do mention rural places, rurality is rarely engaged in a necessarily nuanced and multi-dimensional way.²¹ Rather, rurality is often depicted statically, with proposed solutions accordingly simplistic and largely urbanormative in scope. Owing to these gaps, the Article’s literature review draws on Canadian and other international sources, which tend to more explicitly and comprehensively explore rurality and rurally relevant A2J solutions.²²

Part IV reflects more fully on a persistent and ultimately devastating theme in the data: rural low-income individuals, who are already acutely aware of how public policies actively and inequitably disadvantage rural livelihoods, infrastructure, and health and welfare,²³ simply normalize their experiences with current A2J initiatives as stressful, insufficient, and even humiliating. This Article calls this sense of loss and distrust the “hegemony of defeat.” Accordingly, the Article argues that any A2J effort must first acknowledge this pervasive defeat to meet the legal needs of low-income rural residents and, critically, experience A2J attempts as *just*. As one Northland attorney commented, “I mean, the self-respect [of] going into court with an attorney—that’s not what people in this population are used to. They’re just used to figuring it out on their own.”²⁴

As the introductory vignette demonstrates, “successful” access for self-represented individuals does not guarantee sufficient information, clarity, and confidence—either for the party or the court. While not all cases will require attorney representation, the most difficult issues need thoughtful, objective

21. Exceptions include Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, (2014); Pruitt et al., *supra* note 7; Brian L. Lynch, *Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers*, 90 IND. L. J. 1683, (2015); and Hillary A. Wandler, *Spreading Justice to Rural Montana: Rurality’s Impacts on Supply and Demand for Legal Purposes in Montana*, 76 MONT. L. REV. 225, (2015).

22. For instance, in 2017, the Law Council of Australia (analogous to the American Bar Association) conducted a comprehensive national review of the state of access to justice in Australia. The subsequent report devotes a 58-page section to the unique needs and circumstances of rural, regional, and remote Australians. LAW COUNCIL OF AUSTRALIA, THE JUSTICE PROJECT FINAL REPORT – PART 1: RURAL, REGIONAL, AND REMOTE (RRR) AUSTRALIANS (2018), <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>. By comparison, the recent *Civil Justice for All: A Report and Recommendations from the Making Justice Accessible Initiative*, published by the American Academy of Arts and Sciences, only makes passing references to rural America and entirely neglects rural attorney shortages in the United States. AMERICAN ACADEMY OF ARTS AND SCIENCES, CIVIL JUSTICE FOR ALL: A REPORT AND RECOMMENDATIONS FROM THE MAKING JUSTICE ACCESSIBLE INITIATIVE (2020), https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf.

23. Eisenberg, *supra* note 9.

24. Redacted interview excerpt with Northland attorney, in Minnesota (February 2018) (on file with authors).

presentation to the court, something that is most likely to occur through legal representation. Accordingly, this Article raises deeper questions around motivation and professional responsibility. Why is it that we have given up on the gold standard of both parties being represented by attorneys to settle for *something less*, particularly for rural communities? As this Article's research demonstrates, when justice is experienced and facilitated in the Northland, it is most commonly by legal advocates who offer local knowledge, time, and legal expertise. Any other form of A2J is insufficient, reflecting a failure not of A2J taskforces and others so deeply committed to providing "access" to low-income community members, but of the legal profession and justice system more generally. Part V of this Article concludes with a brief invitation for new understandings of access, justice, and rurality.

II. EMPIRICAL RESEARCH ON RURAL ACCESS TO JUSTICE

A. The Northland Context

This Article is motivated by three years (2017-20) of data collected from mixed-methods research across northern Minnesota and Wisconsin.²⁵ Locally known as "the Northland," northern Minnesota and northern Wisconsin resemble one another more prominently than they do their respective states' southern and/or metropolitan areas. Both northern regions have relatively well-established East African, Hmong and Latinx communities.²⁶ Six Anishinaabe reservations and the Red Lake Nation are located in northern Minnesota, and eleven federally-recognized tribes span the northern half of Wisconsin.²⁷ Significantly, Minnesota and Wisconsin are two of six states named in Public Law 280 (PL 280),²⁸ which in 1953 shifted criminal jurisdiction away from a combination of tribal and federal (Bureau of Indian Affairs) control to state and local government.

In many ways, the Northland region evidences many of the socioeconomic and spatial trends that characterize rural U.S. regions more broadly.²⁹ Between 2009

25. This research has been generously funded by the National Science Foundation's Law and Science program (award #1729117).

26. See David N. Bengston et al., *Listening to Neglected Voices: Hmong and Public Lands in Minnesota and Wisconsin*, 21 SOC. & NAT. RES. 876, 877 (2008); Jessica Schaid & Zoltan Grossman, *Somali Immigrant Settlement in Small Midwestern U.S. Communities: The Case of Barron, Wis.*, in FROM MOGADISHU TO DIXON: THE SOMALI DIASPORA IN A GLOBAL CONTEXT 295, 295 (Abdi Kusow & Stephanie Bjork eds., 2007); Steven Gordon, *Ethnic and Racial Diversity Are an Ever-Changing Reality in Wisconsin*, WISCONTEXT (Nov. 16, 2016, 11:15AM), <https://www.wiscontext.org/ethnic-and-racial-diversity-are-ever-changing-reality-wisconsin>.

27. Exceptions are the Ho Chunk nation, which has trust land in the southern half of the state, and the Forest County Potawatomi, who have off-reservation trust land near Milwaukee. See *Need to Know: Minnesota Tribes*, NATIVE GOVERNANCE CTR. (Jun. 21, 2018), <https://nativegov.org/minnesota-tribes/>; PATTY LOEW, INDIAN NATIONS OF WISCONSIN: HISTORIES OF ENDURANCE AND RENEWAL 44 (2001).

28. Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified as amended at 18 U.S.C.A. § 1162, 25 U.S.C.A. §§ 1321 to 1325, and 28 U.S.C.A. § 1360). The only non-PL 280 tribes in Minnesota are the Red Lake Band of Chippewa (excluded from PL 280 at the outset) and the Nett Lake Band of Chippewa (the subject of retrocession in 1975), and in Wisconsin, the Menominee (excluded at the outset). See DUANE CHAMPAGNE & CAROLE GOLDBERG, CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280 16 (1st ed. 2012).

29. But cf. Michele Statz, *On Shared Suffering: Judicial Intimacy in the Rural Northland*, 55 L. & SOC'Y REV. 5, (2021); Statz & Termuhlen, *supra* note 7.

and 2014, Wisconsin’s poverty rate reached its highest in thirty years,³⁰ with the majority of the state’s highest poverty rates largely concentrated in its rural northernmost counties.³¹ While Minnesota has one of the lowest poverty rates in the nation,³² its lowest median incomes are also concentrated in the north—a marked change since 1999 when the poorest counties were scattered throughout the state.³³ With a rugged woodland topography and substantial deposits of mineral ores, the economies of northern Minnesota and Wisconsin are largely based in rural-dominated industries like mining, timber, agriculture, and manufacturing.³⁴ Yet in recent decades, these sectors drastically reduced employment³⁵ and have not necessarily been replaced by new ones.³⁶ All, along with tribal gaming, are further jeopardized by COVID-19 owing to decreased demand or an inability to employ remote work.³⁷

The Northland is also shaped by socioeconomic and political forces external to the region. While state political landscapes have shifted since this research was initiated, rural individuals’ ability to access justice in the Northland remains impacted by changes that were instituted much earlier. For instance, in 2011 Wisconsin Governor Scott Walker eliminated state funding for civil legal aid.³⁸

30. MALIA JONES, APPLIED POPULATION LAB, SIGNIFICANT CHANGES IN WISCONSIN POVERTY, (2015) http://www.apl.wisc.edu/publications/acs_5years_dec15/acs_poverty_brief.html. Other measures of Wisconsin poverty (including food insecurity) reveal marked precarity among rural northland counties in particular. See Judi Bartfeld & Katherine Curtis, *Wisconsin Poverty & Food Insecurity Profiles 2014*, APPLIED POPULATION LAB, <https://apl.wisc.edu/resources>.

31. The primary exception to this was Milwaukee County. See ECON. RSCH. SERV., DEP’T of AGRIC., PERCENT OF TOTAL POPULATION IN POVERTY, 2019 (2021), <https://data.ers.usda.gov/reports.aspx?ID=17826>.

32. Kimberly Amadeo, *US Poverty Rate by State: Why Are Some States So Poor and Others So Rich?*, BALANCE, <https://www.thebalance.com/us-poverty-rate-by-state-4585001> (last visited May 28, 2021).

33. See TOM LEGG & NGOC (JENNY) NGUYEN, GROWTH & JUST., WIDENING INEQUALITY IN MINNESOTA: A COUNTY-BY-COUNTY ANALYSIS 10 (2015), <http://growthandjustice.org/publication/WideningInequalityMN.pdf>.

34. Hanna, *supra* note 12; Kirwan, *supra* note 12; CONROY ET AL., *supra* note 12.

35. See Rick Barrett & Lee Bergquist, *Industrial Dairy Farming Is Taking Over in Wisconsin, Crowding Out Family Operations and Raising Environmental Concerns*, MILWAUKEE J. SENTINEL (Feb. 11, 2020, 9:30PM), <https://www.jsonline.com/in-depth/news/special-reports/dairy-crisis/2019/12/06/industrial-dairy-impacts-wisconsin-environment-family-farms/4318671002/>; Hanna, *supra* note 12; Kirwan, *supra* note 12; CONROY ET AL., *supra* note 12.

36. *Rural Employment and Unemployment* (2019), ECON. RSCH. SERV., DEP’T of AGRIC., <https://www.ers.usda.gov/topics/rural-economy-population/employment-education/rural-employment-and-unemployment/> (last visited May 5, 2021).

37. *Wisconsin Businesses React to Pandemic Stay-At-Home Order. Many Are Grounded, Others Deemed Essential*, MILWAUKEE J. SENTINEL (Mar. 24, 2020, 12:45 PM), <https://www.jsonline.com/story/money/2020/03/23/wisconsin-businesses-react-covid-19-pandemic-stay-home-order/2898407001/> (“Manufacturing, agriculture and tourism have been described as the three pillars of Wisconsin’s economy, and all three are at risk from the spread of COVID-19.”); Madeline Chaillet & Darby Sullivan, *Why Rural American Could Be a ‘Tinderbox’ for Covid-19*, ADVISORY BD. (Apr. 22, 2020), <https://www.advisory.com/daily-briefing/2020/04/22/covid-19-rural-america>; Statz & Termuhlen *supra* note 7; Austin Montgomery, *Casino Revenue Down in State as Tribes Look to Rebound*, DAILY JEFFERSON CNTY. UNION (Apr. 1, 2021), https://www.dailyunion.com/news/casino-revenue-down-in-state-as-tribes-look-to-rebound/article_4ee98b47-0b82-533f-aabd-fbcb23ee8263.html; Craig Moorhead, *Help Available for Farmers Hurt by COVID*, CALEDONIA ARGUS (Mar. 24, 2021), https://www.hometownsource.com/caledonia/news/local/help-available-for-farmers-hurt-by-covid/article_511ff218-8cab-11eb-af94-73c5a4a0332d.html.

38. Pruitt et al., *supra* note 7, at 79.

Because they no longer receive state tax dollars, Wisconsin's two non-profit civil legal aid providers now rely largely on federal Legal Services Corporation (LSC) funding.³⁹ In 2020, Legal Action of Wisconsin, headquartered in Milwaukee, received approximately \$4.1 million in basic LSC funds.⁴⁰ Wisconsin Judicare, Inc. (Judicare), located in north-central Wisconsin, received roughly \$1 million.⁴¹ This funding breakdown, where Legal Action receives about 80% of the state's LSC funding, is typical: LSC funds are distributed on a per-capita basis according to each service area's share of the eligible poverty population.⁴²

For rural organizations like Judicare that rely so heavily on LSC funding, this distribution formula is profoundly consequential. Judicare's share of the state's eligible poverty population—and of the state's population more generally—is considerably smaller than that covered by Legal Action of Wisconsin. Yet Judicare has just one office and is the sole civil legal aid provider for Wisconsin's northern thirty-three counties and eleven federally recognized tribes. According to the USDA Economic Research Service's Frontier and Remote Area Codes (FAR), 13 of the 33 counties Judicare serves are partially or wholly classified as Level 4 FAR, or "most remote."⁴³ This vast and jurisdictionally complex geography presents unique organizational costs that federal funding formulas cannot anticipate.⁴⁴ These include an absence of large local firms that may take on cases pro bono, as well as limited social services to which to refer individuals with complex extra-legal needs.⁴⁵ Northern Wisconsin additionally faces well-documented rural lawyer shortages that are accelerated by the area's greying bar.⁴⁶ These "legal deserts"⁴⁷ significantly hinder the efficacy and reach of civil legal aid provision. The Judicare model⁴⁸ has historically relied on the participation of private

39. *Id.*

40. LEGAL SERVS. CORP., 2020 GRANT AWARD DECISIONS 7 (2019), <https://lsc-live.app.box.com/s/c0zk4mkejyn17rn7dqhb7eeime294azp> (last visited May 5, 2021). This amount does not include separate 2020 LSC funds for Legal Action's migrant farmworker initiative (\$428,697) or Judicare's Indian Law program (\$182,487).

41. *Id.* This amount does not include separate 2020 LSC funds for Judicare's Indian Law program (\$182,487).

42. LEGAL SERVS. CORP., 2019: LSC BY THE NUMBERS 1 7-10 (2019), <https://lsc-live.app.box.com/s/xjztcpfhiu3cr9yb7o9rd9996pyvwi3i>.

43. Used to describe remoteness in addition to low population size, FAR codes assign rurality on a scale of 1 through 4, with 1 being urban and 4 being the most "remote," or 15 minutes or more from an urban area of 2,500-9,999 people; 30 minutes or more from an urban area of 10,000-24,999 people; 45 minutes or more from an urban area of 25,000-49,999 people; and 60 minutes or more from an urban area of 50,000 or more people. Residing in a FAR Level 4 region puts individuals at a serious disadvantage for accessing necessary goods and services, such as healthcare, grocery stores, and gas stations. See Malia Jones & Mitchell Ewald, *Putting Rural Wisconsin on the Map: Understanding Rural-Urban Divides Requires a Complex Spectrum of Definitions*, WISCONTEXT (May 17, 2017), <https://www.wiscontext.org/putting-rural-wisconsin-map>; ECON. RSCH. SERV., DEP'T of AGRIC., DOCUMENTATION (2010), <https://www.ers.usda.gov/data-products/frontier-and-remote-area-codes/documentation/>.

44. Pruitt et al., *supra* note 7, at 79.

45. *Id.* at 80; Alexandra K. Murphy & Scott W. Allard, *The Changing Geography of Poverty*, 32 FOCUS 19, 22 (2015).

46. Pruitt et al., *supra* note 7, at 81.

47. *Id.*

48. Designed to ensure that low-income clients have freedom to choose their counsel and that a client is defended as vigorously as a private fee-paying client, the Judicare model directs federal or state funds to private attorneys who provide free legal services to low-income clients. See generally Michael A.

attorneys. Yet because of attorney retirements—and correspondingly heavier workloads for the attorneys who remain in these regions—fewer private attorneys are now willing or able to take on “low bono”⁴⁹ Judicare cases.⁵⁰ In response, Judicare has hired more staff attorneys but continues to struggle with attorney retention.⁵¹ This is of particular consequence for legal aid advocacy that requires institutional knowledge of diverse, geographically isolated circuit courts and familiarity with complex concurrent jurisdictional issues.

Like Wisconsin, Minnesota faces its own rural attorney shortages and contends with a greying bar.⁵² Unlike Wisconsin, the state devotes considerably more funding to civil legal aid,⁵³ along with funds to support the “working poor,” individuals who are ineligible for legal assistance because they are nominally above the federal poverty guidelines.⁵⁴ As our research highlights, however, even relatively robust state funding does not necessarily ensure access or equity—especially when it comes to rural regions. For instance, despite its name, the Statewide Low Fee Family Law Project serves only “the Metro,” or those counties of and surrounding the Twin Cities.⁵⁵ Minnesota Civil Legal Service providers have the lowest salaries of Minnesota public sector employees, resulting in a turnover rate as high as 30%,⁵⁶ and in the northeastern corner of the state, where this research in Minnesota focuses, Legal Aid of Northeastern Minnesota (LASNEM) has a service area covering 27,683 square miles, from the

Millemann, *Diversifying the Delivery of Legal Services to the Poor by Adding a Reduced Fee Private Attorney Component to the Predominantly Staff Model, Including Through a Judicare Program*, 7 U. MD. L.J. RACE, RELIGION, GENDER, & CLASS 227, 227 n.1, 241 n.80 (2007).

49. “Low bono” work is work done by an attorney at a reduced fee. See William Vogeler, *You Know About Pro Bono, What About Low Bono?*, FINDLAW (June 7, 2019, 6:00AM), <https://blogs.findlaw.com/strategist/2019/06/you-know-about-pro-bono-what-about-low-bono.html>. Pruitt and Showman note rural lawyers are more likely to provide low bono than pro bono service. This likely owes to a rural lack of anonymity in which an individual may already be a client of the lawyer or firm, or the attorney may feel a personal sense of duty and connection to her community and know—or think she knows—how much the individual can afford. Pruitt & Showman, *supra* note 22, at 518, 519.

50. One interviewee noted, “[W]ith Judicare, they don’t have the attorneys, they don’t have the issuing card agents here. There’s not many attorneys, even if they wanted attorneys, not many here who will take Judicare cases... sometimes you’re just left with the staff attorneys.” Redacted interview in Bemidji, Minnesota (October 2018) (on file with authors).

51. Michele Statz & Jon Bredeson, *A Word Languishes: Judicare, 50 Years Later* (forthcoming) (on file with authors).

52. Pruitt et al., *supra* note 7, at 84.

53. The MN FY17 fiscal allocation for civil legal aid was \$13.145 million. In FY18 it was \$13.72 million. MINN. SUP. CT. LEGAL SERVS. ADVISORY COMM., FY17 ANNUAL REPORT 5 (2018), https://www.mncourts.gov/mncourtsgov/media/scao_library/documents/Annual-report-FY17.pdf; DREW SCHAFFER & ANNE HOEFGEN, MINN. LEGAL SERVS. COAL., SEEKING JUSTICE FOR ALL BUDGET REQUEST FY20-21 CIVIL LEGAL SERVICES NETWORK 3 (2019), <https://www.house.leg.state.mn.us/comm/docs/9306cf3b-c509-4367-8fbc-50cba8c08b69.pdf>.

54. *Statewide Low Fee Family Project*, MINN. STATE BAR ASS’N, <https://www.mnbar.org/docs/default-source/atj/low-fee-family-law-project-revised-ad.pdf?sfvrsn=0> (last visited May 28, 2021).

55. *Hennepin County Legal Referrals*, MINN. STATE LAW LIBR., <https://mn.gov/law-library/research-links/legal-referrals/hennepin.jsp> (last visited May 31, 2021). See also *Hennepin County Bar Ass’n Low Fee Family Law Project*, MINN. HELP, <https://perma.cc/7GRG-RAG2> (last visited May 5, 2021) (“Clients must meet financial eligibility guidelines and have a Family Law matter in Hennepin, Ramsey, Dakota or Anoka County.”).

56. SCHAFFER & HOEFGEN, *supra* note 54, at slide #6.

southwestern tip of Lake Superior to the Canadian border, and from the eastern edge to the midpoint of the state. Even with five staffed offices, legal aid attorneys often travel considerable distances to reach courthouses and outreach sites, and the organization has to turn away 60% of eligible clients seeking its services.⁵⁷

To understand this context better, Professor Michele Statz began conducting mixed-methods research across the Northland in 2017.⁵⁸ Acknowledging the potential suspicion that rural residents may feel toward outsider researchers owing to perceived differences in gender, ethnicity, professional status, or university affiliation,⁵⁹ Professor Statz, Jon Bredeson, and undergraduate and graduate research assistants mindfully worked as participants rather than detached observers in an ongoing conversation with research participants and theoretical frameworks.⁶⁰ To that end, this project has employed diverse and context-specific methods including regional data and policy analysis; participant observation; individual and household surveys; and semi-structured one-on-one and focus group interviews.

Overwhelmingly, research participants responded with enthusiastic receptivity to this project and the research team. Given the well-documented challenges of developing trust and rapport with prospective participants, let alone in complex cross-jurisdictional settings that include Indigenous and other communities rightfully distrustful of external research,⁶¹ this response is worth highlighting. In light of this data, this Article details the urgency with which many feel that the economic marginalization and inequitable A2J context of the Northland—along with highly productive informal, collaborative, and often cross-jurisdictional A2J initiatives⁶²—ought to be publicized.

B. Research Methods and Analysis

During preliminary fieldwork (2015-2016), Professor Statz travelled across northern Minnesota and Wisconsin and conducted approximately 30 semi-structured interviews with civil legal aid and private attorneys, legal aid staff, community organizers, immigration and social services providers, tribal leaders, judges, members of law enforcement, and low-income individuals who had obtained civil legal assistance through Legal Aid Service of Northeastern

57. JON BREDESON & MICHELE STATZ, LEGAL AID SERV. OF NORTHEASTERN MINN. (LASNEM), “NOT A LEGAL ISSUE” A REPORT ON COMMUNITY LEGAL NEED 5 (2019), <https://www.northlandproject.org/assessments-and-reports>.

58. NORTHLAND ACCESS TO JUST., www.northlandproject.org (last visited May 5, 2021).

59. KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER 34 (2016).

60. Michael Burawoy, *The Extended Case Method*, 16 SOCIOLOGICAL THEORY 4, 10 (1998); JENNIFER SHERMAN, THOSE WHO WORK, THOSE WHO DON'T: POVERTY, MORALITY, AND FAMILY IN RURAL AMERICA 14 (2009).

61. See, e.g., Norman Denzin & Yvonna Lincoln, *Introduction: Critical Methodologies and Indigenous Inquiry*, in HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES 1, 2-4 (Norman Denzin, Yvonna Lincoln, Linda Tuhiwai Smith eds., 2008); Alison Jones & Kuni Jenkins, *Rethinking Collaboration: Working the Indigene-Colonizer Hyphen*, in HANDBOOK OF CRITICAL AND INDIGENOUS METHODOLOGIES 471, 486 (Norman Denzin, Yvonna Lincoln & Linda Tuhiwai Smith eds., 2008); Doug Kiel & James F. Brooks, *Introduction: Reframing and Reclaiming Indigenous Midwesterns*, 2 MIDDLE WEST REV. vii, vii (2016).

62. Statz, *supra* note 30 at 8.

Minnesota (LASNEM) and Wisconsin Judicare, Inc. From these contacts, Professor Statz was introduced to others who participated in or helped recruit participants for the larger research project, which begun in 2017.

The larger project included qualitative one-on-one and focus group interviews with low-income individuals. Interviews centered on experiences of rurality; what socioeconomic problems individuals identified as consequential; whether these concerns were framed as legal; how individuals defined and/or mobilized justice; and individuals’ interpretations and experiences of legal assistance and tribal or state court systems. To arrive at these understandings, interviews traced family and employment histories, involvement in and identification with small towns and tribal communities, and engagement—if any—with formal legal structures and professionals. Questions were open-ended to provide subjects the space to narrate and prioritize issues on their own terms. Approximately 60 low-income individuals participated in these conversations. Participants were 18 years or older, fairly evenly divided by gender, and largely reflected the socioeconomic and ethnic composition of the Northland.

An additional 228 low-income individuals across northern Minnesota and Wisconsin participated in individual and household surveys the research team conducted for legal needs assessments on behalf of partnering legal aid organizations.⁶³ While we largely reference ethnographic data in this Article, the collected survey data are particularly useful in gauging low-income residents’ awareness and interpretations of existing A2J supports (see in particular Section II A. A2J Technologies).

Statz also conducted one-on-one interviews and, often, multiple follow-up interviews, with nearly 100 public interest and private attorneys, paralegals, and tribal and state court judges⁶⁴ across the Northland. These interviews were semi-

63. We surveyed 143 low-income residents across the LASNEM service area 85 in Judicare’s service area. The majority of surveys were conducted telephonically, though a number were conducted in-person at area libraries and social service organizations. Survey data were entered into Qualtrics, a software for collecting and analyzing data, in real time. Surveys included the following sections: Introduction, eligibility, and informed consent; overview of available legal resources, paths to information and help; participant’s experiences of 21 problem categories, among them housing, healthcare, jobs and employment, and wills and estates; consequences of legal problems; participant’s evaluation of broader community needs and opportunities; and demographic information. Surveys were publicized through fliers placed at social service organizations, food shelves, libraries, public benefits offices, apartment buildings, shopping centers, and churches and were additionally advertised by a range of community partners via social media and word of mouth. Rather than follow income-eligibility guidelines for legal aid (typically 125% of the federal poverty level), we sought to speak with individuals who may be income-ineligible for legal assistance but are nonetheless unable to afford a private or even “low-bono” attorney. To that end, our eligibility criteria were limited to: residence in a county or tribal reservation within LASNEM’s service area; age 18 years or older; and self-identification as “low-income” or unable to afford a private attorney if a legal issue arises. The duration of the survey ranged from 15 minutes to over two hours; on average, surveys took about 45 minutes to complete. Each participant received a \$10 gift card. Upon survey completion, all personal data were destroyed as per University of Minnesota Human Subjects Requirements. See BREDESON & STATZ, *supra* note 58; JORDAN WOLF & MICHELE STATZ, NORTHLAND PROJECT, WISCONSIN JUDICARE, INC. COMMUNITY NEEDS ASSESSMENT (2018).

64. This research fully acknowledges the critical differences between state and tribal court systems, and certainly *within* these systems as well. The Bureau of Indian Affairs reports 567 federally recognized tribes in the U.S., of which 351 have tribal courts. Additionally, 21 C.F.R. courts (a colloquial name for the Courts of Indian Offenses) serve to administer justice on reservations where tribes have retained exclusive jurisdiction over Indians but do not have an established tribal court to exercise that jurisdiction.

structured and documented individuals' personal and professional histories; understandings of local legal need; definitions of justice; experiences as "insiders" and "outsiders" owing to gender, race or ethnicity, family history, and/or socioeconomic location; the reported salience of client and community expectations; involvement in relevant professional or political policy efforts, particularly those geared toward addressing rural access to justice issues; and the unique social and spatial dimensions of legal practice in the Northland. Finally, Statz conducted one-on-one, semi-structured interviews with other community stakeholders, including librarians, elected leaders, educators, law enforcement, and health care providers.

These data were further contextualized by Professor Statz's observations of judges as they presided over civil and criminal matters and participated in diverse forms of alternative dispute resolution, including mental health, peacemaking, and treatment courts, and by participant observation in local community justice forums, access to justice taskforces on which judges collaborated, and community events with collaborating legal aid organizations.

In 2020, Professor Statz began pursuing additional research on the Lac Courte Oreilles Ojibwa Community College's tribal lay advocate certificate program.⁶⁵ With supplemental NSF funding, this project evaluates the nascent, and presently only, formalized effort to train lay advocates to assist pro se litigants in and, potentially, beyond Wisconsin's tribal courts. Amid complex resource and staffing limitations, local socio-economic needs, and broader challenges to court and personnel legitimacy, this program arguably represents what David Udell calls "community based legal empowerment,"⁶⁶ which is discussed further in Part III.C.

All interviews and field notes in this research were transcribed and coded using NVivo data analysis software. Data were analyzed with a grounded theory approach that integrates theoretically-informed questions, ongoing data collection,

Some tribal courts prioritize Anglo-American judicial structures, adversarial processes, and written or positive law while others emphasize traditional forums for dispute resolution. Many offer some hybrid of both. Arguably all confront challenges to self-determination and sovereignty. This research includes the work of state and tribal judges most simply because a number of these judges *work together*, albeit via informal and at times sporadic channels. Moreover, nearly all of these judges, whether state or tribal, evidence mutual lived experiences of what might be termed "the Northland lawscape," along with a subtly defiant commitment to offer "convivial alternatives" to community members seeking access to justice. See Statz, *supra* note 30, at 19; Creel, *supra* note 15; Larry Nesper, *Ordering Legal Plurality: Allocating Jurisdiction in State and Tribal Courts in Wisconsin*, 38 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 30, 43 (2015); Frank Pommersheim, *The Contextual Legitimacy of Adjudication in Tribal Courts and the Role of the Tribal Bar as an Interpretive Community: An Essay*, 18 N. M. L. REV. 49, 50 (1988); TRIBAL ISSUES ADVISORY GRP., REPORT OF THE TRIBAL ISSUES ADVISORY GROUP 1-2 (2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/20160606_TIAG-Report.pdf.

65. The tribal lay advocate program represents a joint effort between the Lac Courte Oreilles Band of Lake Superior Chippewa Indians tribal court, the Lac du Flambeau Band of Lake Superior Chippewa Indians tribal court, the Bad River Band of Lake Superior Chippewa tribal court, the Red Cliff Band of Lake Superior Chippewa tribal court, the St. Croix Chippewa Indians of Wisconsin tribal court, and the Lac Courte Oreilles Ojibwa Community College. See *Tribal Court Lay Advocate Certificate*, LAC COURTE OREILLES OJIBWE COLLEGE, <https://www.lco.edu/layadvocate> (last visited May 5, 2021).

66. David Udell, *The Civil Legal Aid Movement: 15 Initiatives that are Increasing Access to Justice in the United States*, 2 IMPACT CTR. FOR PUB. INT. L. 73, 76 (2016).

and interpretation to identify emergent themes.⁶⁷ This approach was complemented by abductive theory, which produces new hypotheses and theories by holding surprising research evidence against diverse literatures.⁶⁸

C. A Rural Intervention in A2J Policy and Scholarship

The collected data demonstrate that even relatively robust state-supported initiatives fail to meaningfully address the needs of rural pro se litigants. As demonstrated below, critical gaps exist in how access to justice efforts are perceived by state decisionmakers in the “Metro” and how they are experienced in rural northern regions. Put simply, the initiatives touted as advancing “equal administration of justice for all”⁶⁹ often prove to be the very same self-help forms, helplines, and online resources that low-income rural residents identify as *barriers* to justice.⁷⁰ Owing to such inadequate support, and likewise to the social and technological isolation experienced by remote northern communities, the complex needs of low-income residents largely remain unaddressed.⁷¹ So too do their attendant impacts on rural attorneys and state and tribal court judges, namely high rates of burnout and secondary trauma.⁷² These are meaningful if not disappointing data, and as discussed in the next section, they powerfully demonstrate the inefficacy of well-funded legal supports that fail to incorporate the lived expertise of pro se litigants, meaningfully acknowledge rural individuals’ unique and complex socio-spatial needs, or focus on experiences of justice as much as they do access.

Despite growing attention to rural A2J, it remains rare for state-sponsored initiatives to expressly consider the diverse concerns that rural low-income individuals themselves prioritize; whether rural attorneys share and are equipped to address these concerns; and the extent to which local interpretations of justice align with the assessments of “outside” policymakers. Similarly, the expert perspectives of rural low-income individuals and other “local” legal actors are largely absent in A2J scholarship, which tends to characterize low-income litigants as not thinking justiciable issues are legal or have legal remedies.⁷³

67. See generally BARNEY G. GLASER & ANSELM L. STRAUSS, *DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (2017).

68. Stefan Timmermans & Iddo Tavory, *Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis*, 30 *SOCIOLOGICAL THEORY* 167, 180 (2012).

69. *For the Public*, MINN. STATE BAR ASSOC. (2018), <https://www.mnbar.org/public-resources/resources> (last visited May 5, 2021).

70. BREDESON & STATZ, *supra* note 58, at 28.

71. WOLF & STATZ, *supra* note 64, at 15.

72. Statz, *supra* note 30, at 28-30; *CoLAP’s 2019 National Judicial Stress and Resilience Survey: The Results Are In!*, AM. BAR ASSOC. (Sept. 25, 2019), https://www.americanbar.org/content/dam/aba/events/lawyer_assistance/2019/wedgen2/national-judicial-stress-resilience-survey092319.pdf; See generally Charles P. Edwards & Monica K. Miller, *An Assessment of Judges’ Self-Reported Experiences of Secondary Traumatic Stress*, 70 *JUV. & FAM. CT. J.* 7 (2019); Lisa Morgillo, *Do Not Make Their Trauma Your Trauma: Coping with Burnout as a Family Law Attorney*, 53 *FAM. CT. REV.* 456 (2015).

73. Pascoe Pleasence, Nigel J. Balmer & Stian Reimers, *What Really Drives Advice Seeking Behaviour? Looking Beyond the Subject of Legal Disputes*, 1 *OÑATI SOCIO-LEGAL SERIES* 1, 18 (2011); REBECCA SANDEFUR, *ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE*

In response, this Article enhances and complicates prevailing assumptions of need, access, and justice through robust and rigorous on the ground data. It answers the call for empirical A2J research by moving beyond “evaluation studies”⁷⁴ to consider the deep relevance of historical, socio-economic and spatial context—i.e., the full civil justice picture⁷⁵—to A2J initiatives and scholarship. It does not focus solely on low-income litigants with civil justice problems,⁷⁶ attorney impacts, or the benefits of representation. Instead, it importantly integrates the supply side of funding, A2J initiatives, and legal service delivery⁷⁷ with novel insights regarding needs and, critically, *expectations* for access and justice from those who already intimately experience the “full picture.”

The following section provides an overview of prominent trends in A2J policy and scholarship, namely: (a) A2J technologies; (b) rural attorney recruitment and law schools; (c) non-lawyer and unauthorized practice initiatives; (d) unbundled legal services, and (e) spaces in which legal activities might occur. Each subsection offers an introduction to a particular initiative and provides examples before discussing whether or to what extent the literature on that particular effort considers the unique challenges and opportunities presented by rural “socio-spatiality,” or the social and spatial aspects of lived experience.⁷⁸ Finally, Part III overviews how or if an initiative has been implemented in Minnesota or Wisconsin. Each subsection discusses how an initiative is interpreted, utilized, or disregarded by diverse Northland legal actors. While the data reflects the A2J experiences and expertise of individuals across just one rural region in the U.S., this Article nonetheless maintains that these perspectives must be included alongside leading scholarship and policy to allow for a more multi-dimensional and accountable evaluation of prevailing “solutions.”

III. ACCESS TO JUSTICE INITIATIVES AND RURALITY

*Our country has a vexing access-to-justice crisis. Nobody denies this.
The question is what we are going to do about it.*⁷⁹

The idea of what constitutes “access to justice” varies significantly. This Article evaluates leading law scholarship on the topic alongside the perspectives

COMMUNITY NEEDS AND SERVICES STUDY 3 (2014); Rebecca Sandefur, *Access to What?*, 148 DAEDALUS 49, 51-52 (2019).

74. Here, “evaluation studies” refers to randomized control trials à la the A2J Lab. *See About, A2J LAB*, <https://a2jlab.org/about/> (last visited May 5, 2021). As others have noted, randomized control trials importantly address the problem of selection bias but cannot fully capture real life circumstances or the nuanced benefits of representation. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about When Counsel is Most Needed*, 37 FORDHAM URB. L. J. 37, 73 (2010).

75. Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 103 (2013).

76. Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOC. 339, 341–42 (2008).

77. Tonya L Brito, *Introduction to Symposium in New Directions in the Empirical Study of Access to Justice*, 42 LAW & SOC. INQUIRY 960, (2017).

78. *See generally* EDWARD W. SOJA, *SEEKING SPATIAL JUSTICE* (2010).

79. Benjamin P. Cooper, *Access to Justice without Lawyers*, 47 AKRON L. REV. 205, 221 (2014).

of policy makers and state and federal A2J task forces.⁸⁰ While our overview of diverse initiatives is by no means exhaustive, the Article endeavors to highlight prominent trends and the extent to which initiatives consider rurality, if at all.

To many, A2J refers to literal access, or enabling claimants to physically or virtually come to court.⁸¹ Motivated by the belief that a lack of physical presence and real-time participation impedes access to justice in face-to-face processes,⁸² this perspective largely centers on technology as a way to bridge distance between rural litigants and courtrooms. A telling example is an online video entitled “Going to Court on Your Own,” published by Illinois Legal Aid Online.⁸³ Underscoring the goal of simply *getting to court*, the six questions of the accompanying “Test Your Knowledge” quiz evaluate an individual’s familiarity with legal terms (plaintiff, pro se, determination), e-filing, and where to check in with upon arriving at the courtroom. Tellingly, the final question asks: “What is the name for the sheet posted in or near the courtroom that you should check to make sure your case is on it?”⁸⁴ Similarly prioritizing physical or virtual presence in court, Cabral et al. write:

We envision a world in the near future where access to justice means that a potential litigant can easily find legal information about her rights, apply for legal aid electronically, talk to a legal aid attorney over her tablet computer, find and complete the forms she needs to file in court, access the court’s e-filing system to file her response and check on the progress of her case, and communicate over the Internet with a lawyer in a larger city if her case becomes complicated.⁸⁵

To others, “access” refers to the full completion of the court process, regardless of the actual outcome or the litigant’s perception of the “fairness” of the justice system.⁸⁶ In this literature, it is not merely *being* in the court (physically or via

80. Both Minnesota and Wisconsin have established access to justice commissions. *See Legal Services State Support*, LEGAL SERVS. STATE SUPPORT, <http://www.mnlegalservices.org/statesupport> (last visited May 5, 2021); *Welcome*, WISCONSIN ACCESS TO JUST. COMM’N (2020), <https://wisatj.org/> (last visited May 5, 2021).

81. “Access to justice in state courts today is largely a function of access to physical courthouses and the in-person, real-time availability of justice system decisionmakers—e.g. law enforcement, prosecutors, and judges... Technology has the potential to play a positive role in the years ahead in reducing the economic, physical, and psychological costs of accessing courthouses and therefore justice.” J. J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 1994-1995 (2017). *See also* Judith Resnik, *A2J/A2K: Access to Justice, Access to Knowledge, and Economic Inequalities in Open Courts and Arbitrations*, 96 N.C. L. REV. 605, 611 (2018).

82. Amy J. Schmitz, *Expanding Access to Remedies through E-Court Initiatives*, 67 BUFF. L. REV. 89, 93 (2019); *See also Access to Justice Commissions*, AM. BAR ASS’N, https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/ (last visited May 5, 2021); *Office for Access to Justice*, U.S. DEP’T OF JUST. (Oct. 26, 2020), <https://www.justice.gov/atj>.

83. *Going to Court on Your Own*, ILL. LEGAL AID ONLINE (May 24, 2020), <https://www.illinoislegalaid.org/legal-information/going-court-your-own>.

84. *Id.* Click on “5 quiz question to test your knowledge” to be linked to the survey.

85. James E. Cabral, Abhijeet Chavan, Thomas M. Clarke & John Greacen, *Using Technology to Enhance Access to Justice*, 26 HARV. J. L. & TECH. 241, 247 (2012).

86. Marsha M. Mansfield, *Litigants without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389, 1392 (2016).

technological facsimiles) that provides access, but successfully navigating the attendant procedural process to final adjudication.

Both of these directions implicitly presume the absence of full representation, while a third area of A2J scholarship centers on whether and to what extent direct representation actually makes a difference. Though firmly acknowledging that there are insufficient resources to provide full representation to all civil litigants,⁸⁷ this literature steadily and somewhat unsurprisingly demonstrates that litigants with lawyers create fewer burdens on the legal system than pro se litigants,⁸⁸ and that individuals contending with diverse justice problems including housing, debt collection, family law matters, and government benefits claims who have full representation obtain better results than those who are unrepresented or partially represented.⁸⁹

Most commonly, legal success is attributed to lawyers' understanding of procedural complexities, namely the intricacy of the pleadings, other documents, and procedures necessary to pursue a justice problem as a court case.⁹⁰ Full legal representation also serves as an endorsement of a party that in turn affects how judges and other court staff evaluate their claims.⁹¹ Even the mere *presence* of an attorney has been proven to help courts follow their own rules, particularly when it comes to addressing the summary treatment of unrepresented litigants by judges.⁹² Other work hints at the significance of what Rebecca Sandefur calls "relational expertise,"⁹³ or attorneys' skilled at negotiating the "rarified" interpersonal environment of the court.⁹⁴ The significance of "relational expertise" rests on evidence that lawyers' impact reflect their personal and professional reputations. In other words, judges often give greater credence to the arguments of

87. See, e.g., Bonnie Rose Hough & Justice Laurie Zelon, *Self-Represented Litigants: Challenges and Opportunities for Access to Justice*, 47 JUDGES J. 30, 32 (2008).

88. *Judges' Views of Pro Se Litigants' Effect on Courts*, 40 CLEARINGHOUSE REV. 228, (2006).

89. See Jessica K. Steinberg, *In Pursuit of Justice - Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. ON POVERTY L. & POL'Y 453 (2011); Engler, *supra* note 75; Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 L. & Soc'y Rev. 419, 423–26 (2001) (housing); D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Phillip Hennessey, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 903–904 (2013) (housing); D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make*, 121 YALE L.J. 2118, 2171–196 (2012) (unemployment Compensation); HERBERT M. KRITZER, *LEGAL ADVOCACY: LAWYERS AND NONLAWYERS AT WORK* 21 (1998).

90. Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51, 51–52 (2011).

91. Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact*, 80 AM. SOC. REV. 909, 924 (2015).

92. KAREN DORAN ET AL., CHICAGO-KENT SCHOOL OF LAW, ILL. INST. OF TECH., *NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT, LAWYERS' COMMITTEE FOR BETTER HOUSING* (2003). But *c.f.*, Statz's own work on rural judges' increased time and assistance on behalf of rural pro se litigants. Statz, *supra* note 30.

93. Sandefur, *supra* note 92; Colleen F. Shanahan, Anna E. Carpenter, ad Alyx Mark, *Lawyers, Power, and Strategic Expertise*, 93 DENV. L. REV. 469 (2016).

94. Sandefur, *supra* note 92, at 926. See also Stephen R. Barley, *Technicians in the Workplace: Ethnographic Evidence for Bringing Work into Organizational Studies*, 41 ADMIN. SCI. QUARTERLY 404, (1996); KRITZER, *supra* note 90, at 21.

lawyers who they see as reliable, knowledgeable, and trustworthy rather than unknown advocates.⁹⁵

Taken together, this third body of literature demonstrates the substantive, procedural, and interpersonal benefits of direct representation. Yet it is worth pausing here, for two reasons. First, the literature on the impacts of counsel tends to be urbanormative, meaning that it neglects the unique realities of rural socio-spatiality—and perhaps most critically, rural attorney shortages. Accordingly, the research below relies on but also adds necessary dimension to this body of work. Second, and more specifically, this Article identifies a subtler absence in A2J scholarship on the impacts of counsel, particularly in regard to the relational role of attorneys. The following draws on empirical data collected across the rural Northland to demonstrate why prevailing A2J initiatives, the majority of which have been developed in response to funding and personnel shortages—and which thereby de-prioritize direct representation—largely fail to address the complex legal needs of rural residents. There is no substitute for direct representation. Perhaps owing to the interdisciplinary and collaborative nature of this research, this Article moves beyond a normative legal argument for representation based on case outcomes and attorneys’ substantive and relational expertise in the legal setting. Instead, this Article highlights direct representation as *an intimate and dignifying act between an attorney and client*. As the data revealed, it is this function of attorneys that arguably matters the most to rural low-income litigants—and, importantly, attends to the too often absent *justice* experience of access to justice. This necessarily unsettles A2J “solutions” that are inherently incomplete, inequitable, and consequently experienced as stressful and demeaning.

A. A2J Technologies

Overwhelmingly, A2J initiatives center on technological solutions. Accordingly, the range of technologies detailed in this section is wide. Websites make up a large share of A2J technologies, including court and legal aid websites,⁹⁶ along with online platforms that offer legal advice from licensed attorneys or help direct clients to assistance.⁹⁷ In Minnesota, these are exemplified by state

95. Susan Brodie Haire, Stefanie A. Lindquist & Roger Hartley, *Attorney Expertise, Litigant Success and Judicial Decisionmaking in the U.S. Courts of Appeals*, 33 L. AND SOC’Y REV. 667 (1999); Kevin T. McGuire, *Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success*, 57 J. OF POL. 187 (1995); John Szmer, Susan W. Johnson & Tammy A. Sarver, *Does the Lawyer Matter? Influencing Outcomes on the Supreme Court of Canada*, 41 L. & SOC. REV. 279 (2007).

96. Cabral et al., *supra* note 86; Raymond H Brescia, *Using Technology to Improve Rural Access to Justice*, 17 GOV’T, L. AND POL’Y J. 58, (2018); LEGAL SERVS. CORP., THE SUMMIT ON THE USE OF TECHNOLOGY TO EXPAND ACCESS TO JUSTICE (2013), https://www.lsc.gov/sites/default/files/LSC_Tech%20Summit%20Report_2013.pdf [hereinafter 2013 LSC SUMMIT]; LEGAL SERVS. CORP., 2018 ANNUAL REPORT, (2018), <https://www.lsc.gov/media-center/publications/annual-reports/2018-annual-report> [hereinafter 2018 LSC ANNUAL REPORT].

97. Schmitz *supra* note 83; Deborah L. Rhode et al., *Access to Justice through Limited Legal Assistance*, 16 NW. U. J. INT’L HUM. RTS. 1 (2018); Kathleen Elliott Vinson & Samantha A. Moppett, *Digital Pro Bono: Leveraging Technology to Provide Access to Justice*, 92 ST. JOHN’S L. REV. 551 (2018); 2011 LSC SUMMIT, *supra* note 97; 2018 LSC ANNUAL REPORT, *supra* note 97; Pruitt et al., *supra* note 7; Brescia, *supra* note 97; Michael J. Wolf, *Collaborative Technology Improves Access to Justice*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 759 (2012); *Our Journey: A Call to Action for Inclusive Justice*, BOLDNESS PROJECT (2017), <https://boldnessproject.ruralandremotetojustice.com/> (last visited May 5, 2021);

supported A2J initiatives like Law Help MN⁹⁸ and Minnesota Legal Advice Online.⁹⁹ In Wisconsin, the Wisconsin State Bar Public Legal Resources¹⁰⁰ includes links to help locate a lawyer or access legal advice and information, and Wisconsin Free Legal Answers¹⁰¹ allows qualified users to submit a civil legal question that a volunteer attorney will answer.¹⁰²

Other widely discussed forms of technology include online legal aid intake systems,¹⁰³ mobile phone apps and texting services that can allow clients to access services by phone and/or provide reminders for upcoming court appearances and dates,¹⁰⁴ A2J Author Systems, which generate and fill in forms for users based on their answers to specific questions,¹⁰⁵ provide explanatory guides and videos to help clients understand aspects of the court and legal system,¹⁰⁶ and legal advice telephone hotlines.¹⁰⁷ Some technology-centered A2J initiatives are less concerned with providing advice and assistance than with developing digital alternatives to “traditional,” face-to-face court interactions and appearances. These include video conferencing,¹⁰⁸ online dispute resolution,¹⁰⁹ and E-filing options for legal documents.¹¹⁰

This wide spectrum highlights that there is no clear frontrunner when it comes to technology and, likewise, *no single technology provides access to justice* across diverse socio-spatial contexts. Nonetheless, a presumption remains: There is, or at least could be, a “technological fix” for enhancing or facilitating access to justice.

LISA R. PRUITT & ZACH NEWMAN, CAL. COMM’N ON ACCESS TO JUST., *THE ROLE OF TECHNOLOGY IN ENHANCING RURAL ACCESS TO JUSTICE* (2020); *Civil Justice for All: Law Schools and the Civil Justice Gap*, AM. ACAD. OF ARTS & SCI. (digital conference event, Oct. 27, 2020), <https://www.amacad.org/events/civil-justice-affiliates>.

98. LAW HELP MN, <https://www.lawhelpmn.org/> (last visited May 5, 2021).

99. MN LEGAL ADVICE <https://www.mnlegaladvice.org/> (last visited May 5, 2021).

100. *For Public*, STATE BAR OF WIS., <https://www.wisbar.org/forPublic/Pages/for-public.aspx> (last visited May 5, 2021).

101. Prior to WFLA, there had been Northern Wisconsin Legal Advice Project (NWLAP), an online legal advice program created by and staffed with attorneys from Wisconsin Judicare. The Northern Legal Advice Project was discontinued in 2018 and replaced by Wisconsin Free Legal Answers. Pruitt et al., *supra* note 7, at 87; *Northern Wisconsin Legal Advice Project (NWLAP)*, WIS. JUDICARE, INC. (Aug. 30, 2018), <http://www.judicare.org/news.cfm?PageID=40>.

102. *How It Works*, WIS. FREE LEGAL ANSWERS, <https://wi.freelegalanswers.org/> (last visited May 5, 2021).

103. LSC THE JUSTICE GAP, *supra* note 13; 2018 LSC ANNUAL REPORT, *supra* note 97.

104. Cabral et al., *supra* note 86; 2018 LSC ANNUAL REPORT, *supra* note 97; BOLDNESS PROJECT, *supra* note 98.

105. Lynch, *supra* note 22, at 1697-98; Cooper, *supra* note 80, at 209-10; Rhode et al., *supra* note 101, at 5; Frederick Zemans & Justin Amaral, *A Current Assessment of Legal Aid in Ontario*, 29 J.L. & SOC. POL’Y 1, 25-27 (2018); Cabral et al., *supra* note 86, at 248; 2013 LSC SUMMIT, *supra* note 97, at 4-5; 2018 LSC ANNUAL REPORT, *supra* note 97, at 36-37; Wolf, *supra* note 101, at 779-83.

106. Rhode et al., *supra* note 101, at 5; 2018 LSC ANNUAL REPORT, *supra* note 97, at 36; Wolf, *supra* note 101, at 779-80.

107. Lynch, *supra* note 22, at 1696; LSC THE JUSTICE GAP, *supra* note 13, at 31.

108. Wolf, *supra* note 98 at 785; Lynch, *supra* note 22 at 1695; Cabral et al., *supra* note 86 at 255; Prescott, *supra* note 82 at 2014-15; *Access to Justice in Rural Areas*, LEGAL SERVS. CORP. (2020), <https://www.lsc.gov/grants-grantee-resources/resources-topic-type/access-justice-rural-areas> (last visited May 5, 2021).

109. Schmitz, *supra* note 83, at 90-105; Prescott, *supra* note 82, at 2015-26; Wolf, *supra* note 98, at 774; Pruitt & Showman, *supra* note 22, at 505.

110. Pruitt & Showman, *supra* note 22, 504-05; Cabral et al., *supra* note 86, at 251-52.

As Max Oelschlaeger describes, “the appeal of the technological fix” comes from the belief that “it is easier or more efficacious to solve social problems by using technology to satisfy human nature than reason to modify human behavior.”¹¹¹

It is perhaps unsurprising that the A2J literature that centers on “technological fixes” often presents technology as a transformative force that can bring large-scale change to the legal system and how individuals access it. Describing the recent development of online dispute resolution (ODR) services, Amy Schmitz claims that a “lack of physical access” to courts is what “impede[s] access to justice” for clients in traditional face-to-face proceedings.¹¹² This argument suggests that physical presence in and access to courts—where resolution would traditionally occur—is itself access to justice. Technology is thus presented as “forward thinking,”¹¹³ and as something that can both facilitate and change the idea of how justice is accessed. Yet in championing technology as innovative and transformative, this literature tends to simplify any critiques of A2J technologies as based in a fear of job loss or the disruption of the status quo.¹¹⁴ These arguments reduce criticisms of technology to ignorance while failing to address important questions around its use and spatial relevance.

Indeed, most A2J literature does not adequately address the applicability of technology-centered initiatives to diverse socio-spatial contexts. This is especially true when it comes to rurality. “A2J tech” literature tends to consider rurality minimally, if at all. When it does, a common claim is that technology-based initiatives are “especially” or “particularly” useful in rural areas because they alleviate or eliminate the problems of distance and travel.¹¹⁵ Rarely does this scholarship explicitly consider rural digital deserts in the U.S.¹¹⁶ Moreover, the word “rural” is often used generally, without particular reference to any specific areas or regions,¹¹⁷ which allows the literature to treat rurality in a homogenous way. Accordingly, broad generalizations follow, particularly around the supposed benefits technology might have in rural places.

Consider, for example, the description of an online foreclosure guide for rural communities in New York, which notes it “can be viewed on a smartphone effectively” and “can be a lifeline for pro se litigants who must face their legal problems without a lawyer.”¹¹⁸ This presumption, namely that rural pro se litigants will have access to a smartphone, reveals consequential expectations about the accessibility and affordability of technology but neglects broader realities of economic marginalization and rural digital deserts. While the percentage of rural residents who own smartphones has increased within the last decade, only 71% of

111. Max Oelschlaeger, *The Myth of the Technological Fix*, 10 SW. J. OF PHIL. 43, 44 (1979).

112. Schmitz, *supra* note 83, at 93.

113. *Id.* at 93.

114. *Id.* at 94; Rhode et al., *supra* note 98 at 5.

115. Schmitz, *supra* note 83, at 95; Prescott, *supra* note 82, at 2015; Rhode et al., *supra* note 98, at 4.

116. Jessica Denson, *A Parched Country: Study Shows Digital Deserts Exist*, CONNECTED NATION (Sept. 18, 2019), <https://connectednation.org/blog/2019/09/18/a-parched-country-study-shows-digital-deserts-exist/>.

117. See Brescia, *supra* note 97, at 58; Prescott, *supra* note 82, at 2010; Schmitz, *supra* note 83, at 104.

118. Brescia, *supra* note 97, at 59.

rural residents have them, compared to 83% of urban residents.¹¹⁹ Further, individuals may have smartphones without data plans owing to the high cost of such plans, or have older smartphones with small screens, as was reported in our research. Each of these issues significantly limit access to A2J apps or websites. A number of low-income research participants also mentioned “Obama phones,” referencing Lifeline, a federal program that subsidized telephone service for low-income subscribers.¹²⁰ Some survey participants shared that they would be using the \$10 gift card incentive they received to participate in the survey to add minutes to their Lifeline phones.¹²¹

Relatedly, cell phone coverage is not necessarily strong, consistent, or even present in rural areas.¹²² This fact was neglected by the authors of the aforementioned foreclosure guide, as gaps in service still persist in rural areas of New York state.¹²³ It was similarly an issue for research participants. The profound consequences of absent rural cellular coverage were underscored in 2018 as Native and non-Native community members advocated to bring a cellular tower to northwestern Wisconsin. This collaborative effort was propelled by the death of four family members when a kayak capsized in Lake Superior and emergency services could not be contacted owing to nonexistent cellular reception.¹²⁴ Because of the new tower, coverage is expected to shift from 20% to 80% in populated areas of Bayfield County and the Red Cliff Band of Lake Superior Chippewa reservation.¹²⁵

The dearth of cellular coverage in many rural regions, to say nothing of broadband, calls into question the above characterization of the New York online foreclosure guide as a “lifeline.” Indeed, the realities of rural digital deserts critically illuminate the incorrect assumptions on which many A2J technologies are based—assumptions about connectivity and the ease and accessibility of legal advice hotlines or mobile apps intended to provide self-representing litigants with legal aid assistance or court-sponsored self-help supports.¹²⁶

Without addressing the rural digital divide, the ability of technology to close rural civil justice gaps remains limited.¹²⁷ Arguably the biggest problem with a

119. *Internet/Broadband Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/Internet-broadband/>.

120. Karma Allen, *These States Depend on ‘Obama Phone’ the Most*, NBC NEWS (Jun. 20, 2015, 4:25PM), <https://www.nbcnews.com/tech/mobile/these-states-depend-obama-phone-most-n378741>; Karen Tumulty, *‘Obama Phones’ Subsidy Program Draws New Scrutiny on the Hill*, WASH. POST (Apr. 9, 2013), https://www.washingtonpost.com/politics/obama-phones-subsidy-program-draws-new-scrutiny-on-the-hill/2013/04/09/50699d04-a061-11e2-be47-b44febada3a8_story.html.

121. Fieldnotes in Minnesota (January 2018) (on file with authors).

122. Sharon Stover, Brian Whitacre, Colin Rhinesmith & Alexis Schrubbe, *The Digital Inclusion Role of Rural Libraries: Social Inequalities through Space and Place*, 42 MEDIA, CULTURE & SOC’Y 242, 243 (2019).

123. Kelly O’Brien, *NY Lawmakers Say Rural Broadband, Cell Coverage Top Complaint*, WCAX (Mar. 4, 2020, 3:23 PM), <https://www.wcax.com/content/news/NY-lawmakers-stress-rural-broadband-cell-coverage-is-a-top-priority--568491751.html>.

124. Emma Quinn, *Foundation Set for New Cell Tower in Red Cliff*, KBJR6 NEWS (Aug. 9, 2019, 5:18 PM), <https://kbjr6.com/2019/08/09/an-update-for-the-red-cliff-band-cell-tower/>.

125. Emily Ness, *New Cell Tower Brings Coverage to Red Cliff*, WDIO (Feb. 2, 2020, 10:32 PM), <https://www.wdio.com/news/cell-tower-/5631574/>.

126. See, e.g., *Mobile Legal Help Apps*, JUST. INNOVATION STANFORD LEGAL DESIGN LAB, <http://justiceinnovation.law.stanford.edu/mobile-legal-help-apps/> (last visited May 5, 2021).

127. Brescia, *supra* note 97, at 62.

technological A2J “catch all” for rural areas is that such places often have inconsistent, or entirely non-existent, broadband internet coverage—even as much of the A2J literature presumes “almost ubiquitous” internet access in the United States.¹²⁸ In 2019, only 63% of rural residents across the United States had home broadband access, compared to 75% of urban residents.¹²⁹ Accordingly, initiatives designed for rural A2J that require or center on broadband will likely miss at least a portion of their target population. Lisa Pruitt, for instance, describes Montana Legal Services’ video-conferencing technology for bankruptcy education¹³⁰ while noting that only about 70% of the state has home internet access.¹³¹ The technology might be used by some but cannot possibly reach everyone in need.

Similarly, in Minnesota, rural broadband access varies significantly by county to county—and even within a county itself—with access generally more limited the farther one is from population centers.¹³² The COVID-19 pandemic further highlights how rural broadband connectivity is lacking throughout the state of Minnesota.¹³³ Even if efforts are being made to expand broadband access,¹³⁴ at least in part due to emergency circumstances, the expansion confirms that connectivity was indeed inadequate before. It is worth noting that data on regional connectivity is and has been readily accessible for a number of years, yet the majority of the literature fails to utilize it. Literature that does use it significantly does *not* argue exclusively for technological fixes.¹³⁵

In some cases, technology serves to correct problems created by other A2J tools and resources. Consider A2J author and document assembly systems, which are designed to simplify the legal process by generating completed legal documents from answers provided by users.¹³⁶ A2J author and document assembly

128. Wolf, *supra* note 98, at 770; see generally Schmitz, *supra* note 83. Notably, other scholarship shows an awareness of the digital divide, but argues that the “decreased” divide or “narrowing” of the digital divide over the past two decades is proof that the expansion of technology-based initiatives can and should proceed. See Prescott, *supra* note 82, at 2011, Cabral et al., *supra* note 86, at 246.

129. Andrew Perrin, *Digital Gap Between Rural and Nonrural American Persists*, PEW RSCH. CTR. (May 31, 2019), <https://www.pewresearch.org/fact-tank/2019/05/31/digital-gap-between-rural-and-nonrural-america-persists/>.

130. Pruitt & Showman, *supra* note 22, at 505.

131. *Id.* at 505-06.

132. The Maps and Data section of the Minnesota Office of Broadband Development includes detailed county level maps of broadband accessibility. See *Maps and Data*, MINN. OFF. OF BROADBAND DEV., <https://mn.gov/deed/programs-services/broadband/maps/> (last visited May 5, 2021).

133. Pam Louwagie, *Spotty Internet Access is Leaving Many Rural Minnesotans Behind*, STAR TRIBUNE (Apr. 11, 2020, 11:39 AM), <https://www.startribune.com/covid-19-pandemic-highlights-broadband-divide-in-rural-minnesota/569541472/>; Kirsten Swanson, *Response to Coronavirus Exposes Lack of High-Speed Internet Access Minnesota*, WDIO (Mar. 21, 2020, 10:32 PM), <https://www.wdio.com/coronavirus/response-coronavirus-exposes-high-speed-internet-minnesota/5680480/>.

134. See, e.g., Home, RANGE ASS’N OF MUN. & SCHS. (2020), <https://broadband.ramsmn.org> (last visited May 5, 2021) (providing a partial listing on ongoing broadband expansion projects throughout Minnesota’s Iron Range region); MINN. RURAL BROADBAND COAL., <http://mnruralbroadbandcoalition.com> (last visited May 5, 2021) (highlighting surveys taking place to test broadband speeds in rural communities throughout the state).

135. See generally Lynch, *supra* note 22; Pruitt & Showman, *supra* note 22.

136. See, e.g., Lynch, *supra* note 22, at 1697; Cooper, *supra* note 80, at 209-11; Rhode et al., *supra* note 98, at 4-5; Zemans & Amaral, *supra* note 106, at 25-27; Cabral et al., *supra* note 86, at 247-48; 2013 LSC SUMMIT, *supra* note 97, at 4-5; 2018 LSC ANNUAL REPORT, *supra* note 97, at 36-37; Wolf, *supra* note 98, at 779-83.

systems generate forms digitally rather than having pro se clients fill out hard copy forms themselves. Though Minnesota district courts and Wisconsin circuit courts—and most legal aid offices—may distribute hard copy forms to pro se litigants, they are discussed in this section because online access to court forms are largely prioritized in Minnesota and Wisconsin.¹³⁷ Indeed, Wisconsin even charges litigants for physical copies of court forms.¹³⁸ Moreover, paper- and internet-based resources remain underutilized by low-income litigants.¹³⁹

Ostensibly developed in an effort to streamline and simplify legal forms,¹⁴⁰ Wisconsin Circuit Court Forms¹⁴¹ require users to select the correct category of legal problem and then choose required forms from several pages of listings. In Minnesota, Fillable Smart Forms¹⁴² comprise numerous forms under a variety of potential categories (domestic violence, family law, and so on).¹⁴³ The complexity of Minnesota's digital forms is noted, as there is a "Contact a Self-Help Center" button located on the forms page in Minnesota which links to the Self-Help Centers page.¹⁴⁴ In Wisconsin's A2J author system, the Forms Assistant¹⁴⁵ generates completed forms for family law cases, restraining orders, and small claims.¹⁴⁶ The Minnesota Guide & File¹⁴⁷ system similarly generates forms for different types of cases, but also for legal matters other than filing a case.¹⁴⁸ Currently, there are guides for Conciliation Court, Divorce, and Eviction cases; for creating "an Eviction Answer"; for filing an Affidavit of Service, asking for an Order for Protection or a Harassment Restraining Order, and for requesting a fee waiver.¹⁴⁹ The fact that Minnesota offers a range of options—as opposed to just the three set categories in Wisconsin's Forms Assistant—underscores the significant differences in A2J authoring systems between states.

137. See, e.g., *Court Forms Information*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/Court-Forms.aspx?tabQs=b53lb#Tab02FAQ> (last visited May 5, 2021) [hereinafter *Court Forms Information*]; *Circuit Court Forms*, WIS. CT. SYS., <https://www.wicourts.gov/forms1/circuit/index.htm> (last visited May 5, 2021) [hereinafter *Circuit Court Forms*].

138. See *Forms for Sale*, WIS. STATE L. LIBR., <http://wilawlibrary.gov/services/forms.html> (last visited May 5, 2021).

139. Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 736–37 (2015); ROGER SMITH & ALAN PATERSON, FACE TO FACE LEGAL SERVICES AND THEIR ALTERNATIVES: GLOBAL LESSONS FROM THE DIGITAL REVOLUTION, 21-22 (2014).

140. Cabral et al., *supra* note 86, at 252 (noting that authoring systems reduce problems caused by "missing, incomplete, or inaccurate forms" filled out by users without the software).

141. *Circuit Court Forms*, *supra* note 138.

142. *Court Forms Information*, *supra* note 138; *Quick Reference Guide, Working with Fillable Smart Forms*, MINN. JUD. BRANCH, https://mncourts.gov/mncourtsgov/media/scao_library/SelfHelpCenters/documents/QRG-Working-with-Fillable-Smart-Forms.pdf (last visited May 5, 2021).

143. See *id.* Click on "Overview" to see the list of available categories, which themselves link to groupings of all the forms that might be used for various legal matters in that category.

144. *Id.*

145. *Forms Assistant*, WIS. CT. SYS., <https://www.wicourts.gov/ecourts/prose.htm> (last visited May 5, 2021).

146. *Id.*

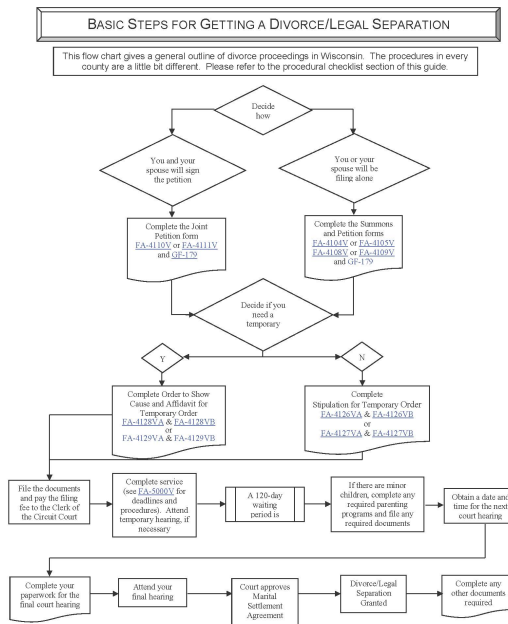
147. *Minnesota Guide & File*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/Guide-and-File.aspx> (last visited May 5, 2021).

148. *Id.*

149. *Id.*

Beyond these differences is a basic, and in a sense state-transcending, question of utility. Though intended to streamline legal claims, self-help smart forms¹⁵⁰ often prove insufficient at capturing the intimate complexity of a legal issue—including the circumstances that may have led up to it. Pointing this out, one attorney stated, “It’s part of representing [someone]. It’s not just, ‘This is my income situation and here’s how many people are in my household.’ It’s ‘here’s my income, here’s who’s in my household, here’s *why* all these people are in my household. Here’s why I need an attorney.’” Here, the attorney paused. “‘Why I need your help’ is probably based on several things that led up to this, which may or may not involve chemicals, or mental illness, or child sexual abuse, or current of recent or past mental, physical, emotional or financial abuse by a partner. You have to know [a client’s] backstory. Sometimes as far back as when they were three.”¹⁵¹

In conversations with rural low-income litigants, attorneys, and judges, court forms were the most often mentioned and most often derided A2J support. This is perhaps unsurprising. Consider, for instance, the complex—and in some places, even incomplete—outline of divorce proceedings and the necessary forms for unrepresented litigants to complete in Wisconsin.¹⁵²



150. While beyond the scope of this article, it is worth noting that smart forms are also aimed toward legal professionals. The development of “no-code” application builders like Afterpattern, Documate, and Woodpecker hold potential for more efficient legal services delivery at a lower cost, and in turn, lower and more predictable attorney fees. See AFTERPATTERN, <https://afterpattern.com/> (last visited May 5, 2021); WOODPECKER, <https://www.woodpeckerweb.com/> (last visited May 5, 2021); DOCUMATE, <https://www.documate.org> (last visited May 5, 2021).

151. Redacted interview excerpt with attorney, in Minnesota (March 2019) (on file with authors).

152. WIS. CT. SYS., BASIC GUIDE TO DIVORCE/LEGAL SEPARATION 3 (2018), https://www.wicourts.gov/formdisplay/FA-4100V_instructions.pdf?formNumber=FA-4100V&formType=Instructions&formatId=2&language=en.

While authoring systems may be simpler than the legal forms alone, A2J author systems reflect familiar assumptions about access to technology, and, correspondingly, a neglect of rural digital access barriers. An informational overview of Minnesota's Guide & File system asks, "Who can use Guide & File?" and answers, "Anyone with internet access."¹⁵³ These initiatives also presume a great deal about technological literacy. For instance, Wisconsin's Circuit Court E-Filing features a detailed list of specific requirements that documents must meet in order to be e-filed, including specific document margins, limitations on file sizes, and notes on "macros," document security, JavaScript, and digital signatures.¹⁵⁴ While this is already facially daunting for anyone with inconsistent or outdated technological resources and/or limited technological aptitude, our data introduce two additional critiques.

First, many low-income individuals in our research region access legal resources at local public libraries—the majority of which have been and continue to be shuttered owing to COVID-19 safety precautions¹⁵⁵—and, less so, at courthouse law libraries. Even as this documented reliance on local libraries importantly challenges assumptions about access to personal computers or smartphones, our research further underscores the relative "privilege" of even *getting* to a library—a trip that for many requires time, transportation, childcare, and a flexible work schedule. When we consider the stress of a justiciable issue, let alone the complex barriers presented by rural poverty more generally, it is perhaps unsurprising that so few low-income rural individuals receive assistance for their civil legal problems in the U.S.¹⁵⁶ Consider also that people often experience multiple justice problems simultaneously or experience several types of inter-related problems—such as health, legal, and financial problems—at once.¹⁵⁷ This has been starkly documented in rural regions, where three quarters of low-income residents experience at least one civil legal problem in a year, and nearly one quarter face six or more civil legal needs in a year.¹⁵⁸

Second, that someone would be expected to skillfully navigate, differentiate, and appropriately define multiple legal and/or extra-legal needs via self-help forms *in a crisis situation* is a profoundly consequential and frankly devastating theme of our research. Indeed, it was interlocutors' frequent mention of "the forms" that motivated this Article. "Maybe you're making fourteen bucks an hour, which is high end for around here," stated Caleb,¹⁵⁹ a legal aid attorney, "and you're paying

153. MINN. JUD. BRANCH, MINNESOTA GUIDE & FILE FAST FACTS (2018), https://www.mncourts.gov/mncourtsgov/media/CourtForms/Fast-Facts-Minnesota-Guide-and-File_GAF_FF101.pdf.

154. Some specific formatting requirements include "a blank 2"x2" square in the top-right corner of the first page to accommodate the court file stamp." See *Circuit Court eFiling*, WIS. CT. SYS. <https://www.wicourts.gov/ecourts/efilecircuit/tech.htm> (last visited May 5, 2021).

155. Statz & Termuhlen, *supra* note 7, at 1520.

156. LSC THE JUSTICE GAP, *supra* note 13, at 31 ("People report receiving assistance filling out legal documents or forms for 21% of these problems, being represented by a legal professional in court for 20% of them, and getting help negotiating a legal case for 14% of them.")

157. Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S. CAROLINA L. REV. 443, 447 (2016).

158. LSC THE JUSTICE GAP, *supra* note 13, at 8.

159. Redacted interview excerpt with Caleb, a legal aid attorney, in Minnesota (February 2018) (on file with authors). To protect the anonymity of participants, the authors utilize pseudonyms and likewise do not identify counties, towns, or sovereign nations by name in this manuscript.

child support or paying off a ticket or whatever it is—just one little thing and you’re in the red... There’s that anxiety and fear.” Here, he introduced the Minnesota court forms: “Sure, they increase access... Now the person at the window [at the courthouse] can say, ‘We have these forms.’” They’re also advantageous to the private bar, he added. “When someone comes in who can’t afford a retainer, the attorney can say, ‘You’ll need these forms and you can fill them out yourself.’”¹⁶⁰

While underscoring the forms as an important option, Caleb was quick to describe them as a “now I can send you on your way” tool for people who encounter low-income individuals with legal needs. This was reiterated by one pro se litigant who located the forms in a courthouse law library. “I didn’t have any clue how to fill them out. I asked [the law librarian how to fill them out] and she said, ‘I can’t help you. I can only give you the forms.’”¹⁶¹ Beyond what we often documented as a fatiguing “shuffle” experienced by individuals seeking critical information and assistance, the forms also represented and contributed to something far more serious, namely *a sense of defeat compounded by growing stress*. As Caleb noted, “One mistake can cause someone at the [courthouse] window to tell the person to start over all again. [And there’s] the anxiety: ‘What happens if I screw this up? Will I lose my kids?’”¹⁶²

Even the director of a state A2J task force highlighted the shortcomings and pressures inherent in A2J author and document assembly systems. “There’s the push to have the pro se forms,” she stated. “But really to be effective, most folks need someone to hold their hands through it... I was just thinking about the pro se divorce forms and how crazy they make them. [Pro se litigants] may be able to go to the courthouse and print off the forms, they may be able to find them online—technology is huge—but in my opinion, you still have to be pretty well educated to make it through twenty-seven pages of instruction.”¹⁶³ This sentiment highlights a deeper expectation in so many A2J initiatives, namely that litigants would be—or could become—mini-attorneys able to expertly solve justice problems themselves.¹⁶⁴ “Unless you have some perfunctory education in law,” stated one participant describing the Minnesota Law Library Helpline, “the advice they give you is worthless.”¹⁶⁵

In addition to, and in part because of, insecure access to technology, digital deserts,¹⁶⁶ presumptions around technological literacy, and the “fear barriers” implicit in so many A2J initiatives, many rural residents do not receive critical information or publicity around the sorts of legal assistance that may be available to them. For instance, in our Minnesota survey data, only 27% of respondents had

160. *Id.*

161. BREDESON & STATZ, *supra* note 58 at 35.

162. Redacted interview with Caleb, *supra* note 160.

163. *Id.*

164. Consider, for instance, this claim for “Tech-Enabled A2J”: “The improvement in access to justice for self-represented litigants can mean anything from feeling more confident in navigating the court system, to feeling empowered to file the right documents, to changing the outcome of a case, and every tool that brings us closer to fair resolution has resounding implications on the justice system.” Kristen Sunday, *Tech-Enabled A2J: How Tech Is Helping Pro Se Litigants Navigate the Courts*, THOMAS REUTERS LEGAL EXEC. INST. (Aug. 17, 2020), <https://www.legalexecutiveinstitute.com/tech-enabled-a2j-pro-se-litigants/>.

165. Redacted survey data, in Minnesota (April 2019) (on file with authors).

166. Denson, *supra* note 117.

heard of the Minnesota Law Library Helpline, 21% of survey respondents were aware of Minnesota Legal Advice, and just 22% had heard of Law Help MN.¹⁶⁷ Similarly, few survey participants knew of Wisconsin Free Legal Answers.¹⁶⁸ Significantly, this lack of awareness was not limited to online supports. In Wisconsin, very few of our survey respondents were even aware of legal aid. Indeed, “29% of respondents had ‘no clue’ or ‘no idea’ what Judicare did.”¹⁶⁹ Discouraging as these data are, participants did share expert ideas as to how, or where, A2J initiatives might be more appropriately publicized in rural areas. These included advertisements in phone books, newspapers, and on social media; fliers at schools, community agencies, food pantries, and faith-based organizations across counties and tribal reservations; booths at community events; and radio spots on local radio stations, including those broadcast in Hmong.¹⁷⁰ Such suggestions uniquely preempt the potential for “digital exclusion”¹⁷¹ so common in many of the other avenues for legal information and assistance we overview here.

We are not the first to argue that the anticipated economies and reach of A2J technological initiatives are not realized as well in rural regions as in metro areas,¹⁷² but the message bears repeating. Indeed, we write this amid the development of the Minnesota State Bar Association’s nascent “Justice for All” plan, which includes remote mediation stations to allow for mediation assistance “across the state” and a centralized online intake system that will ostensibly direct users to the most appropriate resource, including court pro se services, legal aid, or private attorneys.¹⁷³ As our data powerfully evidence, initiatives that rely on technologies to deliver such wide-reaching “justice” often fall short. They also reflect and perpetuate more pervasive injustices that exceed socio-spatial barriers. While beyond the scope of this manuscript, we echo Ann Eisenberg’s recent

167. BREDESON & STATZ, *supra* note 58 at 35.

168. Prior to Wisconsin Free Legal Answers, there had been Northern Wisconsin Legal Advice Project (NWLAP), an online legal advice program created by and staffed with attorneys from Wisconsin Judicare. The Northern Wisconsin Legal Advice Project was discontinued in 2018 and replaced by Wisconsin Free Legal Answers. *See* Pruitt et al., *supra* note 7, at 87; *Northern Wisconsin Legal Advice Project (NWLAP)*, WIS. JUDICARE (Aug. 30, 2018), <http://www.judicare.org/news.cfm?PageID=40>. Additional shortcomings of this initiative include the fact that responses are not immediate (as they might be in a face-to-face meeting with an attorney), and the reach of the program is limited owing to eligibility requirements.

169. WOLF & STATZ, *supra* note 64, at 55.

170. *See id.* at 62.

171. ROGER SMITH, DIGITAL DELIVERY OF LEGAL SERVICES TO PEOPLE ON LOW INCOMES: The Context, LEGAL EDUCATION FOUNDATION 43-44 (2019), <https://www.thelegaleducationfoundation.org/wp-content/uploads/2019/09/Digital-Technology-Summer-2019-v2.pdf>.

172. Strover et al., *supra* note 123, at 244.

173. MINNESOTA STATE BAR ASSOCIATION 2017-18 ACCESS TO JUSTICE REPORT 1 (2018), <https://www.mnbar.org/docs/default-source/atj/2017-18-atj-report.pdf?sfvrsn=2> [hereinafter 2018 MINN. ACCESS TO JUSTICE REPORT]. The “across the state” language remains unverifiable: If there are specific services and agencies that provide in-person mediation, they are metro-based (see GILBERT MEDIATION CTR., LTD., <http://lawgilbert.com/>; ERICKSON MEDIATION CENTER, <https://www.ericksonmediation.com/>). Otherwise, Community Mediation Minnesota is directed toward eligible clients who access services remotely. *Mediation Services in Minnesota*, CMTY. MEDIATION MINN., <https://communitymediationmn.org/services/mediation/#1531257375742-3e9e254c-01a3> (last visited May 5, 2021).

argument that meaningfully addressing the challenges of rurality requires a profound shift in how societal inequity is considered more broadly.¹⁷⁴ What we outline above, namely the intersecting challenges of rural poverty, digital deserts, insufficient technological literacy and the anxieties implicit in failing to find sufficient answers—let alone dignifying ones—are both magnified and compounded by so many technological A2J “solutions.”

B. Direct Representation and Law School Involvement

Unlike A2J tech initiatives that aim to remedy access issues by bridging distance, other access to justice efforts focus on enhancing and growing existing legal resources, namely the private bar, and on utilizing law students for A2J outreach. In this section, we focus on regional efforts to boost pro bono work, recruit and retain rural attorneys, and draw on law students to provide legal education and assistance to low-income community members. While a number of these efforts do—or could—meaningfully appeal to rural A2J needs, there remains a marked absence of data around outcomes and sustainability in rural and remote contexts.

The State Bar of Wisconsin and the Minnesota State Bar Association support important and markedly varied pro bono initiatives. In Wisconsin, these include the “Just Take Two” campaign, a program within the Wisconsin Pro Bono Initiative that encourages participating attorneys to take on two pro bono cases during a twelve month period.¹⁷⁵ The State Bar has also offered grants of up to \$5,000 for innovative pro bono projects.¹⁷⁶ Of course, these efforts rely on the local bar while failing to acknowledge rural legal deserts or, correspondingly, the growing demands with which existing rural private attorneys already contend.¹⁷⁷ Beyond its pro bono efforts, in 2009 the State Bar of Wisconsin also propelled the creation of Wisconsin’s Access to Justice Commission.¹⁷⁸ Among other things, the Commission has endeavored to provide ongoing training for volunteer attorneys and law students.¹⁷⁹

174. Eisenberg, *supra* note 9, at 198.

175. In a call for more volunteers to the Just Take Two campaign, then current Wisconsin State Bar President Michelle A. Behnke argued the overwhelming civil legal need in Wisconsin could not be met by legal services and clinics alone and that intense dedication to pro bono work would be necessary: “We all need to roll up our sleeves and pump new blood into our pro bono legal services initiative.” Michelle A. Behnke, *President’s Message: Pro Bono – For the Public Good*, STATE BAR OF WIS. (Mar. 2005), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=78&Issue=3&ArticleID=948>.

176. STATE BAR OF WIS., *supra* note 101.

177. These demands are not limited to rural attorneys: “Lack of time” was cited as the most frequent reason for *not* taking on pro bono by Wisconsin attorneys. APRIL FAITH-SLAKER, AM. BAR ASS’N STANDING COMM. ON PRO BONO & PUB. SERV., SUPPORTING JUSTICE IN WISCONSIN: A REPORT ON THE PRO BONO WORK OF WISCONSIN’S LAWYERS 12 (2017). While Pruitt and Showman rightly explore the possibility of urban attorneys taking on rural projects, our data suggest that long drive times and a lack of familiarity with local courts often limit “Metro” attorneys’ interest and efforts in the rural Northland. Pruitt & Showman, *supra* note 22.

178. *Welcome*, WIS. ACCESS TO JUST. COMM’N, <https://wisatj.org/> (last visited May 5, 2021)

179. Jeff, *Unemployment Law Training*, WIS. ACCESS TO JUST. COMM’N (Jun. 15, 2020), <https://wisatj.org/unemployment-law-training>.

In Minnesota, the Minnesota State Bar Association offers a number of well-established pro bono initiatives. These include pro bono opportunities via ProJusticeMN,¹⁸⁰ opportunities for limited-service commitments via Minnesota Legal Advice Online, and training to voluntarily assist first responders in preparing basic estate planning documents.¹⁸¹ These efforts are incentivized via Continuing Legal Education credits and the North Star Lawyer award.¹⁸²

Significantly, our interviews with rural private practitioners in the Northland evidenced a strong commitment to pro bono or “low bono” work, but not necessarily owing to—and occasionally even in spite of—the state bar initiatives detailed above. Rather, the advocacy we documented reflected a professional commitment that was powerfully inflected with a deep understanding of place. Common among the attorneys we interviewed, this ethic demonstrated the well-documented realities of rurality, including both economic marginalization and a high density of social acquaintanceship.¹⁸³ One young attorney described the difficulty of starting a solo practice in his spouse’s rural hometown: “[t]o just hang a shingle, then it’s like, well, I need to bill a couple months in advance, because you’ve got to assume it takes two to three months to collect an invoice, you have to assume you’re only gonna collect between sixty to seventy percent of what you actually bill. You can’t go suing people because they’re broke. That doesn’t go over well. And every small town lawyer has given me the same advice—if they don’t pay the bill, that’s it.” Statz interrupted, “That’s your pro bono work.” He nodded. “Yeah. Just record it as pro bono, write it off on your books.”¹⁸⁴

Exhibiting a similar understanding of local need and local resources, one tribal lay advocate described frequently bartering with individuals who need legal advocacy. “I got to know [a guy] a little bit because he cut wood next to my house and I bought wood from him. He called me up and said, ‘Can you help my son out and this and that,’ and I’m like ‘Okay, yeah... tell you what—I got six cords of wood out there, if you can cut, split and stack that, I’ll represent him...’ I’ve been bartering a lot when it comes to things like that.”¹⁸⁵

Another attorney characterized this kind of ad hoc or necessitated pro bono work as one of the most rewarding things of rural practice: “[I]t’s the impact on a community. The reward of helping clients in meaningful ways, the reward of helping underserved clients.”¹⁸⁶ This sentiment was common among the attorneys we interviewed. And while it reflects a commitment that may not be unique to rural areas, it was notably often accompanied by an implicit frustration with external (read state-sponsored and metro-originated) programs aimed at promoting pro

180. PROJUSTICEMINNESOTA, <https://www.projusticemn.org/> (last visited May 5, 2021).

181. *Pro Bono Opportunities*, MINN. STATE BAR ASS’N, <https://www.mnbar.org/about-msba/what-we-stand-for/access-to-justice/pro-bono>. (last visited May 5, 2021).

182. *Id.*

183. See generally William R. Freudenburg, *The Density of Acquaintanceship: An Overlooked Variable in Community Research?*, 92 AM. J. OF SOC. 27 (1986). See also Michele Statz & Kaylie Evers, *Spatial Barriers as Moral Failings: What Rural Distance Can Teach Us about Women’s Health and Medical Mistrust*, 64 HEALTH & PLACE 1 (2020).

184. Redacted interview excerpt with Northland attorney, in Minnesota (November 2019) (on file with authors).

185. Redacted interview excerpt with tribal lay advocate, in Wisconsin (February 2018) (on file with authors).

186. Redacted interview excerpt with attorney, in Minnesota (March 2019) (on file with authors).

bono work, as well as with broader “outside” trends in the lawyering profession more generally.

[The state] sort of discriminates against the rural areas... The law used to be a profession when I started... Then law became a business. When I was practicing law, a young woman came to see me for a divorce. I knew her husband, he was a cop... And he was abusive, she didn’t have much choice. I think my rate, I charged like sixty dollars an hour, and then when I got done representing her and she didn’t really have the money to pay, I knocked the bill down to thirty dollars an hour and added it up, and she never paid any of it. So, that was my pro bono work. I know other lawyers still consider this part of their profession. They have clients that pay, and there are clients that don’t pay. They just write it off, so that’s pro bono. I [could] get credit through the Volunteer Attorney Program.¹⁸⁷ ...I’ve got friends that do that. Volunteer Attorney Program? You don’t want to deal with the bullshit of it. I’m befriending people and helping them all the time. I don’t need somebody else to measure that for me.¹⁸⁸

Another major effort to expand rural representation and increase access to justice is collaborative rural attorney recruitment and retention programs. South Dakota’s incentive payment program is a prominent example. The program is designed to address rural attorney shortages in South Dakota, as well as to alleviate urban attorney surpluses¹⁸⁹ and help reduce the percent of graduating law students facing unemployment.¹⁹⁰ The program subsidizes attorneys who agree to live and work in counties with attorney shortages.¹⁹¹ Participating attorneys receive around \$66,440 over the five-year duration of the program.¹⁹²

Despite its important focus on rural communities, the program has limitations worth noting. For instance, the incentive payment is a valuable source of funding, yet it does not guarantee the continued presence of an attorney in a rural community once the program’s stipend ends.¹⁹³ More general questions of cost are likely what have prevented the replication of this initiative in other states.¹⁹⁴

187. In 2019, northeastern Minnesota’s Volunteer Attorney Program was shuttered when the state elected to fund Legal Aid Service of Northeastern Minnesota (LASNEM) to coordinate with the private bar to provide advice and representation.

188. Redacted interview excerpt, in Minnesota (March 2018) (on file with authors).

189. Pruitt and Showman, *supra* note 22, at 468 (“sixty-five percent of South Dakota’s lawyers live in urban areas”)

190. Lisa R. Pruitt, J. Cliff II McKinney & Bart Calhoun, *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence-Based Solutions to Alleviate It*, 37 U. ARK. LITTLE ROCK L. REV. 537, 620 (2015).

191. Lynch, *supra* note 22, at 1693.

192. *Id.*

193. *Id.*

194. Minnesota has considered a “Greater MN Legal Access Bill,” which would offer debt forgiveness to law students committed to rural practice. In Wisconsin, there is presently a state task force evaluating law school debt forgiveness options. Joe Forward, *Student Loan Debt: State Task Force Eyes Solutions, PSLF Still an Option*, STATE BAR OF WIS.: INSIDE TRACK (Sept. 2, 2020), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=12&Issue=15&ArticleID=27918>.

Further, the program's \$1,063,040 in total funding¹⁹⁵ comes from a variety of sources: half of the costs are covered by the state of South Dakota, with the remaining costs coming from the county where the attorney would practice (35% of costs) and from the State Bar (remaining 15% of costs).¹⁹⁶ Many states would likely struggle to offer this portion of support, to say nothing of rural or remote counties experiencing pronounced funding shortages. That written, the South Dakota program's consideration of law school graduates and students does fit with other trends in A2J rural recruitment strategies.¹⁹⁷

Some law schools have created initiatives aimed at trying to address access to justice problems in rural areas, with scholars correspondingly noting the "important role" and "direct impact" that law schools can have when providing assistance to low-income clients.¹⁹⁸ However, the effectiveness of current efforts varies. The University of Montana School of Law has a program devoted to preparing students for rural practice, but as others have noted, its curriculum may not go far enough in exposing students to the perspectives and skills necessary for sustained success.¹⁹⁹ The William H. Bowen School of Law in Arkansas offers a rural practice incubator in which law school graduates are provided with training, resources, and mentorship supports, in return they must provide a minimum of 100 hours of pro bono or low bono services as they begin practicing in rural areas of the state.²⁰⁰ Law schools in other states, including Georgia, California, and Maine, have endeavored to increase law student participation and engagement in rural communities,²⁰¹ but the success of their efforts varies. For example, Georgia State University College of Law has a program to increase law student exposure to rural areas but has so far only reached "semi-rural Georgia."²⁰² The program's stated hope is for future "trips focus[ed] on access to justice in more rural parts of the state."²⁰³ Other law school efforts include law student bus tours of rural regions California²⁰⁴ and Wisconsin,²⁰⁵ in which law students meet local practitioners and learn about rural practice. While "only a handful of counties participate[d]" in the Wisconsin tour,²⁰⁶ it was positively regarded by local practitioners and notably helped Judicare in its recruitment efforts, even if attorney retention remains an

195. Lynch, *supra* note 22, at 1693.

196. David Gilbertson, *Reflections on the Rural Practice of Law in South Dakota: Past, Present and Future*, 59 S.D. L. REV. 433, 440 (2014).

197. See Ed Finkel, *Small Town Law*, 109 ILL. BAR J. 18 (2021) (describing a program to recruit law students to rural counties in Illinois).

198. Vinson & Moppett, *supra* note 98, at 560. Kathryn Young importantly examines the role of law schools in addressing the A2J crisis, and other nascent work more generally reiterates law schools' significance in producing public interest lawyers and facilitating social transformation. Catherine Albiston, Scott L. Cummings, & Richard L. Abel, *Making Public Interest Lawyers In A Time Of Crisis: An Evidenced-Based Approach*, GEORGETOWN J. LEG. ETHICS (forthcoming 2021); Kathryn Young, *What the Access to Justice Crisis Means for Legal Education*, U.C. IRVINE L. REV. (forthcoming 2021).

199. Wandler, *supra* note 22, at 250.

200. *Rural Practice Incubator Project*, WILLIAM H. BOWEN SCH. OF L., <https://ualr.edu/law/clinical-programs/rural-practice-incubator-project/> (last visited May 5, 2021).

201. Pruitt et al., *supra* note 7 at 32, 63, 89.

202. *Id.*, at 76.

203. *Id.*, at 76.

204. *Id.*, at 60.

205. *Id.*, at 86.

206. *Id.*, at 88.

issue.²⁰⁷ A national-level effort to increase exposure to rural practice is the Legal Services Corporation’s Rural Summer Legal Corps, which in 2018 placed 30 law students in volunteer positions with legal aid organizations across rural areas in 22 states.²⁰⁸

Significantly, none of the five law schools in Minnesota and Wisconsin offers any formal curricular offerings or incentive programs for students interested in rural practice, and all are facing declining enrollment.²⁰⁹ While not explicitly focused on rural outreach, Minnesota Law School notably offers experiential education programs that facilitate and promote professional experience beyond the state’s “Metro”²¹⁰ area. Of arguably the most relevance for rural A2J, Mitchell Hamline’s hybrid on-campus/online JD option permits students to live in their home communities while completing at least some of their law school work.²¹¹ The program was mentioned often in research interviews and is clearly valued and utilized by individuals in rural and/or tribal areas across the Northland. The Mitchell Hamline low residency model holds a great deal of potential in terms of empowering law students to solve problems for the regions in which they live, work, and study.

An arguably more promising direction for rural law student recruitment and retention is rural law student pipelines, particularly as graduates from rural counties are ostensibly “more open to” the idea of returning to practice in their home county than graduates from urban counties.²¹² This is a compelling argument, and one that implicitly raises questions about the effectiveness of recruitment programs *not* using the pipeline method. One example is the Rural

207. Shannon Green, *Up North: Young Lawyers Find Their Way to Wausau*, STATE BAR OF WIS.: INSIDE TRACK (Oct. 4, 2017), <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=9&Issue=19&ArticleID=25887>; WIS. L. FOUND., YOUR DONATIONS: FILLING A NEED FOR LAWYERS IN THE NORTHWOODS 1 (2017), <https://www.wisbar.org/aboutus/WisconsinLawFoundation/sbwNewsLetters/WLF-Vol13No2.pdf>. As of this writing (Oct. 2020) the Wisconsin bus tour was viewed by state bar leadership as “too limited to solve the problem [of rural attorney shortages].” Its future is uncertain. Phone call with Kathleen Brost (October 8, 2020).

208. 2018 LSC ANNUAL REPORT, *supra* note 97, at 3.

209. Pruitt et al. *supra* note 7, at 86.

210. These programs include the Sacks Public Interest Residency Program, in which students hold full-time externships with public interest and government organizations during their third year of law school and have a guaranteed paid position with the same organization upon graduation. The School also offers the 3L Remote Semester, a 10-credit course where students work at a government or nonprofit organization outside of the Twin Cities metro area. *Sacks Public Interest Residency Program*, UNIV. OF MINN. L. SCH., <https://www.law.umn.edu/academics/public-interest/sacks-public-interest-residency-program> (last visited May 5, 2021); *Remote Semester Field Placement—7640*, UNIV. OF MINN. L. SCH., <https://www.law.umn.edu/course/7640/remote-semester-field-placement>. A less direct but no less meaningful opportunity for exposure to rural practice in Minnesota is the state’s relatively high number of trial court positions for judicial law clerks. On average, 28% of all University of Minnesota Law School graduates enter into judicial clerkships at all levels across the state, and in Minnesota (where clerkships are generally limited to 1-2 years), the opportunity provides students with skills and, depending on the location, a deeper understanding of rural work. *2019 Career Facts & Statistics*, UNIV. OF MINN. L. SCH., (March 15, 2020), <https://www.law.umn.edu/career-center/where-grads-go/2019-career-facts-statistics>.

211. *Blended Learning at Mitchell Hamline*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/academics/juris-doctor-program/hybrid-j-d-program/> (last visited May 5, 2021). Mitchell Hamline School of Law is located in St. Paul, Minnesota.

212. Pruitt et al., *supra* note 7, at 665.

Law Opportunities Program (RLOP) at the University of Nebraska's Nebraska College of Law.²¹³ Here, high school graduates from rural Nebraska are given scholarships to attend state universities and, provided they meet certain criteria, are granted admission into the College of Law. RLOP students begin a relationship with Nebraska Law as early as their first year in college, attending guest lectures, special court proceedings, and networking events and, in their later college years, participating in rural Nebraska internships. While hard to evaluate owing to a lack of data on impacts, outcome, and long-term effectiveness, a program like this capitalizes on local commitments and offers a sustained exposure to rural practice that other law school initiatives so far do not. However implicitly, it also attends to the critical role of *trust* in legal advocacy. This has obvious relevance to pipeline programs, but it should also be something that law schools and other stakeholders consider when developing short-term opportunities for non-local attorneys or law students to provide assistance, such as mobile law clinics or digital pro bono. "I don't think you can understate this," commented a Minnesota Supreme Court justice who grew up in northern Minnesota: "This is another barrier for rural areas—people only want to ask individuals for help (if they have to) from someone they know and trust—they do not want to go to a stranger. I get a number of calls a year from someone up north who needs help. They call me because they either know me or they know someone who either knows me or knows my family."

A final consideration here is the location of law schools themselves. Rural U.S. law schools like Vermont Law School²¹⁴ or Appalachian School of Law,²¹⁵ or in Canada, the Nunavut Law Program through the University of Saskatchewan College of Law,²¹⁶ uniquely facilitate opportunities to be involved with local attorneys, courts, and the problems of rural and/or Indigenous people. As Chris Chavis points out, these schools have the unique responsibility to make visible the impacts of rural attorney shortages and the need for relevant policies like increased funding for rural legal aid.²¹⁷ Doing so ensures that graduates who choose to not stay in a rural area have awareness of these issues and are empowered to advocate for policy change at a higher scale.²¹⁸

Other A2J initiatives that center on attorney recruitment and outreach underscore the role of currently enrolled law students. In Minnesota and Wisconsin, these efforts include the Minnesota Justice Foundation's Pro Se Clinics (MN),²¹⁹ which utilize law students to assist pro se clients with filling out "complex legal forms" and by providing legal advice and information about

213. *Rural Law Opportunities Program*, NEB. COLL. OF L., <https://law.unl.edu/RLOP/> (last visited May 5, 2021)

214. *South Royalton Legal Clinic*, VT. L. SCH., <https://www.vermontlaw.edu/academics/clinics-and-externships/south-royalton-legal-clinic> (last visited May 5, 2021)

215. APPALACHIAN SCH. OF L., <http://www.asl.edu/> (last visited May 5, 2021)

216. James Shewaga, *Inuit Students Happy to Have JD Program*, UNIV. OF SASKATCHEWAN (Dec. 14, 2018), <https://law.usask.ca/about/articles/2018/inuit-students-happy-to-have-usask-law-program.php>.

217. Christopher D. Chavis, *Location, Location, Location: Rural Law Schools and Their Role in the Rural Lawyer Shortage*, LEGAL RURALISM (Jul. 14, 2017, 5:29PM), <http://legalruralism.blogspot.com/2017/07/location-location-location-rural-law.html>.

218. *Id.*

219. Pruitt et al., *supra* note 7, at 88.

judicial processes.²²⁰ Of particular significance to this Article, this includes a partnership with Anishinaabe Legal Services, located in northeastern Minnesota.²²¹ While ostensibly utilizing student and volunteer attorneys in rural areas so that “local practitioners are able to serve more clients,”²²² this model presumes there *are* local practitioners. Mitchell Hamline School of Law,²²³ Marquette University Law School,²²⁴ and the University of Wisconsin-Madison Law School²²⁵ all offer programs utilizing law students to provide legal assistance and information. Whether, and to what extent, these programs serve rural communities varies.²²⁶ Minnesota and Wisconsin law schools likewise provide outreach to area middle and high school students, most commonly regarding education around legal rights and the legal system,²²⁷ as well as exposure to the legal profession more

220. *Pro Se Clinics Overview*, MINN. JUST. FOUND., <https://www.mnjustice.org/our-programs/pro-se-clinics/> (last visited May 5, 2021).

221. *Id.* They also partner with the following organizations to provide clinics: Anishinabe Legal Services; Call for Justice, LLC; Indian Land Tenure Foundation; Minnesota Assistance Council for Veterans; Legal Aid Society of Minneapolis; Legal Services of Northwest Minnesota; Southern Minnesota Regional Legal Services; Volunteer Lawyers Network.

222. Catherine Greene Burnett & Eden Harrington, *Law Schools Working Together to Increase Access to Justice*, 51 S. TEX. L. REV. 689, 703 (2010).

223. The Rosalie Wahl Legal Practice Center at Mitchell Hamline School of Law is described as “a law office within the law school” where students provide legal assistants to low-income clients in a variety of matters. *See The Rosalie Wahl Legal Practice Center*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/legal-practice-center/> (last visited May 5, 2021). Created in 1973, the program was one of the first legal clinics of its kind in the United States. *See History*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/legal-practice-center/history/> (last visited May 5, 2021). Since then, the clinical program has had students provide assistance to more than 18,000 clients. *See Gregory M. Duhl, Equipping Our Lawyers: Mitchell’s Outcomes-Based Approach to Legal Education*, 38 WILLIAM MITCHELL L. REV. 906, 914 (2011). It is hard to determine whether the work of the Practice Center reaches rural communities. A listing of locations where law students have done pro bono work across the state is largely urban-centric and centered around the Twin Cities Metro Region. *See Minnesota Justice Foundation*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/legal-practice-center/minnesota-justice-foundation/> (Last visited May 5, 2021). The listing does include Southern Minnesota Regional Legal Services, but their service area includes the south Metro region as well as Minnesota’s southern counties. *See Locations*, S. MINN. REG’L LEGAL SERVS., <https://www.smrls.org/contact-us/locations/> (last visited May 5, 2021). As such, it is difficult to determine the extent of pro bono assistance the Legal Practice Center provides to rural communities.

224. Marquette Volunteer Legal Clinics are staffed by students and volunteers that provide advice and referrals for civil legal problems. The Clinics are presently shut down owing to COVID-19. *Marquette Volunteer Legal Clinics*, MARQUETTE UNIV. L. SCH., <https://law.marquette.edu/mvlc/> (last visited May 5, 2021).

225. University of Wisconsin-Madison Law School Pro Bono Program provides assistance to low-income individuals through a variety of partnerships and in various areas of assistance. *Pro Bono Program*, UNIV. OF WISCONSIN-MADISON L. SCH., <https://law.wisc.edu/probono/> (last visited May 5, 2021).

226. Both Mitchell Hamline School of Law (MN) and Marquette University Law School (WI) engage law students on mobile legal clinics or “justice buses.” The Milwaukee Justice Center’s Mobile Legal Clinic is staffed by volunteers (including students from Marquette Law School) who provide free legal advice, assistance with legal forms, and referrals. Despite its mobility, its service area range is limited to Milwaukee County. *Mobile Legal Clinic*, MILWAUKEE JUST. CTR., <https://www.mkemobilelegalclinic.com/> (last visited May 5, 2021). Mitchell Hamline’s Mobile Law Office is likewise limited in its regional outreach. *Mobile Law Office*, MITCHELL SCH. OF L., <https://mitchellhamline.edu/about/mobile-law-office/> (last visited May 5, 2021).

227. Minnesota Justice Foundation’s Street Law Program (MN) is designed after the Georgetown University Street Law program from 1972, where law students volunteer to teach “at-risk” middle and high schoolers about “their legal rights.” *Street Law Overview*, MINN. JUST. FOUND.,

generally.²²⁸ As above, the extent to which these initiatives reach rural communities in these two states is limited.²²⁹

Most generally, and as with all of the initiatives overviewed here, exposure to rural practice, rural practice incentives, and pipeline programs are by themselves not enough to address the present A2J crisis in rural America—even as the efforts we overview in this section arguably comprise the most sustainable, impactful, and long-term avenue for addressing rural attorney shortages.²³⁰ This is not insignificant, but it also does not guarantee that low-income rural residents will be meaningfully assisted with their justice problems; nor does it acknowledge the profound structural and socioeconomic inequities that low-income rural residents experience and that are often perpetuated and compounded by current A2J solutions.

C. Non-Lawyers and Unauthorized Practice

Increasingly, the use of lay advocates and other non-lawyers is viewed as a possible A2J solution, even as courts in the United States have historically “asserted inherent, and often exclusive, power to regulate the practice of law.”²³¹ Canada has similar laws that also limit practice to licensed attorneys.²³² Reasons for the historical and continued resistance to non-lawyer and unauthorized practice vary, including fear that these roles would “undercut” the legal services market²³³ and concerns over the quality and performance of nonlawyers—even those who are licensed and regulated.²³⁴

<https://www.mnjustice.org/street-law/street-law-overview/> (last visited May 5, 2021) [hereinafter *Street Law Overview*]. Patricia Grande Montana’s overview of urban (New York City and Washington, DC) Street Law programs suggests their goal and purpose is refining the skills of the participating law students and improving the public perception of the legal professional more generally. Patricia Grande Montana, *Lessons from the Carnegie and Best Practices Reports: A Look at St. John’s University School of Law’s Street Law Program as a Model for Teaching Professional Skills*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 97, 115 (2008).

228. The Summer Youth Institute, a program at Marquette University Law School, is designed to teach and expose middle and high school students to the legal system. Unlike the MJF Street Law program, one of the goals in working with middle and high school students [in Milwaukee] is expressly to “expose them to careers in law.” *Summer Youth Institute*, MARQUETTE UNIV. L. SCH., <https://law.marquette.edu/community/summer-youth-institute> (last visited May 5, 2021).

229. The MJF Street Law website notes law students sometimes do their volunteering at “local” schools (suggesting the Minneapolis/Twin Cities metro region), and only otherwise mentions Duluth and Winona as named locations (where “Some volunteers spend their spring break teaching”). *Street Law Overview*, *supra* note 228.

230. A forthcoming chapter by Kelly Beskin and Lisa Pruitt importantly overviews many of these prevailing policy responses to rural lawyer shortages, with particular attention to (1) programs that provide financial incentives for lawyers to practice in rural locales; (2) programs focused on cultivating and expanding pipelines to rural practice; and (3) programs that channel urban attorney resources to rural areas. Pruitt, Lisa R. and Beskin, Kelly, *Rural California Suffers a Painful Shortage of Lawyers*, DAILY J. (CALIFORNIA) (forthcoming 2021).

231. Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2588 (2014).

232. Lisa Trabucco, *Lawyers’ Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada*, 96 CANADIAN BAR REV. 460, 461 (2018).

233. Rhode et al., *supra* note 98, at 5.

234. Rhode & Ricca, *supra* note 232 at 2593-4.

There have been some changes and loosening of regulations in recent years regarding authorized forms of non-lawyering, such as the Limited License Legal Technicians (LLLT) program in Washington State.²³⁵ Notably, however, the Washington Supreme Court chose to end the program in 2020.²³⁶ Of particular relevance to this article, the Minnesota State Bar has considered a two-part recommendation to the Minnesota Supreme Court, namely for paralegals to have limited licenses to provide more legal services, an effort modeled after Washington’s Limited License Legal Technicians program, and for a Legal Practitioners role similar to that of paralegals in Canada.²³⁷ Arizona will begin a two-year pilot project to train non-lawyers beginning in the fall of 2020,²³⁸ and an American Bar Association report notes that six other states and the District of Columbia are “considering or have adopted substantial regulatory innovations.”²³⁹ Despite the increasing changes to regulations, there are still ambiguities, questions, and debates around the topic of non-lawyers.

One such issue is that the definitions and understandings of “unauthorized practice” can be vague. “Attempts to provide a principled definition of unauthorized practice have been notably unsuccessful.”²⁴⁰ Also complicating the

235. Cooper, *supra* note 80, at 217; Thomas Clarke & Rebecca L. Sandefur, *Preliminary Evaluation of the Washington State Limited License Legal Technician Program* (2017); Trabucco, *supra* note 233, at 480.

236. “On June 4, 2020, the Washington Supreme Court decided to sunset the LLLT program. Because of this decision, no LLLT licenses will be issued after July 31, 2022.”

Limited Legal Technicians, WASH. STATE BAR ASS’N (Jan. 14, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians>. For now, the state does allow for Limited Practice Officers (LPO), or individuals licensed to select, prepare, and complete approved documents for use in closing a loan, extension of credit, sale, or other transfer of real or personal property. *Limited Practice Officers*, WASH. STATE BAR ASS’N. (Mar. 25, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-practice-officers>.

237. The Minnesota plan evaluates two separate roles, with different requirements for practice: 1) The legal practitioner: The legal practitioner would work under the supervising attorney’s law license and the ethical responsibilities required of Minnesota lawyers. There would be no separate licensing or licensing board of the Legal Practitioner; 2) The paralegal: “The proposed LLLT Model for Minnesota allows licensed paralegals/administrative assistants to acquire a certain level of education and experience to qualify for licensing through the passage of an exam. Once licensed, the LLLT would be free to practice law in a specific area of law that is limited in scope. The LLLT would not be required to work under the supervision of an attorney but would be required to comply with a code of ethics, similar to lawyers’ ethical requirements, and to obtain legal malpractice insurance.” MINN. STATE BAR, REPORT AND RECOMMENDATIONS: MINNESOTA STATE BAR ASSOCIATION ALTERNATIVE LEGAL MODELS TASK FORCE 1 (2016), <https://www.mnbar.org/docs/default-source/policy/alm-task-force-report-and-recommendations-final.pdf?sfvrsn=0>.

238. Stephanie Francis Ward, *Training for Nonlawyers to Provide Legal Advice Will Start in Arizona in the Fall*, ABA J. (Feb. 6, 2020, 3:18 PM), <https://www.abajournal.com/web/article/training-for-nonlawyers-to-provide-legal-advice-starts-in-arizona>.

239. AM. BAR ASS’N, RESOLUTION 115- ENCOURAGING REGULATORY INNOVATION 2 (2020), https://www.americanbar.org/groups/centers_commissions/center-for-innovation/Resolution115/. In addition to the programs in Washington and Arizona, the report notes California, Connecticut, Florida, New Mexico, Oregon, and Utah have also considered adjustments to regulations. In Utah, alternative legal service providers (sometimes non-lawyers) can now apply to deliver legal services. See Rhys Dipshan, *Restrictions on Legal Services Loosened This Year. What Does That Mean for 2021?*, LAW (Dec. 28, 2020, 10:00 AM), <https://www.law.com/legaltechnews/2020/12/28/restrictions-on-legal-services-loosened-this-year-what-does-that-mean-for-2021/>.

240. Rhode and Ricca, *supra* note 232, at 2588.

questions around unauthorized practice is the fact that the type of work that non-attorneys and nonlawyer professionals would do is already sometimes done by law staff and paralegals.²⁴¹ State bars have typically not pursued charges or other sanctions “against courthouse or legal aid staff who assist pro se litigants,”²⁴² which further complicates understandings of what is or is not unauthorized practice, and who is or is not allowed to do such work.²⁴³

Some of the literature suggests that the extent of unmet legal need in a community might play a role in whether non-lawyers and unauthorized practice are allowed. In Canada, as Lisa Trabucco notes, despite similar restrictions on unauthorized practice as in the United States, non-lawyers are allowed to provide “a broad range of legal services.”²⁴⁴ She notes that much of this practice by non-lawyers occurs “in rural and remote communities where lawyers are scarce” and that courts allow them to operate “to address otherwise unmet needs.”²⁴⁵ Here, the need for legal assistance supersedes actual statutes, rules, and regulations. Similarly, in the United States, proponents of allowing nonlawyers suggest “the magnitude of our access-to-justice crisis calls for experimentation.” That said, questions around quality of service still persist.

Advocates for nonlawyers argue that a lack of law training does not necessarily mean lesser service or worse outcomes. For example, Rhode et al. demonstrate that “lay specialists” in bankruptcy hearings “perform as well or better than attorneys.”²⁴⁶ However, others fear that allowing non-legal professionals will ultimately compound current inequities in accessing justice. Describing the Limited License Legal Technicians program, Cooper notes, “In theory, Washington could be creating two levels of access to justice: high-quality lawyers for those who can afford them and Legal Technicians for everybody else.”²⁴⁷ He also notes that effective training might temper this issue, and that legal technicians could potentially be more prepared to practice in certain areas of law than recently graduated attorneys.²⁴⁸ In Wisconsin, these forms of practice are perhaps best represented in Marathon County Mediation Services in north central Wisconsin,²⁴⁹

241. Cooper, *supra* note 80, at 207.

242. *Id.* at 214.

243. While beyond the scope of this article, there is also the question of malpractice liability. In Washington State, each LLLT was expected to show proof of ability to respond in damages resulting from acts or omissions in the performance of services permitted under APR [Admission to Practice Rules] 28 by: 1. submitting an individual professional liability insurance policy in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; 2. submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT’s ability to respond in damages in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; or 3. submitting proof of indemnification by the LLLT’s government employer.

WASH. STATE BAR ASS’N, APR 28: LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS, https://www.wsba.org/docs/default-source/licensing/lllt/apr-28.pdf?sfvrsn=b563ef1_0 (last visited May 5, 2021).

244. Trabucco, *supra* note 233, at 461.

245. *Id.* at 473.

246. Rhode et al., *supra* note 08, at 19.

247. Cooper, *supra* note 80, at 220.

248. *Id.* at 220.

249. Pruitt et al., *supra* note 7, at 88.

which uses trained volunteer mediators, some of whom are not law trained.²⁵⁰ At one point, the program boasted a 75% success rate of cases reaching voluntary settlements.²⁵¹ The program was intended to expand throughout northern Wisconsin²⁵² but in late 2019 had its budget cut by 25%,²⁵³ raising questions about its future or viability as a wide-reaching A2J model.

A particularly compelling avenue for lay advocacy is in the nascent tribal lay advocacy certificate program offered by Lac Courte Oreilles Community College in collaboration with the Band of Lake Superior Chippewa Indians tribal court, the Lac du Flambeau Band of Lake Superior Chippewa Indians tribal court, the Bad River Band of Lake Superior Chippewa tribal court, the Red Cliff Band of Lake Superior Chippewa tribal court, and the St. Croix Chippewa Indians of Wisconsin tribal court.²⁵⁴ Owing to high numbers of unrepresented tribal court litigants, and to the fact the many tribal courts lack funding to provide public defenders,²⁵⁵ in 2019 the LCO Ojibwa Community initiated the program to train individuals recognized by the Wisconsin tribal court system to provide assistance to pro se civil and criminal litigants. Given the unique context of Wisconsin and Minnesota—both Public Law 83-280 states where state and tribal court judges similarly and often collaboratively navigate under-resourced rural jurisdictions²⁵⁶—the presence of well-trained, if not legally trained, advocates is welcome in the courtroom. The program is presently training its second cohort of four students. Unlike so many of the A2J efforts outlined in this article, the tribal lay advocacy certificate program represents a *formal community member-driven and court-informed effort* to directly address barriers to accessing justice.

D. Unbundled Legal Services

In 2002, the American Bar Association altered the Model Rules of Professional Conduct to allow the unbundling of services.²⁵⁷ While variously defined as Unbundled Legal Services,²⁵⁸ Limited Scope Retainers,²⁵⁹ or Limited Legal

250. Randy Westgate, *More Access to Justice: Volunteer-Based Mediation Program Expands*, WIS. CENT. TIME NEWS (Jul. 24, 2019), <https://wisconsincentraltimenews.com/2019/07/24/more-access-to-justice-volunteer-based-civil-court-mediation-program-expands/>.

251. *Id.*

252. Pruitt et al., *supra* note 7, at 88.

253. Ben Myers, *Marathon County Slashes Funding for Six Nonprofits, Revives Funding for Five Others*, WXPB (Nov. 15, 2019), <https://www.wxpr.org/post/marathon-county-slashes-funding-six-nonprofits-revives-funding-five-others>. (The cuts relate to a decision by the County Board to shift their funding model away from donations: “Instead of just giving these nonprofits a donation, now we’re changing that. We’re saying ‘Hey, we want to contract with you. We want to make sure that we’re getting what we expect and we pay for.’”).

254. See *Tribal Court Lay Advocate Certificate*, LAC COURTE OREILLES OJIBWE COLLEGE, <https://www.lco.edu/layadvocate/> (last visited May 5, 2021).

255. Joe Morey, *LCO College Offers New Program to Provide Lay Advocates to Tribal Court*, LAC COURT OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS (Jun. 3, 2019), <https://www.lcotribe.com/post/lco-college-offers-new-program-to-provide-lay-advocates-to-tribal-court>.

256. See generally Statz, *supra* note 30.

257. Rhode et al., *supra* note 98, at 5.

258. Steinberg, *supra* note 90.

259. Beth Bilson, Brea Lowenberg & Graham Sharp, *Reducing the “Justice Gap” through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries*, 34 WINDSOR Y.B. ACCESS TO JUST. 2, (2017).

Assistance,²⁶⁰ in general the concept recognizes that full representation by an attorney may not be needed in all cases, or for every aspect of a case.²⁶¹ What constitutes “unbundling” ranges from offering legal advice, drafting and writing services, and assisting with legal forms.²⁶² As an A2J initiative, unbundling attempts to maximize the use of existing legal resources rather than suggest or impose external, top-down A2J “solutions”—and in this vein could appeal to rural stakeholders. That written, questions and research gaps regarding unbundled legal services remain.

Unbundling in our research region varies. In Wisconsin, the Wisconsin State Bar developed rules for authorizing unbundling in 2007²⁶³ and expanded the rules in 2014.²⁶⁴ There does not appear to be a centralized unbundling project in the state, unlike Minnesota’s Unbundled Law Project. In 2018, the Minnesota State Bar Association (MSBA) announced that attorneys across the state would begin providing limited scope/unbundled services as part of the nascent “Justice for All” plan. Notably, this is the only facet of the plan that is not explicitly tech-centered.²⁶⁵ A collaboration between the MSBA and the Hennepin and Ramsey County Bar Associations,²⁶⁶ the Unbundled Law Project’s services include but are not limited to providing legal information and advice, partial representation, assistance with preparing forms and court documents, and providing attorney assistance for mediation to modest income clients—i.e., those who can pay something and/or exceed legal aid guidelines.²⁶⁷ Significantly, this project (1) necessitates both the presence and participation of attorneys in order to function, meaning it might not benefit or improve existing rural legal deserts; (2) is discussed as a paid service, meaning it will not benefit those who cannot afford it, even as the costs associated with it are far less than full representation; and (3) individuals are directed to the Unbundled Law Project or Law Help Minnesota’s online intake systems²⁶⁸ to use the program and find participating attorneys. As already noted, this form of intake may actually *inhibit* access for individuals who lack technological literacy and computer skills or, owing to poverty and rural spatiality, lack access to technology in the first place.

260. Rhode et al., *supra* note 90.

261. Bilson et al., *supra* note 260, at 106.

262. Rhode et al., *supra* note 98, at 5.

263. Joe Forward, *Lawyer a la Carte: Expanded Use of Limited-Scope Representation on the Horizon?*, STATE BAR OF WIS. (Aug. 17, 2011), <https://www.wisbar.org/NewsPublications/RotundaReport/Pages/Article.aspx?ArticleID=7937>.

264. Joe Forward, *Supreme Court Expands Limited Scope Representation Rules, Gives Lawyers More Guidance*, STATE BAR OF WIS. (Apr. 4, 2014), <https://www.wisbar.org/NewsPublications/Pages/General-Article.aspx?ArticleID=11467>.

265. *See* 2018 MINN. ACCESS TO JUSTICE REPORT, *supra* note 174.

266. *MN Unbundled Law Project: A New Era in Limited Scope Representation*, MINN. STATE BAR ASS’N (Nov. 26, 2018), <http://www.mnlegalservices.org/legal-services-in-the-news/2018/11/21/mn-unbundled-law-project-a-new-era-in-limited-scope-representation/>.

267. *Frequently Asked Questions*, MINN. UNBUNDLED L. PROJ., <https://mnunbundled.org/pages/faq> (last visited May 5, 2021).

268. *Minnesota Unbundled Law Project: Clients Can Now Apply Through LawHelpMN.org*, MINN. LEGAL SERVS. (Nov. 8, 2019), <http://www.mnlegalservices.org/legal-services-in-the-news/2019/11/7/unbundled/>.

For now, it’s worth noting that arguments in support of unbundled legal services tend to focus on litigant cost benefits and litigant choice²⁶⁹ or on legal aid organizations and service providers that might utilize unbundling as a way to stretch limited funding.²⁷⁰ Importantly, others have highlighted the inequity inherent in the model, particularly regarding litigant choice. For instance, Russell Engler writes, “While the concept of “unbundled” legal services offers the promise of providing choice to clients to retain lawyers for only those tasks for which they needed a lawyer’s expertise, the evolution of unbundling is two stories: a story about clients with resources, for whom choice might be a reality, and a story about clients with few to no resources for whom the choice is to receive unbundled help or no help at all.”²⁷¹

These “two stories” complicate the concept of unbundling and, as our data demonstrate, point to unsettling questions around access, the demeaning “shuffle” mentioned elsewhere in this manuscript, and ultimately what, or who, is responsible. “People can’t afford to pay,” stated a small firm practitioner in northeastern Minnesota. As the conversation progressed, it became clear that he viewed unbundled services as the outcome of broader failures of the profession. “A [private attorney] can do things to reduce costs... All the limited lawyer and bundle shit, which the firms think are going to save their lives, and I think they are stupid—they have their heads in the sand. Eventually the system either changes drastically and this experiment... goes away or we give a lot more. The individual [attorneys] give a lot more.” Other private practitioners expressed a more general uncertainty around unbundled services.

Private attorney (PA): You see people going to flat fees and stuff like that.

Statz: Unbundling.

PA: It is this hot concept and I am skeptical. It means you doing the paperwork and [pro se litigants] are going to court.

Statz: It doesn't seem like enough.

PA: I don't think it is enough.²⁷²

Outside of its cost effectiveness for an individual, a major argument in support of unbundling is that it is ostensibly *empowers* clients. Beth Bilson et al. write that the benefit of unbundling is not merely the cost savings, but that it enables “the client to be a participant in their legal process.”²⁷³ This is a compelling but uncited—and, perhaps, spatially-specific—claim, particularly as other research demonstrates higher levels of *dissatisfaction* for rural residents who use unbundled/limited legal services. Considering the limited legal services provided by Alaska Legal Services Corp., Rhode et al. note that clients who received advice remotely over the phone “had nearly double the rate of negative perceptions of the

269. Bilson et al., *supra* note 260; Steinberg, *supra* note 90.

270. Rhode et al., *supra* note 98.

271. Russell Engler, *When Does Representation Matter?*, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA* 71, 72 (Joy Radice and Samuel Esteicher eds., 2016); *see also* Steinberg, *supra* note 90, at 462.

272. Redacted interview excerpt, in Minnesota (February 2019) (on file with authors).

273. Bilson et al., *supra* note 260, at 106-7.

help they received” than those who received in-person advice.²⁷⁴ Similarly, individuals in rural communities reported more difficulty understanding the advice they received, with only 78% of rural respondents noting they understood their advice compared to 89% of non-rural residents.²⁷⁵ Amid scholarship that already evidences the limited success of unbundled or partial assistance,²⁷⁶ this raises important questions about the effectiveness of unbundled services across distances. Overwhelmingly, scholars agree that more empirical research around unbundled services is necessary.²⁷⁷

For legal aid, unbundling has become a common means for coping with financial constraints. Indeed, it is overwhelmingly “the primary form”²⁷⁸ and “dominant mode of practice”²⁷⁹ for legal aid organizations. Jessica Steinberg notes, “The prospect of serving a multitude of clients, rather than a handful, is attractive to Congress and to other funders of legal services, as well as to advocates, who constantly seek more efficient ways of allocating inadequate resources.”²⁸⁰ While a number of the private attorneys we interviewed were rightfully skeptical of unbundled services, others viewed them as a meaningful way to acknowledge the “default” rural pro se work discussed above. One legal aid attorney in Minnesota commented, “Because the volunteer attorneys—the private attorneys who do want to put in their pro bono hours—I mean, giving counsel, that’s a lot. So a phone call for them, or a meeting with them will give that person the same respect, the same feeling—it doesn’t matter if we do it or they do it. Somebody’s doing it.”²⁸¹

Similarly, a Judicare attorney described unbundled services as an attractive way to mitigate the reality of rural legal deserts and overburdened rural private practitioners—i.e., the same individuals who are presumed to best work within a Judicare model. “That’s something we have difficulty with...[Judicare cases are now] pro-bono work. It’s difficult to say, ‘Come north and do this!’ when there’s not really an incentive, and it’s not something a lot of people are excited to come up and do...”²⁸²

Attorneys we interviewed in northern Wisconsin noted this trend. An older partner in a small firm stated, “I had a plaque around here somewhere, might be up front, from Judicare. We partnered with Judicare for over 30 years. And it’s an excellent organization and they have always had fantastic management on their end. Great program. I mean, it gives people access to the legal system that otherwise probably wouldn’t have it. I’ve watched it erode over the years, through

274. Rhode et al., *supra* note 98, at 12.

275. *Id.* at 14.

276. As Jessica Steinberg demonstrates, in the housing context individuals with partial assistance were less likely to default and more likely to raise cognizable defenses than unrepresented tenants—and yet there was critically no improvement in outcomes. Partially represented tenants fared as poorly as those who received no assistance at all when it came to retaining possession; where tenants had to move; the length of time before they had to move; how much they paid to landlords if ordered to pay; and how often they were awarded damages from landlords. Steinberg, *supra* note 90, at 483-85. (Of course, this study and so many others take place in more metropolitan regions.)

277. Rhode et al., *supra* note 98, at 7; Mansfield, *supra* note 87, at 1389.

278. Rhode et al., *supra* note 98, at 5.

279. Steinberg, *supra* note 90, at 462.

280. *Id.* at 465.

281. Redacted interview with a legal aid attorney, in Minnesota (February 2018) (on file with authors).

282. Redacted interview excerpt, in Wisconsin (October 2017) (on file with authors).

no fault of the people connected with Judicare, it’s all funding. You know? And frankly, that service becomes less attractive to the attorneys as the funding goes down. And when you’re really swamped, and you don’t have a lot of extra time, certainly that impacts your decision to take a case or not.”²⁸³

E. Legal Spaces and Access

While more limited in scope, the legal scholarship that considers public or widely- accessible spaces for legal activities to occur has a relatively more informed and nuanced understanding of rurality.²⁸⁴ Indeed, this literature offers key insights on how to improve A2J and reduce rural access barriers, as well as on how resources like rural libraries and other physical spaces do or might function as important legal resources.²⁸⁵ Among the many A2J initiatives we overview in this Article, this section arguably holds the most rurally-relevant potential for accessing justice. This is largely because the literature on legal spaces tends to reflect a rurally-relevant *understanding* of justice—a dimension that is abstract and accordingly hard to replicate by committed but urbanormative policymakers and stakeholders²⁸⁶—and in particular, those seeking a “catch-all” A2J technology.²⁸⁷

Consider, for instance, libraries. The role and nature of public libraries are often undervalued in scholarship, especially concerning rural communities. There is debate on the future and purpose of libraries,²⁸⁸ including the view that libraries risk becoming obsolete if they act primarily as “institutions of remediation” or “societal band-aids” for the communities they serve.²⁸⁹ Given the realities of rurality, however, libraries’ function as a “societal band-aid” may be out of

283. Redacted interview excerpt, in Wisconsin (April 2018) (on file with authors).

284. See Lynch, *supra* note 22; Kim Economides, *Strategies for Meeting Rural Legal Needs: Lessons from Local, Regional and International Experience*, 16 DEAKIN L. REV. 47 (2011); Brian Real, John Carlo Bertot & Paul T. Jaeger, *Rural Public Libraries and Digital Inclusion: Issues and Challenges*, 33 INFO. TECH. & LIBR.’S 6 (2014) (Paper presented at: IFLA WLIC 2013 - Singapore - Future Libraries: Infinite Possibilities in Session 81 - Library buildings and Equipment).

285. In addition to considerations of or arguments for clinics in the United States, see Lynch, *supra* note 22; Sarah Buhler, *The View from Here: Access to Justice and Community Legal Clinics*, 63 U.N.B.L.J. 427 (2012). Some international scholarship on legal clinics has also been included. See Marzia Barbera & Venera Protopapa, *Access to Justice and Legal Clinics: Developing a Reflective Lawyering Space and Some Insights from the Italian Experience*, 27 IND. J. GLOB. LEGAL STUD. 249 (2020); Zemans & Amaral, *supra* note 106.

286. As others have noted, most Americans’ perceptions of rurality are inconsistent with the worldviews of rural people themselves and the conditions of their lives. See generally David L. Brown & Louis E. Swanson, *Introduction: Rural America Enters the New Millennium*, in CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 2 (David L. Brown & Louis E. Swanson eds. 2003); see also Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273 (2003). Lisa Pruitt extends this disconnect, or what she describes as the “increasingly attenuated connection to rural livelihoods” to the bench, noting that in 2010 four U.S. Supreme Court Justices hailed from New York City and U.S. Courts of Appeals judges, appointed by the executive branch, typically boast elite educations and urban backgrounds. Lisa R. Pruitt & Marta R. Vanegas, *Urbanormativity, Spatial Privilege, and Judicial Blind Spots in Abortion Law*, 30 BERKELEY J. GENDER, L. & JUST. 76, 100 (2015).

287. Michele Statz & Jon Bredeson, *Concerned About Rural Access to Justice? Start Here First*, NORTHLAND ACCESS TO JUST., <https://www.northlandproject.org/the-rural-a2j-guide> (last visited May 5, 2021).

288. Steve Denning, *Do We Need Libraries?*, FORBES (Apr. 28, 2015, 12:18PM), <https://www.forbes.com/sites/stevedenning/2015/04/28/do-we-need-libraries/#23d04c666cd7>.

289. R. David Lankes, *Libraries Are Obsolete*, 18 OLA Q. 12, 12 (2014).

necessity. Put another way, people in rural communities sometimes turn to libraries because there is nothing else.

Yet beyond serving as “information institutions,”²⁹⁰ rural public libraries take on other important roles. As Maija Berndtson argues, libraries are “important and essential placemakers. Big libraries in large developing cities make this aspect visible and meaningful, but every library – even the small and rural – is able to act as placemaker in its own surroundings.”²⁹¹ This idea thoughtfully transcends the notion of libraries as a “societal band-aid,” offering a nuanced understanding of libraries—and of course, librarians—as a *trusted, local* source of information.

This sentiment was evidenced often in our research, highlighting the role of public libraries as sites of information, access, and, critically, power. Indeed, as placemakers, libraries are “taken over” by their users²⁹² and shaped into places with meaningful and diverse (including legal) significance.

For one, public libraries are important places to access reliable internet in rural communities. Outside of the Wi-Fi available to patrons, some rural libraries also rent take home mobile hotspots to help serve “rural populations’ escalating need to be connected.”²⁹³ Such digital loaning programs also prove important when considering absent home-based broadband opportunities or high prices for that service in rural communities.²⁹⁴ Here, libraries step in where service providers fail or ignore rural communities.

As pertains this Article, libraries serve as critical spaces for legal assistance.²⁹⁵ A large part of this simply owes to presence: most rural communities have public libraries. Most do not have a courthouse or academic law libraries—a critical distinction with large metropolitan areas.²⁹⁶ In Minnesota, 55.8% of all libraries are rural, while in neighboring Wisconsin, 59.25% of all libraries are rural.²⁹⁷ The presence and arguable accessibility of rural public libraries render distance from existing services, so often focused on in A2J initiatives, a less significant barrier. And indeed, when we asked low-income survey participants, “What’s working in your community?” “local libraries” were mentioned in both rural Minnesota and Wisconsin.²⁹⁸

290. Strover et al., *supra* note 123, at 244.

291. Maija Berndtson, *Public Libraries and Placemaking* 8 IFL WILC SINGAPORE (2013) (Paper presented at: IFLA WLIC 2013 - Singapore - Future Libraries: Infinite Possibilities in Session 81 - Library buildings and Equipment).

292. *Id.* at 6.

293. Strover et al., *supra* note 123, at 244-45.

294. *Id.* at 244-45.

295. Of course, libraries are not “catch all” spaces for legal assistance. The biggest questions relate to what type of and how much assistance librarians can provide, including the distinction between providing legal information and legal advice. And while some rural libraries have been at the forefront of internet access or offer services like the rentable mobile hotspots discussed above, some rural libraries still often lack internet and technology services available in urban and nonrural libraries, as well as decreased staffing numbers and greater difficulty recruiting librarians. These variables mean not all rural libraries are necessarily equipped to handle or assist with legal assistance. Bilson et al., *supra* note 260, at 127; Real et al., *supra* note 285.

296. See Bilson et al., *supra* note 260, at 113. See also Thomas Sneed, *The Academic Law Library's Role in Cultivating the Rural Lawyer*, 64 S.D. L. REV. 213 (2019) (discussing academic law libraries as hubs for rural A2J assistance).

297. Deanne W. Swan, et al., *The State of Small and Rural Libraries in the United States*, INST. OF MUSEUM & LIBR. SERVS. RSCH. BRIEF NO. 5, 4-5 (2013).

298. BREDESON & STATZ, *supra* note 58, at 80; WOLF & STATZ, *supra* note 64, at 44.

More specifically, and as our data so powerfully evidence, rural *librarians* provide a form of access that A2J scholarship has so far largely neglected. In addition to pointing individuals to available legal and social supports, one public librarian in northeastern Wisconsin endeavored to create locally-relevant access to justice opportunities—most likely because so acutely observed and daily encountered legal need. With a marked brusqueness, she stated:

So we have a lot of folks who are living in poverty and don’t want to talk about it. We have a lot of people who are living in rental housing. Sixty percent of our housing is rental. And with the rollback of the tenant rights laws²⁹⁹... it’s not good. We get a lot of that. We get a lot of impoverished folks who just simply don’t know what their rights are. Or even how to go about finding—you know, it’s a full-time job to find the way to [information]. And there are the usual social issues—teens who are pregnant, people who are battered, disabilities that are not cared for. I have heard on multiple occasions, kids who are not getting their IEPs or IEPs are not being offered when they should be. There’s divorce proceedings, there’s family law, there’s all manner of chaos around here. Because when you have poverty problems, you have chaos surrounding it. There’s food security, there’s home security—I mean, it all winds up being legal.³⁰⁰

“I know about Judicare,” she commented, “And I point people in that direction.” Underscoring distance—Judicare’s sole office is located over an hour from away from the library—she added, “There’s no legal clinic around here. I would love to keep the library open in the evenings once a month to do this. I live 40 miles away; it’s an inconvenient thing for me to do, but I would do it.” Here, Statz asked, “Do you think there are attorneys in the area who would staff a free legal clinic?” She nodded. “I believe so. There are a number of them who already kind of do pro bono stuff. But this would be a way for [low-income people] to come in and at least be heard and to feel like they’re being heard... just a little direction. People genuinely need help and have no place to start.”³⁰¹

This knowledgeable and dignifying approach to legal need—to *feel like they’re being heard*—represented a profoundly different experience for low-income individuals than that which we documented regarding rural *courthouse law libraries*. While Wisconsin has just 4 courthouse libraries, all of them located in major metropolitan areas,³⁰² almost all of Minnesota’s 84 district courthouses have

299. Since 2011, Wisconsin’s Republican-controlled Legislature has passed over 100 changes to landlord-tenant laws. These laws have sped up the eviction process, made it easier to evict tenants, and granted landlords greater power to look into a potential tenant’s credit and criminal histories. Lisa Speckhard Pasque, *Changes to Wisconsin Landlord Tenant Laws Since 2011*, CAP. TIMES (Feb. 7, 2018), https://madison.com/ct/news/local/govt-and-politics/changes-to-wisconsin-landlord-tenant-laws-since/article_57ffd931-afda-5385-a487-9a6882f8d85b.html https://madison.com/ct/news/local/govt-and-politics/locked-out-how-sweeping-changes-to-wisconsin-landlord-tenant-laws-affect-vulnerable-populations/article_89898c57-ce9c-506b-bc9c-63bf55de3d88.html

300. Redacted interview in Bemidji, Minnesota (April 2018) (on file with authors).

301. *Id.*

302. *Wisconsin State Law Library Locations*, WIS. STATE L. LIBR., <http://wilawlibrary.gov/about/locations.html> (last visited May 5, 2021).

law libraries.³⁰³ The law libraries we visited in northeastern Minnesota varied markedly in space, accessibility, and resources. Some law libraries have relatively large print collections, such as the Duluth Law Library, while more rural and remote law libraries consist of a computer station, phone, and some pamphlets and court forms.³⁰⁴ All courthouse law library computers in Minnesota are equipped with Westlaw, and the phone is supposed to be marked with the phone number for the State of Minnesota Law library.

While generally viewed as an important A2J site,³⁰⁵ our data on courthouse law libraries prove otherwise. Indeed, the Minnesota courthouse law libraries we visited implicitly communicate the aforementioned expectation that self-represented litigants would have legal know-how while ignoring the socioeconomic and spatial barriers—and of course, profound stress—already realized by so many pro se litigants.

Courthouse law libraries in northeastern Minnesota.

Photos taken by Michele Statz.



For instance, while mentioned as an exciting resource by many regional state and state bar association stakeholders, the availability of Westlaw on courthouse law libraries meant very little to low-income litigants. Overwhelmingly, and perhaps unsurprisingly, low-income research participants described available law library resources as difficult to understand.³⁰⁶ “There is a law library here,” stated one individual. “That is where we got the [form]. But it was 30 pages long, and I was like, ‘What? I’m supposed to figure this out?’”

“Was there a librarian there?” asked Statz.

303. *Minnesota State Law Library*, MINN. JUD. BRANCH, <https://mncourts.gov/Help-Topics/Law-Libraries.aspx> (last visited May 5, 2021).

304. *Law Library*, COOK CNTY. MINN., <https://co.cook.mn.us/index.php/law-library> (last visited May 5, 2021) [hereinafter *Cook County Law Library*].

305. AM. ASS’N OF L. LIBRS. & ACCESS TO JUST., A REPORT OF THE AMERICAN ASSOCIATION OF LAW LIBRARIES SPECIAL COMMITTEE ON ACCESS TO JUSTICE 22 (2014), <https://www.aallnet.org/wp-content/uploads/2018/01/AccessToJusticeSpecialCommittee2014LawLibrariesAndAccessToJustice.pdf>. (“From the earliest days of their profession, law librarians have facilitated access to legal information).

306. BREDESON & STATZ, *supra* note 58, at 33.

“No,” she replied.

“Was there a telephone there?”

“Yes.”

“Do you know about the phone line [to connect with a law librarian]?”

Statz clarified.

“I don’t know anything about that,” she answered.³⁰⁷

A critical component of not being able to—or necessarily knowing to—access available case law, U.S. Code, Minnesota Statutes or even the law library helpline is the fact that in-person personnel are often absent. Some Minnesota rural courthouse law libraries advertise law librarian, legal aid attorney, or “self-help person” hours, but availability is markedly constrained. For instance, an attorney from the Duluth office of Legal Aid Service of Northeastern Minnesota is available for consultations at the Cook County Courthouse (located 110 miles from Duluth) from 9:00 am until 11:30 am on the third Tuesday of every month.³⁰⁸ For other rural courthouse libraries, simply making available a printer, phone and the phone number for a state law librarian—i.e., a “self-help center workstation”³⁰⁹—is presumed sufficient.³¹⁰ “I tried to use [courthouse law library resources],” stated one low-income community member in northern Minnesota. “My nephew lives with me, and I tried to understand guardianship. Didn’t work. First of all, you have to be comfortable going to the courthouse, which some of us aren’t... It’s like the principal’s office. And then [librarians] are there on certain days but if you’re not available on those days, that’s tough.”³¹¹ This absence of real-time, in-person assistance, and likewise of the intimacy, expertise and trust so needed in a crisis situation, is profoundly consequential. It should additionally be noted that law library staff are not permitted to give legal advice or help with legal research.

While this Article offers important ethnographic evidence, law scholarship has already suggested the need for consistent in-person A2J supports. “Airlines, grocery stores, and libraries have clearly recognized this wisdom,” writes Rebecca Sandefur, “[as] self-service kiosks are typically attended by one or two members of staff who can provide reassurance, answer questions, and refer people to live agents when that seems needed.”³¹² In Minnesota, only 10 courthouses have walk-

307. All courthouse law library phones are supposed to be marked with the phone number for the State of Minnesota Law Library, which people can contact for assistance in research. As evidenced in the first photo (above) this information is not guaranteed.

308. *Cook County Law Library*, *supra* note 305.

309. *Self Help Centers*, MINN. JUD. BRANCH, <https://www.mncourts.gov/Help-Topics/Self-Help-Centers.aspx> (last visited May 5, 2021). 11 county courthouses in Minnesota have walk-in self-help center locations, where pro se litigants can receive help in person. Typically, self-help centers are contained in the same space as courthouse law libraries. The court staff who work the centers are not allowed to provide legal advice.

310. *Law Library*, PINE CNTY. MINN., https://co.pine.mn.us/departments/law_library/index.php (last visited May 5, 2021).

311. Redacted interview in Bemidji, Minnesota (October 2017) (on file with authors).

312. Sandefur, *supra* note 140, at 739. As others have noted elsewhere, self-help centers do little to meaningfully prepare litigants for court or help litigants understand court processes and procedures. See Maura Dolan, *As More People Go Without a Lawyer, Courts Offer Self-Help Services. Advice from the Judge? No Way*, LOS ANGELES TIMES (Apr. 7, 2019, 3:00AM), <https://www.latimes.com/local/lanow/la-me-ln-unrepresented-litigants-20190407-story.html>.

in self-help center locations where staff can help with court forms and answer general questions about court process and preparation for court.³¹³

Ultimately, if there are limits to what libraries can do alone, Beth Bilson et al. point to collaboration as a potential solution. Despite the differing mandates and cliental of court, academic law, and public libraries,³¹⁴ a number “have developed [...] a symbiotic relationship.”³¹⁵ Following this, academic and law libraries could more systematically provide legal information, resources, and training to public librarians.³¹⁶ In this, Bilson et al. underscore the importance, if not necessity, of pooling knowledge and resources in rural communities.

Another collaborative, asset-building approach to rural A2J is found in the “town legal center.” Internationally, the center model has been used since the 1970s in Canada,³¹⁷ Italy,³¹⁸ and the United Kingdom.³¹⁹ Building on existing community resources, the center is formed through partnerships between legal aid organizations, local communities, and the state bar and represents a public space to be utilized by legal aid, private attorneys, “incubator” attorneys, and even law students.³²⁰ In this way, town legal centers provide a centralization of resources often lacking in other A2J initiatives. While there are so far no formal town legal centers in our research region, the concept is compelling to some local private practitioners in northeastern Minnesota.

Reflecting on existing state-sponsored initiatives, one of these individuals commented, “Why should rural residents get second-hand justice? What we want to do is provide high quality, well-managed legal services based on people’s ability to pay.” This sentiment importantly underscores a critical dimension of our research, namely the stigma we documented around accessing legal aid. In the absence of Civil Gideon³²¹ and with deep respect for the eligibility guidelines required by underfunded legal aid providers, we nonetheless identify *shame* as an important but largely understudied aspect in accessing legal aid and other supports. “A lot of times it’s just getting in that door [to legal aid],” stated one research participant. “I think it’s more of a pride issue where you say, you know you need the help, but you [want] to go out and get the help without having shame or fear of being judged. Or others knowing you’re low income. On a personal level, it was hard.” During a focus group, Statz shared her own story and asked about the stigma

313. *Self Help Centers*, *supra* note 310 (Click on “Self-Help Center Locations,” and see the drop down menu of available locations under the heading “Walk-In Self-Help Center Locations.” The listed Minnesota counties feature walk-in locations are Anoka, Chisago, Hennepin, Isanti, Kanabec, Pine, Ramsey, Sherburne, Washington, and Wright.).

314. Bilson et al., *supra* note 260, at 107.

315. *Id.* at 111-2.

316. *Id.* at 112-3.

317. Buhler, *supra* note 286. Zemans & Amaral, *supra* note 106.

318. See Barbera & Protopapa, *supra* note 286.

319. *About Law Centres*, L. CENTRES NETWORK, <https://www.lawcentres.org.uk/about-law-centres> (last visited May 5, 2021).

320. Lynch, *supra* note 22, at 1698.

321. Civil Gideon refers to an approximate civil equivalent to *Gideon v. Wainwright*, the 1963 U.S. Supreme Court case whose decision provided mandatory criminal representation for the poor. See generally, MINN. STATE BAR ASS’N, CIVIL GIDEON TASK FORCE ACCESS TO JUSTICE: ASSESSING IMPLEMENTATION OF CIVIL GIDEON IN MINNESOTA (2011), [https://www.mnbar.org/docs/default-source/atj/msba-civil-gideon-task-force---access-to-justice---assessing-implementation-of-civil-gideon-in-minnesota-\(final\)6565E5B78320.pdf?sfvrsn=2](https://www.mnbar.org/docs/default-source/atj/msba-civil-gideon-task-force---access-to-justice---assessing-implementation-of-civil-gideon-in-minnesota-(final)6565E5B78320.pdf?sfvrsn=2).

that individuals may feel in trying to find legal assistance. Each of the participants, who ranged in age, ethnicity, and gender, nodded vehemently and the room went silent. Finally, one individual commented, “It’s embarrassing to ask for help or to call legal aid. That’s a huge barrier.”³²²

These data around shame and stigma lend extra salience to the aforementioned suggestion of sliding-scale services. While a town legal center importantly centralizes resources, offers a neutral public space (recall the aforementioned comment about the courthouse feeling like “the principal’s office”), and, perhaps most significantly, avoids the unbearable “shuffle” between so many A2J resources, it also facilitates a certain *ownership* of legal outcomes by including a variety of services and payment models. This sets a critical expectation for a personal and financial investment in a legal relationship, an inherently dignifying act.

At a broader scale, town legal centers can also provide a space for legal service providers and those in need of legal services to collaboratively reconsider access and justice. Reflecting on town legal clinics in Italy, Marzia Barbera and Verena Protopana state, “Clinics embody a unique forum to better understand the nature of legal knowledge and legal practice” and can serve as “a space to both practice public interest law, and to rethink such practices, and to influence public policies on access to justice.”³²³ In this sense, the legal center model provides not only a place where assistance can be provided, but one where larger structural problems might be considered and addressed. We accordingly view the town legal center as well-poised to invite and facilitate community-informed and proactive conversations around A2J, equity, and voice. This collaborative setting is also arguably the best place in which to try—and likely refine—many of the initiatives we overview in this Article, among them unbundled legal services or A2J technologies, owing to the likelihood of available in-person and expert assistance. For programs and pipelines that recruit attorneys into rural communities, centers could also provide functional workspaces and a safe location to meet clients, alleviating the burdens and cost of rental or law firm start up. The collaborative, multi-organizational nature of the town legal center model allows for the possibility of securing funding from multiple diverse sources for a variety of issues, including legal, technological, and state funding resources.³²⁴ And in the face of COVID-19, the legal center model might allow for a consolidation of resources for services that have been financially impacted by shutdowns and reduced forms of tourism.

Ultimately, the town legal center capitalizes on trusted relationships and centralized spaces, both major themes in our data. “While the legal community may look at the isolation in rural areas as a ‘problem’ to be solved,” writes Hilary Wandler, “rural communities may have the opposite view and consider it a strength that keeps the community small and, paradoxically, close.”³²⁵ In this way, town legal centers might be viewed as a physical manifestation of a socio-spatial connectivity that often already exists in rural spaces. “Because we are a small

322. Redacted research interview excerpt with focus group, in Minnesota (December 2017) (on file with authors).

323. Barbera & Protopapa, *surpa* note 286, at 251.

324. Lynch, *surpa* note 22, at 1704.

325. Wandler, *surpa* note 22, at 244. See also Statz and Evers, *surpa* note 184.

community,” stated one rural service provider, “because we see those trends, and because we know each other... I think [we have] a unique opportunity to say, ‘How do we actually address those needs?’” To be rurally relevant, A2J initiatives must honor and draw on these acute, expert understandings of local need and existing collaborative relationships. After all, this approach is precisely what mobilized the aforementioned cellular tower on the Red Cliff Reservation and Bayfield County and the inter-tribal creation of the Lac Courte Oreilles Ojibwe Community College lay advocacy program. These initiatives weren’t developed at a state policy level but instead were local, collective, and even cross-jurisdictional efforts to meaningfully address regional infrastructural gaps.

IV. ON DIGNITY, OR WHEN ACCESS ECLIPSES JUSTICE

A. Resignation

This Article is nearly four years in the making. The idea for it originated in an informal conversation between Statz and a district court judge in 2017. As the courtroom where they were standing slowly cleared out at the end of the day, Statz introduced herself to the judge and stated, “I’m conducting research on rural access to justice.”

“The issue is getting people access *to attorneys*,” he retorted. “Anybody can walk into the courthouse. You get in and fumble around—and they had ‘justice.’ They had access to the system, but they didn’t get a just result.”

In the following three years, our research evidenced this point again and again. It also demonstrated something else, namely that pro se litigants do not get a just experience either before or when they appear in the courtroom. Unlike so much law scholarship, many of our data for this point are richly ethnographic. Indeed, the intimate accounts of rural low-income community members, attorneys, and judges together demonstrate something that an analysis of case outcomes or a randomized control trials—critical as they are—simply cannot. When brought together, these individuals’ experiences reveal the profound inequity of the current “A2J apparatus.” In the Northland, this inequity is especially stark and underscores what is already presumed by many to simply be a way of rural life. Indeed, in the early stages of data analysis, we developed a code for what we observed as “the hegemony of defeat.” One tribal judge noted, “I’ve seen it in the eyes of family members. They don’t trust our legal systems. We’ve conditioned them that nothing will happen. As a result... what happens in the home stays in the home.”³²⁶

This sense of resignation was echoed by a legal aid attorney: “It’s really easy for our clients to ignore civil legal needs. It’s just a way of life for them. You know, ‘Of course my food stamps are being cut off.’ It’s just a way of life.” Similarly, an educator on Minnesota’s Iron Range commented, “There’s this idea [here] of, ‘It’s always been this rough.’ People get used to it, just the way people get used to trauma and traumatic events. They think, ‘No matter what happens to me, it’s my job to endure it.’”³²⁷

326. Redacted research interview excerpt with tribal judge, in Wisconsin (November 2017) (on file with authors).

327. Redacted research interview excerpt with educator, in Minnesota (August 2017) (on file with authors).

“Of course, you have people who owe all this money and don’t pay [their bill],” stated one rural attorney. “You have people who don’t have anything, except for a 15-year-old car and they are back on a rent payment. What do you do with those people? I don’t know. Those are the people that need a court system more than a lot of people in my mind. Which is why I really despise this idea that they get a different type of legal service than somebody else.”³²⁸

So keenly observed by those we interviewed, it is unsurprising that the perspectives and practices we documented of many rural attorneys offered a compelling antidote to this inequity. The antidote, or what we ultimately identify as a *just experience*, is profoundly simple. Indeed, it comprises a listening advocate who offers a deep knowledge of local context, time, and legal expertise and has a willingness to act on behalf of the client. Taken together, these components do a great deal towards building trust and confidence in legal process. They feel fair. And perhaps most critically, they feel very, very different from current A2J “solutions.”

“Being in these small towns, it is much easier to be ‘hooked up,’” stated a private practitioner in Wisconsin:

I mean, my network of people that I can hook up a client with is vast, and almost everyone that I send someone to for anything, I know that person personally... I think it's easier to do in a small town... And it happens all the time. It can be something as stupid as a home buyer needing the right person to do a septic and well inspection, or as complicated as somebody that walks in and says, ‘You know, man, I’m having problems.’ I mean, I’ve had people that I was sure we’re going to kill themselves in the next 24 hours if I didn’t get them to the right person. That person doesn’t leave here until I know I got them hooked up with somebody, and I’ll call sometimes and check and make sure they got there. I mean—and a lot of times, frankly, I know the guy, I know the client. Or I’ve seen them around town, I know something about them. I don’t know that you get that in the bigger cities. And no slam on them—there’s a different level of personalization in the metro areas.³²⁹

A legal aid attorney in northeastern Minnesota commented:

“I [listen], show empathy. Try to make them laugh a little... Just let people tell their story. Everyone’s got a story. So you just listen, and usually then you can kind of get to the meat of their issue... I just had one last week where she wanted to go to Florida, that was her legal issue. Just to leave. ‘I gotta get out of here, how do I?’ It’s like, geez, I don’t know... Eventually she was, ‘Well,

328. Redacted research interview excerpt with rural attorney, in Minnesota (February 2019) (on file with authors).

329. Redacted research interview excerpt with private practitioner, in Wisconsin (April 2018) (on file with authors).

they took my kid from me.’ And then we started talking about that... You start listening.”³³⁰

This profound commitment and care was common among the legal aid attorneys we interviewed—a fact that is at once both heartening and sobering when we consider that many legal aid organizations, including those in our research region, are increasingly prioritizing their resources away from direct representation toward impact litigation³³¹ and unbundled services.

One state trial court judge in rural Minnesota stated, “Justice doesn’t exist without humanity. You have to bring that human to it. There has to be a recognition of the circumstances, conditions, and of the people. A straight application of the law without mindfulness to that doesn’t result in justice, it results in an application of the law.”³³²

Referencing the aforementioned “fear barriers” we identify as fundamental to so many A2J initiatives, another rural legal aid attorney commented, “I tell people, ‘it’s going to be okay,’ a lot. And preface that with, ‘it may not turn out the way you want, but you will make it through this,’ you know?”³³³ He continued: “Usually, by the time people get [to legal aid] they just got turned down—they’re bounced around—calling child support, getting, ‘We can’t help you.’ Going to court administration, ‘We’re not a lawyer.’ Going to the library, ‘I don’t know what [to do], here’s the form.’ I think the [low-income] population is used to that, sad to say... By the time they get here, I just want to be that one person who says, ‘I’m listening.’ I want to act like it and make them understand and think there is someone [willing to listen] to their entire story. ‘Okay, so your issue is this.’ And I’ve been here long enough that I feel like it’s a personal responsibility.”³³⁴

B. Responsibility

The A2J initiatives we evaluate in this Article largely begin with the postulate that no one will have an attorney unless they can afford one. To then mitigate the harm that a lack of representation creates and give an appearance of “justice,” these initiatives focus on access. They effectively adopt John Rawls concept of pure procedural justice,³³⁵ with access to the courtroom the coin and living with the decision of the court as the coin flip, with no independent means to assess whether

330. Redacted interview excerpt with legal aid attorney, in Wisconsin (December 2018) (on file with authors).

331. *Reforming the Law Through Impact Litigation*, LEGAL AID SOC’Y, <https://www.legalaidnyc.org/the-legal-aid-societys-impact-litigation/> (last visited May 5, 2021); NATIONAL CENTER FOR ACCESS TO JUSTICE TRACKING OUTCOMES: A GUIDE FOR CIVIL LEGAL AID PROVIDERS & FUNDERS (2018), <https://ncforaj.org/wp-content/uploads/2018/06/NCAJ-Outcomes-Guide-complete-for-6-20-18.pdf>.

332. Redacted interview excerpt with state trial judge, in Minnesota (November 2018) (on file with authors).

333. Redacted interview excerpt with rural legal aid attorney, in Minnesota (February 2018) (on file with authors).

334. *Id.*

335. See generally JOHN RAWLS, A THEORY OF JUSTICE 266 (Harvard Univ. Press 6th ed. 2003) (Rawls’ first principle of justice: “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.”).

the outcome was substantively just. In other words, *our initiatives got the parties through the door. It is now your problem, Judge. Good luck.*

Access to justice does not end when the courthouse door opens. Rather, it is simply where it begins. Under the American system we reach “justice” by establishing rules of procedure designed to ensure a fair presentation of the merits of a case to the court. We ensure a fair and just outcome by establishing a fair and just procedure. This is not solely a pleading requirement that when satisfied permits a person to appear before a judge, be heard, and then have justice served. While foundational to “justice,” procedural due process in its most basic statement is notice and an opportunity to be heard. Critically, the “to be heard” part is often missed by current A2J initiatives. Instead, there is the expectation that an individual *in crisis* is able to navigate on-line forms, attend a clinic, or receive telephone advice from an attorney so that the door to the courthouse opens. There is further expectation that the individual is going to be able to educate themselves as to the rules of evidence and court procedure, perfect a motion, respond to a motion, draft an affidavit, request discovery, answer discovery, subpoena a witness, make an opening statement, call a witness, direct examine a witness, introduce exhibits, respond to objections, cross examine a witness, and make a closing argument. This is untenable. It is precisely why Judith Resnick links “A2J” with “A2K,” or “access to knowledge,” arguing that A2J projects tend to focus on enabling claimants to come to court but failed to address the public dimension of what occurs *in courts*.³³⁶ It is also why we and others explicitly connect the ability to access justice with *human dignity*. As Simon Rice so eloquently states, “A person cannot be human with dignity if... through inability to use the law, she faces loss and damage; if, through confusion about the law, she loses opportunity. Thus, the state’s failure to ensure access to and understanding of its laws does indeed engage human dignity, an essential element of a human right.”³³⁷

Metropolitan areas already recognize the fallacy inherent in current A2J initiatives that litigants in crisis can effectively represent themselves and obtain “justice.” For instance, while rural Minnesota has foisted upon it an assertion that all of the current A2J initiatives will address their ills, Hennepin County, where Minneapolis is located, recognized quickly the failings of this proposition. By Standing Order of then presiding Hennepin County Family Court judge, now Associate Judge of the Minnesota State Supreme Court, Anne McKeig on October 20, 2015, it implemented a requirement that no self-represented litigant may file a family law pleading without first having it reviewed by the Family Law Self Help Center. The stated purpose of the Order was, “[i]n an effort to carry out the Fourth Judicial District’s goal to provide self-represented litigants access to the courts, achieve fair and efficient resolution of their cases, minimize delays and inefficient use of court resources, Self Help Center staff educated self-represented litigants and review certain pleadings for them.”³³⁸

336. Judith Resnick, *A2J/A2K: Access to Justice, Access to Knowledge, and Economic Inequalities in Open Courts and Arbitrations*, 96 N. C. L. REV. 606, 611 (2018).

337. Simon Rice, *Bentham Redux: Examining a Right of Access to Law*, in CAMBRIDGE HANDBOOK NEW HUMAN RIGHTS: RECOGNITION, NOVELTY, RHETORIC 541, 543 (Andreas von Arnould et al. eds., 2020).

338. *Family Court Self Help Center Review of Self-Represented Litigant Pleadings Standing Order*, STATE OF MINN. FOURTH JUD. DIST.,

As a metropolitan area, Hennepin County has the available resources to fund and staff this service. It is provided in the courthouse and is available as both a walk-in service and by appointment under normal conditions but is currently remote and by email due to the COVID-19 pandemic. Certain matters, such as third-party custody cases, require an appointment. The pleading is reviewed for completeness and adequacy and, if sufficient, is approved as appropriate and permitted to be filed. If it is a complicated matter, information is available for legal services or one of the other pro bono legal service providers is contacted for assistance. So while urban areas largely advocate for the A2J initiatives we overview here for rural locales, they clearly recognize the deficiency inherent in *only* providing access without additional human resources.

The attorney is the bridge between “access” and “justice,” even if we are to accept as unsolvable so many other barriers with which individuals in rural areas contend. And yet the legal profession, with the exception of legal services and academics, remains primarily absent from the development of current A2J initiatives, particularly those put forth by national, state, and local bar associations. As Justice Sandra Day O’Connor stated, “[l]awyers have in their possession the keys to justice under a rule of law – the keys that open the courtroom door. Those keys are not held for lawyers own private purposes; they are held in trust for all those who would seek justice, rich and poor alike.”³³⁹

Any A2J initiative which ignores or attempts to supplant or remove the role of the attorney is doomed to only offer access—and to ultimately lose the “to justice.” This is antithetical to the American jurisprudence which provides for “Equal Justice”:

If you are going to be a lawyer and just practice your profession, well, you have a skill so you are very much like a plumber. But if you want to be a true professional, you will do something outside yourself, something to repair the tears in your community, something to make life better for people less fortunate than you.³⁴⁰

Presently, rural areas are facing the crisis of legal deserts: retiring attorneys are not being replaced by new attorneys. Younger community members who pursue careers in law are not returning to the community to practice. Legal service providers, when still providing assistance in rural communities, are promoting current A2J initiatives and decreasing substantially the amount of direct and full representation they are providing. Many law schools, state court administrators, law firms,³⁴¹ and state legislators are not promoting, encouraging, or supporting rural legal practice. The justice gap between those who can afford an attorney and

https://www.mncourts.gov/mncourtsgov/media/fourth_district/documents/Orders/FAM-Standing-Order-FJC-SHC-2015.pdf.

339. Sandra Day O’Connor, *Professionalism*, 76 WASH. U. L. REV. 5, 12 (1998).

340. Kathleen J. Sullivan, *U.S. Supreme Court Justice Ruth Bader Ginsburg Talks About a Meaningful Life*, STAN. NEWS (Feb. 6, 2017), <https://news.stanford.edu/2017/02/06/supreme-court-associate-justice-ginsburg-talks-meaningful-life/>.

341. A notable exception to this was a grant opportunity to Mitchell Hamline School of Law provided by the Fredrikson and Byron Foundation from 2016-2020. The grant was established for the law school to offer fellowships to summer interns who were placed with judges in outstate Minnesota. Based on the program’s success, Mitchell Hamline and the Fredrikson & Byron Foundation are currently evaluating renewal of the program.

those who cannot is widening. Nowhere is this more evident than in current A2J initiatives where the primary focus is removing the necessity, or significantly reducing the necessity, of the attorney.

This failure stems, in part, from a lack of recognition of the role the attorney provides in the rural community, particularly in light of the many other barriers that are endemic to rural life. While the attorney is without doubt a problem solver and often the “key holder” to the door of the decision maker, these skills are only a portion, and perhaps not even the most valuable, of what she or he offers. Most simply, and as we so thoroughly detail above, attorneys work with people in crisis. These are crises that involve children, housing, healthcare, employment, and benefits. The A2J response to these crises is to provide forms, self-help, clinics, telephone advice, and unbundled services, initiatives premised on an expectation that an individual can become their own attorney. This consequently transcends the stated purpose of “access to the courthouse” to a presumption that someone who is not law-trained might prosecute or defend their cause and reach a just resolution.

The main role of the attorney is not to solve the problem, but to bear the burden of the problem—the crisis—so that it may be solved in a dignified and just way. As former U.S. Solicitor General, John W. Davis so aptly stated:

True, [lawyers] build no bridges. We raise no towers. We construct no engines. We paint no pictures. There is little of all that we do which the [human] eye...can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men and women’s burdens and by our efforts we make possible the peaceful life of men and women in a peaceful state.³⁴²

Ignoring this function of the attorney, and the necessary role that the attorney fills in bearing client’s burdens, increases the justice gap between those who can afford an attorney and those who cannot. As present A2J initiatives move farther from addressing attorney shortages and representation, those who are low- to middle-income will have increasing difficulty obtaining free or affordable representation as those of means and power will still enjoy the benefit of burden transference. As this disparity becomes more glaring, the call to address it is increasingly urgent. “There is evidence – tragic costly evidence – that a substantial number of citizens believe that equality is but an unrealized slogan; that justice is for ‘just us’ – the powerful, the educated, the privileged.”³⁴³

The failure of current A2J initiatives to address attorney representation and, by corollary, attorney shortages in rural locales does not fall on the promoters of A2J but upon the legal profession. The inability of the profession to mobilize in support of A2J as a necessary component places the profession at risk of being unneeded, or more likely unwanted, as disparities increase. The American Bar Association, state bar associations, local bar associations, law schools, and the judiciary must recognize the threat that exists to legal practice if they do not act. This is not simply a call to use the significant lobbying power of these organizations to seek increased funding for legal services, which are already

342. *We Build No Bridges*, YOUNG LAWYER (Mar 17, 2018), <https://www.theyounglawyer.com/we-build-no-bridges/>.

343. O’Connor, *supra* note 340, at 12.

demonstrating a propensity to move away from direct attorney representation, or to pull up a chair at the A2J table. Rather, it is to reinitiate a sense of professionalism which demands community involvement. “[P]ublic service marks the difference between a business and a profession. A business can only focus on profits. A profession cannot. It must focus first on the community it is supposed to serve.”³⁴⁴

V. CONCLUSION

In rural communities, access to justice takes on unique and largely unconsidered dimensions owing to rural socio-spatiality, economic marginalization, and an absence of many of the fundamental structures and resources upon which so many A2J efforts rely. Indeed, these structural realities “suggest a need to look beyond a rural client's immediate concerns and examine the forces that contribute to the client's predicament,” write Lisa Pruitt and Bradley Showman. “Identifying and addressing these higher-scale needs are integral components of access to justice in which lawyers play a critical role.”³⁴⁵ We have endeavored in this Article to illuminate the critical role of rural attorneys—an outcome, in a sense, of realizing the inherent insufficiency and even violence of current A2J solutions. Echoing Ann Eisenberg’s call for a more equitable allocation of resources and legal protections to marginalized populations,³⁴⁶ we argue for an understanding of “access” that defers to rural residents’ expectations for *justice*. This is a necessary and inherently dignifying step, one that recognizes local context, trust, and equity as fundamental to A2J.

344. *Id.*

345. Pruitt and Showman, *supra* note 22, at 502.

346. Eisenberg, *supra* note 9, at 251.