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"It Is Here We Are Loved": Rural Place Attachment in Active Judging and Access to Justice

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In the United States, rural economic marginalization and corresponding gaps in employment, affordable housing, health care, nutrition, and education put individuals at high risk for legal need. Yet many rural regions are "legal deserts" with few, if any, attorneys, and prevailing access-to-justice initiatives tend to neglect the unique challenges posed by rurality. The efforts of rural tribal and state court judges, though often overlooked in scholarship and policy, offer a compelling response to this inequitable access-to-justice context. Building on emergent work on "active judging," or when judges step away from a traditional passive role to assist unrepresented parties, this manuscript explores how rural place and place attachments shape diverse judges' interactions with litigants. It draws on mixed-methodological research across seven tribal and state courts in the upper Midwest to shed light on rural judges' efforts, how these efforts are regarded by unrepresented parties, and to what extent a shared experience of rurality provides a meaningful form of "access." In so doing, it offers a novel spatial intervention in scholarship on access to justice and active judging and contributes to more rurally relevant justice practices.

> [T]he possibility arises that as speakers communicate about the landscape and the kinds of dealings they have with it, they may also communicate about themselves as social actors and the kinds of dealings they are having with one another. . . . Indirectly, perhaps, but tellingly all the same, participants in verbal encounters thus put their landscapes to work—interactional work—and how they choose to go about it may shed interesting light on matters other than geography.
>
> — Keith Basso (1996, 75)

Omaa zhawenimiyangidwa epiichi . . .

It is here we are loved . . .

— Margaret Noodin (2020, 44)

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INTRODUCTION: LANDSCAPE WORK

Before becoming a state court judge in Minnesota, Judge Isabelle practiced criminal law in another state. She was a prosecutor and did defense work, then began representing parents in child welfare cases in tribal and state court. She also worked as a legal advocate for one of the tribes: "And because I did some prison work, I did federal work as well. And I've handled a death penalty case," she told me. "I ended up coming up to work for the Band[1] as a child protection attorney for a few years. After that, I was appointed as a tribal judge over there. I spent a total of ten years there—seven of that I was a judge. And then I was appointed to the state court bench in 2003." Judge Isabelle is herself Indigenous, and her professional trajectory reflects that of many of the other Native judges with whom I collaborate, individuals who have practiced diverse areas of law and have served on the bench in different tribal and/or state courts. The non-Native judges who participated in this research all sit on state court benches, but most work closely with tribal counterparts and participate in tribal court-state court forums. This is relatively common in Public Law 280 states like Minnesota and Wisconsin,[2] where, in 1953, criminal jurisdiction was shifted from a combination of tribal and federal control to state and local government (Champagne and Goldberg 2012).

Judge Isabelle speaks with a slight southern lilt. She has bright eyes, short greying hair, and wire rimmed glasses. Her black robe hangs nearly to her feet, and the first time we met in person she wore camouflage-patterned Keds with ivory stockings that wrinkled loosely around her ankles. It was a rainy autumn day, and my research assistant and I were in her courtroom to observe and conduct litigant surveys. The first hearing involved a Native defendant who had been in custody for 170 days on drug charges. His public defender was requesting that he be released on his own recognizance. Judge Isabelle listened to the defense, then looked at the defendant. "Where are you going to go?" she asked. He stammered, visibly nervous, and fidgeted with the orange fabric of his jail scrubs. The handcuff chain jingled steadily against the heavy ring on the leather transport belt that was wrapped tightly around his waist. "It's okay," Judge Isabelle said. He responded: "Down at the Birch Road Trailer Court." Judge Isabelle gave a quick nod. "I do work for Rob Freedman in Adams—over the hill?" He asked it like a question, gauging to see if she was familiar. "Mm-hm." She nodded, her eyes urging him to continue. He described how a friend approached him about the work, having found him sitting in his car on a side road at six a.m. "You were homeless." "Uh-huh. And I'm ADD as shit, but I'm mechanically inclined." "Mm-hm?" She nodded again. They kept talking, he sharing with her the traumatic event that occurred before his arrest and his plans upon release. The county attorney and public defender looked on. The bailiff scanned his phone. I scrawled notes in the margins of an already full page.

1. To protect the anonymity of judges, I utilize pseudonym surnames, which collaborating judges selected for themselves, and likewise do not identify courts, counties, towns, or sovereign nations by name in this manuscript.

2. Pub. L. No. 83–280, 67 Stat. 588 (1953) (codified as amended at 18 U.S.C.A. § 1162, 25 U.S.C.A. §§ 1321 to 1325, and 28 U.S.C.A. § 1360). The only non-Public Law 280 tribes in Minnesota are the Red Lake Band of Chippewa (excluded from Public Law 280 at the outset) and the Bois Forte Band of Chippewa (the subject of retrocession in 1975), and, in Wisconsin, the Menominee (excluded at the outset).

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GETTING ACCESS TO JUSTICE "INTO PLACE"[3]

This is a subtle but also heavy-handed way to begin a manuscript about rural place—about "landscape work" (Basso 1996, 75)—and how it effects access to justice. In what follows, I draw on so many small but significant encounters and contextualize them with why—that is, why the rural judges with whom I conduct research engage litigants in this way—and how—or how this verbal and nonverbal interaction around place is experienced as access and perhaps also justice. My data are based on interviews with eleven tribal and state court judges in northern Minnesota and Wisconsin, an area colloquially known as "the Northland"; over 150 hours of court watching across seven tribal and state courts; and surveys with one hundred litigants in these same courts.

My aim in this manuscript is not to demonstrate what is unique to all rural tribal and state courts—an impossibly sweeping claim—but, rather, to make a necessary place-based intervention in prevailing work on active judging and access to justice more generally. To assert that place matters will surprise no one, and yet most scholars fail to explore what place specifically does in courtroom interactions between judges and litigants, particularly in regard to access to justice. Instead, law and socio-legal scholarship tends to identify place as external to the courtroom, with the literature on law and rurality, in particular, emphasizing the obstacles, absences, and other "justice gaps" associated with rural socio-spatiality. In this subject area, scholars describe physical barriers to court, including distance, bad roads, and an absence of public transit (Pruitt and Showman 2014); digital barriers like insufficient or absent broadband and cellular service (Bennett et al. 2019; Denson 2019); and deep-seated socioeconomic and policy barriers (Eisenberg 2020). Many rural areas are highlighted as "legal deserts" or areas experiencing vast and growing attorney shortages (Pruitt et al. 2018; Statz and Termuhlen 2020), and as Michele Statz, Robert Friday, and Jon Bredeson (2021) demonstrate, rural individuals are further impacted by access-to-justice initiatives that are largely designed by people in urban areas with urban populations in mind and that therefore tend to compound, rather than alleviate, justiciable needs.

Taken together, this scholarship importantly illuminates a profound, multifaceted access-to-justice crisis in rural America with unique implications for elders, veterans, and disabled individuals, all of whom are disproportionately rural (Pruitt et al. 2018). These justice gaps also impact rural migrant farm workers contending with housing insecurity and workplace abuses, rural communities vulnerable to extractive industry waste and other environmental hazards, and rural Native Americans who additionally navigate a complex web of tribal, state, and federal laws as well as deep-seated structural inequities and socioeconomic precarity (Kirmayer, Gone, and Moses 2014). It is perhaps unsurprising that of the ten million rural Americans with incomes below 125 percent of the federal poverty line, three-quarters experience at least one civil legal problem in a year. Nearly one-quarter face six or more civil legal needs in a year (Legal Services Corporation 2017).

Yet, notably, sustained and mixed-methodological research on this crisis, and, specifically, on how it is experienced by rural community members and legal professionals

3. This subtitle nods to Edward S. Casey's (1993) *Getting Back into Place*, a pioneering text on the importance of place in people's lives.

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in tribal and state courts, is lacking. There are some international exceptions (Baxter and Yoon 2014; Newman 2016; Gwaka, May, and Tucker 2018), but, in the United States, very little empirical research on access to justice in rural US regions, including Indian Country, has been conducted (Statz 2021). When we consider that state courts handle 99 percent of all civil cases and the majority of unrepresented parties (Steinberg 2016; Carpenter et al. 2018) and, likewise that tribal courts—many of which cannot afford to provide public defenders to tribal litigants—encounter individuals who are almost always *pro se* (Creel 2011), this scholarly neglect is even more consequential.

By illuminating the place-based access-to-justice efforts of diverse rural judges and, critically, how these efforts are interpreted by litigants, my research not only addresses these scholarly gaps but also importantly exceeds the prevailing focus on external rural barriers and absences. In what follows, I focus in particular on the work of judges: not only do these individuals implicitly and consistently insist on getting access to justice "into place," but their distinct orientations to rural place provide a crucial starting point for developing a theoretical scaffolding through which other empirical, philosophical, and necessarily plural understandings of rurality might be integrated. My aim in so doing is not to address or exhaust so many diverse and often profession-specific definitions of "rural" but, rather, to honour what place means to my interlocutors and to show a socio-legal audience why this definition matters to access to justice.

Most immediately, my data suggest that the place work of rural judges—which importantly spans jurisdictions and individual positionalities—both reflects and adds compelling dimension to nascent work on "active judging" or when judges step away from a traditional passive role to assist those without counsel (Carpenter 2017). While ostensibly motivated by the aforementioned rural justice gaps, I argue that the judging I have documented simultaneously appeals to, is motivated by, and is inflected with rural place in ways that are at once intimate and practical.

Below, I build upon Rebecca Sandefur's (2019) accurate, if not uncomfortable, assertion that the current access-to-justice crisis has been largely defined by the bar, meaning that the prevailing focus on the "supply side" of access to justice—whether in the form of lawyers, non-lawyer advocates, self-help services, or technology—is at once unsurprising but also insufficient (see also Hadfield 2010; Albiston and Sandefur 2013). Instead, as Sandefur (2019, 53) writes, the challenge is both technocratic—a matter of understanding justiciable problems well enough to design appropriate and feasible solutions—but also normative or "a matter of understanding what it means to want lawful resolution or justice":

> A radically different perspective emerges from social-scientific research investigating "justice problems" [and] how those problems affect the lives of people who confront them and the communities and families those people live in. This research transforms the bar's assumption about the need for legal services into an empirical question: what assistance do people need? . . . [W]e have the option of formulating the access-to-justice crisis as being about, well, access to justice. (50)

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What it means to want—and to try to access and to provide—lawful resolution or justice and what it feels like when a sense of justice is arrived at, are questions at the heart of this research.

This insight leads to another motivating factor for this article, which is that my research is arguably best suited to engage emergent literature on active judging but must necessarily also exceed it by virtue of my findings. In other words, the judges with whom I collaborate are ostensibly "active judges," but their efforts are deeply informed and driven by place. Because the active judging literature has yet to meaningfully engage place, I do. And because I am not a law professor but an anthropologist of law and someone from a rural place, I engage it in a way that feels appropriate to me in both a rigorous and rigorously personal way. This means assembling a framework that draws on the scholarly literature on active judging and place attachment as well as writings that regard rural place intimately and as rightfully complex and intersectional. Throughout, I steadily return to insights offered by anthropologist Keith Basso, whose decades of collaborative linguistic fieldwork on Western Apache constructions of place offer a stunningly beautiful reminder of place—and sensing place together—as a meaningful mode of access.

WHAT ASSISTANCE DO PEOPLE NEED? BUILDING A NEW THEORY OF ACTIVE JUDGING AND PLACE ATTACHMENT

Active Judging

Recognizing the insufficiency of focusing disproportionately on "supply-side remedies," or, perhaps more accurately, of conflating "supply side" with "lawyers," a growing number of researchers, practitioners, and policy makers have identified judicial role reform as a potentially meaningful way to address the access-to-justice crisis (Pearce 2004; Zorza 2004; Gray 2005; Barton 2010). "Rather than defaulting to the passive umpire role and thus allowing *pro se* parties to flounder," Anna Carpenter (2017, 661) writes that "reforms would see judges taking affirmative steps to help *pro se* parties navigate the civil litigation process." Here, reformers call for a kind of "active judging" or a model of judging that sets aside traditional judicial passivity in favor of judicial intervention or activity to assist people without counsel.

As Carpenter and others point out, there are multiple reasons for this kind of reform. For one, prevailing forms of access-to-justice assistance (self-help services, non-lawyer advocacy) are often physically located outside the courtroom, whereas the judge is potentially the only legal expert available in the courtroom. There is immediacy in this format as well as cost-effectiveness if it reduces the need for more court personnel (Shanahan, Carpenter, and Mark 2016). Those in support of judicial role reform also offer a kind of preemptive argument for active judges: active judging may circumvent the need for a civil right to counsel, which risks repeating the same failures observed in the criminal justice system (Barton 2010). It also confronts the critique that traditional judicial passivity as applied to *pro se* parties is affirmatively harmful (Zorza 2004; Steinberg 2016). While the work on active judging has yet to expressly consider rurality, these arguments are particularly salient given rural attorney shortages,

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under-resourced court infrastructure, and the marked inaccessibility of so many access-to-justice self-help supports (Statz, Friday, and Bredeson 2021).

The case for active judging has gained traction in policy and practice, with a clear example being the American Bar Association's (ABA) 2007 revision of Rule 2.2 of the Model Code of Judicial Conduct. As the ABA writes, "[i]t is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard."[4] Of course, while "reasonable accommodations" ostensibly speaks to some form of active judging, how "reasonable" is constituted is less clear. In an effort to address some of this ambiguity, Carpenter (2017) synthesized the literature on judicial role reform to identify three primary dimensions of active judging: (1) Judges adjusting procedures: whether informal procedural adjustment, on the one hand (order of testimony, written procedural rules, evidentiary rules), or the formalization of new rules that place the burden of case processing and factual development on courts and judges rather than parties, on the other (see Steinberg 2016); (2) Judges explaining law and process, including the explanation of the order of testimony, evidence, how to make an objection, and whether the judge will rule from the bench or in writing—that is, information that does not constitute giving legal advice or advocacy; and (3) Judges eliciting information from litigants—that is, legally relevant and helps develop a full factual record.

These three dimensions offer us a critical framework for more systematically advancing work on active judging. Yet, amid the growing call for active judging in lawyerless cases, empirical research on what constitutes active judging remains relatively nascent and case and court specific (Carpenter 2017; Carpenter et al. 2018; Shanahan 2018; Steinberg 2018; Steinberg et al. 2021). Moreover, forthcoming work arguably gives us a better sense of why judges in lawyerless courts do not embrace active judging rather than why they do ((Carpenter et al., (2022). Who engages active judging behaviors and why; the professional and personal sustainability of active judging; how active judging might be operationalized across diverse cases and jurisdictions; and, crucially, how active judging is experienced by unrepresented civil litigants remain questions for which there is little empirical data and even less rural or remote tribal or state court-specific data (Statz 2021).

Any research on the topic must further take into account noted inconsistencies across active judges' own perspectives on, and practices of, the three dimensions of active judging, along with more broad and well-documented inconsistencies across trial court judges' decision making, judicial style, and adherence to the rule of law (Conley and O'Barr 1988). It must consider the ethics of active judging and ongoing contestations around "judicial values" (Mack and Anleu 2011), such as neutrality and impartiality as well as, potentially, empathy and emotional engagement (Nussbaum 1996; Sharman 1996; Bandes 2009). And, finally, while active judges may self-identify as playing a role in facilitating fairness and access to justice, scholars must first understand how individual judges interpret "fairness" and, notably, what judges think are litigants' expectations for fairness.

4. American Bar Association, "Model Code of Judicial Conduct 2007," https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct_2007/.

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I use this research as a jumping off point, for the judges I collaborate with reflect the multifaceted, almost endless, variety that is intrinsic to the judiciary and, by extension, active judging. These judges differ from one another across gender, race, ethnicity, age, class background, and political ideology. They serve on tribal and state court benches. They variously self-identify, or might be classified, as activist or conservative judges, as mediators or authoritative decision makers, as trailblazers, minimalists, consensus builders, or almost any of the other prevailing typologies of judging (Conley and O'Barr 1990; Yung 2012). And, yet, each is ostensibly an "active judge" and, as I have observed across all collaborating courts, exhibits dimensions of active judging on behalf of criminal defendants as well.[5] Why?

Place

We know from new data that high numbers of *pro se* litigants and recommended judicial role reform do not alone ensure active judging. If anything, most judges will likely not offer assistance, accommodation, and simplification—along with procedural and substantive justice—owing to ethical ambiguity and time pressures (Carpenter et al. 2022, 58). Accordingly, there must be another explanation, which, I believe, invites an examination of active judging as related to, and necessarily contextualized by, place and attachment to it. In the literature on place attachment, "attachment" is used to emphasize affect, and "place" connotes the environmental settings to which people are emotionally and culturally attached (Low and Altman 1992; Low 2017). Place attachments —whether as narrated accounts of a landscape, place identities, or practices—serve as "symbolic reference points" that illuminate social relations and bond individuals together (Basso 1988). While any person carries with them particular place attachments, it is arguably in rural and remote courts where they are most observable and, likewise, most relevant to active judging.

This distinction is what arguably sets rural place—and, indeed, this research—apart. Some of my data, specifically those that evidence relationality, accountability, and trust in courtroom interactions, are not exclusive to rural settings. Indeed, these phenomena are often referenced in the literature on treatment courts and juvenile courts (Russell 2009; Buss 2021). Moreover, there are, of course, judges across the urban to rural continuum who prioritize and aim to facilitate a kind of emotional responsiveness with litigants, just as others do not (Mack and Anleu 2011). Yet rather than describe what I have documented as an outcome—the way in which we might identify increased trust in the court as owing to the structure and design of a problem-solving setting—I see it as a function of intimacy that is rooted in a shared experience beyond the courtroom.

Necessarily recognizing the dimensions of power and identity that differentiate judges and the parties before them, I foreground place, which carries sentiments of attachment that emerge from lived experience (Aucoin 2017), as compelling and

5. While defendants are not entitled to court-appointed counsel in tribal courts (Creel 2011), many tribes provide public defenders for tribal members or descendants (Macomber 2020). Further, owing to a shortage in defense counsel, many rural defendants appearing in state court do not fare any better when it comes to adequate representation in criminal matters (Kang-Brown and Subramanian 2017).

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informing a sort of intimacy that may however briefly exceed these differences. It is the "rueful self-recognition" of those who share "inside" place attachments as well as "outside" losses and betrayals (Herzfeld 1997). This intimacy occurs in the courtroom via judges' revelatory self-disclosure and emotional expressiveness, and it is constantly reformulated in the interest of offering a sense of access (Thiranagama and Kelly 2011).

Drawing on legal geography's nuanced attention to interactions of law and place (Blomley 1994; Pruitt 2014), we might infer that a judge's disclosure of a place identity or attachment is influenced by an emotional commitment to place that seeks to further foster a litigant's sense of trust. Given a nascent survey finding—namely, that many rural litigants likewise care about the judge's personal opinion of them—we see this going the other way too. In other words, when a litigant discloses a place identity, as in the opening vignette, it may be seen as an effort to forge connection and legitimacy before a judge. "In large ways and small," writes anthropologist Keith Basso (1996, 110), "[people] are forever performing acts that reproduce and express their own sense of place—and also, inextricably, their own understandings of who and what they are" (see also Alexander 2017). Honoring this dynamic, place-based exchange lends a necessary and energizing dimension to prevailing work on active judging, particularly since we now know that the presence of unrepresented parties is typically not enough to motivate judges to intervene and assist people without counsel. My findings suggest that it is rural place—and, specifically, a shared experience of rural place—that largely animates and informs active judging in the courts where I work.

While collaborating judges' efforts are certainly aimed to address the broader spatial context of absent legal representation and rural marginalization (Ghai and Cottrell 2009), I believe that they also originate in judges knowing "who and what" litigants are —to draw on Basso (1996)—and what they want. This sort of knowledge is "multigenerational" and "multi-jurisdictional," as I discuss below, and it intrinsically implicates trust, relationality, and access. Accordingly, place, as revealed in the admission of place attachments or narratives of place, appears to positively impact litigants' perceptions of a "just" decision, even if the outcome is not what they wanted. However incongruous with the more formal aspects of due process, these expressions matter. Not only do they signal an unexamined aspect of active judges' efforts and experiences, but they also have implications for procedural fairness and confidence in the courts. Returning to Sandefur's earlier argument, this intimate knowledge of place offers judges an abiding sense of what people need and thereby helps us understand the active judging practices that follow.

Finally, and just as importantly, place attachment theory also highlights difference. In this sense, place may supersede critical differences—whether between judges and litigants or between tribal and state court judges—or, conversely, amplify them. Absent or unreciprocated place attachments may also highlight broader contrasts to reveal a professional or policy blindness to rural identity (Gaffin 1997). Brought together, this approach counters the use of rurality as "an adjectival context [or] background" for legal analysis (Philippopoulos-Mihalopoulos 2010, 4) to instead foreground rural place as rife with affective bonds and lived expertise with deep relevance to legal process and policy development (Manzo and Perkins 2006).

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AIMS AND METHODS

My intention in this manuscript is to contribute intellectually and practically to what we know about active judging as a form of access to justice and about diverse rural courts and judges more generally. Yet beyond that, and in all of my work, I also want to subvert prevailing academic norms around "expertise." To that end, I firmly maintain that those who live in, and identify with, rural places are best suited to teach us about access to justice in rural places. For socio-legal scholars, this is not a process of discovery but, rather, of listening and specifically about listening to what is being said (Kimmerer 2013). As the poet Margaret Noodin (2020, ix) writes, "[w]hether we hear *giji-giji-gaane-shii-shii* or *chick-a-dee-dee-dee* depends on how we have been taught to listen. Our world is shaped by the sounds around us and the filter we use to turn thoughts into words." Because I am from a rural place, I tend to listen for language about rural places. Because I am an anthropologist of law, I listen for this language in tribal and state courtrooms and in interviews, informal conversations, and surveys with the individuals who move through these spaces. Accordingly, I engage "active judging" quite differently from my counterparts, the majority of whom are law scholars.

Since 2016, I have been conducting mixed-methods research on rural access to justice across northeastern Minnesota and northern Wisconsin. Locally known as "the Northland," northern Minnesota and northern Wisconsin notably resemble one another more than they do their respective states' southern and/or metropolitan areas (Statz 2021). This includes the prominent presence of sovereign tribal nations: six Anishinaabe reservations and the Red Lake Nation are located in northern Minnesota, and eleven federally recognized tribes span the northern half of Wisconsin.

In recent years, I have become particularly interested in the practices and perspectives of rural tribal and state court judges and, through my research, have been fortunate to develop trusting relationships with a number of these individuals. This involvement has in turn facilitated connections with still more rural judges, along with Native and non-Native judges who preside over higher-level courts. It is important to note that, while I absolutely acknowledge the vast procedural and substantive differences between tribal and state courts and, likewise, among tribal courts,[6] I regard rural place in my research as an element that may uniquely supersede jurisdictional divides. Surfacing congruities between rural tribal and state courts is important, for despite a nascent body of law scholarship on rural access to justice in the United States (Pruitt and Showman 2014; Pruitt et al. 2018), there is a dearth of critical and sustained socio-legal attention to diverse experiences of diverse rural courts and still less empirical attention to what is shared across them (Nesper 2015).

It is even more rare to find scholarship on what I have observed as informal cross-jurisdictional collaborations, such as joint advocacy around digital connectivity or shared data infrastructure to enhance local access to justice (Statz 2021). My work aims to address this gap in a necessarily nuanced and mindful way. Regarding the robust presence of Indigenous judges in formal and informal tribal court-state court forums as

6. When we consider, for instance, that there are over 350 tribal courts in the United States—each a unique instrumentality and manifestation of tribal sovereignty—this variance is unsurprising (see Creel 2011).

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"persistent and insistent survivals" (Simpson 2011; see also Ramirez 2007, I mindfully attend to the promotion of access to justice as well as the enactment of self-determination in so many "quiet contexts" (Richland 2021; see also Borrows 2019).

My research is ongoing, and the findings on which this manuscript is based draw on data collected between March and October 2021. In March 2021, I began conducting intensive, mixed-method research in collaboration with seven tribal and state court judges in the Northland. I knew four of these judges from my earlier research, and the remaining three were invited to participate based on rural court location and court type. Taken together, these judges represented a concurrent (1) tribal court (Judge Zanagi'iwe) and (2) circuit court (Judge Brownstone) in a tourism-dependent region in northern Wisconsin; (3) a district court (Judge Vanzandt) situated within the boom-and-bust mining economy of northern Minnesota's "Iron Range"; (4) a tribal court (Judge Bader) located in one of Minnesota's most remote northern regions; (5) a district court (Judge Isabelle) in northern Minnesota, where the first joint tribal-state jurisdiction wellness court in the nation was developed; and (6) a district court (Judge Mimieux) in another concurrent tribal-state court jurisdiction a bit farther south. As a potentially useful comparative point, I additionally conducted research in collaboration with a district court judge who presides over a court (7) in a mid-size city (with a population of ninety thousand) in Minnesota. By comparison, the population of those reservations and towns where rural collaborating courts are located ranges from eight hundred to twelve thousand. I also interviewed four other judges who did not formally collaborate on this research but who were keen to share their own place-based experiences and perspectives. Notably, one of these judges, Judge Barton, represents the tribal court counterpart for the mid-size Minnesota district court mentioned earlier. Another, Judge Cash, is a Minnesota Supreme Court justice originally from northern Minnesota.[7]

All of the interviews were audio-recorded and traced judges' regional histories and place attachments; the extent to which these things inform the judges' regard for *pro se* litigants or low-income parties and/or motivate their advocacy on behalf of them; the judges' involvement in formal and informal access-to-justice efforts; and the reported successes and costs of active judging in rural spaces. Interview questions also explored judges' individual positionalities—that is, judges' self-identifications, experiences of marginalization, and/or socioeconomic privileges (Massoud 2022); judicial styles; adherence to the rule of law more generally; education; and regard for judicial selection processes.[8] If a judge referenced a particular aspect of their identity—whether gender, tribal membership, race, age, or so on—as salient to these topics, I included that information as it was reported to me in the following sections.

In addition to the interviews, my student research assistants and I conducted extensive courtroom observation, which is a well-established strategy to study judges and organizational settings (Fielding 2011; Van Cleve 2020). In this project, courtroom

7. Owing to this judge's relatively exceptional appellate court status, I draw on her reflections on place and relationship, rather than on active judging, to inform this manuscript.

8. In collaborating tribal courts, judges are elected or appointed by Tribal Council members, with the Tribal Council likewise determining the terms of office. In Wisconsin, circuit court judges are elected for six-year terms, and, in Minnesota, state court judges are elected or appointed by the governor, then serve six-year terms before re-election.

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observation is used to document embodied and explicit instances of place attachments in judges' interactions with litigants as well as dimensions of active judging more generally. To enhance reliability and limit subjectivity, the research assistants and I engaged in twenty-five to forty hours of observation in each court. With the exception of Court 7, where we observed the majority of hearings remotely, all courtroom observations took place in collaborating courtrooms, even as many hearings occurred via Zoom owing to COVID protocols that were in place at the time. As a result, we were often alone with the judge, court personnel, and, in some courts, attorneys, while everyone else appeared via Zoom on large screens displayed along courtroom walls.

At the start of each day, we reviewed the court calendar and assigned an anonymized identification number to each case, followed by A, B, and so on, assigned to the parties listed. These identification numbers were used for litigant surveys and daily debriefs (see below). In the courtroom, we recorded the assigned identification number, case type, presence or absence of legal representation, parties' gender and race, if observable, and duration of the encounter between the party and the court on a standardized template. We also documented instances of active judging and place-based language, noting the speaker's phrasing; the time and context in which it was used; the party's response, if any; and how or if the exchange appeared to influence the remaining interaction (Philips 1998). We audio-recorded or were given copies of court recordings for nearly all of the hearings we observed, so as to verify observation notes and ensure accurate representation of courtroom interactions.

Over the course of this project, I also observed informal conversations and meetings between collaborating tribal and/or state court judges—namely, the aforementioned "quiet contexts" in which identity, geography, capacity, and need are variously exerted or minimized. Here, I recorded instances in which place was evoked, by whom, when it was referenced in regard to the provision of access to justice, and how the topic was differently engaged or understood cross-jurisdictionally. While the team members conducted observations in the participating court, I and/or another trained research assistant conducted brief surveys (fifteen to twenty minutes) with litigants at the conclusion of their hearings. In-person surveys were conducted in private spaces near the courtroom, such as attorney-client meeting rooms or courthouse law libraries, and surveys involving remote appearances occurred via Zoom breakout rooms.

The person conducting the survey entered data into Qualtrics survey software on a laptop over the course of the survey. Each survey began by recording the litigant identification number, the case type, and the time and location. Survey questions then progressed to whether parties utilized an attorney or any self-help resources prior to their court appearance and their experience of these supports. Individuals were next asked questions about stress and other health impacts of having a legal case, their familiarity with the judge, how the judge interacted with them, and how they interpreted this behavior. The survey then evaluated respondents' experience of place and place attachments, whether they viewed the judge's experience of place as similar to their own, and the extent to which they believed place matters in the administration of justice. The survey concluded with questions about the participant's background and whether they preferred attending court in person, via Zoom, or by telephone. All questions included the opportunity for participants to elaborate, with researchers recording responses in text boxes below each survey question.

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Finally, during lunch or at the conclusion of each day, my research assistant(s) and I conducted a brief open-ended, audio-recorded "daily debrief" (twenty to thirty minutes) with the collaborating judge. While time spent in each court varied, we conducted an average of six daily debriefs with each collaborating judge. These informal conversations provided an opportunity for us to ask questions or clarify what we had observed in the courtroom and to record judges' own observations and interpretations of litigant interactions. Owing to the familiarity that many judges had with the parties before them, survey data were discussed during debriefs but left anonymous. If a judge mentioned a specific party, this information was redacted in the debrief transcript and replaced with the litigant identification. Data collected during daily debriefs allow me to comparatively evaluate occasions in which judges' and civil litigants' encounters with place align, diverge, and/or subjectively matter to accessing justice.

All recorded interviews and daily debriefs were transcribed, and I engaged in line-by-line coding of all interview transcripts, attaching descriptive codes relevant to central research questions throughout (Thornberg and Charmaz 2014). The research team then did a second round of coding interview transcripts using NVivo, a qualitative analysis software, to collaboratively identify emergent themes and develop a code book to reference and refine as the research progressed. Throughout the course of the project, I steadily reviewed these themes and any of the "surprising" evidence with participating judges via email or over the phone (Baxter and Jack 2008). At the time of writing, a virtual forum with all collaborating judges was scheduled to formally discuss their interpretations of nascent findings and evaluate methods, research questions, and next steps.

In the meantime, we also used Qualtrics software to analyze and visualize survey data. These data have additionally been uploaded onto NVivo, where we are presently comparing and organizing survey question responses into granular thematic groupings; evaluating observational and interview data against demographic dimensions of gender, age, socioeconomic status, and ethnic/racial identity; and assessing how place-based intimacy is analogously or differently understood across the litigant judge and tribal court judge-state court judge axes. While this portion of analysis largely exceeds the scope of this article, it very much informs the claims that I make.

ACTIVE JUDGING IN THE RURAL NORTHLAND: THREE EXAMPLES

Judge Vanzandt

In August 2021, my research assistant and I sat on a bench in a courtroom almost completely lit by sun streaming through the tall windows lining one wall. We were observing a hearing involving a harassment restraining order. The litigant appeared unrepresented. She was a young white woman with brown hair parted neatly on the side. She wore a black blouse with white polka dots and black capri pants and gold-colored flats. Her feet did not touch the floor, and her right foot swung nervously back and forth. She sat at the counsel table alone, her elbows extended on the arms of the chair, and her shoulders were held high. The defendant was young, male, and also

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white. He wore a pale green t-shirt that read "Lake Life" in large letters. His attorney sat beside him, an older white man in a gray suit and purple tie.

The plaintiff began questioning the first witness she had called, a friend. She paused for such a long time between questions that at one point the defense attorney, who had steadily been objecting to what she said ("leading questions"; "speculation"; "objection, narrative"), leaned in her direction and quietly asked if she was alright. Judge Vanzandt began to rephrase the plaintiff's questions. She repeated his language, and, as the witness answered, she closed her eyes and looked down. "I expected it [the harassment] to stop," she said finally. "I thought with other people being involved it would stop." She pressed her lips together, another long pause. "Anything further, Ms. Weber?" Judge Vanzandt asked. "No," the witness replied. "No questions," stated the defense attorney. "The court has further questions," said Judge Vanzandt. He asked about uninvited visits: "And you indicated there were harassing calls and text messages?" The defense attorney interrupted Judge Vanzandt and objected to the questioning. "I don't like to object to the judge," he said, and they both laughed. The plaintiff did not smile. This went on for another five minutes. Finally, Judge Vanzandt asked the plaintiff: "Are you resting your case, meaning are you done with the presentation of your case?"

She mentioned the exhibits she had brought, among them a police report, a letter from her daughter's daycare, the second violation report, the Child Protective Services (CPS) report. "As to Exhibits 1, 2, and 3," said Judge Vanzandt, "they really wouldn't be admissible without having the police officers and CPS workers here." "The contents are hearsay," interrupted the defense attorney, "since they're not subject to cross-examination." He paused. "Look," he said, "I understand she is without legal counsel, but . . ." His voice trailed. After the hearing had concluded, I asked Judge Vanzandt: "Would you say you feel a lot of pressure to help people out in that situation?" "The answer is no," he responded. "I don't feel any pressure to do—I just do it because it's the right thing, but I don't feel pressure to do it. The better person to ask that question to would be to a judge who does not do it." "Huh?" I waited, and he responded:

> Do they feel pressure to the fact that they know this person is not getting a fair day in court, they're not being heard, they don't know those type of things? I don't feel any pressure to do so, I do it just cause it's the right thing to do. Now the thing is, I can't go so far as being their attorney. And that was the point that, you know, Dubenowski [the defense attorney] was giving me a hard time about in chambers, is that, you know, I—"Judge, I can't have you up there being the judge and the petitioner's attorney. Cause that's just not fair."

I asked the defense attorney about it later. He nodded and said:

> What [Judge Vanzandt] did there, he kind of took over questioning . . . on behalf of her, because she froze. And people that, for the most part, you know, that don't have any background in the law or appear publicly, it's tough to formulate questions and go sit there and on the spot try to think of what to say. . . . What Judge Vanzandt was doing was trying to give her her day in

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> court, feel like she wasn't trampled over and she didn't understand the issue. . . . In my opinion, I think he wanted to let her walk out of the courtroom feeling like she wasn't bare naked in there, so I understood what he was doing. I appreciated what he was doing. You'd see the same thing from Judge Harris. He was from [a nearby Iron Range town]. He knew everybody, he knew the right result.

"Sure," I responded. I knew Judge Harris well, and I also knew that Judge Vanzandt respected him a great deal. The attorney continued:

> He would—we would go back in chambers and he'd say, "You know, this Lenny Johnson guy that you want to bring up here—I know the guy's family, he had a tough upbringing, he's really not a bad guy, you know, maybe you've got to cut him slack, he probably needs some treatment here, so let's—he didn't need to go to jail or prison, let's help." Harris was one of my favorites and probably is one of my most favorite judges of all time in the state. Because he tried to always get to the right result no matter how we got there, even if it was contrary to procedurally how you're supposed to do it.

When the plaintiff left the courtroom that afternoon, she was crying. Out of sensitivity, I did not ask to speak to her, and I do not know how she experienced Judge Vanzandt's efforts. This is a significant omission, and I cannot offer a comprehensive picture of the hearing. Still, I include my observations and the judge's and attorney's reflections, along with the following two vignettes, to illustrate active judging in the moment and to begin contextualizing these kinds of efforts in an experience of rural place.

Judge Bader

In August, we observed tribal court hearings in northern Minnesota. The day before court, the judicial services director and I spoke on the phone. "I'm not sure if you know where we are," she told me, "but it's pretty remote. We bring our lunches and have water. The closest store is nine or ten miles away." Located about an hour from the Canadian border, this is the most remote court where I have conducted research. It is surrounded by dense forests and wetlands, and the courtroom is housed in the same building as the tribal police. In the end, we did not need our lunches. The tribal elders make a meal for everyone on court days—court is held three days a month—and we were invited to sit with Judge Bader, court personnel, two tribal police officers, and a parole officer over coleslaw, chips, and beef sandwiches. Talk focused largely on *manoomin* (wild rice) or the best ricing spots for the fall season ahead.[9]

That afternoon, Judge Bader heard a disorderly conduct case involving a tribal member. The hearing occurred via Zoom, with the defendant appearing from a jail nearly four hours away and court-appointed counsel located in Duluth. The hearing started like so many others, with the judge and the defendant speaking informally as the public defender looked on. "If I have to go back up north, the chances of something

9. "Ricing" here refers to the seasonal harvesting of *manoomin* (wild rice).

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happening . . . " stated the defendant. He paused, his eyes earnest, urgent: "I want to stay here." "So you don't relapse when you go home," Judge Bader finished for him. When the hearing concluded, I asked her if I had heard correctly. She nodded.

Judge Mimieux

On another afternoon in a district court in a concurrent jurisdiction in north central Minnesota, Judge Mimieux presided over nine remote conciliation court hearings involving Northland Bonding, LLC. At the start of the first hearing, the judge looked toward the woman appearing on a large screen positioned in the corner of the courtroom. The courtroom was dim, with only Judge Mimieux, her court clerk, reporter, and our research team present. "So you are Ms. Graham, appearing for Northland Bonding, LLC?" "That's correct," said the woman. "And I understand that you have the proper power of attorney to appear on behalf of the Limited Liability Company?" "That's correct, your honor." "And you are not an attorney, Ms. Graham?" "I am not." "Then I am going to get you under oath. Please stand up and raise your right hand." The judge then called the first defendant, Melissa MacKay, who failed to appear. Judge Mimieux turned to Ms. Graham: "To the best of your knowledge, were all of the statutorily-required steps taken with regard to this collection procedure against Melissa MacKay?" "Yes, your honor." The judge continued: "Has Ms. MacKay either answered your complaint or otherwise paid this amount?" "No, your honor." "Then I find for Northland Bonding in the amount claimed. Is Chelsey Brown on the line?" Like Melissa and, indeed, all of the remaining defendants, Chelsey Brown did not appear. "Same question, any answer from Chelsey Brown?" "No, your honor." The judge then asked: "And the source of the indebtedness is the same? A promissory note to get either herself or someone she cares about out of jail?"

This exchange happened for four more defendants. Next, Judge Mimieux asked: "Is Mary Russo on the line?" Silence. "Ms. Gordon," continued Judge Mimieux, "did Mary Russo sign a promissory note in order to come up with the money to bail either herself or someone she cares about out of jail? "Yes she did, your honor." The judge asked: "Any answer or payments on that amount?" Ms. Graham paused to pull up a file. She squinted at her computer screen. "Uh, there are payments on this one." She paused again: "It looks like the new total was $7,000, plus the filing fee. So she made two payments of $700 totaling $1,400. So the new total is $7,000, plus the filing fee of $77." Judge Mimieux responded: "When did she make her last payment?" Ms. Graham paused again. "May 12th." It was July 26th. The judge asked: "Was there any attempt to enter into any other payment agreement other than the terms of the promissory note?" "No, your honor." "And that note called for payments of $700 *a month?*" Judge Mimieux's voice sounded incredulous. "That's correct, your honor."

There was a long pause and Judge Mimieux sighed heavily: "I'll get back to some things later. For the time being, I will declare judgment in favor of Northland Bonding in the amount of $7,082. We'll get back to Mary Russo and some of these other folks in a minute." She moved through two more cases. At the conclusion of the final hearing, she asked: "So, Ms. Graham, is your role with Midwest Bonding to do the collections part? And make court appearances?" "Yes, I do all the collections and appear in court."

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"Ok. Alright. So Ms. Graham? I'm going to just pass on some information, you can choose whether or not to take it to the folks who run your company. Mary Russo is an older member of the [Anishinaabe Band that shares jurisdiction with this county]. I just pulled up her records and find she has no criminal record whatsoever, so she must have signed that to help someone she loves. You have no control over that. I understand that. I'm just passing that on." She paused, her palms resting firmly on the surface of her desk. She looked squarely at the screen. "Ms. Graham, most of the older or unemployed members of the Band live on their per cap.[10] Their per cap is $933 per month. I'm not sure what Midwest Bonding LLC does to check into someone's financial wherewithal, expecting $700 a month when you have $933 to live on, but pass it on to the folks there that this doesn't look good from a policy standpoint right now. And I get it. These folks voluntary signed promissory notes, but there's pressure if you've got someone you care about in jail. So there's a little duress at play. This is bad, bad public policy to be negotiating with Mary Russo at $933 a month to pay $700 a month. Thank you, Ms. Graham, that is all." "Thank you, your honor."

***

At this point, I have presented four instances of what might be characterized as active judging—Judge Isaac's interaction with a criminal defendant; Judge Vanzandt's assistance on behalf of a *pro se* litigant; Judge Bader's informal "check-in" during a criminal hearing; and Judge Mimieux's advocacy for a defendant who failed to appear. We observe in these vignettes the three dimensions of active judging that Carpenter (2017) puts forth—informal procedural adjustment, an explanation (and even modeling) of law and process, and an elicitation of information from a litigant—but there is also a great deal more occurring here. This is why formal interviews and daily debriefs offer necessary context for these efforts. Bringing together these data, I examine these interactions, and the many others that we have so far recorded, through a model that regards active judging through judges' ever-particularized understanding of place. I start with judges' sense of the place where they live, then move to how this sense of place informs judges' awareness of the kinds of assistance that parties need. As my findings demonstrate, the active judging at the center of this research is at once a matter of providing access to justice and even more about providing a sense of trust and even love.

"THE FEELINGS THAT GET LEFT IN A PLACE": A DIFFERENT FRAMEWORK FOR ACTIVE JUDGING

Gaabiboonoke gii-jiisibidoon gichigami

The great sea was pinched by the glaciers

10. "Per cap" refers to per capita payment or the distribution of money to tribal members paid directly from the net revenues of tribal gaming activity.

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neyaashiiwang, neyaakobiiwang, neyaakwaag

land reaching, water pointing, trees leaning

biindig zaaga'iganing, agwajiing akiing.

inside the lake, outside the land.

Omaa zhawenimiyangidwa epiichi ...

It is here we are loved ...

— Margaret Noodin (2020, 45)

The judges who collaborate on this research are, like anyone, complicated, contradictory, and not above reproach. And, yet, I cannot write about their work and relationships without additionally writing about love. As I hope to demonstrate here, thinking about place and love necessarily helps situate active judging within a richer context of landscape and relationship. As I have already documented (Statz 2021), rural judges daily observe—and many experience—the consequences of legal deserts, absent health and social services, long distances, and depressed local economies. Rural judges additionally contend with the unique demands and professional isolation of rural judging, the social costs of rural areas' high density of acquaintanceship (Freudenberg 1986) and, for some tribal court judges, additional considerations of, or obligations to, community, kin, and tribal council (Kleinfeld 2016).

Many collaborating judges spoke at length and with visible sorrow about observing the devastating local consequences of rural methamphetamine and opioid epidemics, growing unemployment as traditionally "rural" industries leave or are automated, and, for some, racial and socio-political divisions that have been exacerbated in recent years. "I'm just in my stride now," said Judge Mimieux, who privately self-identifies as an activist judge. "But I was not feeling that way for a little while, and I was feeling just a little alienated by the community—I think it was that there was a recent election or something. Whatever." "Oh yeah, I heard about that," I responded. We laughed, but only briefly. "The Lutheran Church here in town had this Santa Lucia luncheon, and I took my staff there," she continued, with what appeared an abrupt change of topic: "So we go down to the church basement, and I knew dozens of people there. It was like old home week. And it's like, one hug after another. ... And it was so lovely. I felt so loved and embraced. I thought, 'How could I leave this? These people care about me. I care about them.' It's real intimacy [that] transcends the schisms. ... Knowing somebody, and liking them or loving them, means that you can't demonize them. It's hard to demonize your neighbor."

"I think there's a lot of struggle here," commented Judge Isabelle, "but there's also a lot of love. ... There's no anonymity. You know, that's kind of—that's what I love about it. It's just hard. I mean, there's poverty, it's a digital desert. There's a lot of racism here." She continued: "You know, you don't realize the kind of trauma that someone else has been through. And there's this undercurrent of, you know, racism and hurt. I think that a legacy of that is what we're seeing in drug and alcohol use, and all the bad outcomes. ... But I'm a big believer in the feelings that get left in a place. And so it's

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like—there's a lot in this place, around here. In this area. A lot of healing that just needs to come in a lot of ways."

To arrive at a sense of place attachment, we asked every judge—and, likewise, every survey participant—if there was a particular place or activity that gave them a feeling of home, of peace or security. The answers came quickly, with judges mentioning Lake Superior, a ceremonial lodge, a tract of dense pine forest. Those trees, one judge said: "They're just, like, reaching for the heavens." Another offered: "I bought my cemetery lot [here]. I intend to be buried here, because it's just that sense of belonging that I don't have anywhere else." Only Judge Vanzandt, originally from an urban East Coast city, grappled with the question. "I can't remove the people from the place," he said. "I can't remove the personalities, I can't remove the emotion." Eventually, he settled on his courtroom itself: "The intimacy of the place isn't that I know all the rooms in this courthouse. The intimacy is that I love the people in the courthouse. And so it makes an intimate place, one that connects."

Unlike Judge Vanzandt, most collaborating judges were originally from, or had lived most of their adult lives in, the region where they worked. This resulted in a unique sensitivity to spatial context—both to what it lacked and what it might provide. "Access to services is really tough," noted one Native judge. She described growing up on a reservation in northern Minnesota: "I didn't know any lawyers, I only knew of people who actually had been arrested or who had really challenging lives. … There's not a lot of opportunity, there's not an ability to see people do something different. I mean, I saw a lot of people who didn't work. And who had drinking problems, and who had violence in their homes."

"I've been here for, what, almost fifty years?" commented another judge. "I know the area. That brings so much more to the bench, and having a commitment to the community. Knowing the people in front of me. If I know them too well, of course, I recuse myself. But knowing them is good." "I've been in this area long enough that starting out at [tribal court], there were kids that were involved in child protection cases and families when I was the attorney for the tribe," Judge Isabelle stated. "And then when I became a judge, I saw those same kids as they were growing up, and they were struggling with truancy, and you know, other things—and they cross over from the child protection system to the delinquency system." She paused:

> And now as a state court judge, I'm seeing those same kids as adults, and what happens when you're not addressing family [needs]. I've come to the realization that to be successful, we need to wrap our arms around a whole family and figure out what's going on with them. Because statistically and realistically here, you know, I've got the kids on probation, or I've got their parents on, you know, their own probation, and the grandparents are involved with things. I mean, these issues are multigenerational. And multijurisdictional, because they may have things going in tribal court and here in state court, and then they have different types of cases, so each person has their own case plan and probation requirements.

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ACTIVE JUDGING AS MULTIGENERATIONAL AND MULTIJURISDICTIONAL

In the region where I do research, many courtrooms have just one judge, an individual who is by necessity a generalist and by proximity and personal history deeply familiar with the litigants before her. What results is active judging that is informed by a keen sensitivity to litigants' lives and broader contexts as well as by judges' own "multigenerational and multijurisdictional" experiences. These include professional and personal relationships with concurrent jurisdictional counterparts and colleagues from tribal-state court working groups, as with Judge Zanagi'iwe and Judge Brownstone, in northwestern Wisconsin. Judge Brownstone, a county circuit court judge, noted that, before the pandemic,

> we used to take the entire court and drive to the reservation. We'd hold court in the tribal building every 60 days. . . . We'll probably start this up again in the fall. Now, in theory, do I really need to go there? No, because I can let anyone on the reservation appear remotely anyway if transportation is an issue, and transportation's a huge issue in the rural areas. But I promised the tribe I would go back. They want me to physically be there, they think it's an important presence, and it's a sign that Judge Zanagi'iwe and I cooperate together. So I'll drive up there and we'll do it, once a month or once every 60 days.

It is also worth elucidating the word "multigenerational" for, besides encountering multiple generations of the same family from the bench, many judges also viewed themselves as part of a judging lineage in a sense—one in which active judging and community commitments had been modeled for them by predecessors and judicial mentors. Judge Cash, an Indigenous Minnesota Supreme Court justice, reflected on her relationship with a Native judge who is now retired. "He taught me how to be a mentor, because he became my mentor, even though I didn't know he was becoming my mentor. He was very sneaky." She laughed:

> And when I look at the Native American bar in Minnesota, you can go, he influenced that one, that one, that one. I mean like, the number is astronomical. I remember him coming to me when I was on the district court, and he's the one who told me that there was gonna be an opening on the Supreme Court, and I thought he was gonna apply, and then he said, "No, you are." And I was like, "There is no way in hell that I am applying for that. Because first of all, I didn't want it. I liked district court, because you feel like you can do something, because you're close to the people. I didn't want to do appellate work, zero interest. In fact, negative interest. And he was like, "It doesn't matter. This isn't about you. This is about the Indian community, and we need a seat at the table, and we've not had one, and this—it's your turn. So get on it."

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Judge Vanzandt was similarly impacted by long-standing relationships with earlier "generations" of judges on the Iron Range. Despite his urban East Coast background, "you still appeal to someone else's sense of place," I noted, having observed Judge Vanzandt steadily evoke and elicit place attachments in his interactions with litigants. And he explained: "Well, I think that was probably something I learned from being an attorney here. I think I've carried it over to the bench. It's one of those things that allows me to connect." "You saw other judges doing it?" I asked. "Well, obviously," he responded, leaning back in his chair. Grateful Dead posters lined one wall of his chambers. He mentioned the names of three now-retired judges, all mentors and friends: "I absolutely have seen them do it. And so the thing is, we're sitting there, and I have somebody I don't know that's in front of me, and I know where they're from, and I'm trying to make a connection . . . that's always gonna be the easiest one to go to, identifying with place. I may not know who you know, but we know that we know the same type of people."

"FINDING A GOOD BALANCING POINT": OTHER FACTORS FOR ACTIVE JUDGING

I want to pause here, for Judge Vanzandt hints at a critical difference between rural courts and more urban ones—namely, that in a small rural or remote community, indicators of socioeconomic status are often not tied up with neighborhood or zip code in the same way in which they might be in a more urban area. Judge Vanzandt, for instance, lives down the street from some of his former clients from his days at Legal Aid. Accordingly, this sense of shared space and, by virtue of it, "knowing the same type of people" may engender trust and, by extension, access. It is an understanding that he received from, and saw modeled by, his predecessors.

There is, however, also risk in this approach for it glosses over real and consequential differences in power and identity between judges and litigants. For instance, Judge Vanzandt, who is white, means "rangers" (residents of the Iron Range) when he says: "the same type of people." I asked him whether this includes Native Americans. "Oh no," he said. "We're a very homogeneous area, even with Native Americans, they still only make up a very small percentage of the population." Without pausing, he continued: "It is without question a majority white group before us on the bench. The second would be Native Americans—and the reality is, in most instances, I wouldn't know the individual is Native other than the fact that they're being represented by Art.[11] Or unless they happen to have one of the very historic family names." While Judge Vanzandt arguably side-stepped my question, he also offered a kind of brusque nuance that is very characteristic of most of the judges—Native and non-Native—with whom I worked.

This is also why we supplemented interviews with court watching and litigant surveys. I have collaborated with Judge Vanzandt and conducted research in his courtroom for many years now, and he consistently exhibits active judging on behalf of almost all litigants. Other collaborating judges are not quite as uniform in their efforts. Some

11. Art Matthews is an elder white attorney who has a long-standing and very positive reputation with tribes and bands across the Northland. He regularly appears on behalf of Native defendants in all of the Minnesota tribal and state courts where I conduct research.

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admit that their advocacy falters after a full or particularly challenging calendar, which we observed, and others appear to be more restrained in Zoom hearings rather than in person. These judges exhibited markedly less patience and willingness to explain procedure or elicit information when litigants had technical challenges, appeared to interrupt the judge (a common occurrence if there was an audio delay), or seemed distracted. While the "multigenerational and multijurisdictional" approach is arguably at the heart of active judging in rural spaces, the practice is also driven, of course, by so many of the aforementioned structural inequities that are characteristic of rural areas—attorney shortages, insufficient access-to-justice supports, under-resourced judicial systems, and so on. In other words, although we observe Carpenter's (2017) three primary dimensions of active judging across civil and criminal cases, and even when all parties are represented, active judging is at least in part motivated by high numbers of *pro se* litigants.

Reflecting on Judge Mimieux's efforts on behalf of unrepresented parties, I stated: "So you're acting in these situations as a judge and as an advocate." She nodded, and I continued: "Is this unique to rural judges? Is it something you could or would do if you were in a more metropolitan area?" She responded:

> If I were in a more metropolitan area, there are so many advocates available for people that we don't have. I mean, luckily we have a part time attorney who works in the law library one afternoon a week. So if people are pro se he can't give legal advice, but he can lead them to the right forms to fill out. . . . That helps, but that's very limited. We have legal aid in [metropolitan area forty-five minutes away], but there you're on a waiting list that'll last forever. Urban areas have so many more areas of advocacy for people, and housing courts. . . . And here, we've got nobody for people getting evicted, and so I can't be—I can't act as their legal representative, but I think I've gotten really good at finding a good balancing point, so that they are not further hurt by the fact that they can't afford representation.

Another judge described telling litigants about legal advice websites and even asking her clerk to print out the custody factors that are listed in the statute when she has *pro se* custody cases: "That way they've addressed everything they need to address." One judge spoke at length about eliciting information from *pro se* litigants from the bench:

> You have to put all their stuff out on the table. And, you know, "So we talked about that, and then what's going on with your kid's probation? Or what's going on with treatment?" You don't hear any of this stuff unless you're having actual conversation with people. That ability to humanize things more, listen, make eye contact, so that people aren't chewed up by the system. And tomorrow I have a calendar with almost 100 cases on it. I know it's going to be fast, that kind of thing. But we have to do the best we can.

She stopped. "And this is why place is so important to me," she continued, "because we have to start to meet people where they are, and it's like, [here] they don't have access to

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good internet, they don't have transportation, they don't have housing. And then we say, 'Okay, but your whole family has to get to all these different providers, basically every day of the week, and so good luck.' And, 'Oh my god you stayed out of touch with your probation agent.' I mean, not that it's not serious, but it's not surprising. And so it's like, we have to figure out a way to meet people where they are."

This conversational trajectory, from a judge initially talking about unrepresented litigants, which is what I asked about, to turning to gaps in services and meeting individual needs and expectations, which is what judges wanted to talk about, happened often, persistently pushing me beyond "supply-side" thinking to a bigger understanding of justice. One state court judge who worked in a concurrent tribal-state jurisdiction called this understanding "the greater good." During our first interview, I interrupted her: "I've heard you say 'working for the greater good' a couple of times. I wonder if that's the same as access to justice, or if it's something different?" "It's something different," she replied, "because we need to help people even get here. The limitations, the simplest thing like, we don't have good Internet or cell service everywhere here. So I'm expecting people to call in during COVID or get on iTV or Zoom, and they don't have decent broadband and they can't use their cell phone if they even have one. And tribal members, the Band had transport and would bring folks to court. But that was suspended during COVID and we don't have it back." "So," I said slowly, "what you're describing, those are access issues?" And she replied: "Those are access." I repeated the question: "You identify those as access issues." She responded again: "Yep." I then asked: "Then how do you—is there a connection between the greater good and justice?" And she answered: "I can't get to the greater good unless you can get to me." "Oh," I said. "That's beautiful."

ON TRUST

> [R]elationships to places are lived most often in the company of other people, and it is on these communal occasions—when places are sensed together—that native views ... become accessible.
>
> — Keith Basso (1996, 109)

As I hope to make clear by presenting judges' reflections on their work, a deep sense of place informs the active judging I have observed. In the courtroom context, a mutual understanding of a regional landscape, sacred site, landmark, or practice that may elicit affect or emotion—even love (Low and Altman 1992)—proves an invitation; it is an attempt to level a courtroom encounter that in rural areas is often further complicated for both court and party by the marked absence of counsel. It fuels a provision of justice that is about something more than access. "The thing is," stated Judge Vanzandt, "the access is useless if there's no trust."

Echoing this, Judge Isabelle stated: "I grew up here, and so I would know the family names and I might know relatives, very close relatives of [the litigant]. So I would go out of my way to talk to them about things that we had in common so they would feel more comfortable." "Like what?" I asked. "Oh you know, if somebody appeared in front of me

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and their last name was X, I might say, 'Oh, are you related to so and so?' and they go, 'Yeah, that's my auntie,' and I say, 'Well, will you please say hello to them for me the next time you see them?' Or just ask them something about where they're from, you know, showing some knowledge that they would know when I ask the question that I had been there." "So why do you go out of your way to make that connection?" I asked. "What does that do when you say, 'Hey, tell your aunty hello for me?'" "Well," the judge said carefully, "it does a couple of things. First of all, when you look at access to justice and trust in the judicial system, the Native people have always had good reasons not to trust it. . . . [So] I try to let them feel confident in the fact that they're going to get a chance to be heard. I mean, trying to get—building confidence in the system to them. So they'll know they're gonna be having a fair hearing. And that they can trust you to make a fair decision."

This sense of forging trust, whether trust in the judge, trust in the judicial system, or both, was often central to the judges' efforts, yet again exceeding what we so far know about active judging. These judges step away from a traditional passive role to assist someone without counsel as well as often someone with counsel. And it is active judging that is deeply contextualized through generational histories, cross-jurisdictional experiences, and forward-thinking aims, among them honoring and addressing deep-seated mistrust and fear. "There's something to knowing your community," stated one judge. "You know, knowing what the needs are and what the reality is, and letting this court system be a little more familiar instead of some scary institution that's all about going to jail. . . . I believe so much in the community's confidence in the judiciary."

"I always favor letting [litigants] talk," noted Judge Bizhiki, a tribal court judge in Minnesota. "I had one litigant who was going on and on, and the attorney objected to it, and I said, 'Just let her talk.' Seems like, after they've spoken, they're happy. Even if they lose the case, they at least got to say what they needed to say." This sentiment was echoed by Judge Mimieux: "As with everybody that comes to court, they need to feel heard. I had a great mentor [here] who spoke almost quietly. Was so respectful to everybody. Just treated them with kindness, with respect, with courtesy, and it was the greatest modeling ever. Because I get such good results. People feel heard, they don't push back because they see me as just another authority who's telling them that they're rotten. They hear that enough." Later in our conversation, she added: "[Judging] demands my best every single day, because—" she paused and closed her eyes tightly. "Everybody's case is their only one, it's their only day." Her voice cracked. "And I might have fifty [cases] and I might be up to here," she said, her hand elevated to her chin, "and I might not even want to listen anymore, but I have to give that to them. That demands your best."

The judges with whom I collaborated wanted litigants to feel respected, heard, dignified. This commitment exceeds the presumption that those best suited to speak in the courtroom are litigants' attorneys, and it likewise preempts metro-centric access-to-justice initiatives that, as we now know, often compound stress and even humiliate low-income litigants in rural areas (Statz, Friday, and Bredeson 2021). This desire is multifaceted and rooted in care for community, lack of anonymity, and long-standing familiarity with residents and their socio-spatial contexts. Yet it also speaks to judges'

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own needs and, specifically, if not subtly, to the challenges of working in what are often lawyerless courts. After all, it takes trust to get facts.

Accordingly, while I very much appreciate a central dimension of active judging—namely, eliciting information to build a full factual record, I do not think we can be surprised that there are likely more judges in lawyerless courts who do not embrace active judging than those who do. Consider the commitment—not just to judging, *per se* but also to place and the people of a place—that underlie the efforts I have described. Here, and among such deeply "emplaced people," I cannot imagine judges not engaging in active judging. But it takes time, even a whole life.

DO LITIGANTS AGREE—AND OTHER QUESTIONS FOR DISCUSSION

At its most basic, the work on active judging presumes that judges who step in to accommodate individuals without counsel—whether through a flexible interpretation of procedures, explanations of law and court process, and/or eliciting factual information—will address what litigants need. This literature critically understands that litigants need something like an attorney but, in moving beyond traditional "supply-side remedies," further acknowledges the immediate, physical presence of the judge; the likely limitations of other potential reforms such as civil right to counsel; and the affirmative harm of traditional judicial passivity in lawyerless courts. I believe that these are excellent reasons to argue for active judging and judicial role reform more generally. Yet, as discussed above, we still know woefully little about a key aspect of active judging—namely, whether or not it is experienced by unrepresented parties as a sufficient form of access to justice.

Because my data collection and analyses are ongoing, in this article, I foreground the qualitative, rather than survey, data. It is still worth noting, however, that initial analyses of survey data (both quantitative and open-ended responses) shed promising light on "what it means to want lawful resolution of justice" (Sandefur 2019, 53). Owing at least in part to a shared sense of place and how it is manifest in judges' efforts, these emergent data suggest clear experiences of—and, likewise, also expectations for—trust and mutuality or what so many collaborating judges vocalized as their own aims and motivations. A telling example arises in questions about how individuals appeared in court. At the end of each survey, we asked survey respondents: "Did you appear today remotely via Zoom, telephonically, or in person?" We then asked: "Was that the best way for you to appear, or would you prefer [Zoom, telephone, or in person]?" As the following figure demonstrates, the majority of surveyed litigants preferred appearing in person rather than appearing remotely—a somewhat startling finding when we consider the many physical barriers to accessing court in rural areas. Yet if we also acknowledge the inaccessibility of rural remote hearings owing to "digital deserts" and limited technological capacities, this preference is perhaps less surprising. It likewise corresponds with emergent data from our mid-size city court where more respondents preferred remote hearings. While technological asymmetries between judges, counsel, and unrepresented parties in remote hearings can exist in any courtroom, this inequity is likely better mitigated in urban areas, which tend to have more robust cellular and

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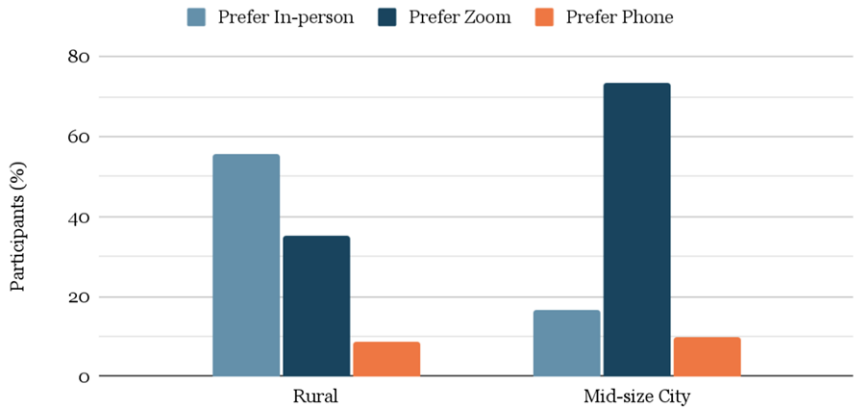

Figure 1.
Court appearance preferences. Credit: Brieanna Watters.

broadband infrastructure (Pew Charitable Trusts 2021). It follows that litigants in larger communities may have more consistent remote access and, correspondingly, a more positive regard for remote hearings (Figure 1).

Yet even with these structural dimensions in mind, many rural survey participants ultimately offered a different explanation for their preference for in-person hearings. Specifically, these individuals articulated the emotional connection that so many judges themselves valued. "It felt good to come in person so that they can see I'm actually sober," stated one individual. "Judge Mimieux and [the public defender] have seen me before when I'm using. I have a history of coming in here and not looking good. I know I look better [now]." As the survey concluded, she mentioned again: "I just want them to see how good I look." Another participant noted: "It becomes more personal [in person]. Screens are difficult to feel the emotion. It's impersonal." Still another commented: "The connection with [the judge] is better—the sympathy, empathy. Understanding where the person is coming from is easier in person." These comments add an important and considerably more relational dimension to emergent analyses of remote hearings and access to justice, which tend to focus on hearing duration, logistical hurdles, and due process concerns (National Center for State Courts 2021; Atkins 2022). They also demonstrate that many of the same aspects that collaborating judges discussed—a judge knowing a person's history, an experience of mutuality, accountability, and trust in courtroom interactions—are prioritized by some litigants as well.

Elsewhere in the survey, we evaluated the extent to which litigants associate different kinds of "concordance," or shared demographic attributes between the judge and litigant, with fairness and just outcomes (Statz, Billings, and Wolf 2021). At the time of writing, 76 percent of surveyed litigants believe that, if the judge and the party before them are from the same place, the judge is better able to understand the person's experience and make a fair decision. By comparison, 51 percent associated these same outcomes with a shared racial or ethnic background, and 45 percent associated them with a

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shared gender identity. When we followed up on the value of place concordance, individuals variously reported: "I think [a judge] understanding the environment and local cultures really helps, but it also depends on the community you're in and the biases in those communities"; "Rural matters because resources are limited"; "If the judge experienced that in their lives and they don't want to see some behaviors in the community anymore, [it might impact their sentencing decisions] to make the community better"; and "When you live in the same area, you know the same struggles."

While still at an early stage of data analysis, it is encouraging to see that active judging and the broader place-based context in which it occurs matter to rural litigants. Why these things matter variously reflects and meaningfully differs from judges' reported motivations and aims, showing that litigants' perceptions will necessarily complicate and enhance what we know so far. For now, I include these initial data because they suggest that there is something about place that is deeply relevant to active judging in rural areas and, by extension, must be rigorously and thoughtfully acknowledged by anyone studying judicial role reform and access to justice more generally.

WHERE DO WE GO FROM HERE?

This article represents the start of a conversation, the beginning of a systematic, place-based intervention in prevailing scholarship on active judging and access to justice. As such, it is not—and arguably cannot be—as exhaustive as I would like. Indeed, my findings are limited to a distinct rural geography and to a cohort of judges who, given their consistent interest in my research, may hold uniquely strong place attachments. Accordingly, there needs to be more empirical research with rural judges who, owing to background and positionality, length of time on the bench, vulnerability to re-election or tribal council political opposition (Kleinfeld 2016), and judicial orientation, may discount the importance of place or prioritize other factors as well as with more urban judges who differently engage place or who may encounter rural place as a proxy for racial or Indigenous identity. We likewise need far more data on how place and judging are differently regarded by litigants across dimensions of class, gender, race, and other valued forms of identity as well as owing to case type, court setting, and jurisdiction.

For now and above all, this new space of inquiry must be rooted in, and grow from, the "interactional work" of place and the creative approach it demands (Basso 1996). This is not nostalgic work, nor is it a denial or conflation of complicated rural histories, identities, and contestations over power and self-determination. Instead, I simply believe that what may be most generative to access to justice—and, specifically, access-to-justice efforts in diverse rural courts—will only come from insisting on particular epistemologies of place or what Robert Macfarlane (2012, 104) calls "the reciprocities between … landscape and self-perception" that rural judges themselves reveal. Significantly, this focus on particularities is not, I argue, at the cost of generalizability. Early on in my research, Judge Vanzandt noted that place attachments might just be understood differently—at a neighborhood level, perhaps—in more urban spaces. "I think there can be something in rural areas that informs more urban courts, something in the intimacy of place," he stated. "We make it seem like [place-based active judging] is unique to rural areas. I don't know that it's unique, I think it's easier. But it would

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occur to me that if there is value in it, it doesn't mean that urban areas can't do it—all's you have to do is just redefine your place."

"You are definitely onto something," stated Judge Cash. "I think judging in rural Minnesota is very different than judging in the urban areas. There are positives and negatives, and that's the same for the tribal community. The similarities in how rural [state] and tribal courts function, I would say that's sort of along the lines of informality." "How would you contrast rural versus urban judging, then?" I asked. And he responded:

> Well, one is the formality versus informality, and that goes along with familiarity because in rural areas, oftentimes you know either the person or you know their family. So you have a lot more information walking onto the bench about their environment or their life, as it is. And in the urban areas, the courtrooms are set up the same, but they're different. They're huge. . . . It feels like a conveyor belt, it's really, really fast. It's harder to make the same investment in the person who's before the court. But I tried.

I nodded, waiting, and he continued:

> For example, there was a young man who was clearly Native, and I'm like, "Where are you from?" and he was like, "Well, I'm from [name of sovereign nation]" And I'm like, "Where in [reservation name]?" And just that instantaneous connection, you could tell, it changed his experience in the courtroom, and his lawyer came and talked to me later. He said, "Thank you for taking even a couple of minutes to acknowledge him as a human. It really made a difference for him."

"Do you think [that approach] has to do with your background?" I asked. "Yeah, I think both the rural background and the fact that I'm Native . . . it's that sense of community and family, and sort of the obligation that I think that I have towards everyone. I think that's rural, and I also think that's part of being Native. I think it's just sort of authentically who I am."

Like Judge Vanzandt, Judge Cash offers a subtle rethinking of how to conduct place-based active judging in diverse contexts. Yet instead of redefining place or approaching it from a different scale, it is here a distinct interactional practice that can be employed across diverse court and case types. If this form of active judging is as meaningful to litigants as my data suggest, then it also underscores so many calls for a more gender- and ethnically diverse judiciary (Beiner 2002; Rackley 2012). It also builds on Lisa Pruitt and Marta Vanegas's (2015) critique of judicial blind spots owing to a lack of geographical diversity on the bench.

"It is here we are loved," writes Margaret Noodin (2020, 45), which is notably not the same as loving a place. In the rural communities where I work, loving a place is not an easy or unconsidered thing, nor does it mean an impossibly magnanimous or superficial love of its people. But there is love in a place, and there may be in a place a sense of being loved, and both are exhibited in collaborating tribal and state court judges' interactions with litigants. As initial survey data suggest, at least some rural litigants value

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and feel this kind of access and even expect it. Accordingly, this article is at once a response to the emergent and important literature on active judging and a response to Keith Basso's (1996) compelling call for more work on "lived topographies." My goal is to bring these literatures into conversation and, correspondingly, into a careful meditation on what I have observed of active judging in rural areas.

By reflecting on place and place attachment in the context of active judging, I hope to begin to address an "expertise gap" that Basso (1996, 196) identified over twenty years ago—namely, that "little is known of the ways in which culturally diverse peoples are alive to the world around them or how they comprehend it, of the different modes of awareness with which they take it in and … discover that it matters." Pursuing this allows us a new understanding of how rural justice gaps are and can be addressed through active judging in tribal and state courts. In this way, we may be better able to understand how place—and, specifically, shared place attachments—may offer a critical experience of access to justice.

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