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The Rural Venue

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INTRODUCTION

In 2005, Lions Gate Films released the movie "Crash."[1] One synopsis summarized the film as "[a] provocative, unflinching look at the complexities of racial conflict in America, *Crash* is that rare cinematic event—a film that challenges audiences to question their own prejudices."[2] Film critic Roger Ebert described the film as follows:

> "Crash" tells interlocking stories of whites, blacks, Latinos, Koreans, Iranians, cops and criminals, the rich and the poor, the powerful and powerless, all defined in one way or another by racism. All are victims of it, and all are guilty [of] it. Sometimes, yes, they rise above it, although it is never that simple. . . .

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1. CRASH (Lions Gate Films 2005) (starring Sandra Bullock, Don Cheadle, Matt Dillon, Jennifer Esposito, William Fichtner, Brendan Fraser, Terrence Howard, Chris "Ludacris" Bridges, Thandie Newton, Ryan Phillippe, and Larenz Tate).

2. Review of CRASH, http://www.rottentomatoes.com/m/crash/about.php (last visited Mar. 4, 2006); *see also* Review of CRASH, http://www.crashfilm.com (last visited Mar. 4, 2006) ("Challenging and thought-provoking, Lions Gate Films' *Crash* takes a provocative, unflinching look at the complexities of racial tolerance in contemporary America. . . . *Crash* boldly reminds us of the importance of tolerance as it ventures beyond color lines . . . and uncovers the truth of our shared humanity.") (ellipses in original).

. . . .

> One thing that happens, again and again, is that peoples' [sic] assumptions prevent them from seeing the actual person standing before them. . . .
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> . . . .
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> . . . ["Crash"] shows the way we all leap to conclusions based on race—yes, all of us, of all races, and however fair-minded we may try to be—and we pay a price for that.[3]

We are all familiar with common stereotypes based on gender and race, and we are well aware that such stereotypes have the potential to impact fairness and justice. Recent psychological research has demonstrated that such stereotyping, long believed to be conscious and intentional,[4] exists at an unconscious level.[5] Thus, individuals who believe themselves unbiased may nevertheless possess unconscious biases affecting their interactions, their responses, their reactions, and their perceptions.[6]

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3. Roger Ebert, Review of CRASH (May 5, 2005), http://rogerebert.suntimes.com/apps/pbcs.dll/article?AID=/20050505/REVIEWS/50502001/1023 (last visited Mar. 4, 2006).

4. *See* Debra Lyn Bassett, *Judicial Disqualification in the Federal Courts*, 87 IOWA L. REV. 1213, 1249 (2002) ("Until the 1980s, most psychologists assumed that attitudes, including prejudice and stereotypes, operated consciously. Accordingly, many researchers used self-reporting to measure attitudes and stereotypes.") (footnote omitted); *see also* Antony Page, *Batson's Blind Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. REV. 155, 180 (2005) ("[U]ntil roughly thirty years ago most mainstream psychological research analyzed racial discrimination through observable behavior and self-reports. Researchers saw racial discrimination primarily as a function of the discriminator's motivation and personality . . . .") (footnote omitted); *id.* at 184 ("[T]he old tools of detecting racism—asking people to report on their own attitudes—were much less effective because they could not distinguish between people who were racist and lying about it (those giving the socially desirable responses) and people who genuinely did not think they were racist.").

> Previously, researchers who studied stereotyping had simply asked people to record their feelings about minority groups and had used their answers as an index of their attitudes. Psychologists now understand that these conscious replies are only half the story. How progressive a person seems to be on the surface bears little or no relation to how prejudiced he or she is on an unconscious level—so that a bleeding-heart liberal might harbor just as many biases as a neo-Nazi skinhead.

Annie Murphy Paul, *Where Bias Begins: The Truth About Stereotypes*, PSYCHOL. TODAY, May-June 1998, at 53.

5. *See* Bassett, *supra* note 4, at 1249 ("Recent studies indicate that prejudiced responses are largely unconscious."); Paul, *supra* note 4, at 52 ("Psychologists once believed that only bigoted people used stereotypes. Now the study of unconscious bias is revealing the unsettling truth: We all use stereotypes, all the time, without knowing it. We have met the enemy of equality, and the enemy is us."); *see also infra* notes 67-87 and accompanying text (discussing psychological research addressing unconscious bias).

6. *See* Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1243 (2002) ("The behavior of real human beings is often guided by racial and other stereotypes of which they are completely unaware."); *id.* at 1250 ("[A]ll of us behave in ways that demonstrate that we are subject to the effects of stereotypes, including those we expressly disavow."); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1490 (2005) ("Recent social cognition research . . . . reveals that most of us have implicit biases against racial minorities notwithstanding sincere self-reports to the contrary.").

A common result of stereotyping—and a feature employed in these recent psychological studies[7]—is the creation of dichotomies, such as good/bad, which substitute for actual evaluation and analysis.[8]

> Such dichotomizing is misleading, of course, for at least three reasons. First, it tends falsely to separate things that are inseparably intertwined, such as nature and nurture. Second, it polarizes things, such as right and wrong, that are often best considered as endpoints of a continuum. Third, and most importantly, such dichotomizing often creates the illusion of symmetry and balance, suggesting, perhaps, that the relationship . . . is meaningfully similar to the rela-

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7. *See* Paul, *supra* note 4, at 53 (describing a psychological test "typical of the ones used by automatic stereotype researchers").

> [The test] presents the subject with a series of positive or negative adjectives, each paired with a characteristically "white" or "black" name. As the name and word appear together on a computer screen, the person taking the test presses a key, indicating whether the word is good or bad. Meanwhile, the computer records the speed of each response.
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> . . . Though the words and names aren't subliminal, they are presented so quickly that a subject's ability to make deliberate choices is diminished—allowing his or her underlying assumptions to show through. The same technique can be used to measure stereotypes about many different social groups, such as homosexuals, women, and the elderly.

Id.

8. *See* Anthony V. Alfieri, *Lynching Ethics: Toward a Theory of Racialized Defenses*, 95 MICH. L. REV. 1063, 1066 (1997) (noting the "engraft[ing of] an essentialist dichotomy of good-bad moral character on the racial identity of young black men"); Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1043 (2002) (noting that the "good/bad dichotomy . . . does not even protect 'good' blacks. . . . [T]o the extent that police officers operate under the assumption that part of their law enforcement project is to ferret out the 'good' blacks from the 'bad' blacks, and to the extent that the goodness (noncriminality) of blackness is not assumed but must be demonstrated (ex ante via identity performance) or established (ex post via a search or seizure), *all* black people are vulnerable to racial profiling."); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 32 (1998) (noting "stereotype dichotomies (*e.g.*, white/black; good/bad)"); Stephanie Lasker, *Sex and the City: Zoning "Pornography Peddlers and Live Nude Shows,"* 49 UCLA L. REV. 1139, 1181 (2002) (noting dichotomies of "madonna/whore, white/dark, ... good/bad"); Caroline Rogus, *Conflating Women's Biological and Sociological Roles: The Ideals of Motherhood, Equal Protection, and the Implications of the* Nguyen v. INS *Opinion*, 5 U. PA. J. CONST. L. 803, 823 (2003) ("In the area of criminal law, prosecutors and defense attorneys rely on the dichotomy of good/bad mother . . . in their portrayals of female defendants who have abused or killed their children."); Sharon Elizabeth Rush, *If Black is so Special, Then Why Isn't it in the Rainbow?*, 26 CONN. L. REV. 1195, 1198 (1994) (noting the "goodness/badness" dichotomy in categorizing families and stating that "[f]rom society's view, the emphasis on 'good/bad' families is dysfunctional because it promotes discrimination against many non-traditional families. Rather than valuing relationships, this approach values the values of those in positions to define 'family.'"); A. Dan Tarlock, *Who Owns Science?*, 10 PENN. ST. ENVTL. L. REV. 135, 149 (2002) ("In general, the regulated community classifies any regulatory initiative not based on traditional science, which leads to a conservative risk assessment decision, as 'bad science' and thus illegitimate and ultra vires. The dichotomy is, of course, a totally contrived and false one and results in a perversion of science.") (footnote omitted); Sherrine M. Walker & Christopher D. Wall, *Feminist Jurisprudence: Justice and Care*, 11 BYU J. PUB. L. 255, 264 (1997) (noting such dichotomies as "male/female, good/bad, right/wrong," but observing that "life rarely breaks down into such neat categories," and further stating that "[l]aw is particularly susceptible to this polarized way of thinking"); *see also* EDWARD W. SAID, ORIENTALISM 45 (Vintage Books 1979) ("When one uses categories like Oriental and Western as both the starting and the end points of analysis, research, public policy . . . the result is usually to polarize the distinction . . . .").

> tionship between yin and yang. This is, of course, often wholly inconsistent with the facts . . . .[9]

Thus, instead of viewing someone as a complex whole, complete with inconsistencies and ambiguities, stereotyping permits instant slotting—people are slotted into little boxes and ascribed particular characteristics and qualities without examination, reflection, or analysis.[10] These snap judgments, of course, are often wrong.[11] If left unchecked, these biases can result in erroneous and unfair impressions, and in the legal system, can result in injustice.

In addition to the injustices that can result from discrimination based on gender, race, ethnicity, color, national origin, religion, age, disability, socioeconomic status, and sexual orientation, there is another, less familiar, form of discrimination. Ruralism involves discrimination on the basis of factors stemming from living in a rural area.[12] Indeed, "'ruralism' is a pervasive form of discrimination—largely unrecognized, unacknowledged, and unexamined—and one often impacting most harshly those individuals who already are subject to other forms of discrimination based on gender, class, and race."[13]

Like other forms of discrimination, ruralism employs stereotypes. These rural stereotypes—as is true of other stereotypes—fall within a dichotomous desirable/undesirable pattern: Rural *places* are desirable, and thus are idealized and romanticized; rural *dwellers* are undesirable, and thus are denigrated and ridiculed.[14] This dichotomy might be primarily only of sociological interest, were it not for the fact that this same dichotomy is demonstrable in the legal arena as well.

General examples of rural stereotypes—both positive and negative—are found easily in the caselaw, including references to "backward,"[15] "iso-

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9. Owen D. Jones, *Proprioception, Non-Law, and Biolegal History*, 53 FLA. L. REV. 831, 849-50 (2001).

10. *See* Peter M. Todd, *Fast and Frugal Heuristics for Environmentally Bounded Minds*, *in* BOUNDED RATIONALITY: THE ADAPTIVE TOOLBOX 51, 55 (Gerd Gigerenzer & Reinhard Selten eds., 2001) ("Humans are renowned for making decisions on the basis of little time, thought, and knowledge. We make snap judgments and rash decisions; we jump to conclusions; we indulge in stereotypes.").

11. *See* Page, *supra* note 4, at 188 ("[J]ust like other kinds of categorization, stereotypes distort what we experience by making our world seem simpler and less surprising. Stereotypes and stereotyping necessarily lead to oversimplified conceptions and misapplied knowledge.").

12. Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 279 (2003) (defining "ruralism"). Indeed, when the 2006 Academy Award for best picture went to CRASH instead of BROKEBACK MOUNTAIN, allegations of ruralism surfaced. *See* Sam McManis, *Hype or Homophobia*, SACRAMENTO BEE, Mar. 7, 2006, at E8 (quoting Larry McMurty, BROKEBACK MOUNTAIN's author and co-screenwriter, as saying, "Members of the Academy are mostly urban people . . . . [w]e are an urban nation. We are not a rural nation. It's not easy even to get a rural story made.").

13. Bassett, *supra* note 12, at 273.

14. *See id.* at 273 ("Our society has a 'love-hate' relationship with its rural communities. While revering rural areas as embodying the ultimate in 'quality of life,' rural citizens are simultaneously denigrated as uneducated, backward, and unsophisticated."); *id.* at 292-93 ("[M]ost people regard rural *areas* with a mixture of awe and disdain. With respect to rural *dwellers*, however, there is no such dichotomy.") (footnote omitted).

15. *See* Crain v. City of Louisville, 182 S.W.2d 787, 790 (Ky. 1944) (analogizing relative differ-

lated,"[16] "uneducated,"[17] "pastoral,"[18] "lonely,"[19] "peaceful,"[20] "rustic,"[21] "bucolic,"[22] "quiet,"[23] "country folk,"[24] and "quality of life."[25] One court

ences among hospitals to courts, and stating: "[T]hey differ greatly in kind and character. Thus, there is the Supreme Court of the United States on the one extreme and a court of a Justice of the Peace in a backward, rural community on the other.").

16. *See, e.g.*, People v. McCarty, 826 N.E.2d 957, 962 (Ill. App. Ct. 2005) ("isolated, rural area"); State v. Croell, No. 04-228-CR, 2005 WL 225027, at *1 (Feb. 1, 2005) ("isolated rural nature").

17. *See, e.g.*, *Ex parte* Household Retail Servs., Inc., 744 So. 2d 871, 874 (Ala. 1999) (alleging fraud in the sales of satellite systems targeting "rural, low-income, uneducated" Alabama residents); Lacour v. Sanders, 442 So. 2d 1280, 1283 (La. Ct. App. 1983) (quoting the trial court's decision as stating, "[b]oth [defendants] are uneducated . . . men who lived in the rural community of Woodworth") (ellipsis in original); State v. Hamrick, 236 S.E.2d 247, 247 (W. Va. 1977) (describing the defendant as "a twenty-six year old woman of very limited intelligence, a poor, uneducated, non-verbal resident of rural West Virginia"); Charleston v. Veri-Fresh Poultry Co., 273 So. 2d 712, 716 (La. Ct. App. 1972) (finding the plaintiff disabled under workers' compensation and describing the plaintiff as "an uneducated, unskilled black woman, living in a rural community").

18. *See, e.g.*, Levy v. Franks, 159 S.W.3d 66, 69 (Tenn. Ct. App. 2004) (describing area as "quiet, pastoral and mostly rural"); Lawson v. Sussex County Council, Civ. A. No. 1615-S, 1995 WL 405733, at *4 (Del. Ch. June 14, 1995) (describing need to maintain "the rural and pastoral character of much of the county" in connection with zoning and development plan); State v. Griffith, C.C.A. No. 158, 1988 WL 2994, at *1 (Tenn. Crim. App. Jan. 15, 1988) (describing land as lying "in a rural pastoral valley").

19. *See, e.g.*, Rowe v. Farmers Ins. Co., 699 S.W.2d 423, 423 (Mo. 1985) ("lonely rural field"); Parvi v. City of Kingston, 362 N.E.2d 960, 965 (N.Y. 1977) ("lonely rural setting"); *In re* Dally's Marriage, 222 N.W.2d 478, 482 (Iowa 1974) (stating that the wife had been "left in a lonely rural setting far from old friends and familiar places"); Sullivan v. Town of Babylon, 89 N.Y.S.2d 212, 213 (N.Y. Sup. Ct. 1949) ("lonely rural community"); Drewry v. Drewry, 216 S.W.2d 888, 890 (Ark. 1949) (noting that the wife was "not willing to experience inconveniences, a measure of comparative poverty, and lonely rural life during the period [her husband] followed the flag").

20. *See, e.g.*, Childs v. Zurich Am. Ins. Co., 476 So. 2d 403, 408-09 (La. Ct. App. 1985) ("peaceful, rural locale"); State v. Wright, 221 S.E.2d 751, 752 (N.C. Ct. App. 1976) ("Watauga County is primarily a peaceful rural mountain county."); Hardy v. Zoning Bd. of Review, 321 A.2d 289, 293 (R.I. 1974) ("[T]he area is typical of those rural areas to which the inhabitants of our cities flee in their search for a peaceful existence."); Baxter v. Gillispie, 303 N.Y.S.2d 290, 295 (N.Y. Sup. Ct. 1969) ("charming and . . . peaceful rural community"); Denver & Rio. Grande W. R.R. Co. v. Lipscomb, 437 P.2d 554, 555 (Colo. 1968) ("peaceful, quiet, rural neighborhood"); Morris v. Borough of Haledon, 93 A.2d 781, 783 (N.J. Super. Ct. App. Div. 1952) ("The result was an industrial blight upon a once rural and peaceful residential community.").

21. *See, e.g.*, Dallen v. City of Kansas City, 822 S.W.2d 429, 432 (Mo. Ct. App. 1991) (discussing zoning ordinance prohibiting building "[d]esign and materials that suggest rural, rustic or non-urban characteristics"); McBride v. Town of Forestburgh, 388 N.Y.S.2d 940, 942 (N.Y. App. Div. 1976) (describing town as "inhabited by some 500 to 1000 people and is rural and rustic in character"); Hardy v. Zoning Bd. of Review, 321 A.2d 289, 293 (R.I. 1974) (stating that the impact of construction upon "[rural] residents, usually refugees from the noise and perils of urban areas, frequently experience a shattering of the bucolic calm of the rustic scene").

22. *See, e.g.*, Omnipoint Commc'ns Enters. v. Town of Amherst, 74 F. Supp. 2d 109, 117 (D.N.H. 1998) (noting "rural area" and "scenic and bucolic atmosphere").

23. *See, e.g.*, West v. Luna, No. M2002-02734-COA-R3-CV, 2003 WL 23119315, at *2 (Tenn. Ct. App. Jan. 6, 2003) ("quiet rural community"); State v. Limbrecht, 600 N.W.2d 316, 319 (Iowa 1999) ("quiet rural neighborhood"); Hollis v. Garwall, Inc., 945 P.2d 717, 718 (Wash. Ct. App. 1997) ("quiet, rural area"); Crooked Creek Conservation & Gun Club, Inc. v. Hamilton County North Bd. of Zoning Appeals, 677 N.E.2d 544, 549 (Ind. Ct. App. 1997) ("the peace and quiet of the rural neighborhood").

24. *See, e.g.*, K-Mart Corp. v. W. Va. Human Rights Comm'n, 383 S.E.2d 277, 286 (W. Va. 1989) (Miller, J., dissenting) (noting stereotypical profile of "country folk in bib overalls and muddy boots").

25. *See, e.g.*, Conservation Law Found. v. Town of Lincolnville, 786 A.2d 616, 619 (Me. 2001) ("maintaining the town's rural character, identity, and quality of life"); Fisher v. Viola, 789 A.2d 782, 786 n.3 (Pa. Commw. Ct. 2001) (zoning board justified minimum lot requirements, among other reasons, "to preserve the rural nature of the community and its high quality of life"); Sinclair v. Sharon Planning & Zoning Comm'n, No. CV 990079576S, 2000 WL 765134, at *6 (Conn. Super. Ct. May 26, 2000) (town's "rural quality of life"); Evans v. Shore Commc'ns, Inc., 685 A.2d 454, 460 (Md. Ct. Spec. App. 1996) ("rural character and quality of life of Talbot County").

has even considered a lawyer's use of a peremptory challenge to strike a juror on the basis that the prospective juror was a "redneck."[26]

Sometimes rural references are patronizing and insulting even when intended to be flattering—as, for example, the judge who stated that the plaintiffs "were just about the sweetest down-home country folk people I've ever seen."[27] Or the dissenting judge who would have denied issuance of a writ to obtain a change of venue, stating that venue was appropriate because the county was neither "small nor unsophisticated."[28] Older cases made no attempt to flatter, instead engaging in rank rural stereotyping, such as "ignorant country folk"[29] (or, if you prefer, "innocent country folk"[30]), "plain country folks,"[31] and references to speech and dialect—such as testimony "couched in the homely but convincing words of the country folk."[32] A more recent case, however, observed that "idyllic" may translate to "condescending:"

> The Closing Law [requiring certain commercial establishments to remain closed to the public on Sundays] . . . prohibits the opening of barbershops in cities, but one may still get a haircut in "rural districts." Leaving aside the question of how "rural district" is defined, we are hard pressed to speculate as to how the legislature could rationally find it more restful to get one's haircut in the country than in one's home town. Even the most idyllic (if condescending) image of quaint country folk gathered at the local barbershop for recreation on a Sunday afternoon falls flat when examined in the light of present day reality.[33]

The vast majority of America's population resides in urban areas.[34] This clustering of large groups of people into relatively small geographical areas—1.5 million people, for example, crowd into the 23.7 square miles

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26. Payton v. Kearse, 495 S.E.2d 205, 208 (S.C. 1998). The court noted that WEBSTER'S NEW WORLD DICTIONARY defines "redneck" as "a poor, white rural resident of the South: often a somewhat derogatory term"—and therefore found the peremptory strike facially discriminatory—on a racial basis. *Id.* at 208 & n.1.

27. Rogen v. Monson, 609 N.W.2d 456, 461 (S.D. 2000).

28. Martinez v. Superior Court, 629 P.2d 502, 509 (Cal. 1981) (Richardson, J., dissenting).

29. Johnson v. Ford, 245 S.W. 531, 536 (Tenn. 1922).

30. Sec. Bank & Trust Co. v. Dery, 185 N.Y.S. 476, 478 (N.Y. App. Div. 1921).

31. Pursifull v. Pursifull, 257 S.W. 117, 118 (Mo. 1923).

32. Bartlett v. White, 272 S.W. 944, 955 (Mo. 1925); *see also* Ware v. Eng'g Const. Co., 135 So. 248, 249 (La. Ct. App. 1930) (stating that the plaintiff's father had remarked "in a characteristic manner: 'Us country folks we go barefooted in the summer"); Brewer v. Griggs, 10 Tenn. App. 378, 385 (Tenn. Ct. App.1929), *available at* 1929 WL 27656, at *5 (describing "country folk" as "possessing good common sense, though many of them in a way ignorant"); *id.* (referring to witnesses from rural area as "grown in the hills").

33. Montalvo Huertas v. Rivera Cruz, No. 89-0112 (JAF), 1989 WL 46716, at *14 (D.P.R. Feb. 16, 1989), *rev'd*, 885 F.2d 971 (1989).

34. *See* STATE PROFILES: THE POPULATION AND ECONOMY OF EACH U.S. STATE 3 (Courtenay M. Slater & Martha G. Davis eds., 1st ed. 1999) ("About 80 percent of the U.S. population lived in metropolitan areas in 1997, and this proportion has changed little since 1990.").

known as Manhattan[35]—provides a striking contrast to the non-urban remainder. Population density is the most obvious difference between urban and non-urban living, and this foundation contributes to a host of additional differences. High population densities bring access[36]—more housing, more services, more programs, and more amenities to serve these large numbers of people. Larger sheer numbers generate more attention to needs and demands, resulting in greater power of every dimension.[37] It is little wonder that the urban perspective dominates America's thinking.[38]

The rural remainder are outsiders. They are geographical outsiders, living beyond metropolitan boundaries. They are also outsiders in a less literal and more figurative sense—they are overshadowed and marginalized. The rural minority faces an interesting dichotomy—a dichotomy based on place versus people.[39] Rural *places* often are romanticized as unspoiled, safe, quiet, and beautiful. Rural *dwellers*, however, often are stereotyped as uneducated, unsophisticated, backward,[40] and sometimes mentally deficient

35. *See* NYC & Co., NYC Statistics, http://www.nycvisit.com/content/index.cfm?pagePkey=57 (providing facts and statistics about New York City) (last visited Mar. 5, 2006).

36. *See* Bassett, *supra* note 12, at 316 ("As a general matter, lack of access and availability is a key problem in rural areas.").

37. *See* Debra Lyn Bassett, *The Politics of the Rural Vote*, 35 ARIZ. ST. L.J. 743, 754 (2003) ("[R]ural dwellers lack power and influence not only with respect to their actual numbers and their political representation in terms of congressional representatives and electoral votes, but also with respect to income and political contributions."); *id.* ("[B]oth rural congressional districts and states with a rural majority tend to be poorer and less politically powerful than the average."); *see also* KNOWING YOUR PLACE: RURAL IDENTITY AND CULTURAL HIERARCHY 2 (Barbara Ching & Gerald W. Creed eds., 1997) [hereinafter KNOWING YOUR PLACE] ("[T]he rural/urban distinction underlies many of the power relations that shape the experiences of people in nearly every culture."); *id.* at 17 ("[T]he city remains the locus of political, economic and cultural power."); Craig Anthony Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL'Y REV. 191, 194-95 (1990) ("[W]hen compared to urban residents, the rural underclass is politically weak. Widely dispersed, they lack the organization, financial resources, and concentrated voting strength necessary to influence public policy."); Robert R.M. Verchick, *The Commerce Clause, Environmental Justice, and the Interstate Garbage Wars*, 70 S. CAL. L. REV. 1239, 1295 (1997) ("[A] state's political and economic power are often associated with size of population . . . ."). *See generally* Bernice Lott, *Cognitive and Behavioral Distancing from the Poor*, 57 AM. PSYCHOL. 100, 101 (2002) ("Power, defined as access to resources, enables the group with greatest access to set the rules, frame the discourse, and name and describe those with less power. . . . '[I]t is power . . . that enables one to discriminate.") (second ellipsis in original) (citation omitted).

38. *See* Bassett, *supra* note 12, at 341 (noting that "[o]ur society has an urban focus"); *see also* CORNELIA BUTLER FLORA ET AL., RURAL COMMUNITIES: LEGACY AND CHANGE 15 (2d ed. 2004) (noting that America "has become so deeply urbanized that we almost assume urbanization to be a natural law"); RALPH A. WEISHEIT ET AL., CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA 2 (2d ed. 1999) ("[C]ontemporary American culture is considered not only homogenous [sic], but an urban culture.").

39. I have previously identified the rural dichotomy at some length in a previous article. *See* Bassett, *supra* note 12, at 292-93 ("[M]ost people regard rural *areas* with a mixture of awe and disdain. With respect to rural *dwellers*, however, there is no such dichotomy.") (footnote omitted); *id.* at 275 ("Our society has a 'love-hate' relationship with its rural communities.") (footnote omitted); *see also* James B. Wadley & Pamela Falk, Lucas *and Environmental Land Use Controls in Rural Areas: Whose Land Is it Anyway?*, 19 WM. MITCHELL L. REV. 331, 337 (1993) ("It is difficult to determine which of two competing attitudes better describes the typical urban view of what is *rural*—nostalgia or condescension.").

40. *See* FLORA ET AL., *supra* note 38, at 7-8 ("Stereotypes of rural communities conjure up images of isolated, relatively self-sufficient, sometimes backward or unsophisticated cultures.").

and physically dirty.[41] In other words, rural areas are quaint places to visit, but they are not places with which to be associated as a year-round permanent resident.

> The ideal country is the place urbanites visit, not the place where poor people eke out a living. Urban dwellers who are free from the stigma of rusticity can wax eloquently about the countryside or embrace it as a retreat without undermining their own cultural superiority—*going to* the country with a fully formed urban identity is not the same as *being from* the country. The very concept of a "country" home, for example, reinforces the fact that its owner is urban(e) and has an unqualified/unmarked home in the city.[42]

Racism, sexism, or classism may exacerbate ruralism, and indeed, ruralism often impacts most harshly those individuals who already are subject to other forms of discrimination based on gender, class, and race.[43] However, ruralism is itself a separate and independent basis for discrimination:[44]

> Given the pervasiveness of the rural/urban opposition and its related significance in the construction of identity, it is remarkable that the explosion of scholarly interest in identity politics has generally failed to address the rural/urban axis. The resulting representation of social distinctions primarily in terms of race, class, and gender thus masks the extent to which these categories are inflected by place identification. For example, social theorists generally fail to acknowledge that a rural woman's experience of gender inequality may be quite different from that of an urban woman, or that racial opposition in the city can take a different form from that in the countryside.[45]

Ruralism might be primarily only of sociological interest, were it not for the fact that this same basic dichotomy is demonstrable in the legal arena as well. The phenomenon is particularly striking in contrasting land use cases with change of venue cases. Specifically, in land use cases, where the focus is on place, rural settings tend to be described in positive, even idealized, terms in the underlying land use regulations and in court decisions. In

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41. *See* Bassett, *supra* note 12, at 275 ("[T]hose who live in rural areas often are stereotyped as uneducated and unsophisticated at best, with stereotypes then degenerating to include such descriptors as backward, unattractive, lazy, stupid, and dirty.") (footnote omitted); Wadley & Falk, *supra* note 39, at 338-39 ("Rural people are considered to be less adept at dealing with the intricacies of modern life. Rural people are simple, uncultured, redneck, but certainly not urbane, or sophisticated. Rural people are also viewed as low key, laid back, and unmotivated.") (footnotes omitted).

42. KNOWING YOUR PLACE, *supra* note 37, at 20.

43. *See* Bassett, *supra* note 12, at 328 ("[R]uralism exacerbates the impact of discrimination against other protected groups.").

44. *See id.* at 339 n.286.

45. KNOWING YOUR PLACE, *supra* note 37, at 3.

change of venue cases, however, the focus shifts from place to people. Venue, although cast by statute in terms of location, is judicially reviewed through reference to the prospective jury pool which, in a rural venue, involves rural dwellers. The result is that negative, unflattering rural stereotypes routinely appear in change of venue cases. These negative stereotypes typically are invoked by counsel and usually are rejected by the court. However, in some cases these stereotypes infect the court's decision.

The title of this Article, "*The Rural Venue*," is intended to encompass both sides of the rural dichotomy. "Venue," of course, has both a colloquial meaning and a legal meaning. In colloquial terms, we may speak of "venue" as meaning place or location, such as professional sporting venues.[46] In this sense, a rural "venue" indicates a rural area or rural location. Another meaning of "venue" is found in the law, where "venue" connotes the geographical area from which prospective jurors are drawn.[47] Accordingly, "the rural venue" has the ability to encompass both rural places and rural dwellers.

Part I of this Article explores the meaning of "rural."[48] Part II provides some background information concerning relevant psychological concepts and recent research addressing stereotypes and unconscious bias.[49] Part III analyzes the rural venue as "place" and examines the caselaw's use of the term "rural" in land use cases and the positive rural stereotypes invoked.[50] Part IV analyzes the rural venue as a source of jurors and examines the caselaw's use of the term "rural" in change of venue cases and the negative rural stereotypes invoked.[51] Finally, Part V concludes that rural stereotypes are so commonplace as often to be unrecognized, even by lawyers and judges, and that this bias impacts laws, lawyers' arguments, and court decisions in predictable and illegitimate ways.[52]

I. WHAT IS "RURAL"?

Defining "rural" is more difficult than it might initially appear. "Rural" is often seen as a synonym for "country."[53] Also common is the pairing of

46. *See* J.I. RODALE ET AL., THE SYNONYM FINDER 676, 896 (1978) (reflecting "venue" as a synonym for "location" and "place"); Mike Tolson, *7 Days to Kickoff: Super Bowl XXXVIII*, HOUS. CHRON., Jan. 25, 2004, at A1 ("The past 10 years have seen an unprecedented building boom in major sporting venues. To date, 44 new stadiums and arenas have risen around the country . . . .").

47. *See* RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 2112 (2d ed. unabr. 1987) (defining venue as "the county or place where the jury is gathered and the cause tried").

48. *See infra* notes 53-66 and accompanying text (discussing the meaning of "rural").

49. *See infra* notes 67-87 and accompanying text (discussing relevant psychological concepts and recent psychological research).

50. *See infra* notes 88-109 and accompanying text (analyzing the implications of rural in land use caselaw).

51. *See infra* notes 110-40 and accompanying text (analyzing the implications of rural in change of venue caselaw).

52. *See infra* notes 142-60 and accompanying text (discussing the legal implications of rural stereotyping by lawmakers, lawyers, and judges).

53. Some sources appear to consider "rural" a synonym for "country." *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1990 (1971) (defining "rural" as "living in country areas[;] engage[ing] in agricultural pursuits . . . [;] of, relating to, or characteristic of people who live in the country . . . [;] of,

"rural" with "farm."[54] To equate "rural" with "farm" as a general matter, however, can be particularly misleading—more than 93% of *rural* American workers have *non*-farm jobs.[55] When we look to more "official" definitions, we find that even our government agencies and programs employ varying definitions of "rural."[56] The United States Census Bureau essentially defines "rural" as that which is not "urban":[57]

> United States government statisticians use two separate methods to delineate urban and rural areas—urban versus rural and metropolitan versus nonmetropolitan. In both instances, the categories are dichotomous, with urban/metropolitan areas defined first, leaving rural/nonmetropolitan areas as residuals.[58]

Indeed, the Census Bureau's online "Introduction to Census 2000" defines "urban" but not "rural."[59] The Census Bureau defines "urban areas" as "consist[ing] of urbanized areas (UAs) and other urban entities. A UA consists of densely settled territory with a population of 50,000 or more inhabitants. Other urban areas have from 2,500 to 49,999 population."[60] In a related vein, the Census Bureau defines "metropolitan areas" as "consist[ing] of a large population nucleus of 50,000 population or greater, together with adjacent communities having a high degree of social and economic integration with that core. Metropolitan areas comprise at least one county, except in New England, where cities and towns are the basic geographic units."[61]

The Census Bureau's official "Census 2000 Urban and Rural Classification" defines "rural" as follows:

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relating to, associated with, or typical of the country"); *see also* Nopro Co. v. Town of Cherry Hills Vill., 504 P.2d 344, 349 (Colo. 1972) (A "rural atmosphere" includes "small farms and large residential tracts, where farm animals and poultry would be permitted, bridle and walking paths be provided, open space be preserved and noise and traffic congestion be eliminated . . . .").

54. For example, a Westlaw search of "rural w/35 farm" in the "allstates" database brought up 1,869 cases; the same search in the "allfeds" database yielded an additional 916 cases (search conducted by author on 06/22/05).

55. *See Back to the Future: The Farm Bill and Rural Economic Development*, ECON. DEV. DIG., Sept. 2001, *available at* http://www.nado.org/pubs/september1.html. (reporting that only 6.3% of rural Americans live on farms); *see also* NEIL WEBSDALE, RURAL WOMAN BATTERING AND THE JUSTICE SYSTEM 37 (1998) ("The traditional notion that rural areas have primarily agricultural economies is still popular today, even []though it is now no longer accurate."); Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 977 ("It is a myth that most rural Americans are farmers.").

56. *See* Bassett, *supra* note 12, at 287 (noting differences in definitions of "rural" among government agencies and programs); *see also* FLORA ET AL., *supra* note 38, at 5 (noting varying population eligibility designations for various rural programs).

57. *See* JANET M. FITCHEN, ENDANGERED SPACES, ENDURING PLACES: CHANGE, IDENTITY, AND SURVIVAL IN RURAL AMERICA 246 (1991) ("The official definition assigned to rural America is a definition by exclusion: Essentially, that which is not metropolitan America is rural America.").

58. CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 3 (David L. Brown & Louis E. Swanson eds., 2003).

59. U.S. CENSUS BUREAU, INTRODUCTION TO CENSUS 2000 DATA PRODUCTS 2 (2001), *available at* http://www.census.gov/prod/2001pubs/mso-01icdp.pdf.

60. *Id.*

61. *Id.*

> [Rural] consists of all territory, population, and housing units located outside of UAs [urbanized areas] and UCs [urban clusters]. The rural component contains both place and nonplace territory.
>
> Geographic entities, such as census tracts, counties, metropolitan areas, and the territory outside metropolitan areas, often are "split" between urban and rural territory, and the population and housing units they contain often are partly classified as urban and partly classified as rural.[62]

Social scientists have repeatedly acknowledged the difficulty in defining "rural":[63]

> The definitions of *rural* are nearly as diverse as the places and populations they are meant to classify and may vary depending on the purpose of the definition. . . .
>
> There is a lack of consensus regarding the definition of *rural.* The definitions are so problematic that the U.S. Office of Rural Health Policy . . . issued a publication on the definitions of *rural,* later expanded to a full text. No approach to defining *rural* is entirely satisfactory; such definitions are always arbitrary, and any one definition may not take into account other important variables. Perhaps . . . the only thread that ties rural areas together is their lower population densities.[64]

The difficulty in defining "rural" is due in part to the focus on the urban[65] and in part on the broad diversity within rural America.

> The people of rural America are a heterogeneous group with great diversity in cultures, occupations, wealth, lifestyles, and physical geography. For example, rural New England is quite dif-

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62. U.S. Census Bureau, Census 2000 Urban and Rural Classification (Apr. 30, 2002), http://www.census.gov/geo/www/ua/ua_2k.html.

63. *See* WEISHEIT ET AL., *supra* note 38, at 4 (noting that while the term "rural" is "very familiar, there are no definitions which are simultaneously precise, measurable, and widely agreed upon"); *id.* at 179-80 app. A ("Despite its apparent simplicity in commonsense terms, there is nothing mechanical or straightforward about developing a systematic working definition of rural. Indeed, rural sociologists have struggled for decades (without much resolution) with how to define rural adequately in social scientific terms."); *see also* Bassett, *supra* note 12, at 288 (observing that "commentators have noted the difficulties in defining 'rural'" and citing authorities).

64. B. Hudnall Stamm et al., *Introduction, in* RURAL BEHAVIORAL HEALTH CARE: AN INTERDISCIPLINARY GUIDE 3 (B. Hudnall Stamm ed., 2003) (citations omitted).

65. *See* FLORA ET AL., *supra* note 38, at 15 ("Our society has become so deeply urbanized that we almost assume urbanization to be a natural law."); *see also* KNOWING YOUR PLACE, *supra* note 37, at 3-4 ("[T]he urban has come to be the assumed reference when terms are used that could in theory refer to both rural and urban subjects."); Arnold, *supra* note 37, at 195 ("American cultural bias toward that which is urban. . . . is created by a pervasive belief in the rightness and inevitability of urbanization.").

> ferent from the more sparsely populated rural areas of the Southwest, where large open areas further separate people. Rural areas also contain significant numbers of minority populations that are often physically isolated and have unique social service needs. Such groups range from predominantly poor Appalachian Whites, isolated Native Americans, poor southern Blacks, and linguistically isolated Hispanics in the Southwest. Many rural areas of North America also contain culturally isolated communities settled by a single immigrant group.[66]

The lack of a comprehensive definition of "rural" does not prevent generalizations and stereotypes. Indeed, as the next Part explains, some generalizing and some stereotyping is an integral part of normal cognitive functioning.

II. A QUICK PRIMER ON UNCONSCIOUS BIAS

A number of scholars have summarized the basic psychological concepts of cognition in recent psychological literature concerning unconscious bias.[67] There is always some risk in offering such summaries, because they are necessarily abbreviated and incomplete. Accordingly, I have employed not one, but two, disclaiming descriptors in the title to this Part—both "quick" and "primer"—and I will now offer a third: This Part is intended to provide only a very brief overview of some of the relevant psychological concepts and research addressing unconscious bias. A comprehensive summary would require an entire book—or a very lengthy law review article.

The natural cognitive process of categorization contributes to the creation of stereotypes and prejudice.[68] Psychologists have known for many years that we are confronted daily with more stimuli than we can carefully and rationally process.[69] To avoid being constantly overwhelmed by this

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66. J. Dennis Murray & Peter A. Keller, *Psychology and Rural America: Current Status and Future Directions*, 46 AM. PSYCHOL. 220, 222 (1991); *see also* Charles W. Fluharty, *Refrain or Reality: A United States Rural Policy?*, 23 J. LEGAL MED. 57, 58 (2002) ("One of the greatest challenges that rural America faces in the public policy arena is its tremendous diversity—across space, circumstance, culture, and demography.").

67. *See, e.g.*, Blasi, *supra* note 6, at 1246-66; Edward M. Chen, *The Judiciary, Diversity, and Justice for All*, 91 CAL. L. REV. 1109, 1119 n.51 (2003); Kang, *supra* note 6, at 1498-1528; Linda Hamilton Krieger, *Civil Rights Perestroika: Intergroup Relations After Affirmative Action*, 86 CAL. L. REV. 1251, 1259-76 (1998) [hereinafter Krieger, *Civil Rights Perestroika*]; Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1186-1211 (1995) [hereinafter Krieger, *Content of Our Categories*]; Page, *supra* note 4, at 180-235; Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 391-96 (2005).

68. *See* Blasi, *supra* note 6, at 1254 ("We know that a significant part of prejudice is bound up in the ordinary cognitive processes of categorization."); *see also* Brad J. Bushman & Angelica M. Bonacci, *You've Got Mail: Using E-Mail to Examine the Effect of Prejudiced Attitudes on Discrimination Against Arabs*, 40 J. EXP. SOC. PSYCHOL. 753, 754 (2004) ("Once social categorization occurs, prejudice, and discrimination are more likely to follow.").

69. *See* TIMOTHY D. WILSON, STRANGERS TO OURSELVES: DISCOVERING THE ADAPTIVE

barrage of stimuli, humans have developed various processing "shortcuts," including schemas and heuristics.[70]

> Every person, and perhaps even every object that we encounter in the world, is unique, but to treat each as such would be disastrous. Were we to perceive each object sui generis, we would rapidly be inundated by an unmanageable complexity that would quickly overwhelm our cognitive processing and storage capabilities. Similarly, if our species were "programmed" to refrain from drawing inferences or taking action until we had complete, situation-specific data about each person or object we encountered, we would have died out long ago. To function at all, we must design strategies for simplifying the perceptual environment and acting on less-than-perfect information. A major way we accomplish both goals is by creating categories.[71]

Thus, the creation of categories is a necessary "mental shortcut" for effective cognitive functioning.[72]

UNCONSCIOUS 24 (2002) (humans receive more than 11 million pieces of information per second, but can consciously process only about 40 such pieces of information—therefore, most information processing must occur unconsciously); *see also* DANIEL M. WEGNER, THE ILLUSION OF CONSCIOUS WILL 56-58 (2002) (explaining that a conscious response requires a half-second or longer, but an unconscious response can occur in as little as one-tenth of a second).

70. *See* Peter M. Todd, *Fast and Frugal Heuristics for Environmentally Bounded Minds*, *in* BOUNDED RATIONALITY: THE ADAPTIVE TOOLBOX, *supra* note 10, at 51, 52 ("Few people would deny that we humans often employ simple shortcuts or heuristics to reach decisions and make judgments."); Kang, *supra* note 6, at 1499 ("We employ schemas out of necessity. Our senses are constantly bombarded by environmental stimuli . . . . [W]e drown in information. Perforce we simplify the datastream . . . through . . . schemas.") (footnote omitted).

71. Krieger, *Content of Our Categories*, *supra* note 67, at 1188; *see also* Paul, *supra* note 4, at 53 ("[W]e all use categories—of people, places, things—to make sense of the world around us. . . . 'Without [them], we couldn't survive.'") (internal citation omitted).

72. Schemas are an integral part of this categorization process; schemas are essentially categories of prior knowledge from which we form expectations. *See* MICHAEL W. EYSENCK & MARK T. KEANE, COGNITIVE PSYCHOLOGY 352 (4th ed. 2000) ("The term *schema* is used to refer to well integrated chunks of knowledge about the world, events, people, and actions."); SUSAN T. FISKE & SHELLEY E. TAYLOR, SOCIAL COGNITION 98 (2d ed. 1991) (defining schema as a "cognitive structure that represents knowledge about a concept or type of stimulus, including its attributes and the relations among those attributes"); *see also* Jamshed J. Bharucha, *Neural Nets, Temporal Composites, and Tonality*, *in* FOUNDATIONS OF COGNITIVE PSYCHOLOGY: CORE READINGS 455, 464 (Daniel J. Levitin ed., 2002) (noting that schemas are "long-term representations of structural regularities . . . . This prior knowledge is implicit, schematic, and acts like a cultural filter."); Ronald W. Casson, *Schemata in Cognitive Anthropology*, 12 ANN. REV. ANTHROPOLOGY 429, 430 (1983) (Schemas "serve as the basis for all human information processing, e g perception and comprehension, categorization and planning, recognition and recall, and problem-solving and decision-making.").

> A crucial function of schemas is that they allow us to form *expectations*. In a restaurant, for example, we expect to be shown to a table, to be given a menu by the waiter or waitress, to order the food and drink, and so on. If any of these expectations is violated, then we usually take appropriate action. For example, if no menu is forthcoming, we try to catch the eye of the waiter or waitress. As our expectations are generally confirmed, schemas help us to make the world a more predictable place than it would be otherwise.

EYSENCK & KEANE, *supra*, at 352. Thus, schemas enable us to process information quickly, indeed automatically, and enable us to organize information—"to identify objects, make predictions about the future, infer the existence of unobservable traits or properties, and attribute the causation of events."

Categorizing information in a simplified and predictable manner requires the use of generalizations. Stereotyping, as a type of generalization, is a normal part of this categorization process. "[S]tereotypes, like other categorical structures, are cognitive mechanisms that *all* people . . . use to simplify the task of perceiving, processing, and retaining information about people in memory. They are central, and indeed essential to normal cognitive functioning."[73] These stereotypes or generalizations may be positive or negative, but in either event, they tend to taint the schema with bias of some sort, which may include a bias to favor—or disfavor—someone who appears to fall within that category. Moreover, because the very purpose of these schemas is to provide a mental shortcut, they are activated both quickly and automatically.[74]

> A problem with schemas is that they are susceptible to unconscious biases and stereotyping. . . . Because a stereotype can become ingrained in a schema, the stereotype can create an unconscious expectation that a specific individual will behave in conformity with the stereotype. If the expectation is distorted or illusory . . . then the perceiver might unconsciously be biased in the way she interacts . . . .[75]

Krieger, *Content of Our Categories*, *supra* note 67, at 1189. Of course, if we are using categories for the purpose of streamlining or simplifying cognitive processes, the categories themselves must be similarly streamlined or simplified. Professor Krieger also stated:

> Categories are guardians against complexity. Their purpose is to simplify the perceptual field by distorting it, so that we experience it as less complex and more predictable than it actually is. . . . Categorical structures can simplify the perceptual environment only if "fuzzy" differences are transformed into clear-cut distinctions.

Id. at 1189 (footnote omitted).

73. Krieger, *Content of Our Categories*, *supra* note 67, at 1188; *see also* Paul, *supra* note 4, at 53 ("[S]tereotypes are too much of a good thing. In the course of stereotyping, a useful category—say, woman—becomes freighted with additional associations, usually negative.").

74. *See* Blasi, *supra* note 6, at 1256-57 (noting that because "we store social categories in our heads by means of prototypes or exemplars rather than statistics, . . . our basic cognitive mechanisms not only predispose us toward stereotypes, . . . but also limit the potentially curative effect of information that contradicts the statistical assumptions about base rates that are embedded in our stereotypes.") (footnote omitted); Ronald Chen & Jon Hanson, *Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory*, 77 S. CAL. L. REV. 1103, 1231 (2004) (noting that once a schema or stereotype has developed, "activation of the stereotypes will be automatic and inevitable"); Krieger, *Civil Rights Perestroika*, *supra* note 67, at 1284 ("There is substantial theoretical and empirical support for the view that the presence of members or symbolic representations of a stereotyped group automatically activates stereotypes associated with that group. As an automatic process, stereotype activation is unintentional—a person has no control over its initiation. Once activated, the stereotype functions as a prime, thereby pulling spontaneous trait inference in a stereotype-consistent direction.") (footnotes omitted); Krieger, *Content of Our Categories*, *supra* note 67, at 1187 ("[A] central premise of social cognition theory [is] that cognitive structures and processes involved in categorization and information processing can in and of themselves result in stereotyping and other forms of biased intergroup judgment previously attributed to motivational processes.") (footnote omitted); *see also* Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 12, 15 (1989) (the automatic process of stereotype activation occurs in both high-prejudice and low-prejudice individuals).

75. Weng, *supra* note 67, at 394-95 (footnotes omitted). The activation of a schema comes about through another type of mental shortcut, called "heuristics." Generally speaking, a "heuristic" is "a rule-

In forming the initial schema or heuristic that is tainted by bias or stereotype, where does the biased information come from? Much of our information comes from our surrounding culture,[76] and with respect to rural stereotypes, our culture commonly reflects rural stereotyping in television, literature, and film.[77] Thus, the rural dichotomy reflects the ambivalence inherent in our perceptions of the rural more generally and permits the use of generalized categories of "good" versus "bad" without regard to ambiguities.[78]

In light of the automatic nature of these cognitive processes, and in light of the generalization and stereotypes inherent in schemas, it is not particularly surprising that psychologists would find that stereotypes may be automatically activated, resulting in unconscious stereotyping and bias. And indeed, a number of psychological researchers have reached precisely that conclusion.[79] Among the more prominent psychological researchers in the

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of-thumb technique for solving a problem, which does not guarantee the solution of the problem but is highly likely to solve the problem." EYSENCK & KEANE, *supra* note 72, at 532. One particular type of heuristic that is especially pertinent to this discussion is the "representativeness heuristic." *See* Thomas Gilovich & Dale Griffin, *Introduction—Heuristics and Biases: Then and Now*, *in* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 1, 3 (Thomas Gilovich et al. eds., 2002) (identifying "three general-purpose heuristics—availability, representativeness, and anchoring and adjustment"). The representativeness heuristic assigns "events that are representative or typical of a class . . . a high probability of occurrence. If an event is highly similar to most of the others in a population or class of events, then it is considered representative." R.T. KELLOGG, COGNITIVE PSYCHOLOGY 385 (Sage Press 1995); *see also* Daniel Kahneman & Shane Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, *in* HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT, *supra*, at 49, 49-50 (according to the representativeness heuristic, "some probability judgments (the likelihood that X is a Y) are mediated by assessments of resemblance (the degree to which X 'looks like' a Y)"). Thus, when we encounter someone (or something) new, our schemas seek to make classifications and predictions based on our previously created categories. Krieger, *Content of Our Categories*, *supra* note 67, at 1200 ("A primary cognitive function of schemas is to help answer the questions, 'What is it?' and 'How is it likely to behave?' The initial matching of a stimulus object against a perceiver's existing schematic structures and the resulting activation of a particular schema represent a significant source of error in social perception and judgment."). Both schemas and the representativeness heuristic can lead to stereotyping in two ways: first, because the characteristics ascribed to the class or group may be founded on erroneous information; and second, because the schema and heuristic tend to ignore variation within the class or group and instead assume that all group members will possess the characteristics attributed to the class or group.

76. Paul, *supra* note 4, at 55 ("Much of what enters our consciousness, of course, comes from the culture around us.").

77. *See* Bassett, *supra* note 12, at 292-99 (discussing rural stereotyping in television, literature, and film).

78. *Cf.* Jeanne A. Fugate, Comment, *Who's Failing Whom? A Critical Look at Failure-to-Protect Laws*, 76 N.Y.U. L. REV. 272, 289-90 (2001) ("[L]ike other invidious dichotomies, [the rural dichotomy] allow[s] judges—and society—to . . . [use] neat categories of 'good' and 'bad' . . . without regard for the messiness of . . . ambiguities.").

79. *See, e.g.*, Mahzarin R. Banaji & Anthony G. Greenwald, *Implicit Gender Stereotyping in Judgments of Fame*, 68 J. PERSONALITY & SOC. PSYCHOL. 181, 181 (1995) [hereinafter Banaji & Greenwald, *Judgments of Fame*] (finding unconscious gender stereotyping in fame judgments and finding that explicit expressions of sexism or stereotypes were uncorrelated with the observed unconscious gender bias); Irene V. Blair & Mahzarin R. Banaji, *Automatic and Controlled Processes in Stereotype Priming*, 70 J. PERSONALITY & SOC. PSYCHOL. 1142, 1142 (1996) (concluding that "stereotypes may be automatically activated"); Devine, *supra* note 74, at 5 (finding that stereotypes are "automatically activated in the presence of a member (or some symbolic equivalent) of the stereotyped group and that low-prejudice responses require controlled inhibition of the automatically activated stereotype"); John F. Dovidio et al., *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 J. EXPERIMENTAL SOC. PSYCHOL.

area of unconscious bias are Mahzarin Banaji and Anthony Greenwald.[80] Most recently, Professors Banaji and Greenwald, through their Implicit Association Test,[81] have demonstrated both that people "have implicit thoughts, feelings and behaviors that are contrary to how [they would] like to behave," and that "stereotypes permeate even to those who are *being* stereotyped."[82] The existence of unconscious bias, of course, helps to explain the phenomenon of biased behavior in individuals who claim they are not biased.[83]

510, 512 (1997) ("Aversive racism . . . has been identified as a modern form of prejudice that characterizes the racial attitudes of many Whites who endorse egalitarian values, who regard themselves as nonprejudiced, but who discriminate in subtle, rationalizable ways.") (citation omitted); Kerry Kawakami et al., *Racial Prejudice and Stereotype Activation*, 24 PERSONALITY & SOC. PSYCHOL. BULL. 407, 407 (1998) ("[H]igh prejudiced participants endorsed cultural stereotypes to a greater extent than low prejudiced participants. Furthermore, for high prejudiced participants, Black category labels facilitated stereotype activation under automatic and controlled processing conditions."); *see also* Patricia G. Devine, *Implicit Prejudice and Stereotyping: How Automatic Are They? Introduction to the Special Part*, 81 J. PERSONALITY & SOC. PSYCHOL. 757, 757 (2001) ("In recent years, there has been a veritable explosion of work on the nature and assessment of implicit components of prejudice and stereotyping. Over the last decade or so, a great many studies have revealed that prejudice and stereotypes can operate without the conscious intent or awareness of social perceivers.").

80. Professors Banaji and Greenwald's research demonstrates the pervasiveness and power of schemas:

> Few experiments demonstrate the self-propelled power of our schemas and categories as clearly or dishearteningly as the ongoing research of Mahzarin Banaji, Tony Greenwald, Brian Nosek, and others among their collaborators. That research on "implicit attitudes" strongly indicates, among other things, that "our minds contain knowledge about social groups (stereotypes [or schemas]) and attitudes (prejudice) toward them—whether we want [them] to or not." In other words, the prejudicial schemas that many of us reject and abhor "elude conscious awareness, seem oblivious to conscious intention, and defy conscious control." This is not to say, consistent with the good news reviewed above, that our schemas do not wield less influence when we actively challenge or reject them. People's explicit attitudes, often based on conscious efforts to reject common stereotypes, do correlate with their implicit attitudes. The point is that explicit attitudes are far from controlling, and the workings of our schemas that we don't see continue to wield surprising influence even as we consciously seek to disarm them. Individuals' simple knowledge of a stereotype, without subscription to its veracity, is enough to activate it in them; they need only be primed or cued with stereotype-related material to experience the influence.

Chen & Hanson, *supra* note 74, at 1232-33 (footnotes omitted) (alterations in original); *see also* Banaji & Greenwald, *Judgments of Fame*, *supra* note 79, at 181 (finding unconscious gender stereotyping in fame judgments and finding that explicit expressions of sexism or stereotypes were uncorrelated with the observed unconscious gender bias); Blair & Banaji, *supra* note 79, at 1142 ("[S]tereotypes may be automatically activated.").

81. *See* Karen Kersting, *Not Biased?*, 36 MONITOR PSYCHOL. 64, 64 (2005) (describing this research); *see also* Blasi, *supra* note 6, at 1250 ("[T]he extensively validated Implicit Association Test . . . uses reaction times to measure implicitly held stereotypes and attitudes toward stereotyped groups."). The researchers' Implicit Association Test is part of an initiative called "Project Implicit," and can be taken online. Implicit Ass'n Test, Select a Test, http://implicit.harvard.edu/implicit/demo /selectatest.jsp (last visited Mar. 16, 2006); *see also* Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4 (1995) (describing the Implicit Association Test generally). *See generally* Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: I. An Improved Scoring Algorithm*, 85 J. PERSONALITY & SOC. PSYCHOL. 197 (2003) (setting forth a new scoring algorithm for the Implicit Association Test); Anthony G. Greenwald, et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464 (1998) (describing the original Implicit Association Test).

82. *See* Kersting, *supra* note 81, at 65 (emphasis added).

83. *See* John F. Dovidio, *On the Nature of Contemporary Prejudice: The Third Wave*, 57 J. SOC. ISSUES 829, 845 (2001) ("[A]lthough overt expressions of prejudice have declined steadily and signifi-

The pervasive nature of stereotyping and the automatic activation of stereotypes means only that in some instances, stereotyping may be the initial reaction. Research suggests, however, that individuals have at least some ability to control these automatic biases.[84]

Although there may be some disagreement as to the reach and ultimate impact of cognitive psychological studies,[85] at least two things appear certain. First, our cognitive processing contains not only objective information, but also subjective positive and negative associations of which we may not be consciously aware. Second, these positive and negative associations (stereotypes), due to their automatic activation, require attention and vigilance, rather than assuming that stereotyping, bias, and prejudice are problems of the past without any real relevance today.

The notion of unconscious bias is also relevant to the phenomenon of ruralism. Outside of the field of sociology, which has a number of prominent rural sociologists,[86] ruralism is largely unacknowledged and unrecognized. Absent recognition, some lawmakers, lawyers, and judges are making assumptions about rural people and rural locations based on unconscious bias and stereotyping—leading to laws, lawyers' arguments, and court decisions based on generalized stereotypes rather than individualized determinations. "Law by stereotype" not only can lead to erroneous results in individ-

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cantly over time, subtle—often unconscious and unintentional—forms continue to exist."); *see also* John A. Bargh, *Bypassing the Will: Toward Demystifying the Nonconscious Control of Social Behavior*, *in* THE NEW UNCONSCIOUS 37, 37 (Ran R. Hassin et al. eds., 2005) ("People are often unaware of the reasons and causes of their own behavior.").

84. Susan T. Fiske, *Stereotyping, Prejudice and Discrimination*, *in* 2 THE HANDBOOK ON SOCIAL PSYCHOLOGY 391 (Daniel T. Gilbert et al. eds., 4th ed. 1998) ("The good news is that people can sometimes control even apparently automatic biases, if appropriately motivated, given the right kind of information, and in the right mood. People therefore *can* make the hard choice."); *see also* Irene V. Blair et al., *Imagining Stereotypes Away: The Moderation of Implicit Stereotypes Through Mental Imagery*, 81 J. PERSONALITY & SOC. PSYCHOL. 828, 828 (2001) (examining "mental imagery as a new strategy to moderate implicit stereotypes"); Nilanjana Dasgupta & Anthony G. Greenwald, *On the Malleability of Automatic Attitudes: Combating Automatic Prejudice with Images of Admired and Disliked Individuals*, 81 J. PERSONALITY & SOC. PSYCHOL. 800, 808 (2001) (suggesting "the malleability of automatic intergroup attitudes"); Susan T. Fiske, *Controlling Other People: The Impact of Power on Stereotyping*, 48 AM. PSYCHOLOGIST 621, 627 (1993) ("[S]ocial structure affects attention, and if people pay more attention, at least some of them are less likely to stereotype."); Laurie A. Rudman et al., *"Unlearning" Automatic Biases: The Malleability of Implicit Prejudice and Stereotypes*, 81 J. PERSONALITY & SOC. PSYCHOL. 856, 864 (2001) ("These findings strongly support the hypothesis that people can 'unlearn' both explicit and implicit prejudice in real-world contexts.").

85. *See, e.g.*, Hal R. Arkes & Philip E. Tetlock, *Attributions of Implicit Prejudice, or "Would Jesse Jackson 'Fail' the Implicit Association Test?,"* 15 PSYCHOL. INQUIRY 257, 268-74 (2004) (suggesting that the Implicit Association Test reflects socioeconomic realities rather than unconscious bias and prejudice); Gregory Mitchell, *Tendencies Versus Boundaries: Levels of Generality in Behavioral Law and Economics*, 56 VAND. L. REV. 1781, 1782 (2003) (noting that he and Professor Prentice "often cite the very same works to support our different perspectives on legal decision theory—with Prentice's article emphasizing how much we know about the quasi-rationality of human judgment and decision making and my articles emphasizing how little we know in light of the complexity of the evidence"); Amy L. Wax, *Discrimination as Accident*, 74 IND. L.J. 1129, 1129-33 (1999) (suggesting that holding employers liable for unconscious discrimination raises issues of inefficiencies, precisely due to the unconscious nature of the discrimination).

86. *See, e.g.*, CYNTHIA M. DUNCAN, WORLDS APART: WHY POVERTY PERSISTS IN RURAL AMERICA 208 (1999); FITCHEN, *supra* note 57, at 247; RURAL SOC. SOC'Y TASK FORCE ON PERSISTENT RURAL POVERTY, PERSISTENT POVERTY IN RURAL AMERICA 232 (1993).

ual cases, but can also serve to undermine the legal system more generally. As the Supreme Court has observed, "The validity and moral authority of a conclusion largely depend on the mode by which it was reached."[87] Yet as the next two Parts demonstrate, law, lawyers' arguments, and court decisions have employed both positive and negative rural stereotypes, permitting such stereotypes to supplement—or even substitute for—analysis based on case-specific facts.

III. THE RURAL VENUE AS PLACE: LANDSCAPE AND POSITIVE STEREOTYPES

The same dichotomy between rural places and rural dwellers found in popular culture[88] is evident in the law as well: Rural places evoke favorable rural stereotypes; rural dwellers evoke negative rural stereotypes. This Part discusses rural places and stereotypes in the context of land use cases; the next Part discusses rural dwellers and stereotypes in the context of change of venue cases.

When legal issues concern rural *places*, favorable rural stereotypes abound in both federal and state court decisions. A particularly fruitful area in this regard concerns land use cases, where cases often conjoin "scenic" and "rural" in describing everything from roads and highways,[89] to the area's "character,"[90] to the inherent qualities of the area.[91] Indeed, "rural

87. Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 171 (1951); *see also* NAACP v. Claiborne Hardware Co., 458 U.S. 886, 920 (1982) ("Civil liability may not be imposed merely because an individual belonged to a group . . . .").

88. *See* Bassett, *supra* note 12, at 293-99 (discussing ruralism in literature, film, and television).

89. *See, e.g.*, Valley Cmty. Pres. Comm'n v. Mineta, 373 F.3d 1078, 1081 (10th Cir. 2004) (describing a stretch of highway designated as a "scenic byway" and known for, among other things, its "rural landscapes"); City of Carmel-by-the-Sea v. U.S. Dep't of Transp., 123 F.3d 1142, 1148 (9th Cir. 1997) (noting "the rural and scenic character of Highway 1"); Zeigler v. Town of Kent, 258 F. Supp. 2d 49, 52 (D. Conn. 2003) ("rural and scenic route"); City of Ridgeland v. Nat'l Park Serv., 253 F. Supp. 2d 888, 892 (S.D. Miss. 2002) ("rural scenic parkway"); Young v. Town of Royalston, No. 991654B, 1999 WL 1335092, at *1 (Mass. Super. Ct. Nov. 29, 1999) ("scenic road . . . rural in character"); Coscan Wash., Inc. v. Md.-Nat'l Capital Park & Planning Comm'n, 590 A.2d 1080, 1089 (Md. Ct. Spec. App. 1991) ("scenic, rural, historic road"); Sierra Club v. U.S. Dep't of Transp., 664 F. Supp. 1324, 1327 (N.D. Cal. 1987) ("This portion of Route 1 is presently a rural and scenic two-lane highway built along the cliffs overlooking the Pacific Ocean."); Natural Res. Defense Council, Inc. v. Cal. Coastal Zone Conservation Comm'n, 129 Cal. Rptr. 57, 63 (Cal. Ct. App. 1976) ("[S]ubstantial improvements to the highway could require large cuts and fills along this scenic route, and could change the coastal experience from one of driving on an essentially rural road to one of driving on a much more urban roadway.").

90. *See, e.g.*, *Carmel-by-the-Sea*, 123 F.3d at 1148 ("rural and scenic character"); Sprint Spectrum L.P. v. Town of North Stonington, 12 F. Supp. 2d 247, 252 (D. Conn. 1998) ("the scenic and rural character of the district"); Stotler v. U.S. Comm'r of Internal Revenue, 53 T.C.M. (CCH) 973 (T.C. 1987) (noting that scenic easements "constitute the visual backdrop and help establish the rural character"); Lufkin v. Assessor, 713 N.Y.S.2d 914, 915 (N.Y. Sup. Ct. 2000) ("scenic rural character"); Lamar Adver. of Montgomery, Inc. v. State Dep't of Transp., 694 So. 2d 1256, 1261 (Ala. 1996) (Houston, J., concurring) ("rural and scenic portions of our state"); Buker v. Town of Sweden, 644 A.2d 1042, 1044 (Me. 1994) ("rural character and natural scenic beauty"); AMG Realty Co. v. Township of Warren, 504 A.2d 692, 729 (N.J. Super. Ct. Law Div. 1984) ("rural character and scenic beauty"); Asselin v. Town of Conway, 628 A.2d 247, 249 (N.H. 1993) ("promoting the character of a 'country community'").

91. *See, e.g.*, Tri-State Video Corp. v. Town of Stephentown, No. 97-CV-965 (FJS) (DRH), 1998 WL 72331, at *7 (N.D.N.Y. Feb. 13, 1998) ("to preserve the rural, historic and scenic qualities of Stephentown"); Cherry Valley Assocs. v. Stroud Twp. Bd. of Supervisors, 530 A.2d 1039, 1040 (Pa.

character" generally emphasizes "the aesthetic and cultural dimensions" of rural areas.[92]

Ordinances pertaining to signs and billboards provide one opportunity to praise rural areas. One case noted that "proper sign control is necessary to provide for the preservation and protection of open space and scenic areas, the many natural and man-made resources, and the established rural communities . . . ."[93] Another case stated that the state's statutes intended to limit billboards to areas considered commercial or industrial, observing that "[f]ew aesthetic features will be found in zoned or unzoned commercial or industrial areas, while rural and residential areas are more likely to include places of scenic beauty an[d] historic interest."[94] An entertaining older case opined:

> There is a direct relation between the preservation of the natural scenic beauty of the Adirondacks and the maintenance of the health and mental composure of the citizens of the State. Each year physicians send thousands out of our cities and more thickly populated areas where factories, billboards and the like prevail in large numbers to seek the physical and mental rest and composure afforded by natural surroundings of the Adirondacks, Catskills and other mountainous or rural areas. Obviously those who are in a poor physical or highly nervous condition and desire such restful surroundings where they may recover their health and physical well-being cannot attain that which they seek if they find in that area the same man-made, mind-disturbing, rest-removing billboards or other so-called indications of progress.[95]

The positive rural stereotypes in land use cases typically are the result of the positive rural stereotypes that inform the underlying land use laws. Challenges to the validity of land use regulations usually proceed through administrative agencies, whose decisions are entitled to judicial deference. "A zoning ordinance is insulated from attack by a presumption of validity . . . . Courts should not question the wisdom of an ordinance, and if the ordinance is debatable, it should be upheld."[96] Courts routinely uphold adminis-

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phentown"); Cherry Valley Assocs. v. Stroud Twp. Bd. of Supervisors, 530 A.2d 1039, 1040 (Pa. Commw. Ct. 1987) ("the rural and scenic qualities of the area"); Keith v. Saco River Corridor Comm'n, 464 A.2d 150, 153 n.4 (Me. 1983) ("the scenic, rural and unspoiled character of the lands").

92. Brent D. Lloyd, *Accommodating Growth or Enabling Sprawl? The Role of Population Growth Projections in Comprehensive Planning Under the Washington State Growth Management Act*, 36 GONZ. L. REV. 73, 145 (2001).

93. Valley Outdoor, Inc. v. County of Riverside, 65 Fed. App'x 192, 192-93 (9th Cir. 2003).

94. Lamar Outdoor Adver., Inc. v. Ark. State Highway & Transp. Dep't, No. CA 03-413, 2004 WL 958104, at *4 (Ark. Ct. App. May 5, 2004).

95. People v. Sterling, 45 N.Y.S.2d 39, 42 (N.Y. App. Div. 1943) (Bliss, J., concurring).

96. Kirby v. Twp. Comm., 775 A.2d 209, 216 (N.J. Super. Ct. App. Div. 2000) (quoting Riggs v. Twp. of Long Beach, 538 A.2d 808, 812 (N.J. 1988)).

trative decisions unless they are arbitrary, capricious, or an abuse of discretion.[97]

Due to the deference accorded to administrative decisions, the positive stereotypes associated with rural places in land use cases often are direct quotes from the community's comprehensive plan or zoning ordinance itself—which often portray a highly positive image of, and an intention to retain the character of, rural communities. For example, one case noted that "the Afton Comprehensive Plan 'is . . . permeated with evidence of a strong desire to preserve the rural character and unique scenic beauty of Afton and the St. Croix Valley.'"[98] Courts have held that communities may consider "'aesthetic values, such as preserving rural charm,' when passing zoning regulations,"[99] and rural residential zoning ordinances may have such general purposes as "to preserve scenic and recreation values."[100]

Interestingly, the positive stereotypes found in land use laws are often circular and conclusory. The circular nature of the analysis results, at least in part, from the difficulties identified earlier in defining "rural."[101] For example, a Washington statute defines "rural character" as having patterns of land use and development:

> (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
>
> (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
>
> (c) That provide visual landscapes that are traditionally found in rural areas and communities;

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97. *See Lamar Outdoor Advertising*, 2004 WL 958104, at *3 (noting that the judicial review of administrative decisions "is limited in scope. Such decisions will be upheld if they are supported by substantial evidence and are not arbitrary, capricious, or characterized by an abuse of discretion.").

98. Hubbard Broad., Inc. v. City of Afton, 323 N.W.2d 757, 763 (Minn. 1982) (quoting Barron Contracting Co. v. City of Afton, 268 N.W.2d 712, 717 (Minn. 1978) (ellipsis in original); *see also* Hafen v. County of Orange, 26 Cal. Rptr. 3d 584, 586 (Cal. Ct. App. 2005) (stating that the specific plan's stated purpose was "to preserve the area's rural character"); K.M. Young Corp. v. Charter Twp. of Ann Arbor, No. 242938, 2004 WL 513830, at *2 (Mich. Ct. App. Mar. 16, 2004) (quoting the Board's conclusion that the general development plan intended "to preserve the township's rural character"); Roberts/Holland LLC v. Berkowitz, No. C.A.00-5669, 2001 WL 1006771, at *4 (R.I. Super. Ct. Aug. 6, 2001) (noting that the goal under the comprehensive plan was to "preserve the natural rural landscape").

99. Asselin v. Town of Conway, 628 A.2d 247, 250 (N.H. 1993) (quoting Town of Chesterfield v. Brooks, 489 A.2d 600, 604 (N.H. 1985)).

100. Smith v. Bd. of County Comm'rs, 110 P.3d 496, 504 (N.M. 2005); *see also* Stonewall v. Bd. of Supervisors, No. 041488, 2005 WL 1225710, at *2 (Iowa Ct. App. May 25, 2005) (zoning ordinance intended "to preserve rural character"); Vill. of Chatham v. County of Sangamon, 814 N.E.2d 216, 229 (Ill. App. Ct. 2004) (zoning intended "to preserve the rural character of the county"); Fedus v. Colchester Zoning & Planning Comm'n, No. 124066, 2003 WL 21267206, at *3 (Conn. Super. Ct. May 16, 2003) (zoning was "designed to preserve a distinctly rural character"); Ripley Rd. Assocs., LLC v. Town of Kittery, No. CV-00-137, 2001 WL 1736574, at *9 (Me. Super. Ct. Aug. 3, 2001) (one goal of zoning classification was to "preserve Kittery's rural character").

101. *See supra* Part I (discussing difficulties in defining "rural").

> (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
>
> (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
>
> (f) That generally do not require the extension of urban governmental services; and
>
> (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.[102]

The circularity of this definition is striking. "Rural character" essentially is defined as "rural lifestyles," "rural-based economies," and "rural areas," with little concrete guidance. What, specifically, is a "rural lifestyle," or, for that matter, a "rural-based economy"? If the terms were only intended to mean farmers, the statute would simply say "farming." Does it mean parcels of land measured in multiple acres rather than quarter-acres? Apartment buildings with garden plots? Family-owned businesses but no nationwide franchises? Can you have an Exxon gas station but not a Brooks Brothers clothing store?

As a result of the difficulties of defining "rural" but the virtually unquestioned association of rural areas with desirability, certain "code words" recur, whether originating in the law or added by the court. These "code words" include, most prominently, "scenic," "beauty," and "open space," all of which are left undefined and usually without the benefit of specific examples, leaving the "code word" to stand on its own, simultaneously conveying rationale and approval without need of further explanation.

But if the stereotype is positive, what is the problem? The problem is that land use regulations are often "very value laden,"[103] and the rural view often is very different from the urban view.[104]

> This disparity between the rural and urban viewpoint is most evident in the concept of landownership and in the role land plays

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102. WASH. REV. CODE § 36.70A.030(14)(a)-(g) (2000).

103. *See* Wadley & Falk, *supra* note 39, at 344 ("Land use regulation and environmental controls tend to be areas of the law that are very value laden."); *see also* Holly Doremus, *Shaping the Future: The Dialectic of Law and Environmental Values*, 37 U.C. DAVIS L. REV. 233, 239 (2003) ("[T]he values held by future society, as well as those of the present, are highly relevant to the effectiveness of our environmental policy efforts.").

104. *See* Wadley & Falk, *supra* note 39, at 342 ("Despite popular opinion to the contrary, the rural mindset leaves little room for romance in describing the significance of land to the farmer or rancher. Indeed, the activities which occur on the land do not merit particular exaltation. Animal operations generate flies and odors, farming generates dust and noise, crops and animals die, and seasons come and go. Nature itself can be very harsh, yet the land remains as perhaps the only constant in a fragile enterprise.") (footnote omitted).

> in rural areas. In the rural community, an inseparable relationship exists between owning land and a way of life that land ownership makes possible. The ability to control land use underlies the attitude of self-sufficiency and independence.[105]

These differences between urban and rural perspectives, not surprisingly, can lead to different values with respect to land use regulation. It is not uncommon for rural dwellers to believe that the urban majority is attempting to control rural land use to conform to an unrealistic urban view of what rural areas should be.[106]

> Unfortunately, there is a growing concern among [rural] landowners that their relationship with the urban majority is becoming custodial rather than cooperative. In one sense, the majority interest appears to be pursuing an urban-oriented agenda, an agenda designed to shape rural land use activity to fit an urban vision of the countryside.
>
> The concern that the relationship is custodial has persuaded many [rural land] owners to believe that our legal system has assumed a discernible urban orientation that is insensitive to their interests and needs. In the areas of land use and environmental law, this orientation seems to result in a significant shift of control over individual land use decisions and practices away from the [rural] landowner toward urban-dominated or public-controlled decision-making bodies. The consequences of such a shift is that the landowners are being deprived of some of the most meaningful attributes of property ownership. . . .
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> . . . .
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> . . . Specifically, the rural landowners reject the rationale that land regulation rescues the rural land from the consequences of harmful rural-oriented uses. Rather, landowners believe the regula-

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105. *Id.* at 341 (footnote omitted).

106. A similar problem arises with respect to environmental laws. Many rural dwellers take offense at the notion that environmental laws, promulgated largely by urban dwellers, are aimed at "saving" rural areas. To many rural dwellers, extensive environmental regulation does little more than make rural living more difficult.

> [E]nvironmentalists view normal rural practices, such as the application of pesticides, herbicides, and the plowing of the land for crop production, as causing irreparable damage to resources such as water or wetlands. [And many environmentalists] view rural lands as being closer to their natural state and, thus, less damaged due to environmentally threatening activity. As such, rural lands are the most susceptible to protection and the most likely to be "saved" from future harm if properly regulated.

Wadley & Falk, *supra* note 39, at 344.

> tions are an attempt to keep rural areas pure and unspoiled for urban purposes. . . .[107]

Descriptions of the beauty of rural areas[108] and the desirability of preserving an area's rural character[109] are not universal truths. Some rural areas are beautiful but others are not—just as some cities are beautiful but others are not—which requires that land use decisions be grounded in specific facts rather than generalized stereotypes. The use of stereotypes, even positive stereotypes, in legal decisions renders the stereotype an absolute—embodying the perception of the facts, serving as an analytical shortcut, and compelling a particular, predestined conclusion. In other words, the mental shortcuts provided by rural stereotypes are so powerful as to risk "law by stereotype"—the substitution of a stereotype for the scrutiny, reasoning, evaluation, and judgment expected in legal decisionmaking.

We now leave the positive, optimistic, affirming half of the rural dichotomy. When the focus shifts from rural places to rural dwellers, we then discover the negative, critical, discouraging half of the rural dichotomy. This contrast is particularly apparent in cases addressing change of venue, which is the subject of the next Part.

IV. THE RURAL VENUE AS SOURCE OF JURORS: RURAL DWELLERS AND NEGATIVE STEREOTYPES

Unlike rural *places*, disdain for rural *dwellers* is evident from the slang used to describe them:

> [W]hile cities may include . . . "city slickers" *among* their inhabitants, it is linguistically difficult to denigrate urbanites *as a group*, whereas the opportunities for criticizing the rustic are vast: crackers, rubes, hayseeds, hicks, hillbillies, bumpkins, peasants, rednecks, yokels and white trash. If we turn to the cultural adjectives derived from the two places the difference is even more obvious:

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107. *Id.* at 345 (footnotes omitted); *see also id.* at 336-37.

108. *See, e.g.*, Town of Baraboo v. Vill. of W. Baraboo, 699 N.W.2d 610, 623 n.6 (Wis. Ct. App. 2005) ("the rural character and scenic beauty of the Town"); Bd. of County Comm'rs v. Crow, 65 P.3d 720, 739-40 (Wyo. 2003) ("Teton County is one of the most aesthetically pleasing counties in the country. Contributing to this aesthetic are the broad scenic vistas and the dominance of the rural natural landscape . . . ."); Anderberg v. N.Y. State Dep't of Envtl. Conservation, 533 N.Y.S.2d 828, 829 (N.Y. Sup. Ct. 1988) ("rural town highway of considerable beauty"); Todrin v. Bd. of Supervisors, 367 A.2d 332, 332 (Pa. Commw. Ct. 1976) ("rural township of great natural beauty"); Neville Twp. v. Exxon Corp., 322 A.2d 144, 148 (Pa. Commw. Ct. 1974) ("rural beauty and scenic harmony of the Township"); Appeal of Yerger, 66 Pa. D. & C.2d 784, 784 (Pa. Ct. Com. Pl. 1974) ("rural scenic beauty").

109. *See, e.g.*, Adelman v. Town of Baldwin, 750 A.2d 577, 585 (Me. 2000) (comprehensive plan sought "to insure that any development will occur in a manner that preserves the aesthetics of the rural character of the community"); Ne. Fin. Corp. v. Rose Twp., No. 209486, 1999 WL 33435001, at *3 (Mich. Ct. App. Oct. 15, 1999) ("[P]reserve[ing] the rural character of the Township is a legitimate interest for the Board to consider."); Elswick v. N. Stonington Zoning Bd. of Appeals, No. 515806, 1991 WL 253693, at *1 (Conn. Super. Ct. Nov. 19, 1991) (noting that one of the purposes of the zoning regulations was to "preserve the appearance of remoteness and the rural character").

> "rustic" is predominantly pejorative, while "urbane" is decidedly positive.[110]

When the focus shifts from place to people, the negative stereotypes associated with rural dwellers are substituted for the positive stereotypes associated with rural places.[111] This change in perspective is illustrated in the caselaw in decisions addressing change of venue.

Historically, "venue" referred to the county from which jurors were drawn; a jury could only hear matters that arose in their county.[112] Indeed, at common law, unlike today, jurors served as witnesses and accordingly were selected specifically for their knowledge of the parties and underlying facts.[113] Today, in the federal courts, the general venue provision ascribes appropriate venue to the place "where any defendant resides, if all defendants reside in the same State," or to the place where "a substantial part of the events or omissions giving rise to the claim occurred."[114] After the filing of a lawsuit, either a plaintiff or a defendant may move to transfer venue and move the case to a different location.[115] Unless the plaintiff's original venue selection was actually improper, however, the caselaw generally instructs that courts must view motions for change of venue with caution, disturbing the plaintiff's original forum selection only for good cause.[116] Similar provisions apply to federal criminal cases, authorizing a transfer of venue for convenience or fairness reasons and employing a stiff standard.[117]

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110. KNOWING YOUR PLACE, *supra* note 37, at 17 (footnote omitted).

111. *See* County Comm'rs of Carroll County v. Zent, 587 A.2d 1205, 1217 (Md. Ct. Spec. App. 1991) (Rural resident accused of operating junkyard in violation of zoning laws; court found the alleged violation was a long-standing lawful "non-conforming use."); *see also id.* at 1206 ("Circumstances which are accepted as natural and normal incidents of a rural society by those who are nurtured by an agrarian environment do not always match the expectations of bucolic life anticipated by suburbanites as they move out to the countryside. While new residents may well expect, and accept, vistas of fields of waving grain, pastoral scenes of dairy cattle on the hillside and the rustic ambiance of the pond and wetlands area in the meadows, they sometimes belatedly discover that the plow precedes the grain, manure accompanies the cattle, mosquitoes infest the ponds, and the products of the fields and animal husbandry must go to market. Since the advent of zoning, the conflicts between rural reality and suburban expectations have been refereed by zoning administrators who, all too often, have found themselves in the unenviable position of reconciling the irreconcilable.").

112. *See* 77 AM. JUR. 2D *Venue* § 2 (1975).

113. *See* John Marshall Mitnick, *From Neighbor-Witness to Judge of Proofs: The Transformation of the English Civil Juror*, 32 AM. J. LEGAL HIST. 201, 201 (1988) ("Throughout at least the first five centuries of the regular use of the jury in England, jurors were drawn from the neighborhood in which an action arose, and were permitted and indeed expected to consider their personal knowledge of the facts in dispute in reaching a verdict.").

114. 28 U.S.C. § 1391(a) (2000).

115. *Id.* § 1404.

116. *See* Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947) ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."); *see also* Antony L. Ryan, *Principles of Forum Selection*, 103 W. VA. L. REV. 167, 174 (2000) (stating that forum non conveniens "is recognized, but only as an exception to the general rule of plaintiff's choice").

117. *See* FED. R. CRIM. P. 21. Rule 21 authorizes a transfer of venue for prejudice or for convenience reasons. The rule's precise language reads as follows:

> (a) For Prejudice. Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice

Rural venues are often the subject of transfer motions, and these challenges have resulted in some interesting caselaw.

We typically think of "venue" as signifying a location or place[118]—which at first blush, would appear to put "venue" on the positive "rural places" side of the dichotomy. However, this is not the case. In contrast to land use, zoning, and other environmental law cases, which address rural areas and speak in terms of the preservation and scenic beauty of rural places, rural venue ultimately translates to rural inhabitants. At its core, venue concerns the source of the jury pool. And as the source of the jury pool, the focus of the rural venue makes a dramatic shift—from the positive desirable attractions of rural "place" to the negative, undesirable factors associated with rural "dwellers." The shift is perceptible from the very outset of discussions of rural venue.

As an initial matter, some bias against rural communities is inherent in venue. Although the vast majority of courts have rejected challenges expressly based solely on rural location as such, some proffered arguments skate on little more than rural synonyms. The community's size, for example, is often one factor used to evaluate a venue challenge.[119] Since population is ultimately the defining factor for "rural," authorizing a change of venue on the basis of the community's size would tend to impact only rural venues.[120] Indeed, some cases have appeared to find the requisite prejudice only in, and thereby restrict successful change of venue motions exclusively to, rural areas.

> It is well recognized that in a small rural community "in contrast to a large metropolitan area, a major crime is likely to be embedded in the public consciousness with greater effect and for a longer time." . . .

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against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

(b) For Convenience. Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties and witnesses and in the interest of justice.

FED. R. CRIM. P. 21.

118. *See* RODALE, *supra* note 46, at 676, 896 (reflecting "venue" as a synonym for "location" and "place").

119. *See, e.g.*, People v. Fauber, 831 P.2d 249, 261 (Cal. 1992) (A change of venue determination "requires consideration of such factors as . . . the size of the community.").

120. *See* People v. Proctor, 842 P.2d 1100, 1113 (Cal. 1992) ("We do not agree with [defendant's] suggestion . . . that every case involving the death penalty merits a change of venue if it arises in a [small rural] county . . . ."); *Fauber*, 831 P.2d at 262 ("[D]efendant fails to support his implicit contention that capital trials should be held exclusively in major metropolitan centers experienced in such cases."); Mills v. State, 462 So. 2d 1075, 1079 (Fla. 1985) (noting that the defendant's argument "would require almost every first-degree murder occurring in a rural county to be tried in another county"); Copeland v. State, 457 So. 2d 1012, 1017 (Fla. 1984) (noting that the "size of a community" factor "should not be extended to require a change of venue in every highly publicized criminal prosecution in a rural community"); *see also* Marvin Zalman & Maurisa Gates, *Rethinking Venue in Light of the "Rodney King" Case: An Interest Analysis*, 41 CLEV. ST. L. REV. 215, 231-32 (1993) ("[V]enue is more likely to be changed in [small] counties.").

> Most recent successful venue cases . . . have involved nonurban counties which had . . . substantially smaller populations.[121]

Other courts have stated that the "local atmosphere" may become tainted in rural counties, thereby mandating a change of venue.[122]

The negative rural stereotypes seen in change of venue cases typically are invoked by counsel. Sometimes defense counsel have been very direct in seeking transfer from a rural venue simply due to its rural nature. In *State v. Miesbauer*,[123] for example, defense counsel appealed the trial court's refusal to transfer venue. As characterized by the appellate court, "The substance of defendant's argument is McPherson County[, Kansas] is a small rural area and *for that reason* could not afford defendant a fair trial . . . ."[124] Although the *Miesbauer* appellate court found no error,[125] a few courts have seemingly given undue significance to the rural nature of the venue. In one Utah case involving a slip-and-fall on the county courthouse steps, the court stated:

> The instant circumstances present a particularly compelling case for a change of venue. Duchesne County is a sparsely populated, rural county. The jury pool was comprised of individuals who, because of the small taxpayer base of Duchesne County, could be particularly concerned with the assets of their county. In fact, one prospective, and later empaneled [sic], juror vocalized this concern

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121. People v. Hamilton, 774 P.2d 730, 738 (Cal. 1989) (quoting Martinez v. Super. Ct., 629 P.2d 502, 506 (Cal. 1981)) (citations omitted); *see also* People v. Vieira, 106 P.3d 990, 999 (Cal. 2005) (noting that "[t]he size of the community is important because in a small rural community, a major crime is likely to be embedded in the public consciousness more deeply and for a longer time than in a populous urban area," and holding—based on the county's population—that a change of venue was not compelled (quoting People v. Coleman, 768 P.2d 32 (Cal. 1989))); *Fauber*, 831 P.2d at 262 ("The population of Ventura County in 1987 was 619,300, making it the 13th largest county in the state. Venue changes are seldom granted from counties of such a large size; the larger the local population, the less likely it is that preconceptions about the case have become embedded in the public mind.") (citation omitted); State v. Gaitan, No. 13749-0-III, 1996 WL 123155, at *7 (Wash. Ct. App. Mar. 19, 1996) ("[T]here are between 70,000 and 80,000 registered voters in Yakima County, a number sufficient to take the county out of the 'small and rural' designation, which caselaw has identified as a consideration weighing in favor of a change of venue in a highly publicized case.").

122. *See, e.g.*, State v. Wall, 763 P.2d 462, 465 (Wash. Ct. App. 1988) ("Courts in rural counties should carefully consider changing venue on high publicity crimes such as homicide, and 'should not hesitate to transfer the cause for trial . . . if it is apparent the local atmosphere has become charged beyond assurance of an impartial jury.") (quoting State v. Haynes, 559 P.2d 583, 587 (Wash. Ct. App. 1977)) (ellipsis in original); Manning v. State, 378 So. 2d 274, 277 (Fla. 1979) (finding the trial court abused its discretion in denying a motion for change of venue because "the general atmosphere in this rural community was sufficiently inflammatory").

123. 654 P.2d 934 (Kan. 1982).

124. *Id.* at 939; *see also* Milan v. State, 427 S.E.2d 573, 575 (Ga. Ct. App. 1993) ("[Defendant] has failed to show that any generalized fears and apprehensions on the part of jurors resulted from the rural nature of Tattnall County."); State v. Williams, 352 S.E.2d 428, 431 (N.C. 1987) ("[D]efendant claimed that it would be particularly difficult to obtain a fair trial without a venue change because of Vance County's size, rural nature and racial bias.").

125. *Miesbauer*, 654 P.2d at 940.

> when during voir dire he questioned whether this lawsuit was going to bankrupt the county.[126]

A North Dakota case, in a similar vein, upheld a change of venue based on the rural nature of the county and the acquaintances among some of the prospective jurors, litigants, and witnesses—stating: "These factors may justify a change in venue even though they may be insufficient grounds to remove an individual juror for cause."[127] The court observed:

> Juries, rather than individual jurors, decide cases, and jury decisions are not rendered in a vacuum. Consequently, determining whether a fair and impartial trial can be had in a particular location requires an analysis of the jury as a whole and of the community where the trial is to be held. This process allows a trial court to consider the aggregate effect of many factors. . . .
>
> The district court's primary concern in changing venue was the relationships among the prospective jurors, litigants, and witnesses. While each juror may have been able to set aside any personal relationships, the district court could consider the cumulative effect of these connections. . . . A review of the voir dire transcript indicates as many as half of the prospective jurors knew something about the case, ranging from "scuttlebutt" to newspaper articles.[128]

These approaches demonstrate little more than anti-rural bias. Fortunately, most courts have emphasized that prospective jurors' mere familiarity with the offense is insufficient to support a change of venue,[129] and that the inquiry should instead focus on the ability to obtain a fair and impartial trial.[130]

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126. Durham v. Duchesne County, 893 P.2d 581, 583 (Utah 1995).

127. Slaubaugh v. Slaubaugh, 499 N.W.2d 99, 106 (N.D. 1993).

128. *Id.*

129. *See, e.g.*, Pruett v. Norris, 153 F.3d 579, 587 (8th Cir. 1998) ("The Constitution does not require jurors to be ignorant of the facts and issues involved in a case."); People v. Fauber, 831 P.2d 249, 263 (Cal. 1992) ("It is not necessary that jurors be totally ignorant of the facts and issues involved in the case . . . ."); Montgomery v. Commonwealth, 819 S.W.2d 713, 716 (Ky. 1991) ("'[T]he mere fact that jurors may have heard, talked, or read about a case' does not require a change of venue." (quoting Brewster v. Commonwealth, 568 S.W.2d 232, 235 (Ky. 1978))); State v. Crenshaw, 64 S.W.3d 374, 386 (Tenn. Crim. App. 2001) ("Mere exposure to news accounts of the incident does not, standing alone, establish bias or prejudice. Prospective jurors can have knowledge of the facts surrounding the crime and still be qualified to sit on the jury."); State v. Grancorwitz, No. 81-006-CR, 1981 WL 139068, at *7 (Wis. Ct. App. Dec. 28, 1981) ("That almost all jurors knew something about the case does not taint the panel. Jurors will not be excused for cause because they have knowledge of or even an opinion as to a criminal case.").

130. *See, e.g.*, Seawright v. State, 479 So. 2d 1362, 1364 (Ala. 1985) ("[A]ccounts of the incident appeared through local media, but no one could remember any specific articles or reports which may have influenced them."); Copeland v. State, 457 So. 2d 1012, 1017 (Fla. 1984) ("[E]very member of the jury panel had read or heard something about the crime. However, they all said that they would be able to disregard the previously gained information and render a verdict based on the evidence presented in court."); *id.* ("[A] change of venue [is not required] in every highly publicized criminal prosecution in a

For this reason, the courts typically view the community's size in conjunction with other factors, most commonly the extent of pretrial publicity.[131] However, even when size ostensibly is tempered with publicity considerations,[132] counsel often have melded the two factors into one. For example, in two Louisiana cases, defense counsel's motions were based on the fact that pretrial publicity had occurred in the rural venue without establishing prejudice and without establishing an inability to obtain a fair and impartial trial. Defense counsel instead simply based the transfer motions on the fact that the rural inhabitants were familiar with the offense.[133]

Other arguments similarly amount to little more than anti-rural bias. For example, in one North Dakota case, the defendant asserted that "a change of venue should have been granted, not primarily because of pretrial publicity by the media, but because of 'the type of publicity small community living generates as a matter of course, i.e. rumor, gossip and speculation.'"[134] A South Dakota defendant asserted that "the publicity, gossip, and innuendo in the community" mandated a change of venue.[135] Although both courts denied the challenges,[136] one of the courts seemed to suggest, whether inten-

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rural community."); State v. Morris, 340 So. 2d 195, 200 (La. 1976) (noting that a change of venue "requires a showing of more than mere knowledge by the public of facts surrounding the offense. It requires, in addition, proof of such prejudice in the public mind that a fair and impartial trial cannot be obtained."); People v. Friday, 598 N.E.2d 302, 305-06 (Ill. Ct. App. 1992) ("[A]lthough defendant's survey showed that a large portion of the 50 people surveyed were familiar with the case, such an awareness or familiarity is not a basis for change of venue, since there is no requirement that jurors be totally ignorant of the case. We cannot say the 25 newspaper articles included in the record and the unknown number of television and radio broadcasts so 'saturated' the community that defendant was unable to receive a fair trial.") (citation omitted).

131. *See, e.g.*, People v. Vieira, 106 P.3d 990, 999, 1001 (Cal. 2005) (assessing "all" of the factors, including the size of the community and the nature and extent of the news coverage, and concluding that a change of venue was unnecessary); People v. Proctor, 842 P.2d 1100, 1112 (Cal. 1993) ("The size of the county by itself is not determinative; rather, the critical factor is whether it can be shown that the size of the population is large enough to neutralize or dilute the impact of adverse publicity."), *aff'd*, 512 U.S. 967 (1994); State v. Gaitan, No. 13749-0-III, 1996 WL 123155, at *7 (Wash. Ct. App. Mar. 19, 1996) (noting that the size of the community is "a consideration weighing in favor of a change of venue in a highly publicized case"). *But see* Martinez v. Superior Court, 629 P.2d 502, 506 (Cal. 1981) ("[W]hen trial is scheduled in a small rural community, even though the publicity is not inflammatory and not hostile toward the defendant, the courts have granted [petitions for change of venue].").

132. Most courts have similarly concluded that extensive pretrial publicity, without more, is insufficient to sustain a change of venue. *See, e.g.*, Sailor v. State, 733 So. 2d 1057, 1061 (Fla. Dist. Ct. App. 1999) ("[M]assive pretrial publicity does not in itself require a change of venue.").

133. State v. Clark, 851 So. 2d 1055, 1075 (La. 2003) (noting defendant's argument that the venue was "a small, rural parish . . . saturated with pre-trial publicity," but concluding that "[a] rural parish . . . is not an improper venue merely because of the local population's familiarity with the offense"); State v. Morris, 340 So. 2d 195, 200 (La. 1976) (noting that the venue was "a small rural parish and any crime of this magnitude would be known to the people," but that the pretrial publicity consisted merely of "factual accounts of the offense and the grand jury action").

134. State v. Breding, 526 N.W.2d 465, 468 (N.D. 1995); *see infra* notes 154-57 and accompanying text (disputing the suggestion that rumors and gossip are unique to rural areas).

135. State v. Petersen, 515 N.W.2d 687, 688 (S.D. 1994).

136. *Breding*, 526 N.W.2d at 468 ("Just as knowledge obtained by jurors from common gossip will not automatically disqualify a juror . . . , generalities about small town gossip do not sufficiently support a motion for change of venue."); *Petersen*, 515 N.W.2d at 688 ("Generalities about small town gossip do not sufficiently support a motion for change of venue.").

tionally or due to ambiguity or a slip of the pen, that rumors and gossip are endemic to rural communities.[137]

Similarly, in a Florida case, the defendant contended that there was "a general atmosphere of hostility against him [because the crimes he was accused of committing] were the main topic of conversation in the rural community of Wakulla County."[138] In a related vein, in a Louisiana case, the defendant speculated that "the rural close-knit nature of the community prevented prospective jurors from responding truthfully when questioned during voir dire."[139]

These anti-rural arguments indicate underlying assumptions of closed-mindedness, irrationality, untrustworthiness, and limited intelligence; assumptions that rural jurors will prejudge cases based on rumor and innuendo; and assumptions that rural jurors lack the intelligence, integrity, and objectivity to base their legal conclusions on the evidence presented at trial.[140] In short, these arguments are based on a mental shortcut that assumes rural dwellers are unequal and inferior to urban dwellers.

The focus of a change of venue motion—whether the court is located in an urban or rural setting—should be the ability to attain a fair trial. Undoubtedly there will be instances where the court, whether urban or rural, decides that a change of venue is necessary, but that decision should rest on the specific facts of the particular case. As is true of most stereotypes, cases undoubtedly can be found that would seem to support the stereotype.[141] However, when rural stereotypes are permitted to form the basis of laws, lawyers' arguments, and court decisions, we risk substituting generalized assumptions for individual assessments—with predictable and illegitimate results.

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137. *See Breding*, 526 N.W.2d at 468 ("[Defendant's] argument is essentially that the rumor, gossip, and speculation 'small community living generates as a matter of course' should have been sufficient alone to support his motion [for change of venue]. However, if we were to accept this argument, a change of venue would be required in every serious criminal prosecution in a rural, sparsely-populated county."); *see also* Rychener v. LaChoy Food Prods. Div. of Beatrice Foods Co., 116 N.E.2d 777, 779 (Ohio Ct. Com. Pl. 1953) ("Like the muted voodoo drums of the jungles in the tropics, gossip and news travels fast in the small towns in this rural county.").

138. Copeland v. State, 457 So. 2d 1012, 1017 (Fla. 1984).

139. State v. Manning, 885 So. 2d 1044, 1065 (La. 2004); *see also* Seawright v. State, 479 So. 2d 1362, 1364 (Ala. 1985) (quoting the defendant's appellate brief as stating that "[i]n a small county such as Butler, the jurors generally know each other and do not want to buck the community sentiment and normally favor conviction regardless of the evidence").

140. *See* Jacqueline S. Anderson, *Changing Venue to Obtain a Fair and Impartial Trial: Trial Court Discretion or Subjective Evaluation? Is this the End of Trials in Rural North Dakota Counties?*, 70 N.D. L. REV. 675, 686 (1994) (stating that a North Dakota Supreme Court decision "leaves the impression that in less populated counties, jurors may not be trusted to lay aside any biases, impressions, or opinions and render a verdict based on the evidence presented at trial" (discussing Slaubaugh v. Slaubaugh, 466 N.W.2d 573 (N.D. 1991))).

141. *See* James L. Hilton & William von Hippel, *Stereotypes*, 47 ANN. REV. PSYCHOL. 237, 245 (1996) (noting that subtle stereotyping in the media and elsewhere ensures that "there will always be at least a few (actual or portrayed) stereotype-congruent individuals available to initiate such self-perpetuating stereotypes").

V. THE REACH OF THE RURAL STEREOTYPE

The rural stereotypes in land use and change of venue cases are blatant, common, and largely unrecognized. Moreover, the reach of the rural stereotype is not limited to these examples. In particular, researchers have documented negative, stereotypical perceptions of rural dwellers in an area closely related to change of venue—that of forum selection decisions in diversity jurisdiction cases and the accompanying notion of "local bias." These studies have concluded that so-called "local bias" is actually rooted in simple anti-rural bias.[142]

In one study examining forum selection decisions in removal cases,[143] Professor Neal Miller found that, generally speaking, lawyers consider a number of different factors in selecting a forum, including procedural rules, existing precedents, perceived judicial competence, fear of local bias, and convenience factors.[144] In fact, Professor Miller found that the primary factors influencing forum selection were "[a]ttorney habit, convenience, and case delay"[145]—perhaps a somewhat surprising finding in light of the oft-articulated "local bias" justification for the existence of diversity jurisdiction.[146]

Significantly, however, Professor Miller found that fear of local bias did exist, but not across the board; the fear of local bias was limited to *rural* local bias—reports of fear of "out-of-state bias [were] geographically concentrated in primarily rural areas."[147] This is not an isolated finding. A study conducted by Kristin Bumiller, examining attorneys' articulated reasons for filing cases in a federal or a state court when concurrent jurisdiction rendered choice available, reached the same conclusion but with an invidious twist, finding that:

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142. *See* Debra Lyn Bassett, *The Hidden Bias in Diversity Jurisdiction*, 81 WASH. U. L.Q. 119, 137 (2003) [hereinafter Bassett, *Hidden Bias*] ("When we look closely at the concept of 'local bias,' . . . it turns out that local bias is, in actuality, antirural bias."). The article notes:

> The term "local bias" is used in the legal literature regularly without definition, thereby assuming that readers understand its meaning. In brief, the concept is intended to convey the notion that a court against which an allegation of local bias is leveled may be incapable of trying the case fairly—not due to a lack of ability or resources, but due to a bias or prejudice in favor of a local party and/or against a nonlocal party. The judiciary's major purpose, of course, is the administration of justice. Because the concept of local bias interjects the belief that some courts may be incapable of impartiality, an allegation of local bias undermines the very ideal of justice.

Id. (footnotes omitted).

143. *See* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369, 386-87 (1992) ("Removal cases are the only cases in which both attorneys make explicit forum selection choices. First, plaintiff's counsel files in state court a case that could have been filed as an original matter in federal court. In most of these cases, defense counsel then decides whether or not to remove the case to federal court.").

144. *Id.* at 381.

145. *Id.* at 383 (footnote omitted).

146. *See id.* at 372 ("Diversity jurisdiction is generally thought to reflect a concern for out-of-state commercial litigants' fears of local-court bias . . . ."). *But see* Bassett, *Hidden Bias*, *supra* note 142, at 124 (arguing that the local bias theory does not "find[] strong support in the historical documentation").

147. Miller, *supra* note 143, at 428.

> [T]he rural versus urban setting of the court influences the perception of local bias . . . .
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> . . . .
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> The more rural the geographical area of the court the more likely attorneys will prefer federal courts to protect their clients from perceived local bias and poorer quality of judges. . . .
>
> . . . .
>
> The frequency of lawyers mentioning local bias is directly related to the *rural* nature of the district . . . .[148]

Bumiller continued: "Where the alternative to the federal forum is a rural county court, attorneys often fear local favoritism. Local bias is as much 'intra-state' prejudice as 'inter-state' prejudice."[149] In other words, the fear of local bias is fear of the rural.[150]

Thus, "the fear of local bias has a direct correlation to the size of the community in which the court is located,"[151] and, according to Professor Miller, "reports of bias directed at out-of-state litigants are most prevalent in the more rural areas of the country, including the Southern and lower Midwest States."[152] This does not demonstrate that local bias *in fact* is found more frequently in rural areas—indeed, researchers have emphasized that studies reflect only the "fear" of local bias.

> Hard evidence of the phenomenon of local bias does not exist because local bias does not lend itself to empirical measurement. Those who have researched local bias acknowledge that "[t]he actual existence of local prejudice is difficult to uncover, and thus survey research must be content with an examination of the *perception* of such prejudice by attorneys." Attorney perception of local bias is, appropriately, commonly described as the "fear" of local

148. Kristin Bumiller, *Choice of Forum in Diversity Cases: Analysis of a Survey and Implications for Reform*, 15 LAW & SOC'Y REV. 749, 749, 752, 762 (1980).

149. *Id.* at 762.

150. *See id.* at 761 ("The incidence of fear of [local] bias supports a theory that out-of-state residents seek protection from the 'provincialism' of rural areas.").

151. Bassett, *Hidden Bias*, *supra* note 142, at 139.

152. Miller, *supra* note 143, at 428. Miller further states:

> Generally, defense attorneys in the Northeast, the industrialized Midwest, and the Far West reported low levels of bias against out-of-state litigants compared to attorneys elsewhere. By contrast, attorneys in most Southern States and the less industrialized Midwest reported such bias as affecting their forum filing decisions in high proportions.

Id. at 410 (footnotes omitted).

> bias. Accordingly, any finding of local bias is, in actuality, a finding of attorneys' *fear* of local bias, not a finding of local bias itself.[153]

Thus, choices based on "local bias" often are grounded in rural stereotypes and based on lawyers' anti-rural fears and biases.

The widespread existence of negative rural stereotypes in lawyers' arguments impacts the law in several ways. As we have seen, sometimes the court accepts these arguments and thereby uses the judicial power to perpetuate ruralism. Even when the impact on the law is less direct, the fact that lawyers are offering negative rural stereotypes within their legal arguments is troublesome. As an initial matter, these arguments reflect an inherent distrust of the rural and seem to suggest that such problems are unique to the rural. Yet the notion, for example, that rumors and gossip are unique to rural areas is demonstrably untrue.[154] Urban dwellers also hear rumors, engage in gossip, and form opinions based on distorted information[155]—witness the E! Channel, celebrity magazines, gossip or society columns of some major newspapers,[156] and the phenomenon of the "urban legend."[157] Carried to its logical conclusion, every lawsuit in the United States would

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153. Bassett, *Hidden Bias*, *supra* note 142, at 137 (quoting Jerry Goldman & Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. LEGAL STUD. 93, 94 (1980)) (footnotes omitted) (alteration in original); *see also* Bumiller, *supra* note 148, at 759 ("The issue . . . may be the perception of bias rather than actual bias against out-of-staters."); Larry Kramer, *Diversity Jurisdiction*, 1990 BYU L. REV. 97, 119 (noting that empirical studies "test only lawyers' fears, not the reality of bias or even the fears of clients"); Douglas D. McFarland, *Diversity Jurisdiction: Is Local Prejudice Feared?*, 7 LITIG. 38, 55 (1980) ("Both the supporters and opponents of diversity jurisdiction too often speak of prejudice, rather than fear of prejudice.").

154. *See* Jennifer Drapkin, *The Dirty Little Secret About Gossip*, PSYCHOL. TODAY, Nov.-Dec. 2005, at 55, 56 ("Nearly two-thirds of adult conversation is devoted to people who aren't in the room, which translates to more than two hours a day. Believe it or not, this is not idle chatter. Without indirect evaluations of other people's behavior, society would simply fall apart.").

155. *Id.* at 56 ("For those in the public eye, gossip is crucial. . . . Gossip isn't just good for the rich and famous. . . . Gossip is a hallmark of a healthy organization; silence is a sign of disease.").

156. *See* Jesse Hamlin, *Arts Czar Stanlee Gatti Has Left His Mark on the City*, S.F. CHRON., July 14, 2004, at E1 ("[Stanlee Gatti's] name already was known to the public through the gossip and society columns in which it regularly appeared. He was always putting on lavish parties for people like the Gettys and Elton John."); Shawn Hubler, *The Nip/Tuck Duck*, L.A. TIMES, June 11, 2005, at E1 (discussing Hollywood celebrities and rumored plastic surgery); Matthew Klam, *Fear and Laptops on the Campaign Trail*, N.Y. TIMES MAG., Sept. 26, 2004, at 46 (referring to "a New York City gossip [web]site called Gawker"); Barbara Rose, *Ex-Lottery Chief Powers Peoples Energy Changes*, CHI. TRIB., Sept. 12, 2004, at C1 (noting that the new president of Peoples Energy Corporation's two regulated utilities "frequently is mentioned in society columns dining with an entertainer or attending a charity function"); Liz Smith, *Swede Dreams Are Made of This*, NEWSDAY (N.Y.), Mar. 31, 2005, at A13 (last Newsday column by Liz Smith, Newsday's longtime syndicated gossip columnist). Indeed, Benjamin Franklin ran a gossip column. *See* Drapkin, *supra* note 154, at 67 ("[T]he tradition of the professional gossip in America goes back to our founding fathers, when Benjamin Franklin, arguably the most socially adept man in history, started a gossip column in the *Pennsylvania Gazette* in 1730.").

157. *See, e.g.*, JAN HAROLD BRUNWALD, ENCYCLOPEDIA OF URBAN LEGENDS (2002); RICHARD ROEPER, URBAN LEGENDS: THE TRUTH BEHIND ALL THOSE DELICIOUSLY ENTERTAINING MYTHS THAT ARE ABSOLUTELY, POSITIVELY, 100% NOT TRUE (2001) ("[O]ur communications technology has hastened the spread of urban legends to the speed of light. You get them in faxes, in voice mail, in e-mail. You hear them on the radio. You read them in hundreds of gossip columns. There's just one problem. They're not true.") (quoted material can be found on the book jacket); *see also* Snopes.com, Urban Legends Reference Pages, http://www.snopes.com (providing extensive review and background of urban legends) (last visited Mar.12, 2006).

need to be transferred to one of the nation's very largest cities to avoid juror taint. Perhaps more importantly, the repeated articulation of these stereotypes without contradiction—particularly in a courtroom, the seat of justice—serves only to confirm and reinforce their existence. Indeed, the persistence of rural stereotypes helps to perpetuate and solidify the rural dichotomy. As one commentator stated in another context: "[L]ike other invidious dichotomies, [rural stereotypes] allow judges—and society—to . . . [use] neat categories of 'good' and 'bad' . . . without regard for the messiness of . . . ambiguities."[158] The lawyers' arguments (and occasional court decisions) discussed above play on anti-rural bias, superimposing a generalized, stereotyped set of attitudes, beliefs, and behaviors upon an individual lawsuit with very particularized, specific facts, and using the generalized stereotypes either as the sole basis, or to supplement insufficient actual facts, in making legal arguments or rendering a decision.[159]

The silence in response to the cases and studies cited throughout this Article is largely due to lack of awareness—a failure to notice that rural stereotyping is at work. Although ruralism cannot be equated with the injustices of some other forms of discrimination, particularly racial discrimination,[160] ruralism is a very real form of discrimination based on assumptions and stereotypes. Ruralism is discrimination based on the dominant urban group's distorted assumptions of rural places and rural people—not the actual fact of rural living.

Not every rural area is scenic and beautiful; not every rural dweller harbors entrenched views based on small-town gossip and innuendo. The use of rural stereotypes in the legal arena is especially pernicious because these stereotypes have the potential to infect and contaminate the perception of the facts. In addition, rural stereotypes have the ability to resolutely pervade legal arguments by truncating or even bypassing a genuine analysis to reach a fated, stereotype-consistent result. Instead of law by stereotype, legal decisions should be based on the actual facts of the specific case. However, the ubiquitous nature of rural stereotypes makes this straightforward goal difficult. Rural stereotypes are firmly entrenched, and widely believed to be supported by anecdotal evidence. A majority of my Civil Procedure students—who are just starting law school and who have never set foot in a courtroom—authoritatively announce that rural courts are biased against out-of-staters and that rural juries are less likely to reach a fair verdict in publicized cases. Asked if they are any happier with the jury results in some highly-publicized cases tried in large cities, they shrug. They believe that

158. Fugate, *supra* note 78, at 289-90 (discussing gender stereotypes and the "good mother" versus "bad mother" dichotomy).

159. *See supra* notes 86-87 and accompanying text (discussing necessity of individualized determinations rather than generalized stereotypes).

160. *See generally* Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -Isms)*, 1991 DUKE L.J. 397 (discussing the dangers of "false understanding" that can arise when other forms of discrimination are used by analogy).

conventional wisdom supports their view of rural courts. Any similar problems with respect to urban courts are ascribed to aberrations rather than to problems with the "urban" nature of the court or jury pool.

We aspire to a justice system that is impartial and objective. Lawyering strategies or judicial decisions based on rural stereotypes—whether those stereotypes are romantic, nostalgic, or condescending—hinder, rather than further, those lofty and admirable goals.

CONCLUSION

Perhaps one of the few statements that would garner universal agreement in the legal profession is that judicial decisions should be based on the facts of the case. The unconscious nature of some biases, however, permits stereotyping potentially to creep into lawmaking, lawyers' arguments, and judicial analysis and decisionmaking. Indeed, a common result of stereotyping is the creation of dichotomies which substitute for actual evaluation and analysis. Rural stereotypes fall within such a dichotomous desirable/undesirable pattern: Rural places are seen as desirable, whereas rural dwellers are seen as undesirable.

When a judge or lawyer is dealing with a largely unacknowledged and unrecognized form of discrimination, as is true of ruralism, any potential personal awareness or sense of "political correctness" that might protect against stereotyping largely disappears. As a result, rural stereotypes—both positive and negative—are found in law, lawyers' arguments, and court decisions. The dichotomous nature of rural stereotypes is particularly striking when contrasting land use cases with change of venue cases. Land use cases, which focus on rural places, evoke positive rural stereotypes; change of venue cases, which focus on the prospective jury pool and thus on rural dwellers, evoke negative rural stereotypes.

The use of rural stereotypes in law tends to shortchange the review and determination of the facts, the depth and quality of the analysis, and the integrity of the conclusion. Until lawmakers, lawyers, and judges acknowledge and examine rural stereotyping, these stereotypes have the potential to twist outcomes in unfair and illegitimate ways.