Lawyer Up

New Mexicans, especially in rural areas, see a gap for justice access

BY JULIE ANN GRIMM APRIL 8, 2020 6:00 AM

Alia Attallah is among incoming students at the University of New Mexico School of Law.

Alia Attallah's shift from professional actor to law school student was unexpected. But so was going to court two years ago to take out a restraining order against her former boyfriend.

"I had never thought twice about the law until I needed the law's protection," Attallah tells SFR.

Newly accepted to the University of New Mexico law school, Attallah's personal journey intersects with a critical problem facing the state: diminishing numbers of lawyers leaving vulnerable people – rural and lower

of lawyers leaving vulnerable people—rural and lower income residents in particular—unable to find help when they need it most. Experts refer to this as the justice gap—and behind each instance lies a story like Attallah's.

The 34-year-old **actress** has a master's degree from New York University and screen credits that include the CBS television show *Elementary* and NBC's *The Blacklist*. Until recently, she split her time between Santa Fe, Los Angeles and New York. During one stint in Santa Fe, her life took a turn with a toxic relationship she says led to a physical attack and months of harassment.

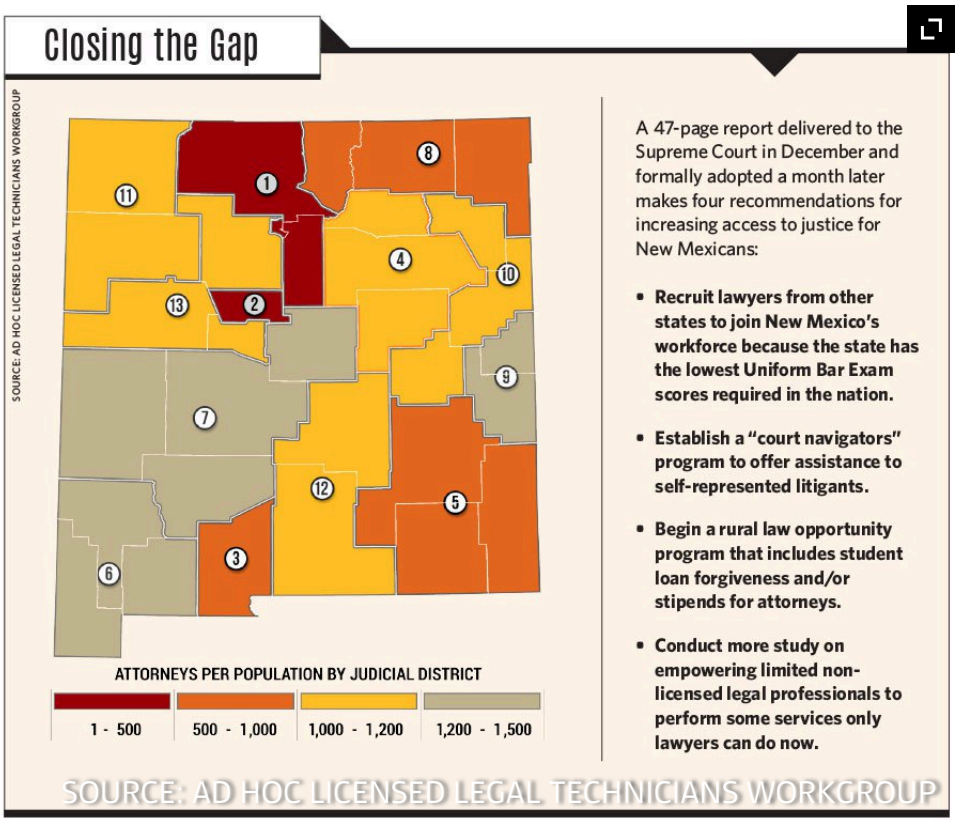
When she sought an order of protection, the man came to court with an experienced local attorney who slapped Attallah with a counter petition. Like many litigants who choose to represent themselves, she felt outgunned and hired a pro. Even so, Attallah pored over law books, researched evidence rules for the hundreds of text messages sent to her phone and generally obsessed about the case.

A month later, a District Court judge granted her petition and dropped his. She went back to New York to audition for pilot season, but her mind had opened to a new possibility.

"I was realizing what a difference the law had made in my life," Attallah says. "The fact that it was there as something I could grab onto and rely on, and that justice had really won out, that the truth had been seen."

She'll be pushing 40 by the time she takes the bar exam in three years or so, but Attallah would still be on the younger side of New Mexico's pool of lawyers. The average age of lawyers across the state is 52; it's as high as 58 in some judicial districts.

That lawyers are aging out of the profession is a window on a deeper problem identified by a New Mexico Supreme Court working group assigned last year to dig into the state's "access to justice gap." That justice gap translates as roadblocks stacked in front of residents who need the courts to resolve everything from divorces to landlord-tenant disputes to wrongful deaths at the hands of government employees or large corporations.



In a **47-page report** the working group delivered to the Supreme Court late last year, which the court formally

Supreme Court late last year, which the court formally adopted in January, authors say the justice gap impacts rural New Mexicans the most, along with low-and-middle-income residents: More than half the state's residents can't afford legal services for civil matters. Right now, some counties lack any lawyers, while applications to law schools have been on the decline. Moreover, the gap doesn't stop at lawyers but can be felt across the entire legal spectrum.

In interviews with SFR, judges, lawyers and the dean of the UNM law school acknowledged the gap, and endorsed some of the working group's recommendations to close it, including providing financial incentives for lawyers who choose to practice in rural areas. None of the proposals offer a rapid solution.

In 2019, New Mexico averaged one lawyer per 430 people—just about the same as the national average a decade ago, according to recent state bar reports and a nationwide study.

But the numbers skew wildly between urban and rural counties. Santa Fe, for instance, has one lawyer for every 147 residents, while Guadalupe County has just one for every 4,341, the new workgroup study says.

"I was shocked to learn that three counties don't have a single lawyer," Santa Fe plaintiffs attorney Kate Ferlic says. "I personally like the David and Goliath fight, but when individuals don't have access to a lawyer to fight a corporation or fight a building owner that is not maintaining the apartments that they live in, those

people are left without a remedy."

Ferlic, a 40-year-old who's the second name in the Egolf + Ferlic + Harwood + Martinez firm, went to law school after four years as a journalist. She works mostly on contingency, and approximately 40% of her clients are from outside Santa Fe, especially in wrongful death, sex abuse, catastrophic injury and civil rights cases.

"The real need in the state in rural communities is probably more likely family law and landlord-tenant issues and things like that, where the disputed value of a case can be low and sometimes difficult to litigate because the cost of litigation is so high that it largely makes it not worth it to pursue," Ferlic says. Of course there's no value on the safety of children or the security of housing, but "the reality is that a lot of people spend a lot of money fighting on these issues. And when one party has resources and one does not, real injustice can occur."

Chief Justice of the New Mexico Supreme Court Judith Nakamura made the rounds before lawmakers earlier this year, and the low lawyer inventory was among her talking points. Before committee after committee during the session, she reiterated the startling statistic to which Ferlic refers: Of New Mexico's 33 counties, a third have 10 or fewer attorneys, 20% have five or fewer and three have no active attorneys at all.

Chief Justice of the New Mexico Supreme Court Judith Nakamaru told lawmakers earlier this year a shortage of attorneys led to fewer applicants for judicial positions.

"We are now experiencing what a lot of the nation is, this shrinking pool of attorneys," she told senators in late January.

At the same time, Nakamura was in the Roundhouse to ask for money to expand the number of judgeships in the state, which was one of the judiciary's priorities from this year's session. A workload study conducted by the National Center for State Courts showed a need of about 17 judgeships. The state appropriated money to add five of those positions this year.

Part of the shortfall comes straight back to the issue of attorneys.

"Even though throughout the state we are seeing a slippage in the number of new case filings, we're seeing an increase in the number of hearings," the chief justice said. "Why? A lot of it is due to self-represented litigants. More people are representing themselves, and there are more hearings to help folks navigate the judicial system. It does not go as quickly as when lawyers are involved."

Nakamura told lawmakers the courts have already taken a number of recent steps to make the law more accessible to people who don't hire lawyers, including simplification of common forms and an online "virtual receptionist" that speaks Spanish and Diné as well as English.

The court adopted several ideas from the working group of lawyers, judges, paralegal experts and academics geared at addressing the lawyer shortage, which included recruiting lawyers from other states and creating an official program to help self-represented litigants navigate the courts. So far no one has estimated what these ideas will cost.

The working group initially formed to consider allowing non-licensed legal professionals to perform services that right now only lawyers can do. That idea, though adopted by the court, is moving the slowest.

And then there's the issue of the next generation of lawyers. One adopted idea would include student loan forgiveness and/or stipends for attorneys who go to work in rural communities. But law schools are having problems of their own.

Attallah took her time to prep and pass the LSAT and to learn about the judicial system before she applied. She shadowed Ferlic over several months on several occasions and spent lots of time with a different lawyer who represented her in the order of protection case. She says the idea of working on family law and domestic violence definitely appeals to her, but she is still figuring it out.

UNM law school applications have been on a steady decline for the last five years, with 339 in 2014 and 273 in 2019, and the current class is 14% smaller than the one from two years ago, the report cites. Those trends, the school's dean Sergio Pareja says, respond to unemployment rates.

Courtesy Pareja Sergio

UNM Law School Dean Sergio Pareja confirms enrollment is down, but says those numbers typically follow unemployment.

Meanwhile, Pareja is dealing with potential delays to the admission season and the start of classes for the new crop of law students amid the COVID-19 pandemic. The school began preparing for online learning in mid-March.

"Kind of the weird silver lining on the downturn that seems to be hitting the country and the world right now is that historically when the economy has gotten bad, like in 2008 or 2012 right after it tanked, our applications went through the roof," Pareja tells SFR. "We had over double the number we have now. Law school applications then shot up for the same reason, people couldn't get a job and they applied to law

people couldn't get a job and they applied to law school…but who knows, there are tons of variables."

The school canceled a prospective applicants' activity that had been planned for April 3, and normally would be giving law school tours and classroom visits right now, "but all of that is canceled because of COVID-19," he says.

Even before that, Pareja recognized a problem for which he had not landed on a solution.

"Heavily, our graduates stay in the Albuquerque and Santa Fe area," he says. "Despite our best efforts. I think when they go to school here, for whatever reason, they like it, they make their contacts here. We actively try to recruit people from the more rural parts of the state to become law students…We'd like to get people to apply in the hopes that when they graduate they will go back and practice in those areas because particularly in rural parts of the state there are real access to justice issues, and we need more lawyers in the rural parts of the state."

The cost of school, the length of time for the degree and the perception that Albuquerque is dangerous are among reasons that's a challenge. Of the students who do come from rural parts of New Mexico to attend law school and pass the bar, many then don't leave the city to practice. The working group report highlights a New Mexico State Bar Association program to urge new lawyers to practice in rural reaches, but it's only three years old and hasn't resulted in anyone locating a new practice outside of

Albuquerque.

Pareja thinks the Supreme Court workgroup's idea to create a student loan forgiveness program could have the most immediate benefit for current and future students.

"If you can get somebody to move to certain parts of the state for just a few years," he says, "they often end up staying once they are there."

Others also support the idea. Every lawyer and judge SFR interviewed for this story raised student loan forgiveness for rural service as a good path forward. It's not dissimilar to an approach that's helped in the medical field.

Nakamura told legislators the courts have a committee "actively working on that," noting she expects the issue will come before the Legislature next year and at interim committee hearings.

In another way, New Mexico's judiciary is not ready to move in medicine's direction.

"The legal emergency room is still too full with patients," reads an introduction to the working group report. "The medical system would triage the patients in the emergency room, treating the most ill or most seriously injured first. Paraprofessionals have been used for years in offering medical care to patients through nurse practitioners, physician's assistants, midwives, etc. These medical professionals…provide cheaper, faster care and triage, referring when necessary to surgeons, laboratories, and radiology."

The legal system, it concludes, should triage as well.

"We are going to continue to study this use of speciality-trained, legal-licensed technicians without a full law license," Nakamura told senators. "They'll be able to offer affordable legal services to civil matters to low and moderate income New Mexicans. The problem is we are not ready for that. It's going to take a lot more study."

Others share the slow acceptance of that idea. Judge Frank Mathew, who runs one of Santa Fe's criminal dockets in the First Judicial District, concedes there's great need among rural New Mexicans, including even in the rural parts of Santa Fe County. At the same time, he tells SFR he's seen nonlawyers and disbarred lawyers alike give damaging advice to defendants.

"Just saying we need to graduate more or put unlicensed attorneys to work may be creating another problem," he says.

The lack of lawyers on the job is something that's been well documented all the way up the court ladder.

Nakamura told legislators this year that the deficiency impacted the pool of qualified applicants for judicial positions. In some cases, just one qualified person applies for a vacant seat on the District Court bench.

"We continue to attract primarily public defenders and district attorneys from government positions, and there's nothing wrong with that, except the majority of our cases continue to be civil," she said on January 27 before the Senate Judiciary Committee.

"It's not just not enough lawyers," echoes Albuquerque attorney Jonathan Miller. "I think there are not enough judges and there are not enough prosecutors. So sometimes it can take a while for a case to go through the system because with so few lawyers, lawyers have to do cases in one county that can delay cases in another county," he says, adding later that because of the economic changes from COVID-19, "I'm terrified right now because we don't have enough money for the system and it's going to get worse."

In some ways, the number of lawyers isn't so important as what they're working on. The Legal Services Corporation, a nonprofit established by Congress to provide financial support for civil legal aid to low-income Americans, calculated in its **2009 study** that although the national average is one lawyer per 430 residents, the rate of lawyers available to people in poverty on average is more like one for every 6,415.

Miller drove more than 4,974 miles last month from Albuquerque to represent clients on a contract with the Law Office of the Public Defender in Lincoln and Doña Ana counties as well as to far reaching places like Clovis, which is in the Ninth Judicial District on the state's southern border and is identified by the workgroup as among those with lowest attorney density per population. Only the 6th district, which encompasses the state's bootheel, has a lower density of attorneys.

Miller will turn 58 this year and has a few private

clients, but most of his practice is on contract for the notoriously stretched-thin public defenders office. The two other lawyers active in Lincoln County are also nearing or older than 60, he says. The workgroup report emphasizes the problem, noting "active members of the bar are aging out and not being replaced by younger members." And the younger generation, as the law school dean notes, are not too keen on practicing in the outskirts.

Even in one of the three counties that makes up Santa Fe's first Judicial District, a lower number of attorneys is a factor. Chief District Court Judge Mary Marlowe Sommer says applications for vacancies on the court don't typically come from Rio Arriba County for the job that's stationed there in Tierra Amarilla.

The court has found ways to adapt, including its twice-monthly "resolution days" wherein self-represented litigants are paired with volunteer lawyers, a self-help desk and legal fairs, she notes.

New Mexico allocates a small pot of money to the family court each year to hire a private attorney for guardianship matters and other cases, and New Mexico Legal Aid gets public funding to provide some service to very low income individuals. But neither service can make much of a dent.

Judge Sylvia Lamar, one of two judges on the family court docket, says there's always room for more help.

"Most of the people who appear before us appear without attorneys," she tells SFR. "In the family law arena, we are really set up to deal with self reported

litigants to the extent we can. We try to give them opportunities to be heard."

Is a civil version of the public defenders office warranted? She let a laugh escape at the question.

"It will never happen," Lamar says. " Representation in a civil case is not a constitutional right…"

Yet, it's not a totally laughable proposition: In 2006, the American Bar Association House of Delegates encouraged legislatures to "provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake." Those basic needs include housing, medicine, child custody and personal safety, among others.

Lamar happens to be the judge who ruled in Attallah's 2018 order of protection. At the end of the trial, she asked each party what they were going to do to move on. It took a while to sink in, but Attallah believes she knows the answer.

"I started to see great crossovers with trial law and training in acting. I started to see that my skill set could be uniquely suited to that type of law, in the ability to really paint a picture for a jury, to be really incisive about what creates a compelling story and how to get the strongest testimony," Attallah says. "That is where the marriage of my skills and the law might come into play. Obviously, I say that with all humility. I have a great deal to learn about the law."

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Former editor and publisher, Julie Ann Grimm, is an avid reader who enjoys writing news, features and reviews when she's not planning, editing, changing lightbulbs or ordering Post-It notes. Santa Fe is her home of choice.

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