

June 2019

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Hannah Haksgaard

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### Recommended Citation

Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 Me. L. Rev. 209 (2019).

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# RURAL PRACTICE AS PUBLIC INTEREST WORK

*Hannah Haksgaard*

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## RURAL PRACTICE AS PUBLIC INTEREST WORK

Hannah Haksgaard\*

## ABSTRACT

As the rural lawyer shortage continues to grow, rural states and communities must find new ways of attracting law students and graduates to rural practice. This Article explores incentives based on conceptualizing rural private practice as public interest work. Rural lawyers provide public interest lawyering through pro bono cases, mixed practices, community service, and even through providing fee-paid services in rural communities. The Article asserts that law schools and rural communities can capitalize on this view to recruit new lawyers and argues that federal loan forgiveness programs should be expanded to cover rural lawyers.

## I. INTRODUCTION

Private practice legal work in rural areas is public interest work. American cities have sufficient lawyers, yet the rural parts of America simply do not.<sup>1</sup> In fact, the rural lawyer shortage continues to grow.<sup>2</sup> At this point the rural attorney shortage is well documented,<sup>3</sup> as are various strategies to combat that shortage.<sup>4</sup> What has *not*

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\* Assistant Professor of Law, University of South Dakota School of Law. Thank you to Lisa R. Pruitt, Neil Fulton, Tiffany Graham, and Wendy Hess for providing meaningful comments on this article. For excellent editorial and research assistance I thank Brianna Haugen. I also thank the members of the *Maine Law Review* for indulging my idea to write this piece and for their important edits throughout the writing process.

1. Chief Justice Gilbertson of the South Dakota Supreme Court has phrased the problem of one of cities providing “islands of justice,” but surrounding rural areas being a “sea of justice denied.” Cassie Bartlett & Charles Michael Ray, *Chief Justice Heaps Praise on Reform Efforts*, SDPB RADIO (Jan. 15, 2014), <http://listen.sdpb.org/post/chief-justice-heaps-praise-reform-efforts> [<https://perma.cc/R3F3-DYYT>].

2. Warren Abrahamson, *North Dakota Attorney Shortage Means Limited Access to Justice*, NEWSDAKOTA (Feb. 7, 2019), <https://www.newsdakota.com/2019/02/07/north-dakota-attorney-shortage-means-limited-access-to-justice/> [<https://perma.cc/47L7-TC2W>] (noting “[a]ttorney job listings have increased 300 percent in the past year” in North Dakota).

3. See, e.g., Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15 (2018) [hereinafter Pruitt et al., *Legal Deserts*] (documenting the rural attorney shortages in California, Georgia, Minnesota, Wisconsin, Maine, and South Dakota); Lisa R. Pruitt et al., *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. 573 (2015) [hereinafter Pruitt et al., *Justice in the Hinterlands*] (documenting the rural attorney shortage in Arkansas); Hillary A. Wandler, *Spreading Justice to Rural Montana: Rurality’s Impacts on Supply and Demand for Legal Services in Montana*, 76 MONT. L. REV. 225, 229 (2015) (documenting the rural attorney shortage in Montana); Brian L. Lynch, *Access to Legal Services in Rural Areas of the Northern Rockies: A Recommendation for Town Legal Centers*, 90 IND. L.J. 1683, 1687-92 (2015) (documenting the rural attorney shortages in Idaho, Montana, and Wyoming); Hon. David Gilbertson, *Reflections on the Rural Practice of Law in South Dakota: Past, Present, and Future*, 59 S.D. L. REV. 433 (2014) (discussing the rural attorney shortage in South Dakota).

4. See Pruitt et al., *Legal Deserts*, *supra* note 3, at 124-26 (discussing various measures used to offset lawyer attrition in rural areas); Pruitt et al., *Justice in the Hinterlands*, *supra* note 3, at 656-66 (proposing various solutions for the rural lawyer shortage in Arkansas); Susan Drisko Zago, *Riding*

been documented is why law schools, policy makers, and lawyers should consider rural private practice to be public interest legal work. As part of the Ensuring Equal Access to Justice in Maine's Rural Communities Symposium, this Article fills this gap in the literature by discussing rural private practice as public interest work.<sup>5</sup>

This Article was inspired by my research from two earlier articles on the rural lawyer shortage. Although neither article was about public interest, the research in both articles established a connection between rural practice and public interest lawyering. In the first article, I discussed how South Dakota's funded rural incentive program for lawyers could be compared to the longstanding incentive programs available for medical professionals.<sup>6</sup> Notably, my research on the medical incentive programs concluded that those programs were successful at attracting medical professionals to rural areas when the focus was on the public service aspects of rural practice.<sup>7</sup> In the second article, I contributed an update on the South Dakota incentive program and interviewed a number of rural lawyers during my research.<sup>8</sup> In speaking with the only two participant lawyers who had no prior connection to South Dakota, I asked why they chose to practice in rural South Dakota.<sup>9</sup> Each attorney explained that she saw rural practice as a way to be a public interest lawyer.<sup>10</sup> In fact, each was looking for traditional public interest jobs before learning about the South Dakota program and deciding to participate.<sup>11</sup> This Article picks up on these prior observations to further discuss whether rural legal work in private firms can be considered public interest, and, if it is so considered, what the implications are for the rural attorney shortage.

Throughout this Article I advocate for treating all rural lawyers as public interest lawyers in terms of financial and other support. In Part II, I argue that all rural legal work—including in private practice—is actually public interest work. Part III addresses the implications of considering rural private practice as public interest work. This includes how and why the Federal Public Service Loan Forgiveness Program should be expanded to cover all rural legal work, how law schools can increase recruiting by discussing rural practice as public interest work, and how local communities should enhance their support of all rural lawyers.

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*Circuit: Bringing the Law to Those Who Need It*, 12 FLA. A & M U. L. REV. 1 (2016) (discussing various proposals).

5. This Article is not specific to Maine, but has major implications in the state because of the rural attorney shortage. See Christopher Chavis, *The Past, Present, and Future of Rural Northern New England: A Study of the Demographics Crisis and How It Affects the Rural Lawyer Shortage*, 71 ME. L. REV. 273 (2019).

6. See generally Hannah Alsgaard, *Rural Incentive Programs for Legal and Medical Professionals: A Comparative Analysis*, 59 S.D. L. REV. 585 (2014).

7. *Id.* at 613.

8. See Pruitt et al., *Legal Deserts*, *supra* note 3, at 101-15 (discussing the rural attorney shortage in South Dakota and interviewing a number of South Dakota attorneys, judges, and legal administrators).

9. Telephone Interview with Kristen Kochejian (Nov. 27, 2017); Telephone Interview with Jennifer English (Nov. 29, 2017).

10. Kochejian Interview, *supra* note 9; English Interview, *supra* note 9.

11. Kochejian Interview, *supra* note 9; English Interview, *supra* note 9.

## II. ENVISIONING RURAL PRIVATE PRACTICE AS PUBLIC INTEREST WORK

The general perception is that there are three types of legal jobs available for new attorneys: law firm jobs, government jobs, and jobs with public interest organizations.<sup>12</sup> The latter two—jobs with the government and public interest organizations—are generally thought of as “public service” or “public interest,” while law firm jobs are not. Students who take law firm jobs are expected to make a strong salary<sup>13</sup> and are generally unentitled to post-graduation financial support from their school or government programs.<sup>14</sup> Yet law firm jobs, including solo practice, in rural areas—what I term rural private practice—should be considered public interest work.

This Part identifies four reasons that rural private practice attorneys should be considered public interest lawyers. First, there is a substantial rural lawyer shortage that deprives many rural residents access to justice. The rural lawyer shortage means the presence of lawyers in private practice provides important services to rural communities, the same type of services that traditional public interest organizations might provide in larger cities. Second, rural private practice lawyers frequently engage in “mixed practice” work, meaning they provide a multitude of legal services, including government work, pro bono work, and traditional private practice work. In a larger city, different attorneys may fill each of these roles and many lawyers would qualify as “public interest” lawyers, but a rural attorney in mixed practice may fill *all* of these roles. Third, even rural lawyers who provide only fee-paid legal services are still serving the public interest by being the only available providers of legal services. Those attorneys will frequently provide critical volunteer services, like serving on non-profit boards, even though they do not hold traditional public interest lawyer jobs. Fourth, rural private practice lawyers—especially in the years immediately following law school—do not earn more, and will frequently earn less, than government or traditional public interest lawyers.

A. *The Rural Lawyer Shortage*

The first reason to consider rural private practice lawyering as public interest legal work is that there is a lawyer shortage in rural areas.<sup>15</sup> Rural communities often have unique needs for attorneys,<sup>16</sup> but rural communities are in desperate need of

12. See, e.g., Chelsea Wilson, *Career Options for Law School Graduates*, LEGAL CAREER PATH, <http://legalcareerpath.com/career-options-for-law-school-graduates> [https://perma.cc/E549-37NC] (listing types of lawyers’ jobs, including “private law firms” and “public service” as the first two categories).

13. See, e.g., Adina Appelbaum, *Should You Become a Public Interest Lawyer?*, ABOVE THE LAW (July 21, 2017, 6:46 AM), <https://abovethelaw.com/career-files/should-you-become-a-public-interest-lawyer> [https://perma.cc/G8ES-A2E3] (“Public interest law almost always means making far less money than you would at a private law firm.”).

14. Government forgiveness is discussed *infra* Part III.A. Law schools with internal loan forgiveness programs are discussed *infra* Part III.B.

15. Pruitt et al., *Legal Deserts*, *supra* note 3, at 120-21 (noting rural attorney shortages in various locations).

16. Lynch, *supra* note 3, at 1689 (“Low-income rural residents also face distinct problems, such as foreclosures of family farms, migrant worker issues, and tribal issues for Native Americans on reservations.”); Jack Karp, *No Country for Old Lawyers: Rural U.S. Faces a Legal Desert*, LAW360

lawyers in general.<sup>17</sup> The glut of lawyers in urban areas<sup>18</sup> is in sharp contrast to the lawyer shortage in small towns and communities.<sup>19</sup> Rural areas need *all* types of lawyers<sup>20</sup>—including prosecutors,<sup>21</sup> public defenders,<sup>22</sup> estate planning attorneys,<sup>23</sup> family law attorneys,<sup>24</sup> immigration attorneys,<sup>25</sup> legal aid attorneys,<sup>26</sup> and every other

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(Jan. 27, 2019), <https://www.law360.com/articles/1121543/no-country-for-old-lawyers-rural-u-s-faces-a-legal-desert> [<https://perma.cc/YYN3-A5JS>] (noting rural legal needs such as “landlord-tenant issues, public benefits, independent education plans for children with disabilities and environmental injustices”); *see also* James W. Sandman & Ronald S. Flagg, *Foreword*, 13 HARV. L. & POL’Y REV. 1, 4 (2018) (“The most common types of civil legal problems among low-income, rural households include health (forty-three percent), consumer and finance (forty percent), and employment (twenty-five percent).”); Lorelei Laird, *In Rural America, There Are Job Opportunities and a Need for Lawyers*, A.B.A. J. (Oct. 2014), [www.abajournal.com/magazine/article/too\\_many\\_lawyers\\_not\\_here\\_in\\_rural\\_america\\_lawyers\\_are\\_few\\_and\\_far\\_between](http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between) (discussing the justice gap and need for attorneys in rural areas and discussing the need for attorneys in Wishek, North Dakota, who are versed in land laws and oil leases).

17. Pruitt et al., *Legal Deserts*, *supra* note 3, at 19-20 (noting shortages of civil and criminal attorneys).

18. *See* Jeff Jacoby, Opinion, *US Legal Bubble Can’t Pop Soon Enough*, BOS. GLOBE (May 9, 2014), <https://www.bostonglobe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/qAYzQ823qpfi4GQl2OipZM/story.html> [<https://perma.cc/PWE8-89MM>]; Steven J. Harper, Opinion, *Too Many Law Students, Too Few Legal Jobs*, N.Y. TIMES (Aug. 25, 2015) <https://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html> [<https://perma.cc/SWT2-TD5U>]; *see also* Jeff Jeff, *The Simpsons—Too Many Lawyers*, YOUTUBE (Dec. 18, 2017), <https://www.youtube.com/watch?v=xpJyHgiWrAU> [<https://perma.cc/XZ6J-2L7Q>] (quoting *The Simpsons: Sweets and Sour Marge* (Fox television broadcast Jan. 20, 2002)).

19. Pruitt et al., *Legal Deserts*, *supra* note 3, at 120-21.

20. *See, e.g.*, Lynch, *supra* note 3, at 1683 (“There are two distinct but related issues that affect legal representation in rural areas of the United States: the problem of attracting and keeping private attorneys, and the problem of satisfying the immense need for pro bono representation for low-income residents.”).

21. *See id.* at 1691 (noting that in Idaho rural prosecutors are having trouble competing with higher-paid position in Boise); Ethan Bronner, *No Lawyers For Miles, So Rural State Offers to 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> [<https://perma.cc/J6NB-85MY>], (quoting Gayle Kocer, The Mayor of Martin, South Dakota, “We need lawyers. Our state attorney drives down from Rapid City. It’s crazy. We haven’t had a full-time city attorney in years. For any legal issue, we have to look out of town.”)

22. Jill Schramm, *Indigent Defense Offices Work Hard To Recruit Attorneys*, MINOT DAILY NEWS (Mar. 30, 2019), <http://www.minotdailynews.com/news/local-news/2019/03/indigent-defense-offices-work-hard-to-recruit-attorneys> [<https://perma.cc/24D8-ZDEV>] (discussing public defender shortages in North Dakota and noting attorney recruitment difficulties, “especially in the western and rural parts of the state”).

23. *Lawyer Shortage in Some Rural Areas Reaches Epic Proportions*, NAT’L PUB. RADIO (Dec. 26, 2016, 5:00 AM), <https://www.npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage> [<https://perma.cc/G267-GKJC>] (discussing how messy the death of rural residents can become due to a lack of wills).

24. *Id.* (discussing how rural residents handle their own divorces).

25. Chad Davis & ST. LOUIS PUB. RADIO, *Immigrants, Migrants Caught in the Middle of Rural Lawyer Shortage*, HARVEST PUB. MEDIA (Sept. 24, 2018), <http://www.harvestpublicmedia.org/post/immigrants-migrants-caught-middle-rural-lawyer-shortage> [<https://perma.cc/N6PU-7LAY>] (discussing how the rural lawyer shortage impacts immigrants); *see also* David Wagner, KPCC, *California Housing Costs Push Migrants Away from Areas Providing the Most Help*, CALMATTERS (Dec. 19, 2018), <https://calmatters.org/articles/california-housing-costs-push-migrants-from-help/> [<https://perma.cc/YCD8-P7AX>] (discussing how new immigrants in California cannot afford to stay in the cities where legal aid is concentrated, and accordingly end up living in rural areas where immigration lawyers are not readily available).

26. Abrahamson, *supra* note 2 (quoting Richard LeMay, Executive Director of Legal Services of North Dakota, as saying “the lack of [rural] attorneys presents a big challenge to providing legal aid for

type of attorney.<sup>27</sup> It is certainly true that rural America needs more legal aid funding, and more legal aid attorneys.<sup>28</sup> The shortage of legal aid attorneys and funds is not unique to rural areas, but it is heightened there.<sup>29</sup> Rural legal service providers receive fewer funds than their urban counterparts.<sup>30</sup> The rural attorney shortage is especially heightened on reservations,<sup>31</sup> including the shortage of legal aid attorneys. One reason that reservation-based and other rural legal aid providers may suffer from an attorney shortage is that “legal service work is very demanding and stressful, and it’s often exacerbated for non-native attorneys on rural reservations as a result of physical and social isolation.”<sup>32</sup> Reservations are not the only rural areas with high minority populations and few legal resources.<sup>33</sup> Unfortunately, however, there is insufficient data to determine how legal aid resources are allocated across racial lines in combination with the rural/urban divide.<sup>34</sup>

Rural areas also have a shortage of government attorneys, forcing counties and municipalities to pay to bring in attorneys from other areas.<sup>35</sup> No one would contest that legal aid attorneys—wherever located—are public interest lawyers.<sup>36</sup> And few

civil cases”). Rural legal aid offices tend to have problems in filling jobs. For example, Dakota Plains Legal Services, an LSC-funded legal aid provider on South Dakota’s reservations, is constantly seeking attorneys. Interview with Frank Pommersheim, Professor of Law, University of S.D. Sch. of Law, in Vermillion, S.D. (Jan. 23, 2019); *see also* DAKOTA PLAINS LEGAL SERVS., *Job Opportunities*, <https://www.dpls.org/jobs> [<https://perma.cc/9HYK-H4PA>] (listing open legal aid attorney positions in South Dakota); PINE TREE LEGAL ASSISTANCE, *Employment*, <https://www.ptla.org/employment-0> [<https://perma.cc/8CK5-6BKU>] (listing open legal aid attorney positions in Maine).

27. Pruitt et al., *Legal Deserts*, *supra* note 3, at 120-21 (discussing general shortage of rural lawyers).

28. *Id.* at 116-18 (discussing the need for more legal aid funding in rural America).

29. Catherine Albiston et al., *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 L. & SOC. INQUIRY 990, 992 (2017) (showing with data that public interest legal organizations “are geographically distributed in ways that disadvantage rural and poor communities”).

30. Pruitt et al., *Legal Deserts*, *supra* note 3, at 54-55 (discussing the urban-rural disparity in legal aid funding in California). Also heightened in rural areas are the limitations faced by legal aid providers. ABA STANDING COMM. ON PRO BONO AND PUB. SERV. AND THE CTR. FOR PRO BONO, RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 7 (2003), [https://www.americanbar.org/content/dam/aba/images/probono\\_public\\_service/ts/aba\\_rural\\_book.pdf](https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/aba_rural_book.pdf) [<https://perma.cc/9N4Q-VWFJ>] [hereinafter ABA RURAL PRO BONO DELIVERY GUIDE] (“Staff-based rural legal aid programs face similar difficulties because they cover a wider geographic region with fewer personnel than urban legal aid programs.”).

31. Pruitt et al., *Legal Deserts*, *supra* note 3, at 102 (noting the disproportionate rural lawyer shortage on South Dakota’s reservations); *id.* at 134 (noting general access to justice issues on reservations).

32. Pommersheim interview, *supra* note 26.

33. Pruitt et al., *Legal Deserts*, *supra* note 3, at 118-19.

34. *See id.* at 116-17.

35. Pruitt et al., *Legal Deserts*, *supra* note 3, at 50 (attorneys traveling in California); *id.* at 66 (attorneys traveling in Georgia); *id.* at 82 (attorneys traveling in Wisconsin); *id.* at 106-07 (attorneys traveling in South Dakota); Bronner, *supra* note 21 (quoting Rolf Kraft, the County Board of Commissioners Chairman as saying, “Between sending out prisoners to Winner and bringing in lawyers and judges, we are breaking the county budget[.]”).

36. *See, e.g.*, 34 C.F.R. § 685.219(b) (2014) (defining public interest to include legal aid attorneys); *Public Service Practice Settings*, HARV. LAW SCH., <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/> [<https://perma.cc/8VBU-67ZF>] (describing public interest

would contest that government attorneys—wherever located—are public interest lawyers.<sup>37</sup> But legal aid and government attorneys are not the only shortage in rural parts of the country—rural areas have a shortage of *all* types of attorneys.<sup>38</sup> This generalized shortage of lawyers means that basically every lawyer in a rural area is providing essential legal needs of the type that is generally considered public interest.

In rural communities, there may be no or too few lawyers to meet the basic legal needs of residents, forcing community members to drive long distances—potentially hours—to access an attorney who can provide basic legal services, such as drafting wills or representing clients in divorces, custody actions, and personal injury suits.<sup>39</sup> Accordingly, private practice lawyers “promote the representation of the underrepresented [and aid in] ensur[ing] equal access to the legal system for all”—thus meeting one definition of public service lawyering.<sup>40</sup> Simply put, rural residents are too often denied access to justice, and the simple presence of rural private practice lawyers goes a long way to provide them access to justice.<sup>41</sup> Drake Law School recently launched a Rural Access to Justice Initiative that “will offer recent Drake Law graduates a pathway to solo or small firm practice in rural Iowa towns.”<sup>42</sup> That program is aimed at creating new private practice lawyers, but notably the goal of the program has been articulated as increasing access to justice in rural communities.<sup>43</sup> Drake Law School explained that the Rural Access to Justice Initiative “was designed to address Iowans’ access to justice by encouraging new attorneys to set up their law practices where attorneys are needed.”<sup>44</sup> Simply put, the presence of any attorney—even a private practice attorney—increases access to justice and serves the same goal as any other public interest lawyer because this is access to the legal system rural residents would not otherwise have—or would not be able to afford because the time and distance to travel to a non-local attorney is expensive.

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law as “tak[ing] place in legal services and law reform organizations, as well as in government agencies at all levels”).

37. See, e.g., 34 C.F.R. § 685.219(b) (2014) (defining public interest to include government attorneys).

38. See Lynch, *supra* note 3, at 1687 (“[R]ural residents have significant legal needs that are not being met by the legal aid programs currently in place—a lack of private attorneys in rural areas adds to this justice gap.”).

39. See, e.g., *id.* at 1684 (noting the difficulty clients face when traveling to lawyers because “[t]owns that are mere miles apart and within the same county may require hours-long journeys over rugged terrain”); Wandler, *supra* note 3, at 234 (“Distance creates isolation, and isolation can impact rural residents’ ability and motivation to seek legal assistance by making transportation and communication more taxing. Thus, service providers can expect to find that residents in remote rural communities more frequently leave legal needs unmet.”).

40. *Career Paths: Public Interest*, U. OF AKRON SCH. OF LAW, [https://www.uakron.edu/law/career/students/career-paths/fs\\_cp\\_publicinterest.dot](https://www.uakron.edu/law/career/students/career-paths/fs_cp_publicinterest.dot) [<https://perma.cc/27L9-LP4Y>] (providing a definition of public interest).

41. See Bartlett & Ray, *supra* note 1.

42. *Drake Law School Launches Rural Access to Justice Initiative*, DRAKE U.: NEWS & EVENTS (Sept. 11, 2018), <https://news.drake.edu/2018/09/11/drake-law-school-launches-rural-access-to-justice-initiative/> [<https://perma.cc/GZF3-RMV2>].

43. *Id.*

44. *Id.*



### B. Mixed Practice

The second reason to consider rural private practice attorneys as public interest lawyers is that rural attorneys frequently engage in mixed practice, meaning that many rural attorneys have more than one job.<sup>45</sup> Many rural attorneys will work as part-time prosecutors while simultaneously running a private practice.<sup>46</sup> Other rural attorneys will take frequent court appointments to serve as defense counsel (particularly in counties without a full-time public defender) while simultaneously running a private practice.<sup>47</sup> Other attorneys may serve as counsel for one or more municipalities, but still operate a private law firm.<sup>48</sup> Some attorneys may engage in several of the above. Because of how frequent mixed practice is in rural areas, rural attorneys are simply harder to categorize than urban lawyers. And rural attorneys do not neatly fit within a dichotomy of public interest versus law firms because many rural attorneys do both. The rural attorneys who engage in mixed practice by working for the government part-time should be considered public interest lawyers.

In addition, private practice lawyers who sometimes provide low bono or pro bono representation to community members should be considered public interest lawyers—even if those lawyers earn regular fees from other clients. Rural lawyers provide pro bono and low bono legal services to community members at higher average rates than their urban counterparts.<sup>49</sup> Currently, most states provide legal aid services through staffed offices, but there is another model—judicare.<sup>50</sup> The idea behind judicare is for the government to compensate private attorneys for handling

45. Although the concept of mixed practice has not been discussed as a reason to consider all rural attorneys as public interest attorneys, it has garnered attention with relationship to the special ethics concerns that arise in rural practice, especially when lawyers are engaging in mixed practice. See Hon. Judith K. Meierhenry, *Confidentiality and Conflicts of Interest: A Guide for South Dakota Lawyers*, 59 S.D. L. REV. 557 (2014) (discussing confidentiality and conflicts of interest issues with a specific focus on rural South Dakota); Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219, 294-98 (2010) (discussing criminal conflicts of interest in rural areas).

46. Nathan Johnson, *State's Attorney Candidate Says Better Relations with Attorney General Needed*, YANKTON DAILY PRESS & DAKOTAN (Sept. 21, 2004), [https://www.yankton.net/community/article\\_3eb3cb50-4cb8-576e-b986-cbe7646ad2de.html](https://www.yankton.net/community/article_3eb3cb50-4cb8-576e-b986-cbe7646ad2de.html) [<https://perma.cc/W9XQ-AM3R>] (noting that for a newly-elected prosecutor in South Dakota “[a] part-time position allows the state’s attorney to maintain, in his case, a private practice.”).

47. John Moritz, *Part-Timers Fill Legal Side-Needs, Prosecutors Say*, ARK. DEMOCRAT GAZETTE (July 27, 2016), <https://www.arkansasonline.com/news/2016/jul/27/part-timers-fill-legal-side-needs-prose-1/> [<https://perma.cc/SNX5-M358>] (quoting Arkansas prosecutor coordinator Bob McMahan as explaining: “[i]n rural counties with only a handful of licensed lawyers, many make a part of their income working part time as a city attorney, public defender, deputy prosecutor or prosecuting attorney”).

48. Ryan R. Reynolds, *Hardin City Council Looks To Boost City Attorney in Thursday Session*, THE VINDICATOR (June 30, 2016), [https://www.theindicator.com/news/hardin-city-council-looks-to-boot-city-attorney-in-thursday/article\\_5753639c-3ecf-11e6-921a-cba751fe63dd.html](https://www.theindicator.com/news/hardin-city-council-looks-to-boot-city-attorney-in-thursday/article_5753639c-3ecf-11e6-921a-cba751fe63dd.html) [<https://perma.cc/7L2N-6AT8>] (discussing a part-time city attorney and noting that private practice lawyer J. Grady Randle served as city attorney for four municipalities in rural Texas).

49. Pruitt et al., *Legal Deserts*, *supra* note 3, at 140-41.

50. See generally Andrea J. Saltzman, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 HASTINGS L.J. 1165 (1983) (discussing the two models of legal aid provision).

the type of work that would normally be done at a legal aid office.<sup>51</sup> Except for criminal appointments, the government-compensation system has never come to fruition, meaning attorneys in areas without legal aid offices who take legal aid type cases do so without pay. Even in circumstances where there is court appointed work, the rates are so low that rural attorneys lose money taking appointments, and if associates take appointments firms must make up the lost income.<sup>52</sup> Rural firms will sometimes make the strategic decision to forgo all criminal court appointments because the hourly rate is too low to support office overhead costs.<sup>53</sup> Unfortunately, court appointments or other sources of funding are not available for the types of civil cases that are normally handled by legal aid in urban areas, meaning private practice rural attorneys will handle those cases, and the rural attorneys will do it with no pay. This is undoubtedly public interest work.

### C. Community Services

Third, rural lawyers in private practice provide vital services to entire communities, and they provide critical community service volunteer work.<sup>54</sup> Broad definitions of “public interest work” already encompass rural private practice. An ABA publication once defined public interest work as “the use of law by nonprofit organizations, law firms, or government agencies to provide legal representation to people, groups, or interests that are historically underrepresented in the legal system.”<sup>55</sup> A law school describes the role of public interest as “to promote the representation of the underrepresented, ensure equal access to the legal system for

51. *Id.* at 1167 (“They proposed instead ‘judicare,’ a delivery system in which private attorneys would be compensated by the government on a fee-for-service basis for the representation of poor people.”).

52. E-mail from Philip L. Garland, rural private practice attorney in Garner, Iowa, to Lisa R. Pruitt, Professor of Law, U.C. Davis School of Law (Feb. 4, 2019, 4:08 A.M. PST) (on file with author); e-mail from Philip L. Garland to Lisa R. Pruitt (Feb. 3, 2019, 5:05 A.M. PST) (on file with author).

53. Stephen Nelson, Judge, Maine District Court, panel presentation at the Maine Law Review Symposium: Ensuring Equal Access to Justice in Maine’s Rural Communities (April 26, 2019); *see also* Maybell Romero, Assistant Professor of Law, Northern Illinois University College of Law, panel presentation at the Maine Law Review Symposium: Ensuring Equal Access to Justice in Maine’s Rural Communities (April 26, 2019) (providing example of an attorney who quit taking criminal appointments because the rates were too low to cover operating costs and student loans); Adam Swanson, Attorney, Swanson Law, P.A., panel presentation at the Maine Law Review Symposium: Ensuring Equal Access to Justice in Maine’s Rural Communities (April 26, 2019) (discussing how attorneys do not take court appointments because the fees do not cover overhead).

54. *See* Hillary A. Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 MONT. L. REV. 235, 239 (2016) (“Rural Montanans need attorneys on the ground in rural communities so the attorneys know the local culture, the community’s interests, individual needs, and the economy. Montana’s rural communities need attorneys who know the lay of the land culturally, economically, and interpersonally and have a vested interest in a thriving rural community.”).

55. Carla DeVelder, *Starting a Career in Public Interest Law: Passion, Commitment and a Desire to Serve*, BEFORE THE BAR (Mar. 1, 2012), <https://abaforlawstudents.com/2012/03/01/starting-a-career-in-public-interest-law/> [<https://perma.cc/7XZC-4FVQ>]. DeVelder then says this: “There are many different areas of public interest law, although some practice areas traditionally fall under the public interest law umbrella, such as animal welfare, consumer rights, civil liberties, legal services to the poor, housing law, GLBT rights, prisoner rights, and immigration law reform, just to name a few.” *Id.* Providing legal services to rural residents should be included on this list.

all and to raise society's consciousness regarding social and political issues that affect all of our lives."<sup>56</sup> Rural private practice lawyers already fit within these broad conceptions of public interest work. As one North Dakota journalist explained: "[w]hile lawyers make up a small piece of the overall labor market, their role in communities is big."<sup>57</sup>

Rural lawyers provide integral services and long-term benefits to rural communities, even if those lawyers represent only fee-paid clients in a private practice.<sup>58</sup> Private practice lawyers in rural communities "assist[] the infrastructure of these rural counties to vibrantly expand and grow, rather than wither away and ultimately become uninhabited with only remnants of courthouses and what once was a thriving rural society."<sup>59</sup> In addition, rural lawyers also provide critical community services, for example by serving on local nonprofit or school boards.<sup>60</sup> Even when a lawyer is simply serving as a board member—not as counsel—having a lawyer board member provides distinct advantages to nonprofits.<sup>61</sup>

#### D. Rural Lawyer Salaries

The final reason to consider rural private practice lawyers as public interest lawyers is because rural lawyers—especially in the years immediately following law school—do not earn more, and will frequently earn less, than traditional public interest lawyers. The data on new-lawyer salaries does not give a specific breakdown based on community size, but the available data supports this point. For 2017 graduates working in private practice, the national mean salary was \$119,739.<sup>62</sup> The public interest national mean salary in the same class was \$51,590, while government attorneys had a mean salary of \$60,361.<sup>63</sup> Those public interest lawyers and government attorneys are covered by loan forgiveness policies benefiting public service lawyers.<sup>64</sup> But private practice lawyers in rural areas frequently make less. For example, the vast majority of new attorneys practicing at firms in South

56. UNIV. OF AKRON SCH. OF LAW, *Career Paths: Public Interest*, [https://www.uakron.edu/law/career/students/career-paths/fs\\_cp\\_publicinterest.dot](https://www.uakron.edu/law/career/students/career-paths/fs_cp_publicinterest.dot) [<https://perma.cc/FX9R-JYFA>].

57. Abrahamson, *supra* note 2.

58. See Wandler, *supra* note 3, at 227-28 (discussing rural legal needs that can be filled by private practice attorneys); see also Pruitt et al., *Legal Deserts*, *supra* note 3, at 106-08 (providing the example of Gregory County, South Dakota, as a place where private practice rural lawyers provide critical legal services).

59. C.J. DAVID GILBERTSON, 2019 STATE OF THE JUDICIARY MESSAGE, S.D. UNIFIED JUDICIAL SYS. 7 (2019), <https://ujs.sd.gov/uploads/annual/fy2018/2019StateOfTheJudiciaryMessage.pdf> [<https://perma.cc/3VYV-RDZF>].

60. See Wandler, *supra* note 54, at 249 (discussing rural attorney community involvement).

61. Alex A. Lozada, *Why Serve on a Nonprofit Board of Directors?*, A.B.A.: THE YOUNG LAWYER, [https://www.americanbar.org/groups/young\\_lawyers/publications/tyl/topics/professional-development/why-serve-a-nonprofit-board-directors/](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/professional-development/why-serve-a-nonprofit-board-directors/) [<https://perma.cc/7WGZ-53MW>] ("A board also may benefit from having a lawyer member, as lawyers are creative problem solvers and are often well versed in networking.").

62. NAT'L ASS'N FOR LAW PLACEMENT, INC., JOBS & JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2017, 19 (2018).

63. *Id.* Judicial clerkships, a subset of government jobs, had a mean salary of \$56,013. *Id.*

64. See generally 34 C.F.R. § 685.219 (2014) (noting the rules governing eligibility for the Public Service Loan Forgiveness Program).

Dakota—even including the state’s largest cities—make only between \$52,000 and \$58,000.<sup>65</sup> In Maine, new rural private practice lawyers typically earn between the mid-\$40,000s to the low-\$50,000s.<sup>66</sup> If public interest and government attorneys making a salary in the \$50,000s or \$60,000s deserve government aid in the form of loan forgiveness, then so do rural private practice attorneys earning a salary in the \$40,000s or \$50,000s.<sup>67</sup>

For all of these reasons, rural attorneys in private practice should be considered public interest lawyers. The implications of this view follow.

### III. IMPLICATIONS

Once policy makers and community members have embraced rural private practice attorneys as doing public interest work, various benefits will accrue. Most importantly, loan forgiveness programs can be extended to private practice lawyers in rural communities. In addition, law schools and local communities can capitalize on the public interest aspect of rural lawyering to attract more lawyers to rural areas.

#### A. Federal Loan Forgiveness

The federal government runs a number of loan forgiveness programs;<sup>68</sup> most relevant here is the Public Service Loan Forgiveness Program (“PSLF”).<sup>69</sup> This program provides loan forgiveness to qualifying borrowers who work full-time in public service for ten years while making income-based repayments.<sup>70</sup> PSLF does not allow any attorney in private practice to participate, thus excluding a large number of rural lawyers whose work should be considered public interest lawyering.<sup>71</sup> Because rural private practice attorneys face the same salary pressures as traditional public interest lawyers and because covering rural private practice attorneys meets the stated goals of the program, PSLF should be amended to cover rural private practice. And, thankfully, a small administrative change can allow for

65. E-mail from Alisa Rosales, Director of Career Services at the University of South Dakota School of Law, to author (Jan. 4, 2019, 11:29 A.M. CST) (on file with author).

66. E-mail from Derek Van Volkenburgh, Director of Career Services at the University of Maine School of Law, to Mac Walton (Feb. 25, 2019, 4:09 P.M. EST) (on file with author).

67. See NAT’L ASS’N FOR LAW PLACEMENT, INC., *supra* note 62; E-mail from Alisa Rosales, *supra* note 65. The National Association for Law Placement, Inc. (“NALP”) collects salary data on new public service attorneys and breaks down that data by area population. NAT’L ASSOC. FOR LAW PLACEMENT, INC., 2018 PUBLIC SERVICE ATTORNEY SALARY REPORT (2019). Although NALP does not define “rural” in its publication, it provides data with rural areas separated out. For some categories, there were insufficient responses to provide accurate data on rural salaries. See, e.g., *id.* at 9-10 (noting insufficient responses for rural areas on “Salaries for Lawyers at Civil Legal Services Organizations By Years of Experience”). When salaries are reported, public service lawyers in rural areas earn similar salaries to public service lawyers in larger metropolitan areas. *Id.* Accordingly, it appears the largest salary difference between rural and urban areas is in the area of private practice.

68. See generally U.S. DEP’T OF EDUC., *In Certain Situations, You Can Have Your Federal Student Loan Forgiven, Canceled, or Discharged*, FED. STUDENT AID, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation> [<https://perma.cc/GD6G-QE3H>] (listing various loan forgiveness programs).

69. 34 C.F.R. § 685.219 (2014).

70. 34 C.F.R. § 685.219(c)(1)(ii) (2014).

71. 34 C.F.R. § 685.219(b) (2014) (defining public interest).

this coverage. The Code of Federal Regulations can simply be updated to allow rural private practice lawyers to qualify for the program by amending who qualifies for loan forgiveness.<sup>72</sup>

One goal of PSLF is to incentivize new graduates to choose types of work that provide critical services to underserved communities. As lawyers concentrate in urban areas and the rural attorney shortage grows, incentives are needed to bring new law school graduates into rural areas.<sup>73</sup> For many law students, the need for financial incentives is mainly tied to rising levels of student loan debt.<sup>74</sup> In addition, because rural attorneys frequently engage in mixed practice with part-time jobs that would otherwise meet the current standards of PSLF, prosecutors and public defenders face a clear economic disadvantage in rural areas.<sup>75</sup>

Assuming PSLF continues, the federal regulations can simply be amended to cover rural private practice. This policy change should receive bipartisan support. Democrats are generally in favor of expanding loan forgiveness programs, and thus should support this modest expansion of the program.<sup>76</sup> Republicans also traditionally support loan forgiveness—President George W. Bush signed PSLF into law.<sup>77</sup> Both conservatives and liberals should have an interest in boosting rural economies. Even small-government conservatives should support this modest expansion of a government program because encouraging lawyers to enter rural private practice creates long-term economically-contributing members of rural communities.

I would be remiss in proposing an expansion of PSLF without also noting its

72. Currently, 34 C.F.R. § 685.219(c)(1)(ii) requires full-time employment by a “public service organization,” although a new provision allowing for a private practitioner in a rural area could easily be added.

73. See Lynch, *supra* note 3, at 1690-91 (“In addition to the problems that face low-income individuals in rural areas, private attorneys are now flocking to urban areas; this ‘rural flight’ hinders access to traditional paid legal services for rural residents, as well as the opportunity for pro bono services for low-income individuals.”).

74. See Wandler, *supra* note 54, at 246 (“New lawyers starting rural practices will require at least some level of financial and logistical support. The need for financial support in rural practice is closely connected to students’ law school debt.”).

75. Many rural counties function using only one or more part-time prosecutors, while urban counties have large staffs. For example, McKenzie County, North Dakota switched its part-time state’s attorney to a full-time state’s attorney for the first time in 2013, while Montgomery County, Maryland has seventy full-time state’s attorneys. The seventy full-time state’s attorneys would qualify for federal loan forgiveness, while a part-time prosecutor serving an entire rural county would not. Compare *McKenzie County Hires Full-time State’s Attorney*, GRAND FORKS HERALD (Dec. 20, 2013), <https://www.grandforksherald.com/content/mckenzie-county-hires-full-time-states-attorney-1> [<https://perma.cc/L3AJ-ASRE>], with *About Us*, STATE’S ATTORNEY’S OFFICE, MONTGOMERY COUNTY, MD., <https://www.montgomerycountymd.gov/sao/about/index.html> [<https://perma.cc/Q7E5-9CKJ>].

76. Jordan Weissmann, *Student Debt Forgiveness Really, Really Popular Among Democrats*, SLATE (Nov. 28, 2018), <https://slate.com/business/2018/11/poll-student-debt-forgiveness-popular-among-democrats.html> [<https://perma.cc/C6RX-VV6M>].

77. See Annie Nova, *Here Are the Facts About Public Service Loan Forgiveness*, CNBC, (Dec. 21, 2018), <https://www.cnn.com/2018/12/21/1-percent-of-people-were-approved-for-public-service-loan-forgiveness.html> [<https://perma.cc/EL2H-ZDA5>] (outlining the Federal Loan Forgiveness Program); Emily Wilkins, *Don’t Kill Loan Forgiveness in Higher Ed Bill, Republicans Say*, BLOOMBERG GOV’T (May 18, 2018), <https://edlabor.house.gov/media/news/dont-kill-loan-forgiveness-in-higher-ed-bill-republicans-say> [<https://perma.cc/JTE2-7JBS>] (explaining Republican support for the Federal Loan Forgiveness Program).

current negative impact on the law schools who send the most graduates into rural practice. PSLF encourages law schools to raise tuition, and students at more expensive law schools—which tend to concentrate in urban areas—receive greater benefits from the program.<sup>78</sup> One study shows that a lawyer participating in the program—earning an average salary—will have zero marginal cost in student loans for anything borrowed above \$54,500.<sup>79</sup> In other words, a student planning to participate in PSLF is incentivized to borrow anything above \$54,500 because they will never pay on that debt; accordingly, they are likely to choose more expensive—and likely more urban—law schools.<sup>80</sup>

Take, for example, a student in the Great Plains choosing between Creighton University in Omaha, Nebraska (population 466,893)<sup>81</sup> and the University of South Dakota School of Law in Vermillion, South Dakota (population 10,772).<sup>82</sup> The tuition and fees at Creighton are over \$40,000 per year,<sup>83</sup> while in-state tuition and fees at the University of South Dakota are just under \$17,000 a year.<sup>84</sup> A student choosing between the two has little incentive to “save money” by attending a cheaper school because everything after the first \$54,500 in loans is entirely subsidized by the government,<sup>85</sup> meaning the federal government would pay for \$65,500 of a Creighton student’s education, while paying for none of a University of South Dakota student’s education. Although on a different scale, consider a student in the northeast choosing between the University of Maine School of Law (“Maine Law”)

78. For example, the *National Jurist* publishes a list of *Best Value Law Schools* every year, and the law schools at the top of that list tend to be public schools. *Law School Rankings*, NAT’L JURIST., <http://nationaljurist.com/compare-schools> [https://perma.cc/KCF7-LBR6]; see Gregory Yang, *Mag Names ‘Top 25 Best-Value Schools’*, TIPPING THE SCALES, (Nov. 4, 2017), <https://tippingthescales.com/2017/11/top-25-best-value-law-schools/> [https://perma.cc/FKB6-MS4P]. Of the law schools with the cheapest tuition, all of the top-ten schools—except the University of the District of Columbia—are located in smaller municipalities in states with low populations. See *The 10 Most Affordable Law Schools in the United States*, AFFORDABLE SCHS., <https://affordableschools.net/the-10-most-affordable-law-schools-in-the-united-states/> [https://perma.cc/4V2P-AVF6]; *10 Top Affordable Recognized Law Schools in the U.S.*, THE BEST SCHS., <https://thebestschools.org/features/top-affordable-recognized-law-schools/> [https://perma.cc/8WJG-ZRNL]; see also Staci Zaretsky, *The Top 20 Most Affordable Law Schools*, ABOVE THE LAW, (Apr. 9, 2018), <https://abovethelaw.com/2018/04/the-top-20-most-affordable-law-schools/?rf=1> [https://perma.cc/VL79-TJKM] (providing a list of the top twenty cheapest law schools).

79. Jason Delisle & Alexander Holt, *Public Service Loan Forgiveness: Big Benefits, Bad Incentives*, NEW AM. (Sept. 10, 2014), <https://www.newamerica.org/education-policy/edcentral/zeromarginalcost/> [https://perma.cc/2SZA-C4GF].

80. *Id.*

81. *Quick Facts: Omaha City, Neb.*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/omahacitynebraska,US/PST045218> [https://perma.cc/VEF7-HAVX] (estimating the population in Omaha as of July 1, 2017).

82. *Quick Facts: Vermillion City, S.D.*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/vermillioncitysouthdakota,US/PST045218> [https://perma.cc/QX29-3NXX] (estimating the population in Vermillion City as of July 1, 2017).

83. *Law School Cost of Attendance*, CREIGHTON SCH. OF LAW, <http://www.creighton.edu/financialaid/tuitionfeesroomboard/law/> [https://perma.cc/W9C3-VPNM].

84. *Tuition & Fees*, UNIV. OF S.D. SCH. OF LAW, <https://www.usd.edu/law/tuition-and-fees> [https://perma.cc/K7U9-WG7K].

85. See Delisle & Holt, *supra* note 79.

in Portland, Maine (population 66,882),<sup>86</sup> and Boston University School of Law in Boston, Massachusetts (population 685,094).<sup>87</sup> The in-state tuition and fees at Maine Law are \$23,610,<sup>88</sup> while Boston University tuition and fees are just over \$55,000.<sup>89</sup> Yet, because the federal government will pay for any debt above \$54,500, the government would pay for over \$15,000 for the education of a student at Maine Law, and over \$100,000 for the education of a student at Boston University School of Law.<sup>90</sup> A prospective student planning to participate in PSLF would see no reason to choose the cheaper rural law schools over the more expensive urban schools.

Accordingly, the more expensive law schools can charge more for tuition because the government pays the increased costs through loan forgiveness, and the cheaper law schools—which are concentrated in rural areas—end up subsidizing the expensive schools. This system does a disservice to the American educational system as a whole. The best alternative is to have the government directly subsidize education fairly instead of allowing more expensive and urban schools to receive a larger benefit. Despite better alternatives and the problems with the program, PSLF has quickly become important to many individuals. And despite a president who has repeatedly stated his interest in decreasing federal loan forgiveness programs,<sup>91</sup> it appears the programs are fully entrenched and are unlikely to be repealed.<sup>92</sup>

### B. Recruiting: Law Schools and Rural Communities

The federal role in student loan forgiveness is only one reason that conceptualizing rural private practice as public service is relevant. Law schools and rural communities should be better able to recruit students if they advertise rural lawyering as public service. As the rural lawyer shortage becomes more

86. *Quick Facts: Portland City, Maine*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/portlandcitymaine,US/PST045218> [<https://perma.cc/9QAD-Q5QH>].

87. *Quick Facts: Boston City, Mass.*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/bostoncitymassachusetts,US/PST045218> [<https://perma.cc/K68Q-ZRRF>].

88. *Tuition & Fees*, UNIV. OF ME. SCH. OF LAW, <https://mainelaw.maine.edu/admissions/financing-your-education/tuition-and-fees/> [<https://perma.cc/2YEG-24UB>].

89. *BU School of Law Tuition & Fees*, BOS. UNIV. SCH. OF LAW, <http://www.bu.edu/law/admissions/tuition-and-fees/> [<https://perma.cc/H3P7-73G2>].

90. Delisle & Holt, *supra* note 79.

91. Bobby Allyn, *Public Servants Took Jobs Counting on Loan Forgiveness. Trump Might Stiff Them.*, WASH. POST (May 26, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/05/26/if-trumps-gets-his-budget-wish-itll-cost-grads-more-to-go-into-public-service/?utm\\_term=.692ebeb35f8](https://www.washingtonpost.com/posteverything/wp/2017/05/26/if-trumps-gets-his-budget-wish-itll-cost-grads-more-to-go-into-public-service/?utm_term=.692ebeb35f8) [<https://perma.cc/3588-J2MA>] (“Though thousands of Americans have made higher education choices and built their lives around the promise of loan forgiveness to pursue careers in public service, the Trump administration is hoping to shut that down, according to the White House’s 2018 budget.”).

92. David Dayen, *The Gaping Divide Over Student Debt*, NEW REPUBLIC (Aug. 2, 2018), <https://newrepublic.com/article/150363/gaping-divide-student-debt> [<https://perma.cc/36AG-ZK2K>] (“The program survived, and Congress temporarily expanded it by \$350 million, so individuals who initially enrolled in the wrong repayment plans could be covered.”).

publicized,<sup>93</sup> and states continue to develop incentive programs,<sup>94</sup> potential law students will be drawn to schools that offer rural law programs.<sup>95</sup> They will also be drawn to schools that recruit rural students<sup>96</sup> and can help interested students obtain rural lawyer jobs after graduation.<sup>97</sup>

Law school applicants are drawn in by an interest in public service. The Association of American Law Schools (“AALS”) recently conducted a study called “Before the JD,” and found that “[a]spir[ing] undergraduates report public-spirited motivations as the top reasons for considering a JD, including seeing it as a pathway to a career in public service, being helpful to others, and advocating for social change.”<sup>98</sup> Law schools should capitalize on this interest in serving others by advertising rural practice as public service. One director of admissions at a rural law school reports that she “encounter[s] applicants who want to do rural practice because they view it as a way to serve communities that they grew up in” and “[t]he law school’s focus on rural access to justice also helps with recruiting efforts.”<sup>99</sup>

Several urban law schools brand themselves as “public interest” schools and are successful in drawing in students.<sup>100</sup> In a promotional video for the University of the

93. For a long time, the rural attorney shortage was simply not discussed. The *New York Times* article in 2013 started a wave of national media coverage. See Bronner, *supra* note 21. Law Reviews have also stepped into the fray in publishing about the rural lawyer shortage. See, e.g., *Revitalizing Rural America*, 13 HARV. L. & POL’Y REV. 1 (2018); *Rural Practice Symposium*, 59 S.D. L. REV. 431 (2019); *Foreword: Ensuring Equal Access to Justice in Maine’s Rural Communities*, 71 ME. L. REV. 205 (2019).

94. This Article does not provide a full discussion of the various incentive programs used by states, but states have been trying different programs to get new attorneys into rural practice. South Dakota is, so far, the only state to have a paid incentive program for new rural lawyers. Other states, such as North Dakota and Maine, have attempted to develop similar programs, but have been unsuccessful. Pruitt et al., *Legal Deserts*, *supra* note 3, at 101 n.473 (North Dakota); *id.* at 101 (Maine). Even more states have tried to interest law students in rural practice by encouraging summer internships in rural areas and by even taking law students on bus tours of small towns. *Id.* at 124-25 (noting bus tours in Nebraska, Wisconsin, and California); see also Wandler, *supra* note 54, at 257-58 (discussing various methods law schools have used to entice students to consider rural practice).

95. See Pruitt et al., *supra* note 2, at 148-51 (discussing what law schools can be providing in their curriculum for future rural lawyers).

96. Aaron Gettinger, *One Reason Rural Students Don’t Go to College: Colleges Don’t Go to Them*, NAT’L PUB. RADIO (Mar. 6, 2019), <https://www.npr.org/2019/03/06/697098684/one-reason-rural-students-dont-go-to-college-colleges-don-t-go-to-them> [<https://perma.cc/KX8S-WYJ2>].

97. See, e.g., *u/Lachitown*, REDDIT, [https://www.reddit.com/r/LawSchool/comments/7zqdgk/rural\\_attorney\\_experiences/](https://www.reddit.com/r/LawSchool/comments/7zqdgk/rural_attorney_experiences/) [<https://perma.cc/2FZC-BCPF>] (providing one sample discussion of potential law students contemplating law schools that can—or cannot—aid in later obtaining a rural law job).

98. ASS’N OF AM. LAW SCHS., HIGHLIGHTS FROM BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 3 (2018), <https://www.aals.org/wp-content/uploads/2018/09/BJDReportsHghlights.pdf> [<https://perma.cc/SH6X-VAWH>].

99. E-mail from Liz Taggart, Director of Admissions at University of South Dakota School of Law, to author (Jan. 25, 2019, 12:08 P.M. CST) (on file with author).

100. See *Center for Public Interest Advocacy and Collaboration*, NORTHEASTERN UNIV. SCH. OF LAW, <https://www.northeastern.edu/law/academics/institutes/cpiac/index.html> [<https://perma.cc/TM27-3YSN>] (providing the public interest focused mission statement: “Through teaching, practice, research and networking, CPIAC seeks to enhance the role of law and legal practice in achieving social, economic, and environmental justice in all dimensions. Searching for innovative and holistic solutions to contemporary social justice challenges, we work across disciplines; we engage with academic, professional, advocacy and grassroots communities; and we develop approaches to legal education



District of Columbia David A. Clarke School of Law, a student explains, “I had looked at a few other law schools, but to me social justice is really important. UDC is the only school that I think really gets that.”<sup>101</sup> Rural law schools should change their branding to show potential students that the schools “get” social justice work in rural settings, much like UDC Law “gets” social justice work in the D.C. area. It is clear that students have a desire to serve rural areas: in a promotional video for the University of South Dakota School of Law, a student explains, “I want[ed] to go to law school because I want to help people from rural South Dakota.”<sup>102</sup> Admissions officers should have greater success in recruiting students like these if they focus on the public service aspect of rural practice.

Law schools can further encourage rural practice by including rural private practice in their loan repayment programs, much like I suggest the federal government should. Elite law schools already provide loan forgiveness for students entering public interest and government jobs,<sup>103</sup> but very few schools cover rural private practice. Yale Law School’s loan forgiveness program applies to any employment, based only on income earned, not type of job.<sup>104</sup> Harvard Law School’s loan forgiveness program covers some types of private employment, including “firm jobs outside of major cities.”<sup>105</sup> Michigan Law School’s loan forgiveness program is the only one to expressly mention rural areas: it specifies that it is not limited to traditional public interest jobs because “[w]e really want our graduates to do the legal work they want to do, whether that is for a public interest organization, the

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geared toward this mission.”); see also *Best Schools for Public Interest Law*, NAT’L JURIST, (Feb. 12, 2014), <http://www.nationaljurist.com/prelaw/best-schools-public-interest-law> [<https://perma.cc/Q2LW-5VN3>] (providing a list of twenty-five schools who are considered the best for public interest after looking at curriculum, clinical opportunities, cost of legal education, and placement in public interest jobs after graduation).

101. UDC LAW, *UDC Law: The District of Columbia’s Public Law School*, YOUTUBE (Sept. 19, 2017), [https://www.youtube.com/watch?time\\_continue=72&v=SFt\\_GZDtZ4s](https://www.youtube.com/watch?time_continue=72&v=SFt_GZDtZ4s) [<https://perma.cc/T7PN-MLJ2>] (quoting Amaya Henry, UDC Law Class of 2019). Adrian Gottshall, an alumna of UDC Law (J.D. ’11; LL.M. ’17) went on to explain how public service is brought into the curriculum: “We don’t just teach them how to litigate and how to write a motion and how to argue in front of the court and in front of the judge, but we’re also teaching them the importance of being a public interest, poverty lawyer. Because we’re representing real clients in real court and we’re making a difference in people’s lives.” *Id.*

102. UNIV. OF S.D., *Tom Schartz- Top 15 Law Scholar*, YOUTUBE (Feb. 19, 2019), <https://www.youtube.com/watch?v=LmFn7UisiQ&feature=youtu.be> [<https://perma.cc/JZ7C-ZVKQ>] (quoting Tom Schartz, USD Law Class of 2021).

103. Law schools that run independent loan forgiveness programs tend to exclude all or most private practice work, regardless of the salary earned. See, e.g., *The Columbia Law School Loan Repayment Assistance Program*, COLUMBIA LAW SCH., [https://www.law.columbia.edu/sites/default/files/microsites/financial-aid/files/lrap\\_policy\\_jd\\_effective\\_feb2019.pdf](https://www.law.columbia.edu/sites/default/files/microsites/financial-aid/files/lrap_policy_jd_effective_feb2019.pdf) [<https://perma.cc/GAR3-XXFV>] (noting coverage for the program “may include private practice where the practice is limited to clients comparable to those served by government-supported and non-profit legal services organizations”).

104. *Yale Law School Career Options Assistance Program*, YALE LAW SCH. (Oct. 25, 2011), [https://law.yale.edu/system/files/area/department/finaid/document/COAP\\_incoming\\_description.pdf](https://law.yale.edu/system/files/area/department/finaid/document/COAP_incoming_description.pdf) [].

105. *How To Compare LRAPS*, HARVARD LAW SCH., <https://hls.harvard.edu/dept/sfs/basics-for-prospective-and-admitted-students/financial-aid-for-public-service/how-to-compare-lraps> [<https://perma.cc/5SRT-YAV8>].

government, or a small law firm in a sparsely populated area.”<sup>106</sup> Other law schools, like Virginia,<sup>107</sup> Pennsylvania,<sup>108</sup> and Stanford,<sup>109</sup> cover some private practice, but place certain limitations on coverage. Other elite schools—such as Columbia,<sup>110</sup> Chicago,<sup>111</sup> NYU,<sup>112</sup> Berkeley,<sup>113</sup> Georgetown,<sup>114</sup> Texas,<sup>115</sup> Northwestern,<sup>116</sup> and Duke<sup>117</sup>—do not cover rural private practice at all. Because schools are already in an “arms race” to increase loan repayment programs,<sup>118</sup> the schools with internal loan forgiveness programs should update their programs to encourage rural private practice.

Even after students with an interest in rural practice attend law school, rural communities need to attract lawyers. Some communities will be able to bring home new lawyers who have connections, while other communities will need to engage in a broader campaign. As I wrote about in 2014, in the 1970s the Indian Health Service—a largely rural program—successfully improved its recruiting method by focusing on physicians’ “idealism and desire to fill a particular health need.”<sup>119</sup> Law students at the University of Montana explained their interest in rural private practice

106. *Frequently Asked Questions: Loan Repayment*, MI. LAW SCH., <https://www.law.umich.edu/financialaid/FAQ/Pages/loanrepayment.aspx> [<https://perma.cc/ZL76-6EQG>].

107. *Loan Repayment Assistance Program Frequently Asked Questions*, STANFORD LAW SCH., <https://law.stanford.edu/apply/tuition-financial-aid/loan-repayment-assistance-program-lrap/#slsnvap-lrap-babies-gallery> [<https://perma.cc/46RS-42HZ>] (requiring certain types of work).

108. *Toll Loan Repayment Assistance Program Guidelines (TollRAP II)*, PENN LAW, <https://www.law.upenn.edu/live/files/8663-tollrap-guidelines-112019> [<https://perma.cc/B7UL-2T62>] (requiring certain types of work).

109. *Virginia Loan Commonwealth Plan (VLCP II)*, UNIV. OF VA. SCH. OF LAW (Nov. 3, 2014), [https://www.law.virginia.edu/system/files/publicservice/VLCPII\\_20141103.pdf](https://www.law.virginia.edu/system/files/publicservice/VLCPII_20141103.pdf) [<https://perma.cc/U4HZ-73X5>] (requiring work to be in certain qualifying areas).

110. *The Columbia Law School Loan Repayment Assistance Program*, *supra* note 103.

111. *Loan Repayment Assistance Program (LRAP)*, UNIV. OF CHI. LAW SCH., <https://www.law.uchicago.edu/financialaid/LRAP> [<https://perma.cc/3V4A-Q762>].

112. *Eligible Employment, LRAP Plus Policies*, NYU LAW, <https://www.law.nyu.edu/financialaid/lrap/lrap-plus-policies-2019-forward/eligible-employment> [<https://perma.cc/X6Z5-U5WD>]; *see also Full Program Description, Loan Repayment Assistance Program*, NYU LAW, <https://www.law.nyu.edu/financialaid/lrap/program-details> [<https://perma.cc/K7NL-KRDV>] (providing NYU’s LRAP policy prior to 2019).

113. *LRAP Eligibility Guidelines—2013 & Beyond*, UNIV. OF CAL. BERKELEY LAW, <https://www.law.berkeley.edu/admissions/jd/financial-aid/loan-repayment-assistance-program/lrap-eligibility-guidelines-2013-beyond> [<https://perma.cc/5DSQ-XSXB>].

114. *LRAP-Eligible Employment*, GEORGETOWN LAW, <https://www.law.georgetown.edu/admissions-aid/financial-aid/loan-repayment-assistance-program/lrap-eligible-employment> [<https://perma.cc/8YBU-MDA2>].

115. *Texas Law Loan Repayment Assistance Program Guidelines*, UNIV. OF TEX. AT AUSTIN SCH. OF LAW, <https://law.utexas.edu/financial-aid/lrap/guidelines> [<https://perma.cc/XKY9-MHUA>].

116. *Loan Repayment Assistance Program (LRAP)*, NORTHWESTERN PRITZKER SCH. OF LAW, [www.law.northwestern.edu/admissions/tuitionaid/lrap](http://www.law.northwestern.edu/admissions/tuitionaid/lrap) [<https://perma.cc/4PV7-DXUU>].

117. *Loan Repayment Assistance Program (LRAP)*, DUKE LAW, <https://law.duke.edu/admis/financial/lrap> [<https://perma.cc/XJG8-AMKW>].

118. Karen Sloan, *LRAP Arms Race, The Leading Edge of Legal Ed*, LAW.COM (Jan. 14, 2019), <https://link.law.com/public/15700930> [<https://perma.cc/4KS9-5ATW>].

119. Alsgaard, *supra* note 6, at 613 (citing C.L. Hostetter & J.D. Felsen, *Multiple Variable Motivators Involved in the Recruitment of Physicians for the Indian Health Service*, 90 PUB. HEALTH REP. 319, 324 (1975)).

by saying they “felt they could make a real difference in individuals' lives.”<sup>120</sup> The paid incentive program for rural lawyers in South Dakota has similarly seen success in recruiting by focusing on the public service aspect. The originators of the South Dakota program imagined the target demographic of new lawyers would be those interested in outdoor activities—such as hunting and fishing—but instead new lawyers have chosen to practice in rural South Dakota because of family connections or an interest in public interest work.<sup>121</sup> Communities should focus on promoting the public service piece of rural practice—in addition to any financial incentives<sup>122</sup>—when recruiting new lawyers. It is the combination of competitive wages and promoting public service that will make recruitment successful.<sup>123</sup>

Once new attorneys arrive in rural areas, the communities must provide support and nurturing. With few local lawyers, there likely will not be bountiful bar membership activities, but communities can support lawyers in other ways, such as providing office space, helping with housing, supporting a spouse's career, and generally welcoming new lawyers into the community. Rural reservations face particular challenges.<sup>124</sup> Few tribes have their own bar associations, but those that do exist can provide critical support for rural attorneys.<sup>125</sup> The point is that rural areas “need communities to nourish those rural lawyers, and doubly so for native communities.”<sup>126</sup> Rural communities must therefore be committed to not only attracting, but also retaining, rural lawyers who will ultimately make a life-long impact.

#### IV. CONCLUSION

Rural lawyers—practicing in any field—should be considered public interest lawyers. Rural lawyers provide critical services to rural communities and frequently engage in mixed practice. These lawyers currently do not qualify for financial benefits—such as loan forgiveness—because they are not full-time public interest or government lawyers. Yet the average rural private practice attorney makes no more than the average public interest or government lawyer. In order to incentivize new law school graduates to move to rural areas, those new graduates should receive loan forgiveness just like other attorneys who serve the public. This history of medical professional recruiting demonstrates that even simply conceptualizing rural private practice as public service may help law schools in recruiting future rural lawyers and may help communities in recruiting the new lawyers they so desperately need.

120. Wandler, *supra* note 54, at 237.

121. Interview with David Gilbertson, Chief Justice, South Dakota Supreme Court, in Vermillion, S.D. (Oct. 5, 2017).

122. While law students in Montana identified serving the public as the biggest draw to rural practice, they saw financial risk as the downside. Wandler, *supra* note 54, at 237. Communities can combat this hesitancy by providing financial incentives.

123. See Abrahamson, *supra* note 2 (noting “competitive wages are necessary” to attract lawyers to North Dakota).

124. Interview with Frank Pommersheim, *supra* note 26.

125. For example, in South Dakota only the Rosebud Sioux Tribe has its own bar association—the Sicangu Oyate Ho Bar Association. *Id.*

126. *Id.*