



Law Student Division

by Anthony Teesdale

Draining the Waters Around the Islands of Justice: Opportunities in Rural Practice for New Law School Graduates

Law students of today have a difficult road ahead

of them. Not only do they face the traditional challenges of a law school curriculum, but they also face a challenging job market. Furthermore, fewer graduates are choosing to practice in rural areas, and more are choosing urban areas. Many jurisdictions have created programs to combat the legal needs of rural America. Leading the way is the State Bar of South Dakota (SBSD), which has created Project Rural Practice. The program will help to combat the trend of urban migration and bring back the Main Street attorney.¹

The "American Bar Association (ABA) Report and Resolution for Project Rural Practice" reports that 65 percent of the attorneys in South Dakota are located in four cities. The rest are spread few and far between. There are 19 counties in the state that have between one and three attorneys, and 14 counties that have between four and six. Six counties have no attorneys.² This situation is not unique to South Dakota, however. In North Dakota, 21 of the 53 counties have fewer than four attorneys. In Georgia, 70 percent of the attorneys are based in the Atlanta area. In Arizona, 94 percent of the attorneys are located in the two largest cities.³ The lack of rural attorneys expands beyond the Midwest region as well. In Maryland, there are 35,000 attorneys, but only 350 reside in the rural Mid-Shore region of Maryland's Eastern Shore. Sandy Brown, executive director of Mid-Shore Pro Bono, indicates that only 100 of these lawyers have taken a referral from Mid-Shore in the past five years. Of those, only 30 have taken 10 cases in the past 10 years.⁴

In South Dakota, there are "islands of justice, surrounded by a sea of justice denied." In other words, people in rural areas aren't seeing attorneys at all. In an effort to counter urban migration, the SBSBD wants to bring back the Main Street attorney from its status as an endangered species.⁵ Patrick Goetzinger, co-chair of Project Rural Practice, likens the issue to patients failing to see their doctor right away: "They don't resolve their legal problems in time. It festers and boils, and they just kick the can down the road; or, they travel the 60 to 100 miles *if they can afford to.*" Goetzinger sees the problem that these issues are compounding with the sick, elderly, or those near the poverty line. In other words, accessing legal counsel can be as debilitating as not resolving their legal conflict at all.⁶

Programs have been created to solve the issue of lack of access to legal counsel. They emphasize that the benefits to rural practice should be more than just incentive programs. Rural communities offer rewarding experiences in other avenues. The availability of leadership opportunities is greatly increased in rural communities, and rural practice attorneys provide important economic impact.⁷ Supreme Court of South Dakota Chief Justice David Gilbertson recalls his experience practicing in Sisseton, S.D. Chief Justice Gilbertson spent 20 years with the fire department while he was practicing, noting that "Being an officer in the Fire Department taught me to work as a team, how to get along with people, fire safety, and fire suppression. These are skills you don't learn as an attorney, where you mostly work on your own. I definitely got more out of the service than I put in. Rural practice offers a broad base of civic endeavors of every kind; you can serve on school boards and local athletics; not only that but it allowed my wife and kids to experience small-town living."⁸

SDRuralLawyer.com recognizes that a firm in a rural area will create jobs for paralegals and needs for services in the area to keep the firm operating. When these dollars are spent in a small urban community, they often are spent between 6 and 15 times before they leave the community. Furthermore, a firm being localized in a small town can bring in people from bigger cities through their typical course of business. These people will then spend their money in the rural community.

Aside from leadership opportunities and the knowledge that rural attorneys are stimulating rural economies, rural practice offers significant opportunity for an attorney to become involved in community development.⁹ It also gives an opportunity to practice every area of law, enabling attorneys to develop their skills quickly. Chief Justice Gilbertson notes, "After six months in practice, I was trying a murder trial as head prosecutor. If I were in Sioux Falls, that wouldn't have happened. And I'm sure that it helped when the Governor was appointing Circuit Judges."¹⁰ Rural practice provides attorneys with the opportunity to broaden their knowledge base, get involved in various civic endeavors, and the rewarding experience of being a participating member of a small town community.¹⁰ However, an additional focus of these programs is to make it more

Tony Teesdale is a second-year law student at the University of South Dakota School of Law. He completed his undergraduate work at the University of South Dakota in 2012 and hopes to remain in South Dakota to practice. © 2014 Anthony Teesdale. All rights reserved. This article was submitted on behalf of the FBA Law Student Division; for more information about this division, please visit www.fedbar.org.

realistic for students with law school debt to practice in a rural area. The reality is that most students are concerned with the possibility of not being able to make enough money to repay student loans or simply choose higher-paying jobs in urban environments.¹¹

South Dakota's Project Rural Practice is unique in that it gives money directly to rural practitioners in exchange for a five-year contract. Project Rural Practice will select 16 attorneys that fit various criteria and give them a stipend equal to 90 percent of the tuition at the University of South Dakota School of Law. The first 35 percent of the stipend comes directly from the county the attorney is practicing in and is paid directly to the attorney. The next 15 percent is paid from the South Dakota State Bar to the unified judicial system (UJS). The UJS then pays the remaining part of the stipend to the attorney, including the 15 percent that the South Dakota State Bar contributed. The funds from the UJS are allocated by HB 1096, which allocates funds specifically for rural recruitment of attorneys.¹² According to Goetzinger, "this is the first time public dollars have gone to funding lawyers like this; it's different than the public defender system, it's different than legal aid. It's going directly for lawyers just for agreeing to stay in a rural area for five years."¹³ The 16 attorneys are a rallying point for the State Bar of South Dakota and have been dubbed the Sweet Sixteen. After June 30, 2017, the stipend will be awarded once every year for five years.

Project Rural Practice requires a continuous five years to be served in a qualifying county. To qualify, a county must have a population of 10,000 people or less, agree to pay 35 percent of the total amount of the incentive payment, and apply to the UJS by submitting a letter of intent from the county commissioners and be accepted into the program by the UJS and receive final approval of eligibility from UJS. The UJS makes eligibility determinations based on demographics of the county, the age and number of attorneys practicing in the county, recommendation of the presiding Circuit Court Judge, programs of economic development within the county, geographic location to other counties receiving assistance, and prior participation by the county in this pilot program.¹⁴

Attorneys are eligible if they have a Juris Doctorate from an ABA-accredited law school, are licensed to practice in South Dakota, and have never been disbarred, suspended, or publicly censured. They must provide a certificate of good standing from the Supreme Court of South Dakota and carry malpractice insurance throughout their time with the program. Attorneys must keep the UJS informed of their address, phone number, and malpractice insurance. Participants of the program are to work full-time for a minimum of 49 weeks per year. Attorneys cannot have participated in any other program that provides payment, scholarship, or loan repayment in exchange for practicing in an underserved area.¹⁵

At the mid-year ABA meeting in Chicago, South Dakota's Project Rural Practice received the highest award the ABA can give a legal access program, the Lewis M. Brown Award for Access to Justice. South Dakota's rural incentive program is just the first step in its plan for bringing back the Main Street attorney.

South Dakota is not the only state to pursue a rural practice incentive program. The University of North Dakota School of Law created a Rural Internship Program, which created three clerkships with judges in areas having populations of less than 15,000 people or less.¹⁶ Nebraska has created an initiative to promote rural practice as well. The program includes tours of rural towns, and Nebraska State Bar President Marsha Fangmeyer reported that it has linked



three students to finding jobs.¹⁷ Even *The Canadian Lawyer* recognizes that rural practice is important but faces hurdles. The British Columbia Branch of the Canadian Bar Association has created the Rural Education and Access to Lawyers (REAL) Initiative that will provide second-year summer student placements and provides funding to small firms to help in recruitment.¹⁸ The Maryland Legal Service Corporation, which manages the Judicare Family Law Project, provides private attorneys with reduced compensation for serving low-income persons involved in domestic cases.¹⁹ Brown of Mid-Shore Pro Bono also tries to source local funds to pay attorney's fees for cases falling outside of state-funded programs.²⁰

Chief Justice Gilbertson recognizes the growing problem that is rural practice, and said, "The front of the U.S. Supreme Court building proclaims: 'Equal Justice Under Law.' This declaration is made without qualification. In recent decades much attention has been paid to fulfilling this promise in the areas of economic status and other personal classifications. Unfortunately scant attention has been paid to the issue of geography. In all too many states, the urban areas have become islands of justice, while the surrounding rural areas are fast becoming a sea of justice denied."²¹ The islands of justice concept is all too familiar to all states with rural areas, and this problem doesn't just affect the Midwest. With programs like Project Rural Practice being created, as well as the shift in legal access programs to pay attention to the issue of geography, equal justice will truly be indiscriminate of both economic status and geography. ©

Endnotes

¹Thomas Nicholson, *ABA Resolution and Report for Project Rural Practice*, STATE BAR OF SOUTH DAKOTA PROJECT RURAL PRACTICE (August 2012), available at sdrurallawyer.com/aba-resolution-report/.

²*SD Rural Lawyer Map*, STATE BAR OF SOUTH DAKOTA, available at www.sdbar.org/sdrurallawyermap.pdf.

³Ethan Bronner, *No Lawyer for 100 Miles, So One State Offers to Pay*, N.Y. TIMES (April 8, 2013), www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html.

⁴E-mail from Sandy Brown, executive director, Mid-Shore Pro Bono (Feb. 14, 2014); ANNUAL REPORT FISCAL YEAR 2012, MID-SHORE PRO BONO, INC., at 6 (2012), available at www.midshoreprobono.org/Portals/8/MSPB_AnnRept2012_v7_Pages.pdf.

⁵Patrick G. Goetzinger, *Project Rural Practice: Saving an*

that warrants of arrest for violations of the internal revenue laws may be issued by a Magistrate Judge, with no reference to similar authority granted to a District Judge. While one doubts whether such language excludes the authority of District Judges to engage in these activities, it underscores the importance of Magistrate Judges within the system, particularly with respect to preliminary criminal matters.

2 Although the phrase “Magistrate’s Court” is frequently heard in federal courthouses, there is no such thing in our current federal system. Magistrate Judges are judges of the District Court.¹⁹ The phrase “Magistrate’s Court” frequently refers to courtrooms where all or most of the matters heard are criminal in nature, sometimes with rotating Magistrate Judges handling the criminal duties, but it is a misnomer. Magistrate Judges are appointed by the District Court Judges in that District to serve in the District Court, not in a so-called “Magistrate’s Court.”

1 The title of the position is “U.S. Magistrate Judge.” The predecessors of the FMJA, among others, worked hard to support the change of title, in order to bring Magistrate Judges in line with other Article I judicial officers, such as Bankruptcy Judges, Tax Court Judges, and Claims Court Judges.²⁰ One earlier proposal would have changed the title from Magistrate to “Assistant U.S. District Judge,” but this, thankfully, was not adopted.²¹ Those who practice in the federal courts might observe that just as “District,” “Circuit,” and “Bankruptcy” are descriptive adjectives that modify the title Judge, so is “Magistrate.” As of 1990, Magistrate no longer is a stand-alone title in the federal court, any more than District, Circuit, or Bankruptcy would be. The proper and preferred address is Magistrate Judge, or Judge, or Your Honor. Paraphrasing from Judge Randolph in *A Few Good Men*, we are quite certain that we have earned such a title.²² ©

Endnotes

¹See www.legalgenealogist.com/blog/2013/03/22/the-magistrate-judge, last checked on Jan. 24, 2014 (“Like their colleagues in bankruptcy, these [Magistrate Judges] are not Article III [J]udges but also adjuncts to and an integral part of the District Courts” (emphasis added); see also *Report of the Federal Courts Study Committee*, 79 (April 2, 1990) (Magistrate judges perform a “vital role” in the federal courts).

²Pub. L. No. 90-578, 82 Stat. 1107 (1968) (codified as amended at 28 U.S.C. §§ 604, 631-639 and 18 U.S.C. §§ 3060, 3401-3402 (1991)).

³Act of May 28, 1896, ch. 252, §§ 19, 21, 29 Stat. 184.

⁴Act of March 2, 1793, ch. 22, § 4, 1 Stat. 334.

⁵Act of March 1, 1817, ch. 30, 3 Stat. 350.

⁶See n. 2, *supra*.

⁷H.R. REP. NO. 734, 101st Cong., 2d Sess. 31 (1990), *reprinted in*

1990 U.S.C.C.A.N. 6877.

⁸Judiciary Act of 1789, ch. 20, § 33, 1 Stat. 91.

⁹Information in this section is derived from Russell R. Wheeler and Cynthia Harrison, *Creating the Federal Judicial System*, 2nd ed., FEDERAL JUDICIAL CENTER, 1994 (hereafter *Creating the Federal Judicial System*), at p. 4.

¹⁰Act of Feb. 13, 1801, 2 Stat. 89; Act of Mar. 5, 1802, 2 Stat. 132; Act of Apr. 29, 1802, 2 Stat. 118; referenced in *Creating the Federal Judicial System*, n. 41-43.

¹¹Act of March 2, 1855, 10 Stat. 631; referenced in *Creating the Federal Judicial System*, n. 44.

¹²*Creating the Federal Judicial System*, p. 16.

¹³From the FMJA website, “FMJA History,” found at www.fmja.org/about-us.html and last checked Jan. 17, 2014.

¹⁴*Id.*

¹⁵Information obtained from the Administrative Office of the U.S. Courts, data accurate as of Jan. 21, 2014.

¹⁶*Id.*

¹⁷See n. 15, *supra*. This does not include any prior service as a U.S. Commissioner.

¹⁸18 U.S.C. 631(b).

¹⁹See n. 1, *supra*.

²⁰H.R. Rep. No. 734, 101st Cong. 2d Sess. 31 (1990), *reprinted in* 1990 U.S.C.C.A.N.

²¹H.R. 5381, introduced July 26, 1990.

²²The following colloquy from “A Few Good Men” was taken from www.imdb.com/title/tt0104257/quotes, last checked April 14, 2014:

Judge Randolph: Lieutenant, do you have anything further for this witness?

[Jessep defiantly gets up to leave the courtroom]

Col. Jessep: Thanks, Danny. I love Washington.

Kaffee: Excuse me. I didn’t dismiss you.

Col. Jessep: I beg your pardon?

Kaffee: I’m not through with my examination. Sit down.

Col. Jessep: Colonel!

Kaffee: What’s that?

Col. Jessep: I would appreciate it if he would address me as “Colonel” or “Sir.” I believe I’ve earned it.

Judge Randolph: Defense counsel will address the witness as “Colonel” or “Sir.”

Col. Jessep: [to Judge] I don’t know what the hell kind of unit you’re running here.

Judge Randolph: And the witness will address this court as “Judge” or “Your Honor.” I’m quite certain I’ve earned it. Take your seat, Colonel.

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Endangered Species by Recruiting the Sweet Sixteen, BAR LEADER (July-August 2013), available at www.americanbar.org/publications/bar_leader/2012_13/july_august/project_rural_practice_saving_endangered_species_recruiting_sweet_sixteen.html.

⁶*Id.*

⁷*Id.*

⁸Telephone Interview with David E. Gilbertson, chief justice, Supreme Court of South Dakota (Feb. 10, 2014).

⁹*Rural Attorneys and Community Development*, STATE BAR OF SOUTH DAKOTA PROJECT RURAL PRACTICE (Oct. 9, 2012), available at sdrurallawyer.com/rural-attorneys-and-community-development/.

¹⁰Telephone Interview with David E. Gilbertson, chief justice, Supreme Court of South Dakota (Feb. 10, 2014).

¹¹Telephone Interview with Patrick G. Goetzinger, co-chair, Project Rural Practice (Jan. 16, 2014).