

The Narrow Road for Legal Access in Rural America for Indigent Citizens in the Post-Pandemic Era

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† I would like to dedicate the article to my beloved family who constantly supported me over the years. Furthermore, I would like to acknowledge Professor Anil Mujumdar of the University of Alabama School of Law for his input. In addition, I would like to thank Professor Richard Delgado and Professor Jean Stefanic of the Seattle University School of Law.

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Introduction

Before law school, I was a poor Black male who feared the thought of having a court-appointed lawyer for any criminal matter.¹ If I had any legal issues, I knew my fate would be left in the hands of an attorney provided by the state. There are significant stigmas surrounding the use of public defenders, as well as barriers to accessing a public defender in my local community of Gadsden, AL. Public defenders systematically fail the people in my community. A deep mistrust in the system has developed out of a continued pattern of the attorneys we depend on failing to fully see us due to unchecked biases and unresolved harm.²

Unfortunately, hiring a private attorney can be an unreachable idea for indigent citizens within the community. My community lacks any promising careers locally—outside of manufacturing plants and typical minimum wage jobs—without a college education. The costs for a private attorney were automatically beyond my checking and saving accounts combined, ranging from \$2,500 to \$8,000 for a misdemeanor case.³

¹ See, e.g., Cynthia J. Najdowski, Bette L. Bottoms, & Phillip Atiba Goff, *Stereotype Threat and Racial Differences in Citizens' Experiences of Police Encounters*, 39 LAW AND HUM. BEHAVIOR 5, 463 (2015), <https://www.apa.org/pubs/journals/features/lhb-lhb0000140.pdf>.

² Jeff Adachi, *Public defenders can be biased, too, and it hurts their non-white clients*, WASH. POST (June 7, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/>.

³ Bruce Denson, *How Much Does a Criminal Attorney Cost?*, HG.ORG LEGAL RES., <https://www.hg.org/legal-articles/how-much-does-a-criminal-defense-attorney-cost-61222> (last visited Feb. 4, 2023).

Furthermore, rural markets normally lack their own public defender's office or adequate legal services for indigent communities. My hometown is considered a small rural city with few attorneys. It also lacks a public defender's office. To make up for this institutional failure, judges assign private attorneys or legal aid services to indigent defendants. These assignments are more common than public defender assignments because of the relatively small number of attorneys in the public sector. The problem occurs when rural markets overutilize this option.

Many communities have legal aid offices that attempt to fill this gap but are unable to provide adequate support for indigent communities. Studies show that the "vast majority of legal aid needs go unmet," largely due to lack of funding.⁴ Legal aid groups state that they should be hiring new attorneys to meet current demands, but instead are struggling to fill budget gaps to avoid cutting existing staff attorneys.⁵ Therefore, due to a confluence of factors, rural communities face a critical shortage of attorneys.

The shortage of attorneys in rural areas is a large issue overall, but an even more urgent issue for indigent people who are left to rely upon attorneys with limited time and attention to devote to their case. Compounding this problem is police brutality and other widespread and underreported issues in rural America—rising at a faster rate proportionally than in big cities.⁶ Legislators in states such as Washington, California, and Nevada passed several police reform measures over the summer of 2020 in response to the mass protests regarding the killing of George Floyd.⁷ One of these reforms included repealing a law that limited qualified immunity and banned the use of chokeholds during confrontations with people being

⁴ Adiel Kaplan, *More people than ever need legal aid services. But the pandemic has hit legal aid funding hard.*, NBC NEWS (Apr. 25, 2021), <https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hit-n1264989>.

⁵ *Id.*

⁶ George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2020); *see also* Samuel Sinyangwe, *Police Are Killing Fewer People In Big Cities, But More In Suburban And Rural America*, FIVETHIRTYEIGHT (June 1, 2020), <https://fivethirtyeight.com/features/police-are-killing-fewer-people-in-big-cities-but-more-in-suburban-and-rural-america/>; Alysia Santo & R.G. Dunlop, *Where Police Killings Often Meet With Silence: Rural America*, N.Y. TIMES (Aug. 13, 2021), <https://www.nytimes.com/2021/08/13/us/police-shootings-rural.html>; David Hemingway, et al., *Fatal police shootings of civilians, by rurality*, NATL. LIB. OF MED. (May 2020).

⁷ *See, e.g.*, A.B. 1196, (Cal. 2020); A.B. 3, (Nev. 2020); H.B. 1054 (Wa. 2021). *See generally* Ram Subramanian & Leily Arzy, *State Policing Reforms Since George Floyd's Murder*, BRENNAN CTR. FOR JUSTICE (May 21, 2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder>.

stopped or detained.⁸ Other reforms addressed the over-policing of indigent communities, especially predominately Black ones. The over-policing of indigent communities is an ongoing issue that results in a higher likelihood of being charged with a crime. This also creates a vicious cycle in which overpoliced communities see more criminal charges and are thus labeled “high crime” areas, a term then used to justify even more police presence. Recent issues surrounding economic instability and the pandemic compound this existing dynamic, creating even more legal needs for lower and middle-class citizens in these communities. Therefore, without intervention, the lack of access to legal aid in rural communities will continue to spiral.

I will begin by examining the lack of access to legal aid in rural communities. Research displays how the legal market in rural America needs to be strengthened to properly serve indigent communities. Part One will discuss the background on lack of access to legal services in rural areas. Part Two will discuss recent reforms which created more tensions between officers and their communities. Part Three will suggest solutions to remedy the issue of access to legal services in rural communities.

I. Background on Issues Involving Lack of Access to Legal Representation in Rural Areas

The recruitment of young attorneys to rural communities has been largely unsuccessful due to competitive paying jobs in metropolitan areas and the stigmas associated with life in rural legal markets.⁹ Younger attorneys normally avoid rural markets due to the attractions presented by more populous cities.¹⁰ Although the number of students attending law school has grown over the past decade, many graduates are forced to work in larger markets to be able to pay off student loan debts as well as to afford household expenses.¹¹ There is a trend of lawyers avoiding small towns for various reasons, ranging from cultural preferences to social life, but one common reason revolves around the salary differences.¹² Salaries in

⁸ George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2020).

⁹ See, e.g., *Alabama Wages*, O*NET ONLINE (last accessed Nov. 3, 2022), www.onetonline.org/link/localwages/23-1011.00?st=AL.

¹⁰ See generally Lisa R. Pruitt, et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV.15 (2018), https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=3771&context=faculty_pub.

¹¹ Martin Pritikin, *People are flocking to law school again. Will there be jobs?*, THE NAT’L JURIST (Oct. 9, 2018), www.nationaljurist.com/national-jurist-magazine/people-are-flocking-law-school-again-will-there-be-jobs. See also Wendy Davis, *No Country for Rural Lawyers: Small-town attorneys still find it hard to thrive*, ABA (Feb. 1, 2020), <https://www.abajournal.com/magazine/article/no-country-for-rural-lawyers>.

¹² *Id.*

metropolitan areas are significantly higher than those in their rural counterparts, deterring young attorneys from pursuing practices in rural areas.¹³ In the metropolitan areas of states such as Massachusetts, for example, the average lawyer's salary was \$153,570 in 2021.¹⁴ However, the mean salary for lawyers in the nearby state of Maine, a state mostly consisting of rural areas, was merely \$80,450 in 2021.¹⁵ Even taking into account different costs of living, this is a significant disparity for an attorney focused on repaying student debts that average around \$108,000 nationally.¹⁶

Some rural states have created incentives such as loan forgiveness programs, but additional incentives may help to lure even more young attorneys.¹⁷ States with large rural areas, such as South Dakota, have passed laws creating annual subsidies for attorneys that live and work in rural areas.¹⁸ The American Bar Association ("ABA") has also called on all levels of government to reduce the decline of lawyers in rural areas, but this challenge has yet to result in an increase to the number of attorneys.¹⁹ Predominantly rural states like Iowa and Nebraska have started various organized tours and internships to try to persuade law students to lay down roots in their communities, but the problem remains unchanged.²⁰

In sum, the private legal system in rural communities has an unsustainably low workforce, resulting in a legal desert in rural areas across America.²¹ Legal aid offices could provide full spectrum legal services to rural communities affected by the shortage, but this would require a large

¹³ See generally Pruitt et al., *supra* note 10.

¹⁴ *Massachusetts Wages*, O*NET ONLINE (last accessed Nov. 3, 2022), www.onetonline.org/link/localwages/23-1011.00?st=MA.

¹⁵ *Maine Wages*, O*NET ONLINE (last accessed Nov. 3, 2022), www.onetonline.org/link/localwages/23-1011.00?st=ME.

¹⁶ Alexis Gravely, *Impact of Student Loan Debt on Young Lawyers*, INSIDE HIGHER ED. (Sept. 23, 2021), www.insidehighered.com/news/2021/09/23/aba-report-shows-impact-law-school-debt-young-lawyers.

¹⁷ See generally Talk of the Nation, *Luring Doctors and Lawyers to Rural America*, NPR (May 1, 2013), <https://www.npr.org/2013/05/01/180329738/efforts-to-reverse-rural-brain-drain>.

¹⁸ S.D. Codified Laws § 16-23-1 (2013); see also Ethan Bronner, *No Lawyers for Miles, So One Rural State Offers Pay*, N.Y. TIMES (Apr. 8, 2013), <https://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See generally Nick Devine, *Equality Before the Law: Ending Legal Deserts in Rural Counties*, GEO. J. ON POVERTY L. & POL'Y (Nov. 3, 2020), <https://www.law.georgetown.edu/poverty-journal/blog/equality-before-the-law-ending-legal-deserts-in-rural-counties/>.

increase in funding for their offices to be able to effectively shrink these legal deserts.²² Unfortunately, funding has become difficult to obtain for these agencies, largely due to budget cuts over the years which have not been helped by the recent economic downturn.²³

Although additional funding could help extend public defenders offices' services to rural deserts, these offices also struggle with adequate staffing levels for attorneys, and subsequently heavy caseloads.²⁴ Much of the heavy caseload can be attributed to the COVID-19 pandemic, which resulted in a pileup of cases as courts ceased to function normally, but the more systemic factor is the low number of public defenders. In one rural area in Louisiana, for example, public defenders are working more than three times as many cases as the state recommends, as well as holding multiple jobs to make ends meet.²⁵ Some offices have asked for funds to recruit more attorneys, but those requests have been denied due to budget issues.²⁶ While criminal justice reform aimed at ensuring adequate representation has swept the country over the years,²⁷ many of these efforts

²² *Id.*

²³ See David Reich, *Additional Funding Needed for Legal Service Corporation*, CTR. ON BUDGET & POLICY PRIORITIES (Feb. 1, 2021), <https://www.cbpp.org/blog/additional-funding-needed-for-legal-service-corporation>.

²⁴ Jessica Pishko, *The Shocking Lack of Lawyers in Rural America*, THE ATL. (July 18, 2019), www.theatlantic.com/politics/archive/2019/07/man-who-had-no-lawyer/593470/; see also Ben Krumholz, *Public defender shortage causing delays, driving up local costs*, FOX 11 NEWS (Mar. 4, 2021), <https://fox11online.com/news/local/green-bay/court-officials-public-defender-shortage-causing-delays-driving-up-local-costs>; Kyle Stucker, *'Calling this a crisis is not an understatement': Public defenders face challenges*, USA TODAY NETWORK (Sept. 29, 2021), www.providencejournal.com/story/news/2021/09/29/new-england-public-defenders-worried-clients-not-getting-effective-representation-covid-19-backlog/5842430001/; Scott Merrill, *N.H. Supreme Court task force addresses shortage of public defenders*, CONCORD MONITOR (Nov. 15, 2021), www.concordmonitor.com/N-H-Supreme-Court-Task-Force-Addresses-Shortage-of-Public-Defenders-43524510.

²⁵ Pishko, *supra* note 24.

²⁶ *Id.*; see also Tom Jackman, *Guest Post: Public defenders can do more for public safety - if we let them*, WASH. POST (July 23, 2021), <https://www.washingtonpost.com/dc-md-va/2021/07/23/funding-defense-stop-crime/>; Stan Finger, *Public Defenders Say Fair Trials in Jeopardy Due to Underfunding*, ACLU KAN. (May 20, 2021), <https://www.aclukansas.org/en/publications/public-defenders-say-fair-trials-jeopardy-due-underfunding>; Jeff Haldiman, *State public defenders backing federal reform bill*, NEWS TRIB. (Nov. 14, 2020), www.newtribune.com/news/local/story/2020/nov/14/state-public-defenders-backing-federal-reform-bill/849029/.

²⁷ Eric Williamson, *Will This Be the Year That History Will Record as the Beginning of the End of Disparity in the Criminal Justice System?*, UVA LAWYER (Aug. 1, 2020), <https://www.law.virginia.edu/uvalawyer/article/tipping-point-criminal-justice-reform>.

have failed due to lack of funding rather than lack of heart.²⁸ This problem has pushed the legal system into a state of limbo, making lawyers unavailable and resulting in a criminal justice system that lacks compassion or safety for the people living in rural America.²⁹

Courtrooms in rural markets have often relied on private bar attorneys to alleviate the heavy caseloads, but even these stop-gap solutions are unable to handle many new clients due both to preexisting cases that have been pending resolution prior to the pandemic and the relative lack of growth in the number and tenure of criminal defense attorneys.³⁰ Less than thirty percent of criminal defense attorneys stay in their roles longer than five years before changing career fields, and almost forty percent of criminal defense attorneys practice for less than two years before changing career fields.³¹ Some lawyers choose to leave due to insurmountable caseloads, unreasonable pay, and questionable retirement plans,³² creating an even larger strain within their communities. This also signals that maybe society has made criminal defense work unsustainable because the institution itself was built to continue the legacy of slavery and control of Black bodies and futures.³³

Unfortunately for indigent people seeking an attorney, the shortage in criminal defense attorneys is accelerated further by the ongoing effects

²⁸ Pamela Metzger, *Rural justice systems low on pretrial resources leave some to languish, die*, USA TODAY (Dec. 13, 2019), <https://www.usatoday.com/story/opinion/policing/spotlight/2019/12/13/rural-justice-systems-low-pretrial-resources-leave-some-languish/4415770002/>.

²⁹ See, e.g., *id.*

³⁰ See Rebecca Millner, et al., *The Pandemic: Law Students' Perspectives on COVID-19's Effects on Legal Education and the Legal Profession*, 45 WESTCHESTER BAR J., 143, 148 (2020).

³¹ *Criminal Defense Lawyer Demographics and Statistics in the US*, ZIPPPIA THE CAREER EXPERT (last visited Jan. 7, 2023), <https://www.zipppia.com/criminal-defense-lawyer-jobs/demographics/> (showing that only five percent of criminal defense attorneys are between the age of twenty to thirty years old).

³² See, e.g., Nicholas M. Pace, et al., *Provisional Caseload Standards for the Indigent Defense of Adult Criminal and Juvenile Delinquency Cases in Utah*, RAND CORPORATION (2021), at 73, www.rand.org/content/dam/rand/pubs/research_reports/RRA1200/RRA1241-1/RAND_RRA1241-1.pdf; Stacey Barchenger, *Compensation, caseload key complaints from defense lawyers*, THE TENNESSEAN (July 29, 2016), www.tennessean.com/story/news/2016/07/29/compensation-caseload-key-complaints-defense-lawyers/87589260/.

³³ See generally Angela Y. Davis, *Are Prisons Obsolete?*, SEVEN STORIES PRESS (2003), available at https://collectiveliberation.org/wp-content/uploads/2013/01/Are_Prisons_Obsolete_Angela_Davis.pdf.

of the COVID-19 pandemic and resulting economic crises.³⁴ This shortage is now a common trait of the legal markets in rural counties.³⁵ The pandemic influenced some lawyers approaching retirement age to “pull the plug” on their careers.³⁶ Many former defense attorneys who may have had health concerns due to age, preexisting conditions, or vulnerable family members decided that the benefit of continuing to work did not outweigh the risk.³⁷ Over sixty percent of criminal defense attorneys were over the age of forty prior to the pandemic, for example.³⁸ Other attorneys have shifted to caregiving duties for loved ones suffering from effects of the virus.³⁹ Therefore, recruiting young attorneys is an essential part of answering the growing legal need in rural job markets.

A. *The Effects of the Pandemic on the Rural Legal System*

The pandemic magnified the barriers indigent citizens already faced when seeking legal assistance. The economic consequences of shutdowns and furloughs contributed to a spike in legal needs in areas such as evictions, unemployment claims, and domestic violence.⁴⁰ The staffing shortages and lifting of eviction moratoriums recently revealed the flaws in the legal system that is unable to meet the needs of indigent—especially rural indigent—rightsholders.⁴¹

The expiration of the eviction moratorium allowed for people across America to witness the fears financially limited citizens have of facing legal issues. The eviction moratorium started as a federal bill that prevented a landlord, owner of a residential property, or similar entity such as a firm from pursuing an eviction against a tenant.⁴² The bill was supported by the Center for Disease Control in order to reduce the spread of COVID-19

³⁴ See, e.g., Gretchen Schuldt, *Courts Face Shortage of Defense Lawyers*, URBAN MILWAUKEE (May 11, 2021), <https://urbanmilwaukee.com/2021/05/11/court-watch-courts-face-shortage-of-defense-lawyers/>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See *supra* note 31.

³⁹ *Supra* note 34.

⁴⁰ Raleigh D. Kalbfleisch, *The Impact of the COVID-19 Pandemic on Legal Services*, THE DUPAGE CNTY. BAR ASS'N (last accessed Jan. 7, 2023), www.dcba.org/mpage/v33-Raleigh-D-Kalbfleisch#:~:text=The%20economic%20consequences%20being%20caused,for%20LS%20C%20funded%20legal%20aid.

⁴¹ *Id.*

⁴² Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4023(f)(5)(B), 134 Stat. 281 (2020).

among displaced citizens.⁴³ The federal moratorium expired on December 31, 2020,⁴⁴ leaving state legislation as the only buffer between landlords and tenants. The Biden Administration attempted to prevent the moratorium from expiring, but this effort was rejected by the Supreme Court.⁴⁵ As a result, many financially burdened residents, particularly those already indigent, were at risk of losing their homes. And as previously described, hiring private attorneys to defend against evictions was out of the question due to the cost. Evictions have also been proven to result in psychological trauma, decreased credit access, and other issues that compound existing disadvantages.⁴⁶ The community most affected by the expiration were indigent Black persons who could no longer afford their living expenses after mass layoffs and job closures.⁴⁷

II. How Reform Bills Escalated the Need for Access

In the summer of 2020, the world watched as people across the United States called for the police to be held accountable for the use of excessive force.⁴⁸ The death of a Minnesota man, George Floyd, caused the world to turn their attention from an escalating pandemic to the familiar issues of police brutality, over-policing, and use of excessive force.⁴⁹ Mr. Floyd's death turned police reform into a national issue overnight.⁵⁰ Many public defenders, federal defenders, and private attorneys joined protests throughout the country.⁵¹ These attorneys voiced their concerns

⁴³ Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020), www.federalregister.gov/d/2020-19654.

⁴⁴ *Id.*

⁴⁵ Ala. Assoc. of Realtors v. Dep't of Health and Hum. Serv., 594 U.S. 23 (2021).

⁴⁶ Carl Romer, et al., *The coming eviction crisis will hit Black communities the hardest*, BROOKINGS INST. (Aug. 2, 2021), <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>.

⁴⁷ *Id.*

⁴⁸ See, e.g., Angela Onwauchi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV., 1 (2021); Rashawn Ray, *How can we enhance police accountability in the United States?*, BROOKINGS INST. (Aug. 25, 2020), <https://www.brookings.edu/policy2020/votervital/how-can-we-enhance-police-accountability-in-the-united-states/>.

⁴⁹ Alex Altman, *Why The Killing of George Floyd Sparked an American Uprising*, TIME MAG. (June 4, 2020), <https://time.com/5847967/george-floyd-protests-trump/>.

⁵⁰ See, e.g., Jay Schweikert, *Qualified Immunity*, 21 AM. BAR ASS'N INSIGHTS ON LAW & SOC'Y 1 (Dec. 17, 2020), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/.

⁵¹ Melissa Brown, *Public defenders rally against 'systemic racism' in criminal justice system*, MONTGOMERY ADVERT. (June 11, 2020), <https://www.montgomeryadvertiser.com/story/news/2020/06/11/public-defenders-rally->

about the criminal justice system and raised issues of systemic racism.⁵² Public defenders from across the country held demonstrations in the nation's capital.⁵³ Sparked by police killings spanning decades, the demonstrators demanded justice, equal rights, and meaningful reform.⁵⁴ Some of the solutions called for included changing the ways in which police departments are funded and procedural reforms within the criminal justice system.⁵⁵

Several state legislatures passed police reform measures in the summer of 2020 in response to these mass protests.⁵⁶ In addition, the George Floyd Justice in Policing Act was proposed as a way of holding law enforcement accountable for misconduct by utilizing the court system, collecting data to improve transparency, and reforming police training and policies.⁵⁷ Some of the suggested reforms involved an end to qualified immunity and restriction of officers' ability to use physical force.⁵⁸ Representative Karen Bass, the sponsor of this bill, hoped to reform qualified immunity so that individuals would not be barred from recovering damages when police violate their constitutional rights.⁵⁹ In January 2021, the California legislature passed a bill⁶⁰ reforming aspects of qualified

against-systemic-racism-criminal-justice-system-christine-freeman-aylia-mckee/5346761002/; see also Christine Simmons & Dylan Jackson, *From Big Law to Boutiques, George Floyd's Death Prompts Outrage, Some Action From Law Firm Leaders*, THE AM. LAWYER (June 1, 2020), www.law.com/americanlawyer/2020/06/01/from-big-law-to-boutiques-floyds-death-prompts-outrage-some-action-from-law-firm-leaders/?slreturn=20211017130433; Lyle Moran, *Attorney urges other lawyers to use outrage over George Floyd's death to demand policing reforms*, AM. BAR ASS'N J. (Oct. 14, 2020), <https://www.abajournal.com/news/article/attorney-urges-lawyers-to-use-outrage-over-george-floyds-death-to-demand-policing-reforms>.

⁵² *Id.*

⁵³ Juliette Rihl, *'The silence is what's killing us.' Public defenders protest against institutional racism in criminal justice system*, PUB. SOURCE (June 8, 2020), <https://www.publicsource.org/public-defenders-protest-against-institutional-racism-in-criminal-justice-system/>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See, e.g., *supra* note 7.

⁵⁷ George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. §§ 118, 301 *et seq.* (2021).

⁵⁸ George Floyd Justice in Policing Act of 2020, H.R. 7120, 116th Cong. §§ 102, 363 (2020).

⁵⁹ Press Release, Rep. Karen Bass, *House Passes Transformative Bass Police Reform Bill*, LIBR. OF CONG. WEB ARCHIVES (Mar. 3, 2021), available at <https://webarchive.loc.gov/all/20211111013620/https://bass.house.gov/media-center/press-releases/house-passes-transformative-bass-police-reform-bill>.

⁶⁰ Cal. Legis. Serv. Ch. 409 (S.B. 2) (West); see also Taiyler Simone Mitchell, *Gov. Gavin Newsom signs bill into law allowing for sweeping law enforcement reform in California*,

immunity similar to a bill recently passed in Massachusetts.⁶¹ In June of 2020, Colorado also successfully passed a bill called the Law Enforcement Integrity and Accountability Act that reformed the qualified immunity protection enjoyed by police officers.⁶² These bills allowed for States to create new standards for policing within local communities by removing some legal protections and holding police accountable for their actions in court. This allowed victims of police brutality to have a more realistic path to justice against officers who once benefitted from layers of statutory and constitutional protections.

While reforms to qualified immunity have not yet been enacted at the federal level, the possibility of more states reforming qualified immunity could increase tensions between local government officials and indigent defendants in courtrooms. The increasing association of police support with conservative ideologists also creates political barriers in Republican-controlled areas.⁶³ Several Republican candidates have accused the increase of crime on the lack of support for police in Democrat-controlled cities, blaming a reduced or reformed police force.⁶⁴ However, the number of people in jail in rural areas has continued to overshadow the number of people incarcerated in large cities.⁶⁵ If qualified immunity was completely repealed, biased judges could become problematic in more conservative-leaning rural areas. Thousands of state and local judges have

INSIDER (Sept. 30, 2021), <https://www.businessinsider.com/california-bill-could-mean-the-end-of-qualified-immunity-2021-8>.

⁶¹ Mass. Legis. Serv. Ch. 253 (S.B. 2963) (West) (creating a nine-member commission to investigate misconduct independently, with subpoena power to compel witnesses and documents as part of its investigations, to determine whether to decertify an officer and remove qualified immunity status).

⁶² Colo. Legis. Serv. Ch. 110 (S.B. 20-217) (West) (placing greater rules around police use of force, prohibits the use of chokeholds, makes it a crime for officers to observe misconduct without reporting, and makes it easier for civilians to sue officers personally for wrongdoing).

⁶³ See, e.g., Nicole Narea, *The defense Democrats aren't using against Republicans' soft-on-crime attacks*, VOX (Oct. 18, 2022), <https://www.vox.com/policy-and-politics/2022/10/18/23409890/crime-midterms-democrats-messaging>; Martin Kaste, *Republicans blame Democrats for rising crime. Here's the complicated truth*, NPR (Nov. 3, 2022), <https://www.npr.org/2022/11/03/1133144370/republicans-blame-democrats-crime-complicated-truth>; Li Zhou, *The reason Republican attacks on crime are so potent*, VOX (Nov. 3, 2022), <https://www.vox.com/policy-and-politics/23433184/crime-midterms-oz-fetterman-pennsylvania-senate>.

⁶⁴ *Id.*

⁶⁵ Jacob Kang-Brown & Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America*, VERA INST. OF JUSTICE (June 2017), <https://www.vera.org/publications/out-of-sight-growth-of-jails-rural-america>.

violated judicial ethics rules without rebuke in rural areas.⁶⁶ For example, one rural judge in 2016 admitted in court documents to violating judicial conduct codes since 2000.⁶⁷ Despite these admissions, he was not barred from serving as a judge.⁶⁸ In addition, approximately 1,509 ethics cases have resulted in judges resigning, retiring, or being publicly disciplined from 2008 to 2019.⁶⁹ While reforms to the qualified immunity standard will thus provide indigent folks more opportunities to seek justice for excessive force violations, the prohibitive cost of private attorneys and overburdening of public defenders means that they will likely struggle to find adequate representation for their case. Furthermore, plaintiffs in rural areas may encounter judges with pro-law enforcement biases overseeing their cases. And since there appear to be areas in which judges have gotten away with ethical violations, it is even more important for these plaintiffs to have an attentive advocate with sufficient time to devote to their case in the courtroom. Accordingly, reformation could reveal a larger systemic issue in court systems as more states begin to adopt police reform bills.

As courts continue to reopen and resume normal operations in the wake of the pandemic, many courtrooms will face huge dockets, causing a shortage in speedy trials for rural markets. In Maine, for example, a near full stop of jury trials in 2020 contributed to a pileup of court dockets statewide.⁷⁰ Although Maine utilized technology to reduce the backlog of cases from the pandemic, the court relies on in-person jury trials to ensure judicial efficiency.⁷¹ Thus, the pandemic created increased the demand for attorneys in the country.⁷² States ranging from South Dakota, Georgia, Texas, and Arizona have reported a majority of lawyers working in urban

⁶⁶ Michael Berens & John Shiffman, *Thousands of U.S. judges who broke laws or oaths remained on the bench*, REUTERS (June 30, 2020), <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Keith Edwards, *Maine courts handcuffed as coronavirus pandemic continues*, CENT. ME. (Jan. 9, 2021), <https://www.centralmaine.com/2021/01/09/maine-courts-handcuffed-as-coronavirus-pandemic-continues/>.

⁷¹ *Id.*

⁷² See, e.g., Erika Bolstad, *Public Defenders Were Scarce Before COVID. It's Much Worse Now.*, PEW (June 21, 2022), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/21/public-defenders-were-scarce-before-covid-its-much-worse-now> (“Even before the pandemic, many court systems nationwide were unable to meet demand for public defenders, but the crunch worsened after COVID-19 slowed courtroom operations.”).

areas rather than rural areas with similar issues.⁷³ As a result, states have found ways to address qualified immunity and policing issues but still face implementation problems within the rural legal markets.

III. Where Do We Go from Here?

A. Recruiting More Attorneys to Practice in Rural Areas

New attorneys could be motivated by incentives for practicing in rural areas rather than the metropolitan communities. The current state of the legal markets in rural areas could be framed as an opportunity for new attorneys that struggle to enter the highly competitive job markets in bigger cities. The projected growth rate for the job market for criminal defense attorneys is steadily rising, while many experienced attorneys are retiring at a slower rate.⁷⁴ In major cities, career fields in bankruptcy, restructuring, and public interest will likely surge as a direct impact of the pandemic.⁷⁵ Largely due to the economic uncertainty in major cities, many senior attorneys will oversaturate the job market, causing job availability issues for new attorneys.⁷⁶ Additionally, lawyers in small towns have been known to practice as general practitioners.⁷⁷ New attorneys can thus gain experience in practices such as personal injury, estate planning, tax law, criminal and family law,⁷⁸ turning an inexperienced attorney into a marketable candidate later in competitive job markets in major cities just a short drive away. New attorneys could master several different practices in a short time while also focusing on areas of law that interest them. As a result, the incentive for new attorneys to divert from the traditional big law firms could be the legal profession's best kept secret for new attorneys.

B. Modifications to Rule 1.7 Exemptions

The ABA should also modify Rule 1.7's exemptions to accommodate limited legal markets and reduce the impact on rural legal systems. ABA Rule 1.7 bars attorneys from representing clients that present conflicts of interest in relation to their current clients, at least without informed consent.⁷⁹ Informed consent requires present or former clients to

⁷³ See generally Wendy Davis, *No Country for Rural Lawyers: Small-town attorneys still find it hard to thrive*, AM. BAR ASS'N J. (Feb. 1, 2020), <https://www.abajournal.com/magazine/article/no-country-for-rural-lawyers>.

⁷⁴ See, e.g., Schuldt, *supra* note 34.

⁷⁵ See generally Millner, *supra* note 30.

⁷⁶ *Id.*

⁷⁷ Roy S. Ginsburg, *Be a Small-Town Lawyer*, ATTORNEY AT WORK (Aug. 21, 2020), www.attorneyatwork.com/be-a-small-town-lawyer/.

⁷⁸ *Id.*

⁷⁹ Modern Rules of Prof'l Conduct R. 1.7 (2018).

waive a potential conflict before an attorney is allowed to represent the potential client. The ABA could create an exception in certain circumstances to allow lawyers the flexibility to represent clients in need of legal services. The struggle to attract new defense attorneys to rural areas leaves many with heavy caseloads.⁸⁰ Although the number of students applying to law school is rising, few students are actually seeking jobs in the rural job market over the competitive urban or suburban job market.⁸¹ As many states await data on the effectiveness of new incentives for students choosing to practice in rural areas,⁸² other issues may prohibit existing attorneys from being accessible to new clients without informed consent from former clients.⁸³

For example, consider a landlord that owns half of a rural city and retains a local attorney for their legal needs. This attorney could be considered to have conflicts of interest precluding them from representing potential clients who may work for, live in buildings owned by, or otherwise do business with this prominent landlord. Unless the attorney receives consent—which is uncertain depending on the nature of the legal dispute—they would be unable to represent that client, even if the attorney is one of very few available locally. A narrowly tailored amendment could create an exception, however, to let the attorney proceed with the representation of that indigent client rather than all prospective clients. This could be achieved in a few ways: the ABA could adopt amendments to the Model Rules, which individual states may then choose to incorporate either fully or in part.⁸⁴ Alternatively, state bar associations could petition the body responsible for prescribing attorneys' code of ethics—usually the highest court—to amend the rule itself as well as the explanatory comments associated with that rule.⁸⁵ This course of action could be beneficial to rural markets with limited attorneys that are restricted from representing clients due to Rule 1.7.⁸⁶ Therefore, adopting narrowly tailored exceptions to this

⁸⁰ See Pishko, *supra* note 24.

⁸¹ See, e.g., Ginsburg, *supra* note 77; see also Pritikin, *supra* note 11.

⁸² See Bronner, *supra* note 18.

⁸³ Modern Rules of Prof'l Conduct R. 1.7 (2018).

⁸⁴ See, e.g., Kristine A. Kubes, et al., *The Evolution of Model Rule 8.4 (g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law*, 20 UNDER CONSTR. 3 (Mar. 12, 2019), www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/ (exemplifying how the ABA amends Model Rules and how states may choose to respond).

⁸⁵ See, e.g., Petition, *In the Matter of Rule of Professional Conduct 1.2*, VA. STATE BAR ASS'N (Nov. 5, 2021), https://www.vsb.org/docs/Petition21-4_Rule%201.2_110521.pdf.

⁸⁶ *Id.*

ABA Rule could create more access for indigent clients in limited legal markets.

C. The Employment of More Law Students in Legal Aid Offices

Staffing shortages have been a problem for legal aid organizations over the last decade, but law students have helped reduce the burden. Law students across the United States have volunteered time away from their books to help legal aid services in their communities, either as summer interns (often in unpaid or underpaid positions) or pure volunteers. Many of the simple but crucial tasks that come with representing individuals can be accomplished by a law student, allowing for the attorney to be able to assist more clients. However, law students are only a temporary fix because filings and court appearances require the supervision of a licensed attorney. Although law students are not practicing attorneys and thus limited on what services they can offer without passing the bar, an example of when they have been able to help is with the various issues caused by the lifting of the eviction moratorium.⁸⁷ Students can assist in the drafting and completion of required documents. Reducing the need for staff attorneys to spend time on issues that do not require a practicing attorney to complete could help legal aid offices' efficiency. The government created the eviction moratorium to help indigent citizens affected by the pandemic, but the number of clients needing help is overwhelming for short-staffed legal aid offices.⁸⁸ Economic needs also contributed to more crime in indigent communities, thus increasing the demand for public defenders.⁸⁹ Law students could be a temporary answer to these multiple challenges, allowing more people in indigent communities to obtain access to legal services, especially in rural areas.

Many legal aid organizations hire law students as interns during the summers to reduce the amount of work placed on staff attorneys. Although there is no limit on how many students can volunteer for legal services, the biggest limiting factor is that they are often not compensated for their time. Many students who would dedicate their time are limited—or may not be able to accept such positions—because of this financial burden. If adequate

⁸⁷ M. Tyler Gillett, *US law schools help communities during eviction crisis*, JURIST (Jan. 29, 2022), <https://www.jurist.org/news/2022/01/us-law-schools-help-communities-during-eviction-crisis/>.

⁸⁸ See Kalbfleisch, *supra* note 40.

⁸⁹ See, e.g., Benjamin H. Harris & Melissa S. Kearney, *The Unequal Burden of Crime and Incarceration on America's Poor*, BROOKINGS INST. (Apr. 28, 2014), <https://www.brookings.edu/blog/up-front/2014/04/28/the-unequal-burden-of-crime-and-incarceration-on-americas-poor/>.

compensation was available, more students would be able to help support legal aid organizations without the fear of additional financial burdens.

As described, many law students are unable to pursue public interest jobs because of a lack of funding. The pandemic allowed for the government to pass large funding bills; a tactic that could be used to create more incentives for law students to engage in public interest work.⁹⁰ Most law students face huge undergraduate and graduate loan debts, and have no choice but to consider how to make enough money. Legal services could hire more law students compared to the cost of adding a staff attorney to optimize their offices with more support. Court dockets are swamped with cases that have been pending since prior to the pandemic.⁹¹ Some of these cases could be ripe for settlement and mediation, matters with which law students can assist. Law students can be certified as mediators⁹² and could help in reducing the caseload for staff attorneys. Law students could be incentivized by receiving credit hours and funding, as well as experience that looks good on their resumés. Therefore, by making more funding available for law students assisting legal aid organizations, they can support important but burdensome administrative work and lessen the docket overload by becoming certified mediators. This would help provide various services for indigent people and save short-staffed attorneys' valuable time without incurring an even greater financial burden.

Conclusion

There is a crisis in the availability of defense attorneys in rural America. Legal aid organizations can be considered the backbone and lifeline for indigent communities across the country, including in rural areas. However, the lack of funding has contributed to a growing gap between indigent people and their access to justice. This gap was accelerated by the onset of the pandemic, further exposing the lack of legal access in indigent communities. Making rural legal markets more competitive by offering job incentives, increasing legal aid organization capacity by supporting the involvement of more law students, and making

⁹⁰ See, e.g., Am. Bar Ass'n, *CARES Act provides needed relief to legal profession*, AM. BAR ASS'N (Apr. 6, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/04/cares-act-and-legal-profession/>.

⁹¹ See, e.g., Sherri Jackson, et al., *Justice delayed: Alabama's court system bogged down with COVID jury trial backlog*, CBS 42 (Feb. 16, 2021), <https://www.cbs42.com/your-voice-your-station/justice-delayed-alabamas-court-system-bogged-down-with-covid-jury-trial-backlog/>.

⁹² See generally Scott Van Soye, *How to Become a Mediator without a Law Degree*, ADR TIMES (Dec. 26, 2020), <https://www.adrtimes.com/how-to-become-a-mediator-with-or-without-a-law-degree/>.

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narrowly tailored modifications to ABA Rule 1.7 could be innovative answers. This will require investments by state governments and creativity among legal professionals, but it must happen in order to realize a system in which there is—at the very least—access to justice for all.