

2018 Policy Paper

Courts Need to Enhance Access to Justice in Rural America



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Introduction

With no car, no bus service, and no access to online court services, a long distance journey to a courthouse by moped provided the only means for one woman to seek assistance in applying for a domestic violence restraining order. The local court at Big Bear Lake in San Bernardino County, California, had closed due to budget reductions, requiring the woman to travel an even greater distance than normal to reach the closest courthouse. After many hours, and a challenging descent down a winding, dangerous mountain road in bad weather, she reached the courthouse late in the afternoon only to find the court's self-help center had closed for the day. Distressed and tired, she made the return trip home in darkness, no closer to securing the restraining order she badly needed. The woman made the repeat journey to the courthouse the following day. Unfortunately, her experience is one that is all too familiar for millions of rural Americans.

I. The Challenge: Rural Justice in an Urban Society

Accessing justice in the United States should not be made daunting or dangerous because a person lives in a rural area. Yet across the country, geographic distance, declining and aging populations, outdated technology with slow or nonexistent Internet connectivity, and problems attracting and retaining judicial officers, court staff, and legal professionals all present significant challenges that threaten the ability of Americans living in rural communities to access the justice system.

Access to justice is a right and an expectation for every American. Inferior or inadequate access to court and legal services

cannot be an acceptable response to the needs of our rural communities.

A. Defining “Rural America”

Rural America constitutes approximately 97 percent of the land area of the United States.^{1,2} Every state in the Union has a rural population recognized by the United States Census Bureau as counties and municipalities with a population of less than 2,500.³ Every state has a stake in identifying and addressing the challenges of providing equal access to justice for its rural communities.

For urban or suburban residents who may take for granted that a courthouse, a specialized attorney, or interpreter services are within a short car, bus, or train ride, the sheer scale and sparseness of rural areas can be difficult to comprehend. For perspective, the map below illustrates how the entire territory of North Dakota—one of the country's most rural states with a population of just 693,972—covers the combined metropolitan areas of New York, Philadelphia, Baltimore, Washington, and Pittsburgh, with a combined population of more than 37 million people.^{4,5}

¹ *New Census Data Show Differences Between Urban and Rural Populations*, United States Census Bureau (2016). <https://www.census.gov/newsroom/press-releases/2016/cb16-210.html>

² The US Census Bureau defines rural America as an area or population that is both (1) outside of an urban area and (2) has less than 2,500 residents. Derived from *2010 Census Urban Area FAQs*, US Census Bureau (2010). <https://www.census.gov/geo/reference/ua/uafaq.html>

³ *2010 Census Urban and Rural Classification and Urban Area Criteria*, US Census Bureau (2010). <https://www.census.gov/geo/reference/ua/urban-rural-2010.html>

⁴ *QuickFacts*, US Census Bureau (2017). <https://www.census.gov/quickfacts/fact/table/ND/PST045217>

⁵ *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2016 – United States – Metropolitan and Micropolitan Statistical Area; and for Puerto Rico*, U.S. Census Bureau.

Geographic Overlay of North Dakota on Combined Metropolitan Areas



B. Rural Population Decline

A little over a century ago, more than 54 percent of the U.S. population lived in rural communities.⁶ Today, that figure stands at just under 19 percent.⁷ There are 704 counties with a population that is completely (100%) rural and another 1,185 counties that are mostly rural (more than 50%).⁸ By comparison to these 1,889 rural counties whose residents make up less than one-fifth of the population, there are just 1,253 counties that are mostly urban (less than 50% rural).⁹ Rural populations span from the east, where 64.4% of the total rural population lives east of the Mississippi River including Maine with the highest proportion of population living in rural areas at 61.3%, to the west where 10% of the total population lives in rural areas including the

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁶ *Urban and Rural Population: 1900 to 1990*, US Census Bureau (1995).

<https://www.census.gov/population/censusdata/urpop090.txt>

⁷ *2010 Census Summary File*, US Census Bureau (2010).

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>

⁸ *Discovering rural America*, in Capitol Ideas May/June 2018, p.13, Council of State Governments

⁹ *Ibid.*

least populous rural county in Kalawao, Hawaii.¹⁰

Automated corporate farming, the depletion of natural resources, a desire for greater education and employment opportunities, and the lure of urban life have drawn the population away from rural areas to ever-expanding urban centers. Even though 60 million people still live in rural America, and some communities are experiencing marginal growth, this population as a whole is dramatically declining as urban growth outpaces rural growth in all but four states.¹¹ Population declines and an aging workforce have challenged local governments to maintain routine services.¹²

Rural depopulation is challenging federal, state, and county government commitments to maintaining local services. Reduced taxpayer and voter bases in rural areas can lead to a tightening of the government purse where the return on investment in socioeconomic infrastructure may be perceived to be lower. Fewer resources affect the ability of rural courts to deliver justice in the traditional model of courthouse, full-time judge, and full-time staff, all within a reasonable traveling distance. Diminishing resources that translate into a lack of services also increase the likelihood that court-mandated orders such as domestic violence treatment, drug counseling, mediation, and mental health support—programs that are desirable or even required by statute—will not be accessible to rural communities.

¹⁰ *Id.* at p.14

¹¹ *2010 Census Urban and Rural Classification and Urban Area Criteria*, US Census Bureau (2010). <https://www.census.gov/geo/reference/ua/urban-rural-2010.html>

¹² Bill Lucia, “Credit Ratings Agency Offers Dim Outlook for Rural America; Population declines, an aging workforce and sluggish growth pose challenges,” at RouteFifty, July 19, 2018, accessed at <https://www.routefifty.com/finance/2018/07/moodys-rural-america-economic-financial-troubles/149893/>

As rural migration continues, attracting and retaining experienced jurists, attorneys, and court staff is becoming more difficult. Lacking the resources of larger, urban courts, rural attorneys and courts must employ a “jack of all trades” model. The dearth of attorneys to represent clients in local jurisdictions can exact a considerable toll. Many residents are forced to travel long distances to neighboring counties for legal services. Recent reports indicate that only 85 of the 357 towns in North Dakota have an attorney, while six rural counties in South Dakota and 12 in Nebraska have no attorneys at all.¹³

With the average age of lawyers nationally reaching 49, the shortage in rural America becomes even more critical as local, rural attorneys nearing retirement age will cease practicing without anyone to replace them.¹⁴ In rural Inyo and Mono counties in California, for example, excluding government attorneys (county counsel, district attorneys, and public defenders), the former Presiding Judge recently reported that there are approximately 22 attorneys currently in private practice. Of those, only a handful are under the age of 62. The shortage is likely to become more acute since, although California’s population is expected to grow 21.8% by the end of 2035, the population will shrink in eight northwestern, rural counties.¹⁵

The absence of lawyers in a jurisdiction not only means fewer choices for legal

representation, but fewer candidates to fill judgeship vacancies in rural courts. A limited workforce pool also affects the ability of rural courts to recruit and retain staff that are sufficiently qualified to meet the needs of the public and private sector—clerks who can be generalists and handle counter and courtroom duties for all case types. A lack of competitive salaries compounds the problem.

C. Aging Population

Concurrent with the shrinking of America’s rural population, its remaining residents are also graying. According to the United States Census Bureau’s American Community Survey, the average age of residents in rural communities rose from 39.7 to 43.4 between 2009 and 2016. By comparison, the urban residents’ average rose just 0.8 years to 36.4.¹⁶ Not only is the average rural resident seven years older, but the population is aging more than 4.5 times faster.

The declining economic viability of many of rural America’s regions is a key factor in the accelerated aging of these communities. Socioeconomic changes have led to a large drop-off in job opportunities, resulting in an unbalanced age structure as younger people leave in search of employment and more seniors remain behind. Wheeler County, Oregon’s least populated county, exemplifies the negative impact of the employment challenge. With only 347 full-time jobs to support 1,300 people, the county’s median age rose from 48 to 56 between 2000 and 2013. By comparison, in the more economically prosperous Oregon county of Multnomah, of which Portland is a

¹³ Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, Human Rights Magazine Vol. 40 No. 3 (2014).
https://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america.html

¹⁴ See supra note 9.

¹⁵ California Department of Finance Report, *New State Population Projections*, press release March 8, 2017, appendix California Projected Population Growth 2010 to 2035 Percent Change.

¹⁶ 2012-2016 American Community Survey 5-Year Estimates, US Census Bureau.
https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_GCT0101_US26&prodType=table

major city, the median age is a remarkable 20 years younger at 36.¹⁷

As rural Americans age, their living circumstances and social and economic stability change and can become increasingly precarious. Their legal needs also change, and their ability to access courts and navigate court services can become even more limited.

D. Technology

Although technology offers significant opportunities to improve court services in rural communities, accessibility can be limited or, in some cases, impossible. Bridging the digital divide to make broadband technology universally available has been described as “the 21st century version of bringing electricity to rural America in the 1930s.”¹⁸ According to the U.S. Census Bureau, as of 2016, 23.8 percent of rural populations had no broadband Internet access of any type.¹⁹ Rural Americans lack access to high-speed broadband at a rate four times higher than the national average.²⁰ In Michigan, nearly 37 percent of rural residents have no access to high-speed broadband; in some rural

¹⁷ Alana Semuels, *The Graying of Rural America*, The Atlantic (2016).
<https://www.theatlantic.com/business/archive/2016/06/the-graying-of-rural-america/485159/>

¹⁸ *Need broadband in Michigan? Rural life can mean you're out of luck*, Bridge Magazine (2017).
<http://www.bridgemi.com/public-sector/need-broadband-michigan-rural-life-can-mean-youre-out-luck>

¹⁹ *Measuring America: Our Changing Landscape*, US Census Bureau (2016).
<https://www.census.gov/library/visualizations/2016/com/m/acs-rural-urban.html>

²⁰ *2016 Broadband Progress Report*, Federal Communications Commission (2016).
<https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report>

counties, 100 percent of residents have no access.²¹

Technological innovation in rural courts may be further tested by the aging rural population that is not always comfortable with technology—seniors 65 years and older who cannot or will not take advantage of IT solutions. According to research conducted in 2016 by the Pew Research Center, only 42 percent of seniors have smartphones, and only 51 percent are broadband Internet adopters.²² With only one in five seniors confident about online privacy, the challenge to adopt remote online court proceedings as a viable access solution becomes significantly more difficult to overcome.²³

E. Costs of Maintaining the Traditional Brick-and-Mortar Courthouse

Despite the increased access to court services that technology has the potential to provide, expectations around having brick-and-mortar courthouses and local access to justice remain strong in rural communities. For many residents, a fully functioning courthouse is viewed as a symbol of local stability and control as well as pride. Judges, court staff, and attorneys who reside locally are respected for their knowledge of and commitment to their communities. Many rural residents say they believe that justice is better served when the local judge has some

²¹ See supra note 17.

²² Monica Anderson and Andrew Perrin, *Tech Adoption Climbs Among Older Adults*, Pew Research Center (2017).
<http://www.pewinternet.org/2017/05/17/technology-use-among-seniors/>

²³ G. Oscar Anderson, *2016 Technology Trends among Mid-Life and Older Americans*, AARP (2016).
https://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2016/2016-technology-trends-older-americans.doi.10.26419%252Fres.00140.001.pdf

knowledge of the parties, their families, and their history in the county.²⁴

Access to justice may not be a daily, weekly, or even monthly requirement for residents of these rural areas. However, when disputes arise and need resolution, the purpose of the court becomes salient. Keeping courthouses open and judges and staff employed in between these episodes is an expensive proposition, but closing courthouses and forcing residents to use a courthouse that is not their own is not the obvious or best solution. In a 2017 survey the National Center for State Courts found that to meet the challenge of providing court services to rural, remote, and underpopulated areas, 32% of respondents favored allowing residents to do court business online but 37% favored allowing residents to travel to a courthouse or wait for a traveling judge to come to their community.²⁵

Courts must evaluate how best to meet the needs of our changing rural communities: what types of cases are being heard, what court services are needed, and how services should be delivered. Rural residents are as entitled to efficient and effective justice as urban and suburban users. There is no one-size-fits-all solution, but there are opportunities for improving services in order to deliver on the promise of providing access to justice in rural America. In this paper COSCA examines and makes recommendations concerning the means to address access to justice in rural areas

²⁴ At the same time, there can be concerns about the perception of bias by local parties for judicial officers who are well-known, full-time residents in small communities and who are required to disclose conflicts or disqualify themselves based on longstanding community ties.

²⁵ *The State of the State Courts 2017 Poll*, National Center for State Courts, Figure 7, accessed at: nsc.org/2017/survey.

through technology (Part II(A)), court structure (Part II(B)), and attracting legal resources to rural areas (PartII(C)).

II. Opportunities to Improve Access to Justice for Rural Americans

What may appear to be an obstacle along the road to delivering access to justice in rural America may instead be an opportunity to reconsider how courts provide court services. At the forefront of most proposals to solve these challenges is technology which is delivering on promised potential in many areas. Technology certainly presents the opportunity to improve access to courts through increased access to online communications. As with many solutions, there may be unintended or unwanted effects from technology. In addition, even as the digital divide between urban and rural populations is reduced through technological innovation, rethinking our understanding of courts and court services is underway in many communities. Redistributing work from overmatched urban courts to rural courts with proportionally greater time to devote to cases and case data, flexibility in our understanding of venue and subject matter jurisdiction, a different approach to the creation and location of judgeships and staffing, and a less rigid reliance on in-person proceedings are among the innovations being introduced in diverse areas. These efforts point the way to new approaches that can be considered in state courts facing the challenge of providing access to justice in rural areas.

A. The Potential and Pitfalls of Technology for Rural Justice

Technology is rapidly changing the way justice is being delivered. The justice system needs to embrace technology if it is to remain relevant. The Chancellor of the High Court in England, Sir Geoffrey Vos argues that courts need to move fast to deliver online dispute resolution (ODR) and other

forms of speedier dispute resolution "before the millennials lose faith in the way the older generation is content to deliver justice." He added that "in an era when people can get every kind of service instantly or at worst the next day by calling it up on their smart phones, it is inconceivable that they will accept, in the longer term, the delays that are inherent in almost all justice systems."²⁶

As evidence of the transition in the delivery of justice, England and Wales are introducing ODR for small claims up to 25,000 pounds (almost \$33,000), for divorce, for guilty pleas in criminal cases and other matters. He predicts that commercial disputes will ultimately follow.

In America today very few civil cases go to trial. The great majority of the work goes on before trial and lends itself to the use of ODR. Further, other services like probation, counseling, mediation and even anger management can be provided online. The National Center for State Courts in its study of 2015 state court civil filings, titled *The Landscape of Civil Litigation in State Courts*, found that over half of civil caseloads are comprised of relatively low-value debt collection, landlord/tenant, and small claims cases.²⁷ The use of ODR in these types of cases would speed resolution, reduce cost and increase convenience to the public. However, ODR requires litigants to have access to robust, reliable Internet services.

²⁶ Vos: *Courts need to embrace ODR or risk younger generation losing faith in the justice system.* (December, 2017). <https://www.legalfutures.co.uk/latest-news/vos-courts-need-embrace-odr-risk-younger-generation-losing-faith-justice-system>

²⁷ Trends: Close Up. Civil Justice Myths. (December, 2017). National Center for State Courts.

Because these changes in the delivery of justice, in addition to benefitting rural areas, would also benefit urban and suburban areas, support for these efforts will enjoy a broad base of support. For example, Minnesota has implemented a centralized entry and collections program that permits people to pay citations online or over the telephone to a centralized payment processing center.²⁸ This eliminates the need to travel to court. Most of the staff for the center work from home. If payment is not made, the citation is automatically transferred electronically to the Department of Revenue. This has the effect of taking courts out of the collection business, standardizing citations and relieving pressure on local staff. Prior to this new system, overdue debt was collected at the rate of about \$1 million per year. Since implementation, collection has increased to \$4.8 million.²⁹

While all of this can help reduce cost and inconvenience throughout our justice system it especially provides an opportunity to expand access to justice to rural areas. This would require that broadband be more widely available in rural areas. The Federal Communications Commission formed a Rural Broadband Auctions Task Force on April 3, 2017, to oversee both the Connect America Fund Phase II (CAF-II) and Mobility Fund II (MF-II) auctions. The CAF-II will offer nearly \$2 billion to bidders to connect unserved and underserved locations over the next decade. The MF-II auction will make available more than \$4.5 billion over ten years for expanding 4G LTE [Fourth (4th) Generation in the Long Term Evolution of wireless broadband technology] mobile coverage

²⁸ Implementation of the Minnesota Court Payment Center (CPC) (Centralized Payable Processing), April, 2012.

²⁹ Minnesota Judicial Branch Centralized Work Units Prepared for Mr. Milton Mack, Michigan State Court Administrator (May, 2018).

across rural America and in Tribal lands. In a report issued in February 2018 the FCC found that 80% of the 24 million Americans who lack broadband access live in rural areas.³⁰

State courts need not wait for the federal government to fund expansion of Internet access. In his 2014 Nebraska State of the Judiciary address, Chief Justice Heavican noted that in the preceding year, “the cost of improving bandwidth to rural Nebraska courts was shared by the Supreme Court and the Department of Motor Vehicles, the Department of Health and Human Services, and the Secretary of State.”³¹ As a result, in Nebraska video conferencing became practical in the rural counties of Cherry and Cheyenne due to a 60% increase in Internet speeds, allowing use of video interpreters in courts and participation by video from correctional facilities by incarcerated individuals in court hearings which “saves money, increases access to justice, and lowers the risks inherent in transporting inmates and juveniles.”³² In California the Internet for All bill that went into effect on January 1, 2018, will focus on access in rural areas by providing \$300 million of state funds for infrastructure and \$30 million for efforts such as helping families sign up for services.³³ After discussing challenges that resulted in the Kentucky legislature appropriating \$110 million in April 2018 to address delays in construction of the KentuckyWired statewide fiber optic network, the Council of State Governments

recently surveyed a number of ongoing technology developments in other states with dedication of significant resources:

*Elsewhere, some cities and towns in North Carolina are pushing state lawmakers to approve laws to make it clear that local governments can enter into P3s [public-private partnerships] to facilitate the expansion of high-speed internet in that state. Colorado lawmakers this year agreed to spend more than \$100 million to extend high-speed internet to rural parts of the state. And Tennessee Gov. Bill Haslam signed legislation last year to provide \$45 million in grants and tax credits to co-ops and internet service providers to encourage the development of internet in areas that don't have it.*³⁴

The cost of wiring rural America with broadband, one home at a time is expensive, time consuming and has an unacceptably low return on investment for private service providers. A more viable option might be to provide broadband to small population centers in rural areas. Broadband could be brought to a specific facility. The justice system could partner with other state agencies so that the services of those agencies would also be available online to the public at this facility. The facility could become a community gathering place that provides online access for courts and other state and local agencies staffed by volunteers or clerks. It could provide ready access to legal help online like Michigan Legal Help or Illinois Legal Help Online.³⁵ It could become a community hub for other activities including creating public/private partnerships or other arrangements so that companies like Amazon, Walmart or other

³⁰ <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>

³¹ Nebraska State of the Judiciary Address, Chief Justice Michael G. Heavican, page 6, accessed at: www.supremecourt.ne.gov

³² Id.

³³ Jazmine Ulloa, *California wanted to bridge the digital divide but left rural areas behind. Now that's about to change*, Los Angeles Times, January 18, 2018, page 10.

³⁴ *Discovering Rural America, supra*, in Capitol Ideas May/June 2018, p.41, Council of State Governments

³⁵ Interview with Cody Gross, Chief Information Officer, Judicial Information Services, Michigan State Court Administrative Office (December 11, 2017).

commercial enterprises could use these sites as convenient drop off/distribution centers. The facility could be designed to provide a reasonable degree of privacy while maintaining the human touch of an employee or volunteer to provide any assistance. Rebecca Becker, manager of the Minnesota Court Payment Center, reports that in rural areas the courts are part of the social life in the community.³⁶ These centers could serve as hubs for the longer term delivery of broadband to more individuals over time. Having a concentration of services at a specific location can result in sharing the cost of providing these services.

While these centers would work well in providing access to justice there are other areas of opportunity. Rural areas often lack access to professional services such as psychiatrists, mental health counselors, interpreters, translators, court reporters and attorneys. State court systems could begin to centralize certain services and make them available online. This would help not only rural areas, but all who are served by the justice system. For example, probation services could be handled online as well as counseling, anger management and other services. The only limit to providing higher quality, efficient justice services is our imagination. Alaska has established a roadmap for amplifying access to justice to address the civil needs of citizens by defining the “justice ecosystem” expansively to leverage services in rural communities from social service providers, medical service providers, and information service providers as a way to bridge the gap in legal and court services.³⁷

³⁶ Interview with Rebecca Becker, Manager, Minnesota Courts Payment Center, Court Services Division, State Court Administrative Office, Minnesota Judicial Branch (April 27, 2018).

³⁷ *Alaska's Justice Ecosystem: Building a Partnership of Providers*, Self-Represented Network for the Alaska Court System, August 2014, accessed at: <https://srln.maps.arcgis.com/apps/Cascade/index.html?appid=102d56b227384bb0827edc98909e7f77>

The justice system must adapt to the new technological era and embrace the opportunity to provide greater access to justice that is fast and economical.

B. Court Structure; Alternatives to the Traditional Model for Rural Justice

1. Removing Impediments to Providing More Effective Service for Rural Residents

Too often, the words “court reform” are viewed by rural residents as code for taking services away from them. One recent example occurred in early 2018 when the Santa Cruz County Board of Supervisors in rural southern Arizona proposed to close the court in Sonoita and have its cases heard about 30 miles away in Nogales in order to save \$200,000 by eliminating one judge, a constable, and two clerks. A front page photograph of a crowded Board of Supervisors meeting accompanies the story in the local paper recounting that “tempers flared at times” and “high taxes and lack of county services were the subject of many people’s remarks, as was the idea of secession from the county” which ultimately resulted in postponement of the scheduled vote on closing the court.³⁸ After a later vote the Board closed the Sonoita court.

Court reformers often underestimate the visceral opposition that arises from community leaders, members of the bar, court clerks and judges when a court reform plan is put forward. This is sometimes dismissed as parochialism; however every community has an investment in having court proceedings held locally. Business closures, financial fraud, and crime sprees are just some of the case types that can affect multiple people and have an outsized impact on small communities. The right of persons other than the litigants to attend

³⁸ “Residents Resist Courthouse Closing,”

public hearings is impeded when hearings are held in distant locations.

Cost effectiveness is always a concern of good government, but it cannot be an overriding concern when determining who gets access to essential judicial resources. COSCA has consistently stated that courts must be adequately funded, “It is axiomatic that the core functions of our government are supported from basic and general tax revenues. Government exists and operates for the common good based upon a common will to be governed, and the expense thereof is borne by general taxation of the governed.”³⁹ Indeed, experience has shown that cost effectiveness and efficiency of state resources are generally not winning arguments for reducing or eliminating court services to rural areas. This is particularly true when the cost of the proposed efficiency is actually a cost shifting from the state tax base to a local community or individual court users. Minnesota Governor Mark Dayton articulated this in a recent statement on a proposal to reduce the hours at border patrol stations located in small towns saying, “The action is a deplorable example of placing the convenience of a public service provider ahead of the needs of the people it is supposed to serve.”⁴⁰

National polls on confidence in government have consistently shown that people trust their local government officials more than state or federal officials. In the 2017 State of State Courts poll, 60% of respondents agreed that judges need to do a better job of getting out into the community and listening to people.⁴¹ Having well-respected judges in

rural communities increases confidence in the court system and increases the court system’s awareness of the challenges and needs of rural communities.

A fallacy of court reform is to assume that rural residents would prefer better remote service to an imperfect service available locally. In fact, when given a choice, rural residents consistently choose the services of a limited license or paraprofessional in their own community over having to travel elsewhere to obtain services from a fully-licensed professional. This choice is not unique to the judicial system or to rural areas. As can be seen with the introduction of limited license professionals such as physician’s assistants, dental therapists and licensed alternative teachers, what often begins as an answer to the needs of sparsely populated regions quickly becomes acceptable in metro areas.

In Alaska, court surveys show that residents recognize when a fully-staffed court is not necessary and prefer to have a magistrate judge or clerk available in the community during peak demand hours over a closed court serviced by a visiting judge.⁴² As a result the Alaska Supreme court issued an order directing the delivery of “court services to rural Alaska communities by using a combination of circuit magistrate judges, resident deputy magistrates, and resident clerical staff” and providing staffing guidelines based on the dispersed workload in rural Alaska communities.⁴³

In 2002, Nevada created a Commission on Rural Courts. The creation of the Commission was spurred by a fiscal crisis.

³⁹ 2011-2012 Policy Paper Courts are Not Revenue Centers, Conference of State Court Administrators, pg. 7

⁴⁰ Gunderson, Dan “Dayton Slams ‘Deplorable’ Customs move to cut hours at 2 Minn. Border Crossings, December 14, 2017.

⁴¹ National Center for State Courts 2017 The State of State Courts poll

⁴² See generally summary of community meetings hosted by the Rural Court Magistrate Judge Study Group between June 1, 2017-November 20, 2017 on file with the Office of the Administrative director for the Alaska Court System.

⁴³ Supreme Court of Alaska, Special Order of the Chief Justice “Regarding Staffing of Rural Court Locations,” Order No. 6925 issued January 17, 2018.

The Commission recognized the relatively high costs of maintaining rural courts compared to urban court costs as well as the lack of resources available to most rural courts, but their proposed solutions were to pool efforts and share resources across county lines, judicial districts and jurisdictions, rather than to close courts completely.⁴⁴ Today Nevada has a Rural Courts Coordinator tasked to “find ways to provide the same access to justice in rural counties that is available in the urban cities. The Rural Courts Coordinator aids communities in identifying and fulfilling judicial resource needs.”⁴⁵ In 2012, The Kansas Supreme Court’s Blue Ribbon Commission on the Judiciary reached much the same conclusion, and focused its recommendations on removing impediments to the efficient placement of judges and the management of the judicial system.⁴⁶

A cogent example is found in a Nevada initiative undertaken during fiscal years 2011 through 2016 to reduce travel in rural districts by creating two new judicial districts thereby reducing the size of three existing districts. Without additional judicial positions this reorganization reduced average hours on the road per district for FY 2011-16 by 14% per full-time judge and reduced average miles driven per year by 12% compared to FY 2007-10. “Moreover, in FY 2016, the total miles driven was the lowest magnitude (56,560) reported since the original report, and reflected a 39 percent reduction from FY 2010 (93,302).⁴⁷

⁴⁴ Report of the Commission on Rural Courts, September 2003, pg. 2. Report published by The Administrative Office of the Courts.

⁴⁵ Nevada Judiciary website accessed at: https://nvcourts.gov/AOC/Featured_Programs/Rural_Courts_Coordinator/

⁴⁶ Recommendations for Improving the Kansas Judicial System: Report of the Kansas Supreme Court’s Blue Ribbon Commission, January 3, 2012.

⁴⁷ Hans Jessup, Sheldon Steele, and Kandice Townsend, *Rural District Court Judicial Travel in*

The need for rural judges to travel on average decreased by 16% the time they had available to execute judicial obligations compared to urban judges, but “[i]mprovements to access to justice, such as installation of video conferencing equipment through the rural areas of Nevada, as well [*sic*] realignment of the counties into new districts have contributed to a 26 percent reduction in the time judges spend on the road traveling to and from their respective courthouses since the original report, and most notably, without adding any new judicial positions.”⁴⁸

In Minnesota the Seventh and Eighth Judicial Districts share a District Administrator who, with a staff of 9.65 FTE and the two Chief Judges in the districts, supervises court administration and staff in 23 counties having a total of 41 judges.⁴⁹ This arrangement was unique in Minnesota in 2010 but proved the concept through “a number of collaborations between the two districts to reduce costs through economies of scale while simultaneously ensuring stable or better customer service” in the areas of human resources, finance, information technology support, and emergency office coverage across district lines.⁵⁰

Communities with small populations can prove quite innovative in approaching the challenge of keeping rural courts open. For example, the court in Harris County, Georgia, obtained funds under the Rural Development Housing and Community Facilities Program of the United States

Nevada, Fiscal Years 2011-2016, Supreme Court of Nevada Administrative Office of the Courts, January 2017, page 1.

⁴⁸ *Id.*, page 6.

⁴⁹ Griller, et al., *Reengineering Rural Justice*, *supra* note 41, page 25.

⁵⁰ *Id.*, page 28.

Department of Agriculture to expand the size and enhance the security of their courthouse. “Courts are included in the list of essential community facilities that may be improved through grants and loans under these USDA programs.”⁵¹ In announcing an additional \$700 million to expand rural broadband infrastructure in August 2018, the USDA also launched a new webpage to provide direct access to information about the agency’s continuing investments in e-Connectivity including grant funding opportunities.⁵²

Removing obstacles to sharing resources, improving management of the judiciary, and streamlining court processes reduces the pressure to close courthouses because it makes it more cost effective to serve rural areas. At the same time, introducing flexibility into where, when and how services are delivered gives rural residents both a voice and a choice in how they will receive services.

2. Creating Opportunities for Change

The physical and legal structure of a court system can create barriers that make providing services more burdensome for individual citizens and the government. Making structural changes to court systems can benefit all residents of the state by providing more flexibility in where and how services are available. Although some structural changes require legislative action there are often actions courts can take to streamline services and reduce costs through their rule-making, administrative and funding authority

a. Venue

⁵¹Elaine Nugent-Borakove, Barry Mahoney, Debra Whitcomb, *Strengthening Rural Courts: Challenges and Progress*, in *Future Trends in State Courts*, NCSC 2011, page 67.

⁵² <https://www.usda.gov/broadband>

Courts should advocate for greater flexibility in venue requirements. Venue requirements exist for every case type. The venue for criminal cases is where the alleged crime occurred. Venue for civil cases is generally where the action arose, where one or more of the parties reside, where a company has a physical presence, or where sufficient nexus exists to the place where the case is filed. There may be mandatory timeframes related to venue, such as requiring at least one of the parties to a dissolution action to reside in a county for a minimum of six months prior to filing a case in that county. Greater flexibility will benefit rural residents by allowing them to choose to file in a court that may be geographically closer to them than the county seat of their resident county, to handle multiple actions in a single county, or to save attorney fees by filing in the same county in which their attorney’s office is located. Flexible venue may reduce the number of potential conflicts of interest inherent in single judge counties thereby saving the cost and time associated with assigning another judicial officer into the county.

Some states already allow for a degree of flexible venue. The North Dakota statute on venue of trial for civil actions allows the district court to hold any trial or hearing in either county if the county seats of adjoining counties are less than ten miles apart and are located in the same judicial district, although in the case of a jury trial, the jury panel must be composed of residents of the county of venue even if the case is not tried in that county.⁵³ For criminal hearings, the North Dakota legislature has deferred to the Supreme Court’s rulemaking authority on venue. By court rule, the initial appearance, arraignment or other hearings or proceedings may take place outside the county of venue.⁵⁴ Also by court rule a trial

⁵³ North Dakota Century Code 28-04-05.1

⁵⁴ N.D.R.Crim.P. 18

can be transferred to another county for convenience and justice upon the defendant's motion or upon motion of the court, if no objection is filed by the parties. Under Alaska's temporary transfer rule a defendant charged with a minor offense may request that arraignment be held in a second court which is nearest to the place where the defendant resides or is employed. If the defendant enters a plea of guilty or no contest, venue of the case remains with the second court for sentencing.⁵⁵ For certain offenses in New Mexico, an officer may file the citation in the county where the alleged incident occurred or an adjacent county which is often closer to the site of the offense.⁵⁶

Minn.R.Crim.P. 1.05 subd.8 establishes a process to consolidate proceedings for charges pending in multiple counties by having a judge in the county where the most serious offense is filed preside over all of the cases through the use of interactive television.

Venue is important in maintaining the rights of litigants, witnesses, and the public to ensure that cases are not filed in locations so distant that they create prejudice or economic harm to any particular side of a dispute. Allowing some flexibility in venue to allow litigants to choose a more convenient forum can reduce individual costs and allow for more equitable distribution of judicial workloads.

b. Subject Matter Jurisdiction

⁵⁵ Alaska Rule 12 Temporary Transfer of Minor Offense Cases, and Rule 2 Minor Offense Defined

⁵⁶ NMSA 1978, section 35-3-6(a) (2007), "A magistrate also has jurisdiction in any criminal action involving violation of a law relating to motor vehicles arising in a magistrate district adjoining at any point that in which the magistrate serves and within magistrate trial jurisdiction; provided that the defendant is entitled to a change of venue to the district where the cause of action arose if the defendant so moves at, or within fifteen days after, arraignment.

Courts should advocate for greater flexibility over assignment of subject matter jurisdiction. Except for those states that have consolidated courts into a single trial court level with general jurisdiction judges, all states have some restrictions on subject matter jurisdiction that limit the types of cases a judge can hear. Most commonly, the limitations are based on the type of court a judicial officer is elected or appointed to serve in. Some examples of this type of limitation include the county courts of Colorado and the city and parish courts of Louisiana which can only hear civil disputes that are valued below a specific dollar amount. Limitations on subject matter jurisdiction may also be based on the educational level of the judicial officer. In North Dakota only municipal judges with a juris doctorate are allowed to hear misdemeanor driving under the influence or domestic violence cases. In Wyoming, Arizona, and New Mexico a non-lawyer judge can, following mandatory training, rule on probable cause in a felony case but may not preside over other proceedings in the case.

One of the persistent issues with subject matter limitations is the problem of judges "passing on the road" as they travel between courthouses to take up cases that other judges are barred from hearing. Not only does the extra travel time add costs but what could be a full caseload for one judge must be divided between multiple judges each having jurisdiction over only part of a caseload. When jurisdiction is further restricted by geography, then those judges with less than a full caseload cannot be reassigned to work in other courts where a shortage of judicial officers exists.

Court reform, as first proposed by Roscoe Pound⁵⁷ in 1906 and later endorsed by the

⁵⁷ Roscoe Pound was [Dean of University of Nebraska College of Law](#) from 1903 to 1911 and then Dean of Harvard Law School from 1916 to 1936.

American Bar Association through their *Standards Relating to Court Organization*,⁵⁸ was intended to resolve issues created by subject matter and geographical jurisdiction limitations to achieve the general goals of “unification, flexibility, conservation of judicial power, and responsibility.”⁵⁹ Unification of courts as envisioned by Pound and others is notoriously difficult to achieve, particularly when it comes to consolidating courts. As of 2013, there are 26 states that have courts that are “unified” constitutionally, statutorily, or by pronouncement by their supreme court.⁶⁰

However, the unification may be in name only as some of these court systems still have varying levels of trial courts. Although the majority of court consolidation occurred in the period between 1950 and 1990, there have been some recent reforms efforts that have been successful. In 2000, California completed consolidation of its municipal courts with the superior court. Arkansas consolidated some limited jurisdiction courts with the circuit court. In 2011, Vermont consolidated most of its limited jurisdiction courts into its district court. In 2012, New Hampshire consolidated its limited jurisdiction courts with its circuit court. The Arkansas structural reform, which began as a voluntary reform, continues with legislatively mandated consolidation occurring in January 2017 for some courts and a delayed consolidation date of January 1, 2029 for the remaining courts.

Although there has been a trend toward court consolidation it is not universally supported. “There is no longer a consensus that full unification is the desired end state

⁵⁸ ABA Standards Relating to Court Organization (1974), revised 1990. Renamed *Standards Relating to Trial Courts* (revised 1992)

⁵⁹ Pound, Roscoe, 29 Rep. Am. Bar Assn. 395 (1906)

⁶⁰ Rafferty, Bill, Unification and “Bragency” a Century of Court Organization and Reorganization. *Judicature* 96:6 (2013)

for all court systems.”⁶¹ In fact, when unification includes consolidating courts into a single tier, but the new structure retains subordinate judicial officers, it also retains the inefficiencies caused by subject matter jurisdiction limitations. Several states have demonstrated that legislative or constitutional restructuring of court systems is not a necessary prerequisite to reducing the inefficiencies created by limitations on subject matter jurisdiction.

Michigan allows for voluntary concurrent jurisdiction plans that allow judges of probate, district and circuit courts to share work that would otherwise be restricted by subject matter. Plans may include sharing jurisdiction over juvenile matters, personal protection orders, and select criminal and civil cases. Plans may also provide for arraignments and pleas for felony matters to be heard at a single location. Following years of successful implementation of concurrent jurisdiction plans, in 2012 the legislature changed the statute to require concurrent jurisdiction plans unless a majority of the judges in a judicial circuit voted not to have a plan.⁶²

Maine created a unified criminal docket to collapse a two-tiered court process in which district court heard some types of criminal cases and the superior court heard others into a single process. The two-tiered system required that certain cases be transferred from district to superior court at a certain stage of the proceedings, while others remained with the district court. With the unified criminal docket process, all district and superior court judges have jurisdiction to hear every type of criminal offense at every stage of the proceeding and there is no longer a need to bind over cases from one level of court to another.

⁶¹ Durham, Christine and Daniel Becker. A case for Court Governance.

⁶² MCL 600-401, et. seq.

New Jersey statutes allow municipal courts to enter into agreements for both “shared courts” and “joint courts”. Shared courts remain separate entities but agree to share judges, physical space, staff, technology or similar services. Joint courts are created when two or more courts agree to combine into a single entity. Giving local courts the option to merge or share services allows residents to decide where they want to access services and the level of services they want to fund. As of April 2009, 18 of New Jersey’s 21 counties had one or more merged courts, with 64 municipalities having established a joint court and 59 municipalities having opted for a shared court.⁶³

In Arizona, a county board of supervisors may consolidate the justice of the peace courts with the county court by the process of redrawing its precinct boundaries when there is a vacancy in the office of the justice of the peace.⁶⁴ In Utah, inter-local agreements between cities and counties allow municipal courts to hear justice court cases.⁶⁵

It is notable that the Arkansas and Utah innovations all began as voluntary options for local courts and it was only after demonstrated acceptance of the changes that the reforms were mandated. In Maine the innovations began as a pilot project in one region, were subsequently expanded to other regions, and after demonstrated success the reforms were adopted statewide.

Beyond concurrent jurisdiction, court consolidation and co-location of courts, some states have stretched limited

jurisdiction to encompass a greater range of case types by stretching the skills of judges. Two examples of this are the Arizona and New York educational requirements for non-lawyer judges. Through the certification process, judges are better equipped to handle more complex cases that might otherwise have been transferred to a general jurisdiction court.

c. Creation and Chambering of Judicial Officers

Courts should have a decisive voice in when new judgeships are created and where they are chambered. These decisions should be based on objective criteria including the use of a weighted caseload analysis and comparative need.

In some states the number of judges may be determined by constitutional or statutory requirements based on geography. Kansas is constitutionally required to have one resident judge in each of the state’s 105 counties including the 35 with a population of less than 5,000 residents during the 2010 census.⁶⁶ In addition, the Kansas legislature has statutorily designated the number of judges and location of chamber.⁶⁷ Alabama is constitutionally required to have one judge in each circuit. Each circuit must contain at least three but not more than six counties.⁶⁸

Kansas, Michigan, and Wyoming have each successfully advocated for legislative changes that base funding of new judgeships on a weighted caseload analysis prepared by the Administrative Office of the Courts.

In North Dakota, judicial districts are created by the Supreme Court and the number and location of chambers within

⁶³ Del Preore, Jude, et. al., *Innovation from Crisis: The New Jersey Municipal Court Experience*. National Center for State Courts. *Future Trends in State Courts* (2009).

⁶⁴ A.R.S., section 22-101

⁶⁵ Utah Code 78A-7-102(1)(a)(ii)

⁶⁶ Kansas Constitution, Article 3, §1

⁶⁷ See for example, K.S.A.20-338

⁶⁸ Alabama Constitution of 1819, Article V, Section 5.

each district are assigned by the court. By administrative rule, the Court sets the criteria to be used in determining whether a vacancy should be filled or whether a chambers should be relocated when a vacancy occurs.⁶⁹ This model was recently proposed by the South Dakota Supreme Court and was readily adopted by the South Dakota legislature.

Georgia has an administrative policy expressing a preference for multi-judge circuits and detailing the criteria used to evaluate whether a new judgeship is needed or circuit boundaries should be changed. Under the rule, all requests to add judgeships or change circuit boundaries must go before the Judicial Council for a recommendation on the request before the request can proceed to the legislature. A unique feature of the policy is that the Judicial Council must expressly consider projected changes in costs to state and local government, including savings or additional costs due to personnel, facilities and travel and state that a change should not be recommended unless the shift in costs is minimal or balanced by equivalent cost savings.⁷⁰

Nebraska has a legislatively created Judicial Resources Commission that determines, based on judicial workload statistics, whether a judicial vacancy exists and where it should be located. The Commission consists of four judges (one from each level of the court system), six members of the state bar association (one from each judicial district), and six citizens (one from each judicial district) and one citizen at large who cannot be a judge, member of the state bar association or an immediate family member

⁶⁹ N.D.Sup.Crt.Admin.R. 7 Designation of Chambers and N.D.Sup.Crt.Admin.R. 7.1 Judgeship Chambers and N.D.Sup.Crt.Admin.R. 7.2 Judicial Vacancies

⁷⁰ Judicial Council Policy for Judgeship and Circuit Boundary Studies

of any judge or lawyer member of the committee.⁷¹

There is a stereotype of rural judges having too little work, but the opposite is as true in many courts. Because additional judgeships can be hard to obtain and there is typically a shortage of judges to handle caseloads in urban areas, a rural court or rural district's request for one additional judge can be pushed aside until the need has grown to a more commanding number. Using caseload per judge measurements in conjunction with weighted caseload statistics can more readily show where single judges may be carrying a 1.5 or higher caseload.

d. Constitutional or Legislatively Required Staffing

Courts should have control over the number of positions within the judicial branch and should have the authority to assign work to non-judicial staff regardless of judicial boundaries. Many states, either by constitution or legislation, require a clerk of court for each level of court. The requirement of either an elected or appointed clerk for each level of court within a city, county or judicial district increases the cost to local taxpayers. It creates inefficiencies when there is not a sufficient caseload to justify a full-time position and the clerk does not have the jurisdiction to work outside his or her electoral district. In states with multi-tiered courts, multiple clerks in the same geographical area (and sometimes the same courthouse) may cause confusion for litigants.

A recent study by the National Center for State Courts found that general jurisdiction court clerks are elected in 32 states, and in 27 states all court clerks are elected. In four others (Nevada, Missouri, New York, and Washington) most clerks are elected; in select counties/independent cities the clerk is chosen by the court. North Dakota uses a

⁷¹ Neb. Rev. Stat. § 24-1201, et. seq.

mixed approach of election (13 counties), court-appointment (14 counties), and selection by the county commission (26 counties). Two states that most recently ended elected clerks are California, where the clerk functions were gradually transferred from the elected county clerk to the court executive, and Delaware, where prothonotaries became appointed officials pursuant to a 1989 constitutional amendment.⁷²

Even in those states where the court does not have full control over the number of positions, courts have taken action to reduce costs and increase efficiencies. The three primary reforms in this area are centralization of services, remote allocation of services, and consolidation of management level positions. These administrative efficiencies are almost always supported by the community as an alternative to closing offices completely.

In addition to statutory or administrative requirements, some courts have set their staffing standards to ensure that all court offices are open during regular business hours rather than staffing based strictly on a workload analysis. Minnesota has a staffing standard of two full-time employees per office. To balance workloads across the state, the court's case management system has been leveraged to allow for work to be redistributed from urban courts to rural courts. Some examples include moving the Central Appeals Unit from the most populous county (Hennepin) to two of the least populous counties (Lincoln and Pipestone), centralizing expedited child support orders from all 87 counties to a group of counties in western Minnesota, and moving the work of centralizing all jury qualification and summoning from all 87 counties to staff in northwestern Minnesota.⁷³

⁷² Nebraska Clerk of Court Study, page 17

⁷³ Minnesota Judicial Branch, 2017 Annual Report

As of 2012, 10 states have created a centralized call center, 8 states have centralized collections, 7 states have centralized payables, 11 states have centralized juror summons and/or juror qualification, 10 states have centralized processing of traffic citations, and 3 states have centralized the review of annual probate reports.⁷⁴ Utah has centralized transcript preparation and the filing of small claims cases. "AOCs in South Dakota, Nebraska, and Kansas have started sending some types of computer-focused clerical work from larger counties to less-busy smaller ones via the Web, thus allowing smaller courthouses to retain staff and remain open."⁷⁵ By 2017 California had established 117 court-based Self-Help Centers covering all 58 counties including many rural areas. "The centers are located in or near courthouses, and are staffed by attorneys who direct non-attorney staff members and volunteers."⁷⁶ Both centralization and remote work distribution make maintaining a court presence in rural areas more sustainable.

Beginning in 2015, Nebraska began allowing counties to voluntarily transfer the duties of the ex officio clerk of district court to the county court clerk magistrate.⁷⁷ Minnesota appoints personnel to serve as clerk of court for more than one county. In

⁷⁴ 2012 Budget Survey of State Court Administrators, National Center for State Courts, p.5, available at <https://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/COSCA%20Budget%20Survey%20Summary%20012%20with%20Tables.ashx>

⁷⁵ Nugent-Borakove, et al., *supra* note 23 *Strengthening Rural Courts* at page 67.

⁷⁶ California Commission on Access to Justice, *Improving Rural Justice in California*, September 2010, page 12.

⁷⁷ Nebraska Clerk of Court Study, page 15

Iowa 31 of the state's 55 Clerks of District court oversee more than one county.⁷⁸

Remote redistribution of work and centralization of functions can be job stabilizers as well as job creators and may be well received in rural areas where government jobs are part of the county's or state's strategy to maintain the economic viability of all of its communities.

e. Mandatory Court Appearances

Courts should consider adopting rules to reduce the number of appearances required and to allow parties to make appearances on paper or via technology such as video conferencing or telephone.

Evaluations of drug courts have consistently shown that it is the involvement of a judge that makes these courts so successful. The actual presence of a judge underscores the significance of a proceeding and lends weight to the decisions the judge makes. The value of face-to-face time with a judge and the formality of a court setting should not be undersold. However, too many perfunctory proceedings to touch legal bases and where, in the eyes of the litigant, "nothing happens" invites scorn for the judicial process. For decades, courts have recognized the benefits of differentiated case management and the need to triage caseload by case type while paying little attention to the individual hearings and filing requirements that constitute case processing. Through court rules some states have begun to address this issue.

Minnesota allows for combined first appearance and arraignments in criminal cases Minn.R.Crim.P. 5.05 and Minn.R.Crim.P.8. Under Minn.R.Crim.P15.03 subd. 2 a defendant may file a

written plea agreement in lieu of plea and sentencing hearings for misdemeanor and gross misdemeanor offenses.

N.D.Rules.Ct. 3.2 allows for any type of motion to be submitted on the briefs unless either party who has filed a brief requests an oral argument. The request must be made within 7 days of the expiration of the time allowed to file briefs. N.D.Rules.Ct. 10.2 requires a court appearance on a small claims case only if one of the parties has requested a hearing within 20 days of the filing of the claim.

The Nevada Supreme Court has adopted a policy implemented by rule that favors audiovisual transmission equipment appearances in civil and criminal cases. The Nevada rules require that parties in civil and family court proceedings "shall be allowed to appear before a judicial officer or judge, master, commissioner, or special master using telephonic transmission equipment" for most conferences and hearings unless the court orders personal appearance.⁷⁹ The rules still require personal appearance for trial. Michigan has gone even further to permit certain trials to be conducted using audiovisual transmission. Michigan has installed, and will maintain, inter active video equipment in every trial court permitting arraignments and other matters to be conducted without requiring personal attendance. Over half of all trials in mental health proceedings are conducted using this equipment substantially reducing the need to transport persons to these proceedings. Although the court rule provides that if at trial a party does not consent, two-way interactive video technology may not be used in criminal proceedings, a Michigan Court of Appeals panel recently determined that taking video testimony over the objection of the defendant in a rape trial did not violate the Confrontation Clause of the

⁷⁸ Iowa Judicial Branch Report on FY 2019 Budget, accessed at <https://www.iowacourts.gov/iowa-courts/19-budget>

⁷⁹ Nevada Court rules, Part IX-B, rule 4.1

Constitution and was harmless error.⁸⁰ Two-way interactive video technology opens the door to resolving issues in all types of cases fairly, quickly and efficiently.

Minnesota rules of court for uncontested formal testacy proceedings creates a batch process that allows a court to set a number of proceedings at the same time and for the court to make findings and a record of the hearing without requiring the petitioner or other interested parties to appear for the hearing.⁸¹

Several states have gone to a system of administrative traffic cases that eliminates hearings unless requested by the defendant. Michigan has gone a step further by introducing online dispute resolution of minor traffic offenses. Under this system, any available judge can accept the assignment and work the case from his or her desk. This saves litigants the cost and time associated with a hearing and allows for better use of judicial resources.

While many states utilize interactive video to allow judges to preside over hearings remotely, Utah no longer requires attorneys to appear in person for hearings, even when their client is required to appear in person at the courthouse. Alaska allows litigants, as well as attorneys, to appear telephonically for nearly every type of proceeding, including non-jury trials.

⁸⁰ *People v Jemison*, unpublished opinion Michigan Court of Appeals (Case No: 334024, April 12, 2018). Application for Leave to Appeal granted by the Michigan Supreme Court (Case No. SC: 157812. January 16, 2019), on the question, “whether permitting an expert witness to testify by two-way interactive video, over the defendant’s objection, denied the defendant his constitutional right to confront witnesses and, if so, whether this error was harmless,” found at: http://publicdocs.courts.mi.gov/sct/public/orders/157812_73_01.pdf

⁸¹ Minn.Gen.R.Prac. 406

Mandatory court appearances for default or perfunctory hearings create a financial burden on litigants and strain court resources and the need for them should be re-evaluated.

There are many initiatives that provide alternatives to traditional court structure and processes including broader understandings of venue and jurisdiction, as well as reconsideration of mandatory court appearances. Sharing judges, staff and work across traditional geographic boundaries can be more efficient and helps retain judicial resources in sparsely populated areas. Rethinking court structure in the ways described above can revitalize courts in rural communities and make access to justice viable where courts can no longer function under traditional approaches.

C. Attracting Resources to Rural Areas

The optimal way to ensure access to justice is to ensure access to quality legal representation. This is especially challenging in rural America where the population of lawyers is aging and dwindling. A shortage of lawyers can be devastating to our judicial system. As South Dakota Chief Justice David Gilbertson once commented, “[a] hospital will not last long with no doctors, and a courthouse and judicial system with no lawyers faces the same grim future.”⁸² “In South Dakota, 65 percent of the lawyers live in four urban areas. In Georgia, 70 percent are in the Atlanta area. In Arizona, 94 percent are in the two largest counties, and in Texas 83 percent are around Houston, Dallas, Austin and San Antonio” while in Iowa the 33 counties with the smallest populations, among the state’s 99 counties

⁸² Pruitt, McKinney, 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 (2015), Available at: <http://lawrepository.ualr.edu/lawreview/vol37/iss4/3>, At 620, quoting *South Dakota State of the Judiciary Message* (2013).

contain fewer than 4 percent of the state's lawyers.⁸³ Many jurisdictions are seeking to reverse this trend by implementing innovative programs to attract lawyers to hang a shingle in the rural areas of their states. What follows is just a sampling of the many programs offered throughout the country as states grapple with this problem.

To determine what programs might work best in their state, the authors of a recent case study in Arkansas surveyed lawyers and law students about their attitudes towards practicing law in rural areas.⁸⁴ Law students who responded that they intended to practice in a rural area of the state valued the opportunity to establish their own practice, and the autonomy such a practice offered. Many other students indicated an openness to consider a rural practice, if given financial incentives and professional support and opportunities. Some students did express negative attitudes about maintaining a rural practice, such as expectations of rural bias toward minorities, a lack of anonymity, a lack of professionalism and a shortage of clients.⁸⁵ Lawyers who answered the survey were also concerned about financial stability, and listed the top factors for why they practiced in a certain market (rural versus non-rural) as the ability to work in a law office of a certain size, the length of their commute, and the ability to find a life/romantic partner.⁸⁶

Considering these survey results, it is not surprising that the majority of programs designed to attract lawyers to rural areas seek to do so by providing financial incentives. For example, South Dakota

offers an annual subsidy in exchange for a multi-year commitment from an attorney to practice in a rural area of the state, similar to a national program for medical personnel offered through the National Health Service Corps.⁸⁷ The South Dakota Legislature voted to provide an annual subsidy of approximately \$12,500 in return for five continuous years of practice in an eligible rural county. Eligible counties must have a population of less than 10,000, and several factors are considered in determining eligibility: (1) demographics of the county; (2) age and number of the current membership of the county's bar; (3) recommendation of the county's presiding circuit judge; (4) programs of economic development in the county; (5) proximity to other counties receiving assistance; (6) evaluation of the attorney seeking assistance under the program; (7) the applicant's previous ties to the county; and (8) prior participation by the county in the pilot program. At first limited to sixteen participants, the program was later expanded to allow a total of 32 attorneys. The participating attorney signs a contract; if breached, the subsidy must be repaid or the attorney could face discipline. Rural lawyers are also provided mentors, and their spouses are offered assistance in finding employment.

Another approach to providing financial assistance is offering income tax credits. Under consideration but ultimately not funded in 2018 in Maine was legislation to provide an income tax credit to lawyers who practice for a set number of years in a rural area of the state.⁸⁸ Another appealing incentive for experienced lawyers is the opportunity to earn Continuing Legal Education credits for pro bono work in rural

⁸³ Ethan Bronner, *No Lawyers for Miles, So One Rural State Offers Pay*, New York Times, April 8, 2013

⁸⁴ See *supra* note 79 at 623 *et seq.*

⁸⁵ See *supra* note 79 at 575.

⁸⁶ See *supra* note 79 at 645-646.

⁸⁷ See *supra* note 79 at 620.

⁸⁸ Cordes, "Maine Law tackles the need for more young lawyers in states' rural communities", 11/13/2017, <http://www.mainebiz.biz>.

communities, as is offered in New York.⁸⁹ Ohio allows one hour of Continuing Legal Education credit for every six hours of pro bono legal services, for a maximum of six credit hours.⁹⁰

Some initiatives are aimed specifically at attracting young lawyers. Perhaps the most appealing is the offer of assistance with student loan repayment, an option which garnered a positive response from the law students surveyed in Arkansas. The state of Nebraska funds a program that provides loan repayment assistance through the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board. Recipients of the assistance must agree to practice at least three years in “public legal service” or in a “designated legal professional shortage area.”⁹¹ Receiving mentorship assistance or law office management guidance can also serve to help make a rural practice attractive to a young attorney.

Recognizing that today’s law students can be tomorrow’s rural practitioners, several states specifically target law students. The Iowa State Bar Association offers summer clerkships which allow law students to experience a rural practice first hand. The clerkship also gives a rural attorney the opportunity to try out a potential new associate.⁹² Maine’s “Rural Lawyer Pilot Project”, initiated by Maine Law School with assistance from the Maine State Bar Association, Maine Board of Bar Overseers, and Maine Justice Foundation, sends law students into rural areas to shadow

experienced attorneys. In 2017 the Maine Law School invited jurists from rural areas to spend time at the law school on the subject of “Preparing for Rural Practice.”⁹³ Texas encourages law students to participate in a “Pro Bono Spring Break”, and spend their spring vacations assisting pro bono clients in locations across the state, including rural areas.⁹⁴ Law schools can also aid in preparing a future rural practitioner by offering appropriate coursework, such as law office management.⁹⁵

The Diversity and Inclusion Department of the Oregon State Bar awards two fellowships to law students who are willing to accept a summer clerk position in rural Oregon. Summer internships are also available in Nebraska for law students interested in gaining work experience in a rural community.⁹⁶

In Arizona as part of their Access to Justice initiatives, the Arizona State Bar has implemented an attorney – client matching service that is not limited by geography. When a client seeks an attorney, they use the online Lawyer Finder service, to briefly describe their case, provide their contact information and indicate what they are willing to pay for the service requested (from top dollar for the most experienced attorney to *pro bono*). The request is then electronically matched to qualified attorneys who receive a notice by email and can then respond to the potential clients. Attorneys

⁸⁹ “Rural Law Center of New York, Inc.” [probono.net](https://www.probono.net/oppsguide/organization.53815-Rural%20Law%20Center%20of%20New%20York%20Inc), <https://www.probono.net/oppsguide/organization.53815-Rural Law Center of New York Inc>

⁹⁰ See *supra* note 79 at 659.

⁹¹ See *supra* note 76 at 622.

⁹² *Ibid.*

⁹³ See *supra* note 85.

⁹⁴ Kiddoo, Texas Bar Blog, July 2, 2015, <https://blog.texasbar.com>.

⁹⁵ See *supra* note 79.

⁹⁶ American Bar Association, “Rural Support Programs”, https://www.americanbar.org/groups/delivery_legal_services/legal_access_jobs_corps/lajc_resource_center/rural_support_programs.html

from anywhere in the state can respond to potential clients. Depending on the type of case, attorneys can even provide service remotely using video and electronic document exchanges.⁹⁷

Another idea to attract lawyers to rural areas would be the creation of judicial clerkships in rural areas funded by the state legislature. Not only would these clerkships draw top law graduates into rural settings where they would hopefully settle, but it would also benefit rural judges who are often without law clerks and other adequate resources such as a law library. As one commentator noted optimistically, “[a]ccording to the National Health Service Corps, those trained in rural areas are two to three times more likely to stay in those areas, and the same might prove true of lawyers.”⁹⁸

A potential source of tomorrow’s rural practitioners may be today’s undergraduate students, according to the University of Nebraska College of Law. It has launched the “Rural Law Opportunities Program” where the law school will partner with local colleges to jointly recruit incoming college freshmen from rural Nebraska to pursue legal careers outside urban areas. The colleges will provide free tuition, and if the undergraduate maintains a 3.5 GPA and achieves a certain score on the Law School Admissions Test, he or she will be admitted automatically to the College of Law. The student will also receive programming, support and mentorships from the College of Law.⁹⁹ A comprehensive list of Bar Association, Law School, and Legal Aid Programs focused on attracting lawyers to rural practice and providing incentives to do so is published by the American Bar

⁹⁷ State Bar of Arizona, *Find A Lawyer*, at <https://azbar.legalserviceslink.com/>.

⁹⁸ See *supra* note 79 at 662.

⁹⁹ “Nebraska Law tackles state’s rural legal needs”, *Nebraska Today*, October 26, 2016.

Association at its Legal Access Job Corps tab.¹⁰⁰

One yet untried solution to providing legal services for rural areas is the creation of “Town Legal Centers” or “Community Justice Centers” which would serve as virtual offices for attorneys from around the state. These could be located in local libraries and be equipped with videoconferencing and fax machines or other technology which would enable participants to mimic a traditional attorney-client interaction. In exchange for private attorneys volunteering their time on pro bono clients, they would be eligible to receive referrals for paying clients. Law students would also have opportunities to work on pro bono cases.¹⁰¹

Alternative methods of delivery of services, such as the use of interactive video for medical consultations, therapy, and court appearances, have followed the same path of innovation and adoption. The Arizona Administrative Office of the Courts and the State Law Library developed a “Librarians Academy” to teach basics about self-help law, judicial processes, and the difference between legal information and legal advice, while the Minnesota State Law Library has a circuit riding law librarian to train librarians about navigating the court website and finding online court forms.¹⁰²

¹⁰⁰ American Bar Association, Legal Access Job Corps, Rural Support Programs accessed at <https://www.iowacourts.gov/iowa-courts/19-budget>

¹⁰¹ Lynch, Brian L. (2015) “Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers,” *Indiana Law Journal*: Vol. 90, Iss. 4, Article 8. Available at <http://www.repository.law.indiana.edu/ilj/vol90/iss4/8>.

¹⁰² Gordon Griller, Lee Suskin, David Sayles Erika Friess, *Reengineering Rural Justice in Minnesota’s Eighth Judicial District, A Case Study: Improving Efficiencies, Reducing Costs, and Enhancing Operations in Rural Courts*, National Center for State Courts, October 2010, pages 15, 53.

A new approach to providing needed legal services in communities where lawyers are scarce or cannot meet the need for legal services at low cost is the Limited License Legal Technician, or LLLT, an innovation by the Washington State Supreme Court and the Washington State Bar Association. LLLTs are non-lawyers, often paralegal professionals who formerly worked in law offices, who operate without supervision by lawyers and help customers fill out legal forms and understand legal procedures. Although currently limited to family law it is expected that the program will expand to additional practice areas in the near future. A recent initial evaluation of the LLLT program by the National Center for State Courts found,

The evaluation shows that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish or need assistance.

The training program prepares LLLTs to perform their role competently while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to be widely accepted in spite of its short track record.

There are some questions about how best to scale up the program. The biggest current bottleneck is the required year of training with the University of Washington (UW) Law School. Washington State is actively pursuing other ways to mitigate that constraint. The regulatory costs of the program are not yet close to breaking even, but scaling up the program significantly would resolve that issue. LLLTs would greatly benefit from additional training on business management and marketing, but several of the first LLLTs are successfully running a full-time LLLT practice.

The example of the LLLT program in Washington State has already encouraged a second state to create a similar program. Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. Several of the recently approved program changes in Washington State were incorporated immediately into the Utah program design.

The LLLT program suggests that new legal roles with costs lower than traditional lawyers are a potentially significant strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.¹⁰³

Arizona has over 600 Legal Document Preparers that are allowed to complete legal documents and provide legal information to clients.¹⁰⁴ Arizona has created a committee to explore limited licensing options for non-attorneys similar to the medical model which allows limited practice by physician assistants, nurse practitioners etc. along the

¹⁰³ Rebecca L. Sandefur and Thomas Clarke, *Preliminary Evaluation of the Washington State Limited License Legal Technician Program*, March 2017 Executive Summary, National Center for State Courts with support from the Public Welfare Foundation and the American Bar Foundation.

¹⁰⁴ Arizona Judicial Branch, *Legal Document Preparer Program*, at <https://www.azcourts.gov/cld/Legal-Documents-Preparer-Program> and see list of certified Legal Document Preparers at <https://www.azcourts.gov/Portals/26/2018/Directory%20Update/LDPDirectory%2010-1-2018.pdf?ver=2018-10-01-150336-407>

LLLT model. This Task Force will also explore limited licensing that would allow these non-attorneys to actually assist clients in the courtroom or at administrative hearings. These new approaches in Washington, Utah, and Arizona are aimed at providing consumers of legal services less costly options than only being able to hire a licensed attorney.

While it may be too soon to determine the effectiveness of these initiatives in attracting legal practitioners to rural areas or providing alternatives to the tradition of receiving legal services only from lawyers, it is important to continue these efforts and to also try new approaches. Access to justice and to quality legal representation should not be dependent upon one's zip code.

III. State Courts Can Enhance Access to Justice for Rural Populations Through Innovation, Reengineering of Court Processes and Dedication of Necessary Resources

As courts implement new technologies and reengineer court access in cities plunging forward into the age of information, it is critical to maintain a dedication to the essential principal of access to justice for rural populations. To do so requires a multi-phased approach. This paper highlights many programs underway in numerous courts that achieve success in serving rural populations. Improved Internet access promises to broaden access to justice directly with courts that make proceedings and processes available remotely. Reengineering how justice is delivered may or may not depend on improved electronic access. Redistributing work from

overmatched urban courts to rural courts with proportionally greater time to devote to cases and case data, flexibility in our understanding of venue and subject matter jurisdiction, a different approach to the creation and location of judgeships and staffing, and a less rigid reliance on in-person proceedings are among the innovations being introduced in diverse areas. Specific initiatives described in this paper and supported by COSCA include;

- Work with governments and industry to extend speedy Internet access and using that access to:
 - bring new tools such as online dispute resolution, interactive televised hearings in place of in-person proceedings
 - electronically transfer cases across traditional court boundaries to more efficiently match workload with existing resources
 - look to traditional and non-traditional partners to share overhead costs in order to retain local access to vital court services
- Restructure traditional court processes to deliver services in reorganized traditional settings as well as innovative new methods, including:
 - reexamine traditional rules and practices such as venue and subject matter jurisdiction to allow cases to cross traditional jurisdictional boundaries
 - modernize approaches to the location and function of judges and staff
 - reduce mandatory in-person court appearance mandates where Internet, phone, and video appearances can be satisfactory or allowing the filing of a pleading in lieu of an appearance
- Attract resources to rural areas that are particularly underserved by attorneys by:

- partnering with state government and business entities to create incentives for rural legal practice such as student loan forgiveness
- co-locating court services with other government and private resources in shared rural settings
- exploring limited practice certifications for non-lawyers to increase access to legal assistance that is otherwise unavailable or unaffordable.

Although fewer in number than urban residents, rural Americans are a critical part of the body politic and are equally entitled to the best access to justice available through new technologies and reconsideration of traditional methods of delivering court services. Among the many competing interests in the state courts, COSCA members dedicate their energies and abilities to providing rural populations with access to our courts.