This article argues that as lawyers across the nation seek to increase equal access to justice, they should include public health status and services as components of justice administration. The author examines both the current status of rural public health law as well as suggests specific instances in which rural lawyers could benefit from incorporating public health law into their legal practice. Lawyers have an ethical responsibility to their clients to understand public health science, and how those principles apply to their client's case in order to achieve the optimum outcome for the client. Public health law is an essential subject for rural lawyers. The article seeks to answer a critical question: How can rural lawyers use public health research and practices to improve their client outcomes, improve their own satisfaction with the practice of law, and benefit the community as a whole?

I. INTRODUCTION

Rural lawyers sometimes respond to questions about the impact of public health on their practice with the answer, “I am a lawyer, not a doctor.” Other times, a quizzical look appears on the lawyer's face as he or she asks, “What do you mean?” On the other hand, the mention of alcohol misuse, childhood immunizations, hepatitis, HIV-AIDS, and domestic violence often sparks acknowledgement and interest. The forgoing list, however, is not exhaustive, and unless the lawyer is a recent law school graduate who wandered into a public health law class, the usual response is politely offhand. For the most part, lawyers are uninformed about the specific applications of public health law that might benefit them in their practice, especially a rural practice.

This paper is the result of over fifteen years of observations and critical thinking about how to articulate the relevance of public health, and the devastating effects of public health failures, to the justice system. As lawyers across the nation seek to increase equal access to justice, we are now beginning to, and should continue to, include public health as a component of justice. The article will examine both the current status of rural public health law structures and processes, as well as identify specific instances in which rural lawyers could benefit from incorporating public health law into their legal practice. The central question this article seeks to answer is: How can small town lawyers use public health research and practices to improve their client outcomes, improve their own satisfaction with the practice of law, and benefit the community as a whole? The answer, while not simple, lies largely within the legal community itself. Practicing attorneys' knowledge and talents can advance the understanding of public health law and policies. The legal promotion of public health solutions begins largely with a careful consideration of how public health systems and justice systems can intersect to create equal access to justice. Lawyers, particularly rural lawyers who are so often community leaders, should take up the burden of an ultimate goal: to create laws and systems that are both comprehensive and understandable to improve health and justice in the communities they serve. Any lawyer can join in this effort regardless of the
lawyer's practice area or the issue's subject matter content. Whether the lawyer is in general practice, civil litigation, criminal defense or prosecution, or focuses on family law, and regardless of whether the clients are individuals, institutions, or corporations; few practices totally can avoid public health related issues. The entire legal community should begin to understand and promote public health as an essential component of justice. Public health is complex in nature, and thus it is well suited to lawyerly expertise and practice. The complexities lie in the intersection of multiple levels of geopolitical governance, a broad range of scientific disciplines, and many diverse American cultures and societies. Often a general lack of understanding in the legal community, coupled with the inaccessibility of scientific evidence and expertise in the area, creates significant barriers to solving the public health issues that arise in the practice of law. The healthiest and most just solution is to provide resources that are up to date, easily available, and low cost. [FN1] Some of the resources that are more readily available in larger communities, such as preventive physical health screenings, mental health and alcohol dependence screenings, assessments, and treatments are either too expensive or too distant for rural clients to access. Rural law offices have been considered unable to assist in gaining access to such services or providing public health related services because the expense is such a major barrier.

This article explains why lawyers should have a stake in public health. [FN2] It examines some current and emerging public health issues to demonstrate the legal impacts across many areas of practice. [FN3] Next, this comment will define public health. The article will identify the ten essential public health services every community should work to provide; examine the three core functions of public health in order to provide foundation for the ways public health issues might manifest in a small town practice; and explain the importance of relevant research. [FN4] Historical and current public health issues will be described. [FN5] Finally, this article will consider public health tools that may assist lawyers in rural practices as their clients very often have access to fewer programs than those in suburban and urban communities. [FN6] While the basic public health principles do not necessarily vary much from rural to urban, the number and quality of services vary greatly. The variances in demographics, and differences in access to services in rural communities, increase the difficulty for rural lawyers seeking access to practical approaches and effective tools to incorporate public health law into their practice. This article will offer those tools and approaches necessary for rural lawyers to better represent clients in public health law issues.

II. BACKGROUND

A. What is Public Health?

The Institute of Medicine (“IOM”) defines public health as “what we, as a society, do collectively to assure the conditions in which people can be healthy.” [FN7] The parameters for law under the public health banner set by this definition appear to be vast, and they are not well defined anywhere. Public health advocates, and some public health professionals, have taken the IOM definition as justification to claim whatever they want to claim to be under the purview of public health. The strongest example of this approach can be found in the recent writing and discussion recycling the 1988 idea of “Health in All Policies” (“HiAP”). [FN8] The HiAP concept recognizes that social, physical, and economic environments all influence health, and these factors are collectively referred to in HiAP as the “social determinants of health.” [FN9]

Using this holistic approach to public health, the Public Health Institute, the California Department of Public Health, the American Public Health Association, and The California Endowment produced the Health in All Policies: A Guide for State and Local Governments in 2013. These organizations created this strategy in response to a current growing interest in using collaborative approaches to improve public health by embedding health considerations into decision-mak-
ing processes across a broad array of law and policy sectors. As more jurisdictions adopt this approach, it will force rural lawyers to either engage in public health law or have the scope of their practice severely limited. The IOM has also published a working paper that adds commentary and new perspective to the aims of HiAP. [FN10]

The American Society of Law, Medicine, and Ethics (“ASLME”) recently published an article in which the authors list a series of major developments in public health practice and the law. [FN11] Some of those policy areas include: tobacco control, emergency legal preparedness, health information privacy and data sharing, food policy, vaccination, drug overdose prevention, sports injury law, public health accreditation, and maternal breastfeeding. [FN12] The authors also include some of the main specifically legal themes:

(1) [F]ood access and nutrition assistance; (2) school foods (e.g., farm to school, standards for school lunches and competitive foods); (3) regulation of food and beverage marketing (e.g., industry self[-]regulation, marketing to children and minorities, First Amendment restrictions on government action); (4) labeling of packaged foods and menus; (5) encouraging healthy foods (e.g., funds for supermarket development, use of food stamps at farmers’ markets, healthy corner store programs); (6) discouraging unhealthy foods (e.g., sugar-sweetened-beverage taxes, nutritional standards for toy giveaways and government food-purchasing contracts, reducing sodium intake); (7) food safety; [and] (8) aligning agricultural policy with the federal Dietary Guidelines for Americans . . . . [FN13]

This mere sampling of descriptions of public health law provides a wide scope for a lawyer who understands public health as having complex and foreseeable impacts on the justice system to incorporate public health concepts into his or her practice. Furthermore, a knowledgeable rural lawyer could also build a successful practice around public health issues because so many rural communities are agricultural in nature. Equally important, a rural lawyer can also help in a very hands-on way by molding policies that promote public health services in communities where resources may be quite limited in access to both public health and justice. Most lawyers, and maybe even particularly rural attorneys, are committed to the American ideals of fairness and justice for all members of society. Legal, social, and health issues are all intersecting forces, that when collectively addressed and implemented in the form of narrowly-tailored policy, will ultimately create a holistic sense of justice for both individuals and communities. As lawyers across the nation seek to increase equal access to justice, we are now beginning to, and should continue to, include public health as a component of justice.

*532 To be clear, while the scope of “public health” continues to be broad, this wide-ranging definition of what encompasses public health is neither wholly bad nor wholly good. The mischief occurs when the public health label is misused to promote scientifically unsound ideas in order to advance selfish motives or religious and philosophical beliefs. An amplified problem occurs when public health authorities trample on individual rights and expression without respect for the individual, statutory law, or Constitutional protections (either at the state or federal level).

In Souvannarath v. Hadden, [FN14] Hongkham Souvannarath, a Laotian woman who speaks little English, provides a cautionary example about the power of public health authority and the aforementioned mischief that can occur under the guise of public health. For ten months, Souvannarath was detained in a California jail pursuant to an Order of Quarantine and Isolation signed by Dr. David Hadden, the Fresno County Health Officer. [FN15] The case will be discussed more in depth later in the article, [FN16] but it is important to note that violations of basic rights happen frequently in the name of public health law. It becomes understandable that cases like this stimulate the establishment of public interest law firms, such as the Mississippi Center for Justice. The Center, which opened its doors in 2003, was intended to change the policies that had Mississippi ranked as having the worst attainment for “nearly every indicator of human well[-]being.” [FN17] Today, progress is being made, and rural attorneys can be a catalyst for further success.
The two tables below will demonstrate why rural areas need lawyers who understand the impacts of public health law and policy. The children and young adults, who are the future of these small towns, are at risk.

Mortality: Children and Young Adults [FN18]

Death rates for all causes among person 1-24 years of age by region and rurality, 2008-2010

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Mortality: Suicide [FN19]

Suicide rates among persons 15 years of age and over by region and rurality, 2008-2010

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

*535 These graphs show increasing disparities in the public health of rural communities. The selected charts particularly highlight the threat to the future of the communities. The first chart illustrates the increased mortality of the young in communities without a large city and with populations of less than 10,000, nationally and in all regions. The future of the communities is endangered by the despair of the communities as evidenced by the greater suicide rates in the second chart. The trend lines are frightening.

The “10 Essential Public Health Services” and “3 Core Functions” of public health outlined below will provide a sort of “public health orientation” for lawyers, so they can start to consider both how to address public health in their practices specifically, and how they can be better advocates for their clients generally. The “10 Essential Public Health Services” describe the public health activities that all communities should undertake to better serve their populations, and these tenets also serve as the framework for the National Public Health Performance Standards (“NPHPS”). [FN20] A steering committee that included representatives from both the federal government and private organizations with public health interests developed the standards in September of 2013. According to the standards, each community should:

[1.] Monitor health status to identify community health problems
[2.] Diagnose and investigate health problems and health hazards in the community
[3.] Inform, educate, and empower people about health issues
[4.] Mobilize community partnerships to identify and solve health problems
[5.] Develop policies and plans that support individual and community health efforts
[6.] Enforce laws and regulations that protect health and ensure safety
[7.] Link people to needed personal health services and assure the provision of health care when otherwise unavailable
[8.] Assure a competent public health and personal healthcare workforce
[9.] Evaluate effectiveness, accessibility, and quality of personal and population-based health services
[10.] Research for new insights and innovative solutions to health problems [FN21]

Investigating and understanding these standards will aid rural lawyers in creating local policy that is tailored to their community's needs.

The “3 Core Functions” of public health lay out the ideal process for implementing public health policy. [FN22] This is not unlike the analytical processes *536 lawyers have for accepting new or managing complex cases. For instance, traditional legal analysis is much like the first core function of public health: an assessment. Typically, an attorney will ask, “What is the status of the law for this case?” and “What does my client need?” The second public health function an-
swers these questions with the development of policy, or in legal thinking, a case management plan, to improve the as-
seessed status and meet the community or client needs in the matter at hand. The third function is assurance, or in other
words, the application of policy and a determination that the policy works; this would be the settlement or court judg-
ment point in a case. The case strategy steps for a law practice envisage a framework that delivers legal services just as
the “3 Core Functions” of public health informs the effective delivery of public health services. [FN23]

B. The Need for Rural-Specific Research and Evidence-Based Studies

Admittedly, a need exists for a better understanding of exactly which public health research conclusions and practices
are most effective in the justice system as a whole and in rural justice systems specifically. [FN24] The calls for evidence-
based practices can be found in both judicial literature and public health literature. [FN25] While not as widely un-
dertaken, the need is great for research that aligns public health law and practices into rural environments, and it is in-
credibly important to the twenty-five percent of the United States population who live in those areas. The available liter-
ature on the relationship between health status and rural justice systems unfortunately is limited by a dearth of rural stud-
ies in general.

The evidence-based studies that have been done examine how new knowledge created by medical research has been
incorporated into actual medical practice. Over time, the criminal justice system has also begun to consider program ef-
cicacy research in making funding decisions, and the legal *537 community has also adopted the term “evidence-based
practice.” Thus, this article operates under the following definition of evidence-based programs: “The Office of Justice
Programs (OJP) considers programs and practices to be evidence-based when their effectiveness has been demonstrated
by causal evidence, generally obtained through high quality outcome evaluations.” [FN26] In other words, this means
that a program or practice is “evidence-based” when there is research showing that the program or practice produces de-
sired outcomes on a consistent basis. More precisely, it includes programs that are replicated with fidelity and serve a
population with the same characteristics as the population that was used to conduct the research. The importance of un-
derstanding “evidence-based” as a term of art is twofold. The first consideration is the effective use of resources. The
second is that fairness to the participants demands that a program should carry a reasonable expectation of successful
outcomes.

Frequently, the available data is not attributable to, or specifically applicable to, rural communities. Thus, it can be
difficult to design tailored strategies and logic models that support using public health approaches in a rural law practice.
[FN27] Additionally, much of the literature that does exist focuses only on the juvenile and criminal justice caseloads,
and that research often includes only generally applicable findings like the following: “People who are involved in crim-
inal justice systems experience significantly higher rates of chronic, acute, and behavioral health problems than the gen-
eral population. Arrests are concentrated in low-income communities where people are more likely to be medically un-
derserved.” [FN28] This demonstrates how the discussion is often explicit to criminal justice defendants only and does
not necessarily differentiate between rural and urban areas, which is unhelpful for rural strategizing.

It is widely accepted that the implications for public health for families in juvenile or family court can be just as seri-
ous as for individuals, although the research in these areas still largely focuses on urban phenomena. One must consider
that “[i]n addition to health effects on criminal justice involved individuals, the system is likely to impact the health of
families and communities, predominantly in urban areas.” [FN29] Even when looking at medical malpractice litigation,
which is at the unambiguous intersection of legal and *538 medical goals directed toward improving public health, the
literature is inconclusive. For example, Assistant Professor Frakes concludes, “[f]ocusing on composite measures of
health care quality in both inpatient and outpatient domains, [his] results . . . are indeed suggestive of a current malprac-
tice system that does not substantially improve upon the quality of care delivered by medical providers.” [FN30]

In contrast to the often discouraging justice system literature, public health law expert and scholar, James Hodge, and his coauthors have expressed their confidence that the potential exists to increase social and legal justice through the application of public health services within the legal system:

The future for use of law in public health practice is bright. At all levels of government there is great potential for law to intervene positively in response to a growing slate of new challenges. . . . Politically divisive public health issues, notably including gun control and cell phone use among drivers, must rely increasingly on statutory, regulatory, and judicial legal maneuvers to reduce related injuries and deaths. . . . In these and multiple other areas, the application of law is inextricably connected to the betterment of the public's health. [FN31]

It is clear that rural lawyers are in desperate need of research that provides evidence-based legal responses to improve public health outcomes, as those attorneys attempt to best advocate on behalf of their rural clients. In the meantime, however, rural clients should not have to wait on the relevant research for lawyers to begin to incorporate the more obvious and beneficial public health practices into their case planning.

One of the most significant barriers to the effective use of research (that is applicable but not unique to justice or lawyers) is the lack of understanding of the term “evidence-based.” A program is not “evidence-based” unless the research matches the community and client characteristics. Many, if not most, non-medical professionals do not understand the origin or the precise meaning of the term, and the way many in the legal field currently use “evidence-based” can be problematic and even dangerous. [FN32] Describing a program as “evidence-based” without adequate research findings to justify the use of the term in a particular setting, or in connection with the specific population, builds false expectations as to how participants will or will not succeed.

For example, judicial determinations, like the terms of custody or visitation with a child, a suspended sentence, or bail, may be calculated using program *539 treatment plans. These plans will guide a judge by assuring that certain participants in the program will succeed at modifying their behavior by no longer drinking alcohol or engaging in violence. If these programs are not tailored to specific socio-economic status, however, the predictions of the program for a certain person could be completely inaccurate. This is only one example of a practice that can be highly ineffective (and even harmful) in rural areas when program directors are forced to use public health research that only references urban areas and populations. Unless a practice is supported by research that has the characteristics listed below, a rural lawyer should argue, and a rural judge should understand, that it is not “evidence-based” and thus could be ineffective or harmful to their client. The minimum requirements for the use of a program to be called “evidence-based” include:

1. The individuals shall have the same characteristics as one another-- such as age, gender, and other characteristics required in the participants of the study for which the program was intended to provide beneficial results;
2. The program implementation shall maintain fidelity to the study protocol, and deviations must be noted and the effects evaluated on the program participants; and
3. The quality and quantity of services in the program shall be equivalent to those services provided in the study.

Thus, the client should not be placed into a program without careful consideration of whether that program has evaluations that show the way the services will be provided to the client, and whether that program will be effective for that client's specific characteristics and needs.

For a lawyer to advise a client or for a court to order a public health policy, not understanding whether the program fits the client's needs, is a manifest injustice to a client and the public. For now, the website sponsored by the OJP has the
best research supported list of justice system programs available. [FN33] The National Registry of Evidence-based Programs and Practices ("NREPP") also has a searchable online database of mental health and substance abuse interventions. [FN34] These are not “evidence-based” programs or practices but merely a list of practices that are being used across the country to deal with mental health and alcohol and drug issues. Again, a program is not “evidence-based” unless the research matches the community and client characteristics.

*540 The next most formidable task in incorporating public health cross-disciplinary law principles and knowledge into the small town practice is managing a lawyer's greatest asset, which is time. When undertaking the effort of incorporating public health principles into a rural legal practice, it is imperative to keep in mind that the lawyer's stock in trade is time and knowledge. Of the two, time is the more billable and therefore, more precious. The high value of a lawyer's time requires that specific approaches and tools be developed for the legal community so that the use of public health principles is effective and efficient.

One potential model might be for a lawyer to employ a cadre of specialized legal assistants to help much like medical technicians and other assistants help doctors. It would be beneficial to hire a legal assistant who is specialized in having medical training to administer simple health screenings and who is skilled in assessing clients to use a computerized screening and referral programs. [FN35] Delegating these services to a legal assistant would be a more efficient use of resources, rather than spending lawyer's billable time. Some rural communities, however, do not have paralegals, but instead a traditional secretary provides the office support services. Recognizing that the extent and content of formal education for legal support staff will vary widely, this potential model suggests that some efforts should be made to compensate for the workforce deficiencies. A non-deficient workforce surrogate could be screening instruments and other applications used through technology. [FN36] This would facilitate and streamline support services while providing basic public health service when appropriate.

C. History of Public Health in American Jurisprudence: In the Courts and the Classroom

The American courts' level of engagement in public health issues has fluctuated over time. In the 1800s, public health law cases were largely concerning quarantine, compensation for quarantine, and the destruction of private property in the attempts to control disease outbreaks. The first public health law case decided by the United States Supreme Court was Jacobson v. *541 Massachusetts [FN37] in 1905. [FN38] In Jacobson, the Court upheld a Massachusetts statute that allowed local communities to pass ordinances requiring vaccinations against smallpox. [FN39] By the mid-1900s, however, cases with public health implications at the state level became more sporadic. Frequently, the cases reported at the appellate level were not labeled as public health cases, but today we are seeing a public health law revival.

A modern example of public health in the court system is the Souvannarath case. [FN40] Souvannarath was a Laotian woman who spoke little English, and from July 30, 1998 to May 27, 1999, she was detained in a California jail under an Order of Quarantine and Isolation which was signed by Dr. David Hadden, the Fresno County Health Officer. [FN41] The doctor concluded Souvannarath was not complying with the ordered treatment program for multi-drug resistant Tuberculosis (TB). [FN42]

On July 23, 1998, Fresno County served Souvannarath a Notice and Order for Examination, written “in English, and told her she was required to appear at the chest clinic on July 28 or risk being detained for continued noncompliance.” [FN43] Souvannarath failed to appear. [FN44] Subsequently, an Order of Quarantine and Isolation was signed by Hadden, who consulted with TB program employees, whom commanded that she be held in the county jail until she complied with the prescribed course of treatment that could last for two years. [FN45] The Order did not specify reasons for the detention and did not “contain a statement of Souvannarath's rights under the TB control laws to request release, to a
hearing, and to [obtain] court appointed counsel.” [FN46]

The next day, Souvannarath was told she was being taken to the hospital but instead was taken at gunpoint to jail. [FN47] When she arrived at the jail, she realized she was lied to and refused to cooperate. [FN48] Authorities told her that she would be carried in against her will if she did not voluntarily comply. [FN49] During the ordeal, both she and her daughters who were with her were crying. [FN50] Souvannarath was forced to undress and was strip-searched. [FN51] Thus the opinion of the Court of Appeal of the State of California, Fifth Appellate District, sets *542 out a frightening public health story. [FN52] There are many other cases that demonstrate how lawyers must temper public health authority with a healthy respect for equal justice.

Even though the need and interest in public health law resources for the small town lawyer are increasing, the urban setting and focus of many law schools and public health scholars dissuades those who would study and address the rural needs. The lack of legal leadership in rural public health law and policy prevents an understanding of the rural public health issues.

However, Public Health Law, a legal textbook co-authored by four public health law experts, is an excellent textbook, and it could serve well as a public health law primer for any lawyer seeking to understand the ramifications of public health for the practice of law in a variety of subject areas. In the Preface, Professor Wing and his coauthors discuss with candor the challenges of writing the textbook, and they thus illuminate the challenges in defining the practice of public health law. The authors explain,

Public Health Law will provide useful if not necessary preparation for a range of legal and political controversies that [law students] are certain to confront, one way or another, regardless of their legal career paths. Public health has been, is, and always will be, central to the lives of all Americans, and indeed, all humans no matter where in the world they live. [FN53]

The authors also note the “ongoing and lively debate in both academic and professional circles over the definitional limits of public health and the kinds of issues and problems that should appropriately be considered within its purview.” [FN54] The authors briefly discuss the debate but do not touch directly upon specific implications for small towns and less populated areas. However, they recommend “that any introductory Public Health Law course be taught using examples from the law school's jurisdiction. Public health law is, in very large part, built on the laws of each state[].” [FN55] The patchwork-fashion of public health law reemphasizes that public health law is driven by specific community needs, not generalized assumptions, which is valuable for a rural lawyer to understand. [FN56]

By focusing on a specific jurisdiction, a textbook's interpretation of statutes, local ordinances, administrative regulations, and applicable case law can be analyzed as a coherent and an integrated local body of public health law. This is where a significant barrier for small town lawyers becomes obvious. Because public health law has only recently been recognized as an area for legal analysis and practice, even less analysis and commentary are available on the specific *543 concerns for rural areas. The passing references are sparse, but the conclusion that there are a great deal of opportunities for rural attorneys is accurate. This book would provide a worthwhile read to gain an interesting perspective of how public health law is evolving.

The collaboration and engagement between public health and legal studies is increasing in ways that will be significant to rural practice. Some examples are more obvious than others. For example, people are more likely to think of alcohol misuse as a public health issue than they are to consider food safety as such an issue. Food safety, however, is a growing area of law in both tort claim litigation and administrative regulation. Bill Marler, an attorney from Seattle, has won over three hundred million dollars in food safety cases. [FN57] He has recently described his work on spinach cases:
“We have 93 cases. We've been going through each one individually to figure out whether there's a link to Dole Baby Spinach. We have eight lawsuits filed in six states, all in federal court . . .” [FN58] The enormity of the litigation over food safety may not be clear to rural attorneys until they learn about Mr. Marler's practice. Food safety litigation is a growing field. Litigation arising from the federal Food Safety Modernization Act [FN59] and the role of the Food and Drug Administration (“FDA”) on farms and production sites will certainly increase the need for legal counsel of many food producers in rural areas.

III. ANALYSIS

A. Public Health Law in Action: How Rural Attorneys Can Better Serve Their Clients

As the Jack or Jill of all legal trades, a general practice lawyer in a rural area likely will represent clients dealing with a public health issue in one or more of the following classifications:

- an individual who needs public health services or who is in court because of the failure to receive adequate public health services;
- children and families whose lives are disrupted by lack of public health services;
- business clients, including agricultural clients, who must comply with health and environmental regulations, ordinances, and statutes;
- food producers and processors that must comply with FDA and USDA regulations, as well as state and local requirements for food safety;
- county and local government units with regulatory authority; or
- not-for-profit groups advocating for public health improvements.

*544 Specifically, the role of nonprofit advocates in bringing litigation seems to be increasing, and understanding this role would be worth a cost-benefit study. [FN60] The role of lawyers employed by a nonprofit advocacy group will likely be perceived as a mixed blessing at best. It is ideal if the lawyers instead live in the community and work to better understand their specific community needs and dynamics.

The foregoing list is not exhaustive, but it serves to highlight the need for public health law expertise across many social and economic fronts. Lawyers have a unique view of the public health needs of their clients and community because they have to work with the personal devastation caused by health problems, violence, or business failures. Lawyers see the innermost details of their clients’ business and personal matters, up close and painfully. Their advocacy skills and knowledge-base empowers lawyers to be a force to increase access to justice through improvements to rural public health structures and services.

1. Alcohol Misuse Fuels the Justice System and Increases Public Health Burdens

Without alcohol misuse, and the resulting behavior, the justice system caseload would be significantly reduced. Many people see alcohol misuse as simply criminal, but that view is far too narrow. It presents a compelling example of a public health issue that is often not seen as a health problem. Our country experiences a wide range of alcohol impacts driven by both international and local cultures and practices. Some international implications include: when a child is adopted from another country where he or she was exposed prenatally to alcohol; when a worker from another country misuses alcohol because that was acceptable in his or her country of origin; or when alcohol misuse was a part of the home county's religious beliefs or cultural practices. [FN61]
Alcohol can touch every kind of case on the courts' dockets. Alcohol-impaired decisions can lead to divorce, tort claims, death, criminal prosecution, and business litigation regardless of whether the alcohol misuse relationship is obvious. The World Health Organization's characterization of the public health implications of the misuse of alcohol likely will not surprise a rural attorney:

*545 Wider implementation of policies is needed to save lives and reduce the health impact of harmful alcohol drinking, says a new report launched today by WHO. Harmful use of alcohol results in the death of 2.5 million people annually, causes illness and injury to many more, and increasingly affects younger generations and drinkers in developing countries.

Harmful use of alcohol is defined as excessive use to the point that it causes damage to health and often includes adverse social consequences. [FN62]

a. Agencies That Combat Alcohol Misuse

The number of agencies in the United States at local, state, and federal levels working to mitigate and prevent alcohol misuse substantiates these conclusions about the large scope of alcohol misuse and its harmful effects. These agencies manage significant budgets and many programs, therefore demonstrating the extent of the problem, indicating high costs, and resulting in a burden on taxpayers. The burden also falls on justice systems, health systems, social systems, and the general economic well-being of communities.

Congress has taken a serious stance on the detrimental effects of alcohol misuse. Congress established the most generously funded agency called the “Substance Abuse and Mental Health Services Administration (SAMHSA) in 1992 to make substance use and mental disorder information, services, and research more accessible[.]” in the fifty states and territories. [FN63] The value and effectiveness of SAMHSA is debatable, but its fiscal year 2014 budget request is over $3.5 billion. [FN64] SAMHSA has funded many alcohol and drug prevention and treatment programs and many of the existing drug and mental health courts. Some reports from the United States Government Accountability Office (“GAO”) indicate that the requirements for a program to be funded lack rigor and consistency. [FN65] SAMHSA continues to address those concerns.

Other federal agencies also spend significant funds on alcohol programs. The annual budget for the last three years for the National Institute on Alcohol Abuse and Alcoholism (“NIAAA”) exceeds $450 million to fund research about the effects of alcohol on health and behavior. [FN66] The mission of the CDC *546 Alcohol Program is “[t]o strengthen the scientific foundation for preventing excessive alcohol consumption.” [FN67] The CDC delineates the public health picture of American alcohol misuse by providing data and other information on alcohol-related behaviors.

Additionally, the National Highway Traffic Safety Administration (“NHTSA”), under the U.S. Department of Transportation, was established by the Highway Safety Act of 1970, and it seeks to reduce alcohol impaired driving. [FN68] The NHTSA Impaired Driving program is large, and it involves the state and local communities by providing funding, training, publications, and research. [FN69] One example of the program’s publications, Challenges and Defenses II, is a publication that presents “claims and responses to common challenges and defenses in driving while impaired cases[.]” [FN70] NHTSA’s education and training resources may be helpful to a rural lawyer in helping a client deal with impaired driving issues whether the lawyer is defending an impaired driver, prosecuting an impaired driver, working as a public health advocate for better programs to treat alcohol misuse, or sitting as a judge with adjudication responsibilities.

The United States Department of Justice's Office of Justice Programs is home to many Bureaus and Offices that also deal with alcohol's impacts on the justice system. [FN71] A program example by one of the OJP's offices, the Office of Juvenile Justice and Delinquency Prevention, is the Enforcement of Underage Drinking Law (“EUDL”) which has
provided research and funding to the states and local communities to better protect youths from alcohol injury. [FN72]

b. Fetal Alcohol Spectrum Disorders

Another compelling public health issue for attorneys who represent children and families, as well as criminal defendants, is Fetal Alcohol Spectrum Disorders (“FASD”). This is a group of disorders that may develop when the mother drinks alcohol during pregnancy. [FN73] According to the CDC, “FASDs are *547 100% preventable if a woman does not drink alcohol during pregnancy.” [FN74] NIAAA endorses, motivates, and funds new research on FASD and staffs the Interagency Coordinating Committee on Fetal Alcohol Spectrum Disorders (“ICCFASD”). ICCFASD convenes all Federal agencies' activities seeking to solve FASDs' challenges. [FN75] Many agencies are investing in reducing the burden of alcohol misuse on the justice system, but their research and programs have not been easily accessible to rural practitioners. The American Bar Association (“ABA”) Center on Children and the Law is taking the lead to provide more resources to lawyers about FASDs on their website. [FN76] The ABA also has published an easily accessible online resource titled, Fetal Alcohol Spectrum Disorders (FASD): What You Need to Know to Help Your Clients. [FN77]

c. Alcohol Case Law

A review of the case law dealing with alcohol misuse leads to the conclusion that all rural lawyers will, at some point in their career, deal with clients or defendants who misuse alcohol or who are affected by alcohol misuse in some capacity. Sometimes alcohol misuse occurs in the context of a professional setting; other times it is in a social or private setting. Unlike larger communities, often neither the clients nor the courts in rural areas have access to adequate public health prevention and treatment services. A wise lawyer, however, may be able to leverage some of the information and resources referenced here to provide more effective legal services to their client.

Beginning with the first United States Supreme Court case to recognize alcoholism as a disease, we can trace the types of cases that demonstrate the impact of alcohol misuse on the justice system. In Powell v. Texas, [FN78] the Court noted, “Despite the comparatively primitive state of our knowledge on the subject, it cannot be denied that the destructive use of alcoholic beverages is one of our principal social and public health problems.” [FN79] Later, the Court declined to hold that public intoxication should not be a crime if the defendant was an alcoholic and concluded by writing, “It is simply not yet the time to write the Constitutional formulas cast in terms whose meaning, let alone relevance, is not yet clear either to doctors or to lawyers.” [FN80] Yet we may now be approaching the *548 day when research can inform the courts about better ways to deal with alcohol misuse; small towns, however, confront barriers to reaching that day. The barrier most relevant here is the lack of judicial and lawyerly expertise in finding and utilizing social science research related to alcohol.

Impaired driving cases are examples of the alcohol-related caseload in the United States justice system from the local trial court all the way to the United States Supreme Court. Schmerber v. California [FN81] is a 1966 case dealing with the question of testing motorists for alcohol impairment. [FN82] Just last year, the Court was still dealing with alcohol impaired driving and blood testing in the case of Missouri v. McNeely. [FN83] The issue of rural road safety was addressed by the United States GAO in 2004. A key finding of the report was that “[c]rashes on rural roads (roadways in areas with populations of less than 5,000) account for over 60 percent of these fatalities . . . about 70 deaths each day. Further, the rate of fatalities per vehicle mile traveled on rural roads was more than twice the urban fatality rate.” [FN84] This report contains alarming statistics for small town lawyers who represent those drivers who use rural roads. The most discouraging number involves behaviors regulated by statutes: “[R]ural crashes accounted for about 68 percent of unrestrained (unbelted) fatalities, about 63 percent of all alcohol-related fatalities, and 62 percent of speeding-related fatalities.” [FN85] There are also numerous recent appellate level cases in the state courts that involve alcohol misuse, but
those are peculiar to the states' statutes. The singularity of the cases to one state makes these cases irrelevant in a general way to lawyers who practice elsewhere. Again, the localized nature of the law is a barrier to a broader recognition of the importance of the science involved in the individual adjudication of cases.

The few reported court opinions articulating a demand that treatment be scientifically appropriate to the individual's need are too fact-specific to be useful or reassuring. The federal government has produced a guide titled, Topics in Brief: Treating Offenders with Drug Problems: Integrating Public Health and Public Safety, which outlines treatment theory and practice. [FN86] How much attention the courts pay to the Topics in Brief guide will depend on whether the financial resources of the defendant are adequate to pay for the treatment. The courts, for the most part, do not have budgets to pay for treatment or other *549 services for defendants. In some rural communities, the treatment services are frequently accessed through the criminal justice system.

Table 1

“Selected Primary Substance of Abuse among Rural and Urban Admissions Aged 12 or Older: 2009” [FN87]

<table>
<thead>
<tr>
<th>Primary Substance of Abuse</th>
<th>Urban Admissions</th>
<th>Rural Admissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol</td>
<td>36.1%</td>
<td>49.5%</td>
</tr>
<tr>
<td>Marijuana</td>
<td>17.0%</td>
<td>20.9%</td>
</tr>
<tr>
<td>Cocaine</td>
<td>11.9%</td>
<td>5.6%</td>
</tr>
<tr>
<td>Heroin</td>
<td>21.8%</td>
<td>3.1%</td>
</tr>
<tr>
<td>Non-heroin Opiates</td>
<td>4.0%</td>
<td>10.6%</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>6.1%</td>
<td>6.3%</td>
</tr>
</tbody>
</table>

Table 2

“Selected Sources of Referral to Treatment among Urban and Rural Admissions Aged 12 or Older: 2009” [FN88]

<table>
<thead>
<tr>
<th>Sources of Referral</th>
<th>Urban Admissions</th>
<th>Rural Admissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual/Self</td>
<td>38.7%</td>
<td>22.8%</td>
</tr>
<tr>
<td>Criminal Justice System</td>
<td>28.4%</td>
<td>51.6%</td>
</tr>
<tr>
<td>Other Community</td>
<td>15.4%</td>
<td>10.0%</td>
</tr>
</tbody>
</table>
Alcohol/Drug Abuse Care Provider 10.4% 7.0%
Other Health Care Provider 5.4% 7.0%

Ultimately, the justice system’s standard process of waiting until an alcoholic or addicted person is in court before making treatment available for that person is a difficult and cruel dilemma.

B. Food Safety Modernization Act via State and Federal Governments

The local board of health is the agency that holds the responsibility for local public health enforcement in most states. The federal government has plans to enlist the health department staff as the “boots on the ground” in dealing with food safety matters. This means that the local boards may have to enact unpopular ordinances, and an attorney for the department will have to file court actions to enforce the ordinances. Representing the Board of Health with the *expanded* role under FSMA and promulgating new ordinances may be daunting in a small town because of community relationships. Simply having a cup of coffee and lunch in a small town may be hampered by how the local board of health deals with the food safety ordinances. As the former chair of my county’s Board of Health, I knew which establishments took food safety precautions and those that did not. I also recognize the cost factors of new expensive equipment and more workers, and that in some communities the local coffee shop owner’s ability to stay in business may be threatened. Food safety is a huge, emerging issue for everyone, but when there is only one place in town to get lunch, representing the local board of health may result in conflicting emotions.

In the coming years, the FDA is going to play a more important role in a small town food sources. The FDA is proposing that state and local governments adopt the CFR, making the state and local government act as an arm of the federal government. The push by the FDA to have the states adopt sections of federal regulations dealing with food safety by reference is a request that has the potential to increase a rural lawyer’s exposure to federal food safety regulations practice. [FN89] The state and federal enforcement mechanisms, as a result, will become increasingly intertwined. Even experienced lawyers can misunderstand the role of the federal agency when the regulations are adopted by reference.

Until now, plaintiffs in headline-grabbing, food safety cases have usually been represented by multiple lawyers. For example, Bill Marler, a Seattle lawyer, and the members of his firm are well-known food safety attorneys. Both plaintiffs’ attorneys and the defense lawyers who represent food producers and processors are either in large law firms in larger communities or are corporate in-house counsel. Their work has been largely restricted to dealing with the regulations under the federal law before enactment of FSMA, defending tort claims over food-borne illnesses, or filing breach of contract claims over the delivery of safe and wholesome products.

America, however, will soon see a seismic change in food safety law and the regulatory role of public health agencies. The leading paragraph from the FDA webpage sets out a rather subdued explanation of the new Act:

The FDA Food Safety Modernization Act (FSMA), the most sweeping reform of our food safety laws in more than 70 years, was signed into law by President Obama on January 4, 2011. It aims to ensure the U.S. food supply is safe by shifting the focus from responding to contamination to preventing it. [FN90]

Federal agencies, including the FDA, are writing hundreds of new or amended food safety administrative rules for the Code of Federal Regulations. The review section of the American Action Forum (“AAF”) follows the Unified Agenda, which is a document that lists the expected updates from these rules. The AAF looked at forty major planned...
rules and calculated a corresponding $133 billion price tag. Note that big-ticket regulations identified by the AAF review includes more than $6 billion to implement a sweeping food safety overhaul as authorized by FSMA. The Regulatory Review Dashboard is a quick and free resource for a rural attorney to review pending federal regulations. This is a public website that discloses information about the review of draft regulations by the Office of Information and Regulatory Affairs (“OIRA”). [FN91]

The whole focus of food safety law has shifted, and the result is a broad new regulatory bureaucracy with sweeping powers for the government. For example, the government may go onto a farm without warrants and permission or may seize food ingredients and products summarily. It is also important to note the increased likelihood that many of the states will adopt the FDA regulations by reference because they do not have the resources to write their own. Much of the United States food supply, however, is grown in rural areas and some food products are even processed in the same rural communities. Therefore, a lawyer in proximity to the producers and processors will have to understand the public health vocabulary, regulatory system, and the relationship of local, state, and federal agencies to better represent the local farmer.

At the time of writing this article, the District United States Attorneys are not handling these food safety cases. Rather, the United States Department of Justice Consumer Protection Division has the lead. The multitude of the lawyers in Washington, D.C. means it will be more difficult and expensive to represent a rural client. How many clients will need representation, and how many cases will be generated by FSMA, is still unclear, but just watching the interest and input around the publication of the proposed regulations is a strong indication that people are ready to litigate. [FN92]

The new regulations and guidance generated, and the controversial nature of some of the regulations, support an expectation that new practices may be necessary to represent agricultural clients for two reasons. First, during a short period of time from September 2011 to December 2013, the FDA published six proposed rules, seven guidance documents, one Interim Final Rule, and one Final Rule in the Federal Register to implement FSMA. Thousands of pages in the Federal Register detail the comments and hearings and meetings held by the FDA. Second, a U.S. District Judge in California ordered the FDA to adhere to a timeline to propose and promulgate the rules required in the statute, thus compelling the FDA to issue more regulations faster. The court’s order means that now, the FDA has to rush the regulations through the approval process more quickly than expected. That rush may mean that the opportunity for meaningful public input will be inadequate. The Washington, D.C. based-groups will give their comments because they have resources and locale to respond quickly. Conversely, small rural interests may be unable to respond as effectively. In addition, the limited hearings are in larger cities and the Internet submission of comments may not be satisfactory.

Regardless of whether one supports or disapproves of the FSMA, lawyers are seeing sweeping changes in how the law approaches food safety. A rural attorney who represents local growers, land owners, restaurant and grocery business owners, transporters of food, the board of health, and even individuals who endure a food-borne illness, will be impacted by the FSMA. The lingering and unsolved question is how to develop the collaborations about public health issues, from both legal perspectives and food safety science perspectives, in order to provide the tools to support lawyers in a food safety practice in rural and remote areas.

C. Other Relevant Areas of Rural Public Health Law

1. Rural Water Crisis

Water rights are also an important area of the law that is directly linked to public health. Those who live in the west and southwest are probably familiar with water rights litigation, but water rights litigation is now increasing in states...
where water has traditionally been plentiful. For agriculture and some manufacturing processes, water is the new “gold.” The increase in water demand threatens to turn common law, in the states that accepted the common law upon statehood, as well as many existing state statutes upside down. As the federal government, through the Environmental Protection Agency (“EPA”) and the FDA, seeks to control the national water supply through legislation and regulations, rural attorneys cannot ignore the importance of water rights for their clients. Many excellent journals and other resources examine the science and law regarding water rights. [FN93]

2. Rural Diversity Ignites Violence

Violence is an obvious issue for the legal system; whether in the community, of interpersonal sort, sexual in nature, or against children, violence is always a concern to public health. Regardless of the type, the injury and deaths resulting from violence makes everyone feel less safe. For example, when the ambulance and police arrive on a street or in the courthouse in response to a call for help, bystanders also suffer stress that has been compared to living in a war zone. [FN94]

Solutions for current public health issues that fuel the justice system will only emerge from collaboration between public health agencies and the legal community. One example of a groundbreaking effort by both legal and public health agencies can be found in the 2013 publication, Changing Course: Preventing Gang Membership, which was written by experts in public health and public safety and co-published by the National Institute of Justice (“NIJ”) and the CDC. [FN95] Changing Course emphasizes the strong link between public health and public safety. [FN96] The cascading impact of gang presence begins with membership and leads to violence and, therefore, the injury to public health safety impacts children, families, neighborhoods, and society at large. [FN97]

Rural gangs, like other rural problems, do not attract the attention of many researchers because the numbers are small and their locations are spread out across the countryside. National Public Radio reported by anecdotal stories about rural gangs in the state of Washington. [FN98] The Federal Bureau of Investigation published the 2011 National Gang Threat Assessment which contains data and descriptions of both urban and rural gangs. [FN99] That report notes the changing nature of gangs and their geo-diversity. [FN100] The United States Department of Justice through the Bureau of Justice Assistance has also funded projects to intercept and prevent gang activity on tribal lands. [FN101]

3. Domestic Violence in the Rural Heartland

Another example of a partnership between public health and the legal community comes from Bedford, Indiana. The county has beautiful hills and limestone outcroppings with one four-lane state highway traversing the county north and south, while a two-lane U.S. highway crosses in an east and west direction. The CDC did an assessment of domestic violence in this largely rural area where less than one third of the population lived within city limits.

In March 2010, local stakeholders in Lawrence County, Indiana raised concerns to state public health officials about the number of homicide incidents related to domestic violence (DV) that had recently occurred in their community. In response, the Indiana State Health Department (ISDH) requested assistance from the Centers for Disease Control and Prevention (CDC) through an “Epi-Aid” field investigation to improve understanding of the potential circumstances contributing to fatal and nonfatal DV cases in Lawrence County and to identify effective measures to reduce the incidence of DV. [FN102]

Because of the assessment, the county eventually received funding to establish a “domestic violence” treatment court, which was a benefit to the entire area.

A large population study documents the extent of the negative health impacts of domestic violence in large municip-
alities. [FN103] While the extent of the violence in rural areas is under reported, some data does support the conclusion that the individual, family, and community impacts of domestic violence are even more severe in rural areas. One study reports:

Women in small rural and isolated areas reported the highest prevalence of IPV [(Inter Personal Violence) (22.5% and 17.9%, respectively) compared to 15.5% for urban women. Rural women reported significantly higher severity of physical abuse than their urban counterparts. The mean distance to the nearest IPV resource was three times greater for rural women than for urban women, and rural IPV programs served more counties and had fewer on-site shelter services. Over 25% of women in *555 small rural and isolated areas lived >40 miles from the closest program, compared with <1% of women living in urban areas. [FN104]

We are just beginning to understand the extent of the negative effects of domestic violence in rural areas, particularly for women. The areas around the Bakken oil field in Montana and North Dakota are experiencing significant violence as the demographics change rapidly. Several studies are underway there, as well as on tribal lands. These studies are funded by the National Institute of Justice and will be published upon completion.

IV. CONCLUSION

No matter how small the town or how remote the community, the rule of law requires that all lawyers advance the application of the law based on science and fairness to achieve justice for all. Lawyers have an ethical responsibility to their clients which includes understanding the science that applies to their client's case in order to achieve the optimum outcome for the client. Public health law is an essential subject of all lawyers' continuing legal education, but it should be of particular concern to rural attorneys. By incorporating public health law practices into their advocacy, rural lawyers will be more effective for their clients and the result will be more equal access to justice.

*556 APPENDIX: ADDITIONAL RESOURCES

1. Experts on FASD & Criminal Justice Presentation: http://www.youtube.com/watch?v=XaKoHhHfERg&list=PLiFZcDuldDA7_E3fwhEAc7ddVrwNCPW&index=1.

   The National Organization on Fetal Alcohol Syndrome (“NOFAS”), which is the leading voice and resource of the Fetal Alcohol Spectrum, also provides more information at http://nofas.org.

2. The CDC Public Health Law Webinar Series is a monthly series focused on providing the public health community with practical knowledge on emerging topics. The American Society of Law, Medicine & Ethics, the Network for Public Health Law, and the Public Health Law Research Program sponsors the series. You can access the series at https://www.networkforphl.org/events__webinars/webinars/.

3. Bed Bugs: Legal Remedies and Limitations to Eliminating a Community Health Problem

   Held on Thursday, January 16, 2014. This webinar examined the biology of bed bugs, potential legal remedies and their limitations, and the role of landlords, tenants and housing and public health officials in preventing and eliminating bed bug infestations. Archived slide available at https://www.networkforphl.org/webinars/2014/01/09/398/bed_bugs_legal_rem edies_and_limitations_to_eliminating_a_community_health_problem/.

4. Exploring and Understanding the Role of Public Health Law Research

Held on Wednesday, February 19, 2014. This Webinar examined the legal and ethical basis for vaccination requirements, reviewed a recent assessment of how non-medical vaccination exemption laws impact the annual incidence rates of vaccine-targeted diseases, and explored how states are changing their vaccine exemption laws. View and download the slides at https://www.networkforphl.org/webinars/2014/01/07/403/blocked_shots_examining_the_basis_nature_and_public_health_impact_of_vaccine_exemption_laws/.

[FNd1]. Linda L. Chezem, J.D. Chezem was the first woman appointed to the Circuit Court bench in Indiana, and the second woman appointed to the Indiana Court of Appeals serving a total of twenty-two years on the bench. Chezem presently holds a dual appointment to Purdue University's College of Agriculture and Indiana University's School of Medicine, where she informs federal, state, and local policy on justice and health issues for youth and families. Chezem also currently serves on the National Advisory Council on Alcohol Abuse and Alcoholism at the National Institutes of Health in Bethesda, Maryland.

[FN1]. For example, broadband technology availability may be low cost in urban communities but may be expensive or unavailable in rural communities. See Types of Technology Available, National Broadband Map, http://www.broadbandmap.gov/technology (last visited Mar. 28, 2014).

[FN2]. See supra Part I.

[FN3]. See supra Part I.

[FN4]. See infra Parts II.A-B.

[FN5]. See infra Part II.C.

[FN6]. See infra Part III.


[FN8]. See id. at 39 (providing the World Health Organization's definition that health is “a state of complete well-being, physical, social, and mental, and not merely the absence of disease or infirmity.”).


[FN12]. Id. at 739-41.

[FN13]. Id. at 740 (citations omitted).


[FN16]. See infra at II.C.


[FN19]. Id. at 25.


[FN22]. Id.

[FN23]. See id. (providing additional information). The Centers for Disease Control (“CDC”) provides additional resources through the Public Health Law Program housed in the Office for State, Tribal, Local and Territorial Support (“OSTLTS”). See Centers for Disease Control and Prevention, Public Health Law Program, http://www.cdc.gov/phlp/ (last visited Mar. 28, 2014). The CDC is one of the leading organizations that seeks to advance public health law, and its program funded the development of several public health resources for lawyers. One such resource is a state bench book or bench guide. The first state public health bench book, Indiana Public Health Bench Book, can be found online at http://www.in.gov/judiciary/admin/files/pubs-public-health-bb-opt.pdf. Several states have since published similar bench books or bench guides. While the bench books are written primarily for judges, the CDC also provides very useful materials for continuing legal education on public health law as well as graduate classes on rural public health law and policy.


[FN25]. Note that the term “evidence-based practice” in this context was generated in health research literature, and the term denotes the idea of promoting research and practices that have been proven to benefit patients.

A “logic model” is a graphic that “displays the sequence of actions that describe what the program is and will do--how investments link to results.” Logic Model, Univ. of Wis. Extension, Program Dev. and Evaluation, http://www.uwex.edu/ces/pdande/evaluation/evallogicmodel.html (last visited Mar. 28, 2014).


Ingrid A. Binswanger, et al., Health Disparities and the Criminal Justice System: An Agenda for Further Research and Action, 89 J. Urban Health 98, 99 (2012) (citations omitted). While the study’s emphasis is for urban areas, the concern of the impact on families should be addressed for rural communities as well.


Hodge et al., supra note 11, at 741-42.

“Evidence-based” practice is a term that originated in an effort to describe use of advances in medical knowledge and practices as validated by research and implemented in the actual medical care received by patients. Many references to “evidence-based” practices exist in the medical field and in the social sciences, and some are occasionally used in reference to justice system programs.

See CrimeSolutions.gov, Nat'l Inst. of Justice, https://www.crimesolutions.gov/ (last visited Mar. 28, 2014). This site is an initiative of the OJP within the Unites States Department of Justice. The National Institute of Justice (“NIJ”) contracts with Development Services Group, Inc. (“DSG”) to coordinate the evidence review process and provide content and with Lockheed Martin to provide website and technical support.

National Registry of Evidence-based Programs and Practices, U.S. Dept Health Human Servs., http://www.nrepp.samhsa.gov/Index.aspx (last visited Mar. 28, 2014). “All interventions in the registry have met NREPP’s minimum requirements for review and have been independently assessed and rated for Quality of Research and Readiness for Dissemination.” Id.

For example, alcohol use screening can be used to identify problems with abuse, especially in young people. U.S Nat'l Library of Med., Web-based alcohol screening and brief invention for university students: a randomized trial, http://www.ncbi.nlm.nih.gov/pubmed/24668103?tool=MedlinePlus (last visited Apr. 23, 2014). A specialized paralegal could assist a client in a law office with performing the screening, finding locations to get a screening if equipment is necessary, or obtaining a referral using a computer-assisted program for screening and referral to treatment system. “[S]ome screenings [can be done] in your doctor’s office. Others need special equipment, so you may need to go to a different office or clinic.” Health Screening, MedlinePlus, http://www.nlm.nih.gov/medlineplus/healthscreening.html#cat66 (last visited Apr. 23, 2014).

For example, alcohol misuse is an area where screening and brief intervention could be easily conducted by a properly trained paralegal or live by the lawyer via the Internet. See CARS-DWI Assessment and Treatment Project, The Century Council, http://www.centurycouncil.org/judicial-guide/cars-dwi-assessment-and-treatment-project (last visited Mar. 28, 2014).

[FN38]. Id.

[FN39]. Id. at 12.


[FN41]. Id. at 1117. See also. Arax, supra note 15 and accompanying text.

[FN42]. Souvannarath, 95 Cal. App. 4th at 1117.

[FN43]. Id. at 1119.

[FN44]. Id.

[FN45]. Id.

[FN46]. Id. at 1119-20.

[FN47]. Id. at 1120.

[FN48]. Id.

[FN49]. Id.

[FN50]. Id.

[FN51]. Id.

[FN52]. See id.


[FN54]. Id.

[FN55]. Id. at x (emphasis added).

[FN56]. A published rural-specific supplement to Public Health Law would be immensely helpful both in the classroom and in practice.


[FN58]. Id.


[FN61]. Agriculture workers from other countries may use alcohol according to their cultural norms. Those who are undocumented may have a disease such as tuberculosis or other conditions that present public health issues to the community, small or large. Because an undocumented worker may be reluctant to seek public health services, their illness may not be detected in timely manner.


[FN71]. The OJP provides innovative leadership to federal, state, local, and tribal justice systems, by disseminating state-of-the-art knowledge and practices across America. See Office of Justice Programs, www.ojp.gov (providing more information).


[FN74]. Id.

[FN75]. Organization of ICCFASD, Nat’l Inst. on Alcohol Abuse and Alcoholism, ht-


[FN79]. Id. at 526-27 (emphasis added).

[FN80]. Id. at 537.


[FN82]. Id. at 758-59.


[FN85]. Id. at 2.


[FN88]. Id.

[FN89]. An example of adoption by reference:

There are three ways for States to adopt Federal Resource Conservation and Recovery Act (RCRA) regulations in order to obtain authorization to run a RCRA Subtitle C program:

a) States can adopt rules that are structured or worded differently from Federal regulations, but that are equivalent in effect and no less stringent;

b) States can adopt the Federal RCRA regulations verbatim; or

c) States can adopt the Federal RCRA regulations by reference.


[FN93]. See e.g., Katie Jane Dahlseng, Comment, South Dakota's Solutions to Soppy Soil: Changes to Water Management, 58 S.D. L. Rev. 347 (2013) (summarizing South Dakota case law on water and drainage rights).

[FN94]. As one commentator explained,

There is now a large body of literature to show that a variety of traumatic experiences can cause significant psychological difficulties for large numbers of people [ ]. Many individuals show great resilience in the face of such experiences and will manifest short-lived or subclinical stress reactions that diminish over time [ ], and most people recover without medical or psychological assistance [ ]. Nevertheless, a range of psychological difficulties may develop following trauma in some of those who have been exposed, including acute stress disorder and posttraumatic stress disorder (PTSD). The rate of acute stress disorder has been reported to be 13% in motor vehicle accident survivors [ ] and 19% in victims of violent crime [ ]. Reported rates of acute PTSD (defined as PTSD symptoms for less than 3 months) have varied across different trauma populations, from 23% in motor vehicle accident victims [ ] to 47% in rape victims [ ].


[FN96]. Id. at 1.

[FN97]. Id. at 1-2.


[FN100]. Id.


59 S.D. L. Rev. 529

END OF DOCUMENT