University of California, Davis

From the Selected Works of Lisa R Pruitt

2007

Toward a Feminist Theory of the Rural

Lisa R Pruitt, University of California, Davis

Available at: https://works.bepress.com/lisa_pruitt/3/
TOWARD A FEMINIST THEORY OF THE RURAL

Lisa R. Pruitt*

Feminists have often criticized law’s ignorance of women’s day-to-day, lived experiences, even as they have sought to reveal the variety among those experiences. This article builds on both critiques to argue for greater attentiveness to a neglected aspect of women’s situation: place. Specifically, Professor Pruitt asserts that the hardships and vulnerability that mark the lives of rural women and constrain their moral agency are overlooked or discounted by a contemporary cultural presumption of urbanism.

This Article considers judicial responses to the realities of rural women’s lives in relation to three legal issues: intimate abuse, termination of parental rights, and abortion. In each of these contexts, Pruitt scrutinizes judicial treatment of spatial isolation, lack of anonymity, a depressed socioeconomic landscape, and other features of rural America. She contrasts responses to the plight of rural women in these legal contexts, where courts often show little empathy or understanding, with judicial responses to the vulnerability and hardships associated with sustaining rural livelihoods in non-gendered contexts.

Drawing on rural sociology and economics, as well as from judicial opinions, Pruitt argues that the combination of features that constitute rural America seriously disadvantages rural women. She further maintains that this disadvantage is aggravated when society’s prevailing urban perspective obscures legal recognition of the rural. Unlike Catharine MacKinnon’s landmark work under a similar title, Toward a Feminist Theory of the State, Pruitt does not purport to articulate grand theory. Nevertheless, by showing how features of rural life are often overlooked or misunderstood by legal actors, and by explaining the legal relevance of these features to critical junctures at which women encounter the law, Pruitt begins the process of articulating a feminist theory of the rural.

* Professor of Law, University of California, Davis. Thanks to Meghan Haswell, Krista Maher, Elizabeth Strayer Buehring, class of 2008, and to UCD Law Librarian Erin Murphy for superb research assistance. Thanks to Melissa M. Benites, David Chase, Fernando Flores, Micah A. Globerson, Kimberley Jensen, Teri Ann Kezirian, and Erica Sorosky, class of 2007, and Cindy Dole, class of 2009, for editorial assistance. Diane Marie Amann, Alan Brownstein, Joan MacLeod Heminway, Elizabeth E. Joh, Lisa C. Ikemoto, Katherine Porter, and Jennifer R. Smith critically read earlier drafts and directed me to helpful sources. All errors are my own. I dedicate this to my mother, grandmothers, and great-grandmothers, all of whom knew the hardships and vulnerability of being rural women.
# Table of Contents

I. Rural Women, Rural Realities ................................................................. 426  
   A. Political and Social Trends ................................................................. 427  
   B. Limited Economic Opportunities ....................................................... 429  
   C. Significant Structural Disadvantages .................................................. 432  
      1. Transportation .................................................................................. 433  
      2. Child Care ....................................................................................... 434  
      3. Housing ......................................................................................... 436  
   D. Summary ............................................................................................. 437  

II. A Role for Place in Feminist Theory ....................................................... 438  

III. Rural Women in the Presence of Law .................................................... 442  
   A. Intimate Abuse ..................................................................................... 442  
   B. Termination of Parental Rights ............................................................. 453  
   C. Abortion ............................................................................................... 457  
      1. Casey and the Undue Burden Test .................................................... 459  
      2. Waiting Periods and Rural Women Under Casey ............................... 462  
      3. Post-Casey Decisions ....................................................................... 466  
         (a) Mandatory Waiting Periods, Informed Consent Laws, and Spatial Isolation ............................................................................. 467  
         (b) Judicial Bypass Procedures and Lack of Anonymity .................... 477  
      4. Summary ........................................................................................... 482  

IV. Conclusion ............................................................................................. 484
Feminist scholars have long lamented law’s inattentiveness to and misunderstanding of the day-to-day realities of women’s lives.¹ Anti-essentialists have argued that feminism must look beyond gender as the sole or primary site of subordination to other factors that shape women’s lives.² This Article draws on both arguments, calling attention to rural women as a distinct population, differentiated by place.³ In it, I argue that the social, political, and economic realities that form the backdrop of rural women’s lives are largely ignored in many legal contexts. In the rare cases that acknowledge the rural context, its role in defining women’s choices is often downplayed or dismissed in relation to the legal issue at hand.

This Article discusses the relevance of place to rural women’s situation in three different contexts: intimate abuse, termination of parental rights, and abortion. With respect to each of these, I assess whether and how the relevant legal doctrines sufficiently accommodate information about the lived realities of rural women. I reveal, for example, that legal analyses of intimate abuse and termination of parental rights often ignore or discount the added vulnerability and hardship that rural women may experience by virtue of their rural setting. In the abortion context, my analysis illustrates how courts have consistently denied or dismissed the significance of obstacles that effectively prevent many rural women from exercising this constitutional right.

¹ See generally Judith A. Baer, Our Lives Before the Law 40–67 (1999) (advocating “situation jurisprudence,” which focuses on women’s situation and what has been done to women, and criticizing “character jurisprudence,” which emphasizes “essential gender distinction[s]”); Catharine A. MacKinnon, Women’s Lives, Men’s Laws 6, 34 (2005) (arguing that we “should analyze the legal issues in terms of the real issues, and strive to move law so that the real issues are the legal issues”).


³ I use “place” in this Article primarily in a literal sense, while also beginning to explore how the identities of women in rural areas are socially constructed in relation to their rural situation. See infra note 9. I also lay the groundwork here for further theorizing about the socio-spatial dimensions of rural women’s lives. I thus rely implicitly on the work of critical geographers who call attention to the role of space and place in understanding how societies operate and change. See, e.g., Doreen Massey, Space, Place and Gender (1994); Linda McDowell, Gender, Identity & Place: Understanding Feminist Geographies (1999); Edward W. Soja, Postmodern Geographies: The Reassertion of Space in Critical Social Theory (1989).
Part I details the rural milieu, to the extent that it can be generalized across regions. While the term “rural” has many definitions and connotations this Article uses it primarily to signify sparsely populated places. But rural places have more in common than low population density, and I also use the term to refer to the conglomeration of characteristics generally associated with rural areas. Rural people labor under various structural disadvantages that stem generally from poor economic and educational opportunities, but also arise from specific deficits in transportation, child care, and housing, among others. While a great deal of the information presented relates to the socioeconomic disadvantage that marks rural lives, my argument is not based solely on class. It is also about other features of rural America: close-knit community where residents tend to be familiar with one another; more tradition-bound and conservative thinking that emphasizes women’s care-giving roles; spatial isolation created by low population density; and attachment to place.

Part II provides a theoretical framework for conceptualizing rural women’s difference as disadvantage and for arguing that place merits attention in our analysis of gender issues. Drawing on the work of Catharine MacKinnon, I assert that we must attend to the details of women’s lives—that we should “strive to move law so that the real issues are the legal issues.” Based on the work of Judith Baer, I argue that we must focus on women’s situation rather than on their character. In this regard, my analysis reveals the aggravated disadvantage and

---

5 The distances typical of rural areas go hand-in-hand with the fact that “all rural areas share one common characteristic: relatively low population densities.” Greg Duncan et al., Lessons Learned: Welfare Reform and Food Assistance in Rural America, in RURAL DIMENSIONS OF WELFARE REFORM: WELFARE, FOOD ASSISTANCE AND POVERTY IN RURAL AMERICA 455, 456 (Bruce A. Weber et al. eds., 2002).
7 MacKINNON, supra note 1, at 6.
8 Baer essentially renames dominance theory, associated with radical feminists, as situation theory. She explains that “the implication that dominance is a universal feature of women’s lives is contentious, the assertion that women’s situation has been a subject one is incontrovertible.” BAER, supra note 1, at 41 (emphasis omitted). She thus refers to theories that emphasize dominance as theories of women’s situation. See id. “Situation theory (jurisprudence) holds that what makes law male is the fact that men use it to subordinate women.” Id. “If we fail to discuss what has been done to women,” Baer asserts, “we leave out a huge part of reality. We limit the insights we can reach about people who do these things and about a society that lets them do it and teaches them how.” Id. at 62.
multi-faceted vulnerability that rural women experience by virtue of place, including the differing socio-spatial dynamic created by sparsity of population and geographic isolation.9

Building on anti-essentialist scholarship, I maintain that geography matters, just as race, sexual orientation, and other factors do. Rurality is highly relevant to many legal analyses, even though law has rarely recognized it in relation to and in combination with gender. Being a rural woman may also represent a significant component of identity. Just as being a woman of color is a greater element of identity than being white,10 experiencing a rural upbringing or being a long-time rural resident can be a critical aspect of how a woman sees herself, even while the urban equivalent may not be.11

Part III discusses three different contexts in which courts have adjudicated conflicts arising in rural places and in which characteristics of the rural setting were arguably legally relevant: intimate abuse, termination of parental rights, and abortion. In discussing each of these, I illustrate law’s ignorance of—or indifference to—rural realities. I also contrast law’s typically insensitive responses to these gender-specific issues with more empathic judicial handling of non-gendered legal issues that similarly implicate the spatial isolation and lack of anonymity that are characteristic of rural areas.

9 See infra notes 21–22, 50-53, 56-63, 334 and accompanying text (discussing the social and economic significance of these phenomena). See also Gerald W. Creed & Barbara Ching, Recognizing Rusticity: Identity and the Power of Place, Introduction to KNOWING YOUR PLACE: RURAL IDENTITY AND CULTURAL HIERARCHY 6 (Barbara Ching & Gerald W. Creed eds., 1997) (lamenting the “lack of a conceptual vocabulary for articulating the blend of psychic, cultural, and ‘real’ geography” for analyzing the rural/urban distinction and place-based identity). Professors Ching and Creed argue for a “theoretical middle ground in which ‘place’ can be metaphorical yet still refer to a particular physical environment and its associated socio-cultural qualities.” Id. at 7. They claim that “place identities are clearly linked to a particular kind of place, but even identities built upon the land are social constructions.” Id. at 12.

10 See Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 604 (1990) (sharing an anecdote of a West Coast feminist critics meeting at which all women were asked to pick two or three words to describe themselves: “[n]one of the white women mentioned their race, [while] all of the women of color did”).

11 Creed & Ching, supra note 9, at 4 (arguing that marked and marginalized rural folk experience the distinction more intimately and their “rural” status is a more significant element of identity for them: “the urban-identified can confidently assume the cultural value of their situation while the rural-identified must struggle to gain recognition”). In each pairing, black/white and rural/urban, the former is the outsider, the minority, while the latter represents the default or the norm. It is thus the former about which society must be educated and sensitized. As a related matter, Creed and Ching have argued that “the rural/urban distinction underlies many of the power relations,” and that “the city remains the locus of political, economic and cultural power.” Id. at 2, 17.
By the claim “toward a feminist theory of the rural,” I do not purport to articulate “epic theory” as MacKinnon did in her germinal text under a similar title. Rather, my aim is to explain and document how rural women have been disadvantaged by law’s ignorance of or callousness about the practical realities that shape their lives. In positing how law’s urban presumption and bias have undermined rural women, I reconceptualize the significance of rurality to women’s lives, particularly as those lives encounter the law.

I. RURAL WOMEN, RURAL REALITIES

Rural scholars caution that diversity among the nation’s rural places makes it difficult to generalize across the rural populace. Yet studies of women in areas ranging from Appalachian Kentucky to rural Michigan reveal similarities. Rural women’s lives are shaped by conservative views, including those regarding the proper roles of women. Their situation is characterized by low educational attainment and frequent underemployment.

13 See id.
14 See, e.g., Cynthia B. Struthers & Janet L. Bokemeier, Myths and Realities of Raising Children and Creating Family Life in a Rural County, 21 J. FAM. ISSUES 17, 41 (2000). Courts have sometimes been reluctant to so generalize across states and regions, but at other times they have done so. One sees both practices, for example, in abortion decisions assessing regulations that arguably create undue burdens on women’s right to abortion. See infra Section III.C.3(a) (discussing Utah Women’s Clinic, Inc. v. Leavitt and Karlin v. Foust, in which each court dismissed differences between the geography of Pennsylvania and that of Utah and Wisconsin, respectively, and A Woman’s Choice-East Side Women’s Clinic v. Newman, in which the majority rejected evidence of the consequences of abortion regulations in Mississippi as insufficient to prove that similar regulations in Indiana would lead to consequences there similar to those in Mississippi).
15 PUB. OPINION STRATEGIES & GREENBERG QUINLAN ROSNER RESEARCH, W.K. KELLOGG FOUND., ELECTION 2002: RURAL VOTER AND RURAL ISSUES 37 (2002), available at http://www.wkkf.org/ (follow “Knowledgebase” hyperlink and select “Publications and Resources” from the drop-down menu; then follow “Food Systems and Rural Development” hyperlink; then follow “E” hyperlink under “Browse By Title”; then follow “Election 2002: Rural Voters and Rural Issues” hyperlink) [hereinafter PUB. OPINION STRATEGIES]. “Rural women are actually stronger GOP partisans than their male counterparts, are more supportive of conservative religious groups, [and] are more conservative than non-rural men on self-reported ideology . . . .” Id.
16 Forty-two percent of rural women have attained only a high school education or less, compared with twenty-four percent of urban women; twenty-six percent completed some college, as opposed to thirty percent of urban women; and thirty-two percent graduated from college or went beyond, compared with forty-five percent of metro women. Id. at 24.
A. Political and Social Trends

Some social and cultural differences between rural and urban areas dissipated or disappeared with the decline of the family farm and the corresponding decrease in rural population.\(^\text{18}\) Family size and birth rates are now similar in rural and urban areas,\(^\text{19}\) and advances in transportation and communication have reduced rural isolation.\(^\text{20}\) Despite some blurring between rural and urban values and practices in recent decades, rural individuals still tend to hold more traditional beliefs than those who live in cities.\(^\text{21}\) Sociologists attribute this, at least in part, to the types of relationships rural people form as a result of decreased population size and density: the closer interaction among people within a rural community leads to “greater levels of consensus on important values and morals.”\(^\text{22}\)

The conservative politics of so-called non-metro\(^\text{23}\) residents are evident in rural voting tendencies. Until the latter part of the twentieth century, rural voters


\(^\text{19}\) Id. at 435.

\(^\text{20}\) Id. at 433.


\(^\text{22}\) Id. at 435. *See also* Fern K. Willits et al., *Persistence of Rural/Urban Differences in Rural Society in the U.S.: Issues for the 1980s* 70, 72-74 (Don A. Dillman and Daryl J. Hobbs, eds. 1982) (observing that rural residents are “more traditional in their moral orientation . . . more ideologically religious and conservative in their practices, and more satisfied with their lifestyle” compared to their urban counterparts).

\(^\text{23}\) The word “non-metro” indicates “rural” when the study cited uses the Office of Management and Budget (“OMB”) designations of metro and non-metro, which are defined slightly differently than the U.S. Census Bureau’s “rural.” *Housing Assistance Council, Taking Stock: Rural People, Poverty, and Housing at the Turn of the 21st Century* 11 (2002), available at http://ruralhome.org/pubs/hsganalysis/ts2000/index.htm [hereinafter HAC, TAKING STOCK]. The U.S. Census Bureau uses the term “rural” to mean “all territory, population, and housing units located outside of UAs [urbanized areas] and UCs [urban clusters].” U.S. Census Bureau, Census 2000 Urban and Rural Classification, http://www.census.gov/geo/www/ua/ua_2k.html (last visited Mar. 6, 2007). It defines “urban” as “including all territory, population, and housing units located within an urbanized area (UA) or urban cluster (UC).” *Id.* This definition delineated the boundaries of “urbanized areas” and “urban clusters” to encompass densely settled territory, which consists of: “core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile.” *Id.*
aligned themselves with Democratic candidates who “tapped into the economic concerns of rural districts.”

Rural voters overwhelmingly supported Republican candidates in 2002, marking the fifth consecutive election in which they did so. Further, President Bush carried the vast majority of rural districts in each of the last two presidential races. This shift is attributed to conservative views espoused by Republicans on topics of importance to rural voters: gun control, abortion, and religion. When rural communities do elect Democrats to Congress, their voting records are more conservative than those of urban Democrats.

The OMB uses the terms “metropolitan” and “micropolitan” to refer to essentially the same dichotomy. Micropolitan areas are outside metropolitan areas and have no cities of 50,000 people or more. Office of Mgmt. & Budget, Executive Office of the President, OMB Bull. No. 07-01, Update of Statistical Area Definitions and Guidance on Their Uses app. at 2 (2006), available at http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf. Metropolitan areas, on the other hand, are those with at least 50,000 residents or with an urbanized area of 50,000 people or more. Id. Metro areas thus include suburbs and other areas near them that are socially and economically integrated. See id.; see also Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82,228, 82,238 (Dec. 27, 2000). Some scholars have pointed out that the definition of non-metro areas is a narrow one that excludes twenty-nine million people who live in small towns with fewer than 2500 residents or in open territory, but who are classified as metro because they are within a metro county. See Leslie A. Whitener et al., As the Dust Settles: Welfare Reform and Rural America, Introduction to Rural Dimensions of Welfare Reform, supra note 5, at 1, 19 n.4. This Article nevertheless treats the terms as essentially synonymous because both refer to sparsely populated areas that are removed from urban centers. See also Pruitt, supra note 4, at 9–11 (analyzing complexities of rural classification).

Gregory L. Giroux, Recalibrating the Rural Voter’s Place, Cong. Q. Weekly, June 27, 2005, at 1722.


Giroux, supra note 24, at 1722. One scholar has argued that “[t]he far right understands rural peoples’ alienation and exploits it, transforming their bitter desperation into political action that suits the right’s own broader agenda.” Osha Gray Davidson, Broken Heartland 118 (1990).

Abortion has been a very controversial issue in rural communities. For example, the South Dakota legislature in February 2006 passed a law making it a felony for doctors to perform abortions unless necessary to save the life of the mother. Evelyn Nieves, S.D. Abortion Bill Takes Aim at ‘Roe’; Senate Ban Does Not Except Rape, Incest, Wash. Post, Feb. 23, 2006, at A1. The law was designed to challenge Roe v. Wade, 410 U.S. 113
As for rural women, they tend to marry younger and at a greater rate than urban women. They also have a tendency toward more traditional views about themselves, believing that their primary role is to bear, raise, and protect children. Non-metro women’s views about abortion are generally more conservative, too, with rural women significantly more likely to support pro-life rather than pro-choice candidates. A study of nonmarital conceptions among rural and urban women found that those in rural areas were more likely to carry a fetus to term and to marry before the baby’s birth.

B. Limited Economic Opportunities

More than fifty-five million people—roughly twenty percent of Americans—live in non-metro areas. Of the 15.1% of these living in poverty, women,
children, and people of color represent a disproportionate share. Families headed by females are now almost proportionately represented in rural areas, and 35.2% of those living in such families were impoverished in 2003, a rate 7% higher than that for their urban counterparts.

Myriad other reasons also account for the prevalence of low socioeconomic status among women in rural America. These include limited economic opportunities and deficits in human capital that plague rural communities. While the 2000 census reported a median household income in metro areas of $44,755, the median income in non-metro areas was only $33,687. On average, then, non-metro workers earn twenty-eight percent less than their metro counterparts. This

---

35 HAC, TAKING STOCK, supra note 23, at 20.

36 Daniel T. Lichter & Leif Jensen, Rural America in Transition: Poverty and Welfare at the Turn of the Twenty-First Century in RURAL DIMENSIONS OF WELFARE REFORM supra note 5, at 83 (providing statistics according to race).


A study of the risks of poverty for female-headed families shows they are significantly higher for those living in non-metro areas than for others. Synder & McLaughlin, supra note 21, at 143–45 (finding rural, female-headed families with children most likely to be poor and twice as likely to be living in poverty as their suburban counterparts).

38 HAC, TAKING STOCK, supra note 23, at 21.

39 Id. at 20. Some have debated whether the impact of this differential is blunted by a lower cost of living in rural areas. Compare Mark Nord, Does it Cost Less to Live in Rural Areas? Evidence from New Data on Food Security and Hunger,” 65 RURAL SOC. 104 (2000) (noting that while housing costs tend to be lower in rural areas, the cost of other necessities tend to be higher) with DEAN JOLLIFE, THE COST OF LIVING AND THE GEOGRAPHIC DISTRIBUTION OF POVERTY, USDA ECONOMIC RESEARCH REPORT NUMBER 26 15 (2006), available at http://www.ers.usda.gov/publications/err26/err26.pdf (suggesting that poverty measures be adjusted to account for cost-of-living differences between metro and non-metro areas, which would cause metro poverty levels to be greater than non-metro levels between 1991 and 2002).

40 Id. at 19; see also David A. Cotter et al., Gender Inequality in Nonmetropolitan and Metropolitan Areas, 61 RURAL SOC. 272, 282 (1996) (noting nonmetropolitan earnings are well below metropolitan earnings); Struthers & Bokemeier, supra note 14, at 42 (noting
earnings differential is no doubt related to the fact that only fifteen percent of non-metro residents have at least a bachelor’s degree, compared to twenty-five percent of all U.S. residents. 41

Despite the more traditional nature of rural culture, metro and non-metro women are employed at equal rates. 42 Yet, women in rural areas earn only about half of what men are paid for similar jobs, an earnings ratio that is similar to that between urban women and men. 43 Women residing in rural areas are thus at a significant disadvantage relative not only to all metro workers, but also relative to the men in their own communities.

Rural people are more likely than urban people to work in manufacturing, 44 and rural women are more likely than rural men—seventy-three percent compared to thirty-nine percent—to do so. 45 In addition, consumer service jobs now comprise one-third of non-metro employment. 46 Both categories of jobs have drawbacks. Manufacturing jobs are subject to market whims and overseas relocation, thus
providing little security. While the flexibility of service jobs can accommodate a mother’s schedule, it may also mean fewer hours, lower earnings, and poor benefits. In sum, rural women tend to be employed in “low-wage, unstable, secondary-sector,” gender-segregated jobs.

Rural women frequently rely on elaborate, carefully balanced social networks for support and assistance to supplement their incomes. Rather than turning to social service agencies, women often look to each other for help with child care, transportation, and even occasionally paying bills. In return, they offer the same services to others within their networks, either as payment for assistance given or as a down payment, of sorts, for a future favor. By utilizing a combination of these networks and informal work, rural women are sometimes able to avoid welfare and maintain their independence. Nevertheless, some scholars have observed that such networks are increasingly fragile and temporary. As single parenthood increases, family-based and social support networks diminish in significance, and many rural women seem to be losing a previously valuable resource.

C. Significant Structural Disadvantages

While the broad economic picture of rural America is disheartening, the situation of women there is even more so. Transportation, child care, and housing

---

47 Id. at 18.
48 Gibbs, supra note 44, at 59.
51 NELSON, supra note 50, at 75.
52 FIENE, supra note 30, at 65; NELSON, supra note 50, at 81. Women tend to request only as much as they are willing to give, knowing they may otherwise be expelled from the network. Id. at 77. One woman described the relationship as: “like the checking account—first you put the money in and then you make the withdrawal and there’s no problem. It’s when you do it the other way around [that] there’s red ink.” Id. at 67.
54 See generally Pruitt, Missing the Mark, supra note 53, at 445–51 (documenting with detailed statistics the problem of rural poverty, including so-called persistent poverty and poverty among female-headed households).
are among the structural obstacles that weigh heavily on the rural female population, who have even fewer resources than rural men to devote to them.\textsuperscript{55}

1. Transportation

The long distances that typically separate rural residents from jobs, services, and other people make reliable transportation a necessity.\textsuperscript{56} It is thus not surprising that, compared to those in urban areas, rural Americans spend a higher percentage of their income on transportation.\textsuperscript{57} Nevertheless, rural counties have a higher rate of car-lessness than urban counties.\textsuperscript{58} While rural residents are more reliant upon public transportation than their urban counterparts, they have fewer public transport options.\textsuperscript{59} With less than a tenth of all federal funding for public

\begin{footnotes}
\item[55] Because of their lower earnings, rural women likely face greater pressure related to housing and other problems than do rural men. Wendy Boka, \textit{Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting}, 9 DRAKE J. AGRIC. L. 389, 399 (2004). The extremely high poverty rates among female-headed families in rural areas and the shortage of housing there leave rural women very vulnerable to homelessness. \textit{Id. See also HAC, Taking Stock, supra} note 23, at 21 (listing housing problems, low wages, and a shortage of adequate child care as some of the factors that contribute to the severity of non-metro women’s poverty).


\item[57] Porter, \textit{supra} note 56, at 1008 (citing \textit{BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, 2001 CONSUMER EXPENDITURE SURVEY tbl.51} (2003)). In 2001, rural households spent twenty-five percent of their income on transportation, whereas urban households spent only nineteen percent. \textit{Id.} The average transportation expenditure for a rural household exceeded that of its urban counterpart by almost $\text{1000.} \textit{Id.} (citing \textit{BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, REP. NO. 966, CONSUMER EXPENDITURES IN 2001, at 13 tbl.7} (2003)).

\item[58] \textit{U.S. DEP’T OF AGRIC.}, AGRIC. INFO BULL. 795, \textit{RURAL TRANSPORTATION AT A GLANCE} 3 (2005), available at \textit{http://www.ers.usda.gov/publications/ AIB795/AIB795_lowres.pdf} [hereinafter \textit{RURAL TRANSPORTATION AT A GLANCE}]. A high rate of car-lessness is at least twice the average rate of car-lessness. \textit{Id.} According to the U.S. Department of Agriculture, more than 1.6 million rural households have no car. \textit{Id.} Nevertheless, in 2000, rural households had access to a car at a slightly higher rate (92.7\%) than urban ones (88.9\%). \textit{Id.} For a look at how access to cars has changed women’s lives, see Carol Sanger, \textit{Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space}, 144 U. PA. L. REV. 705, 711-28 (1995). She writes of rural women that they “could now visit friends, receive visitors (including federal farm agent-educators), take their children to the doctor, shop in town instead of from catalogues, attend meetings, and generally ‘relieve the monotony of the household routine.’” \textit{Id.} at 714.

\item[59] \textit{See} Susan Murty, \textit{Regionalization and Rural Service Delivery, in THE HIDDEN AMERICA, supra} note 37, at 199, 207; Porter, \textit{supra} note 56, at 1026. \textit{But see} \textit{RURAL TRANSPORTATION AT A GLANCE, supra} note 58, at 1 (stating that recent increases in federal
transportation going to rural areas, only about sixty percent of rural counties are able to offer it. Of those using rural public transportation, sixty-two percent are women. Yet transportation challenges put these and other rural residents at a disadvantage for getting access to employment, health care, child care, and other services.

2. Child Care

The nature of rural job markets and the omnipresent issue of distance mean that rural residents have fewer child care options than urban ones. Because there are fewer child care centers per capita in rural areas, only twenty-five percent of rural children under age five are cared for in such centers, compared to thirty-five percent nationwide. For poor rural families, the federally funded Head Start funding and greater state and local control have led to improvements in rural roads and public transportation.

60. RURAL TRANSPORTATION AT A GLANCE, supra note 58, at 3. In this report, the U.S. Department of Agriculture relies on the Office of Management and Budget definition of rural. Id. at 6; see supra note 23. Nevertheless, rural public transportation services grew in the 1990s. RURAL TRANSPORTATION AT A GLANCE, supra note 58, at 3. “[N]onmetro providers offer[ed] 62 percent more passenger trips, 93 percent more miles traveled, and 60 percent more vehicles (vans and buses) . . . .” Id.

61. RURAL TRANSPORTATION AT A GLANCE, supra note 58, at 3. Twenty-eight percent of these counties offer only limited services, meaning fewer than twenty-five trips per car-less household per year. Id.

62. Id. at 4. Thirty-one percent of users were elderly, and twenty-three percent were disabled. Id. Rural residents, particularly those in high poverty areas, are more reliant on public transportation than their urban counterparts. Id. at 3.

63. Services are often located in the county seat or some other distant regional location. See Murty, supra note 59, at 204–05.

A lack of child care resources creates an added obstacle for mothers who are trying to find work or leave abusive relationships. Boka, supra note 55, at 397. See also Debra A. Henderson et al., The Impact of Welfare Reform on the Parenting Role of Women in Rural Communities, 11 J. OF CHILDREN & POVERTY 131, 134, 139 (2005) (observing the child care challenges faced by rural residents attempting to move from welfare to work).

64. A lack of child care resources creates an added obstacle for mothers who are trying to find work or leave abusive relationships. Boka, supra note 55, at 397. See also Debra A. Henderson et al., The Impact of Welfare Reform on the Parenting Role of Women in Rural Communities, 11 J. OF CHILDREN & POVERTY 131, 134, 139 (2005) (observing the child care challenges faced by rural residents attempting to move from welfare to work).


activities close to their home. Created under the U.S. Department of Health and Human Services, Head Start, http://www.acf.hhs.gov/programs/hsb/about/index.htm (last visited Mar. 6, 2007). Head Start programs “have the overall goal of increasing the school readiness of young children in low-income families.” Id. To participate, families must meet low-income eligibility. Id.

COLKER & DEWEES, supra note 65, at 3.

Id. at 3–4 (citing Alice M. Atkinson, Rural and Urban Families’ Use of Child Care, 43 FAM. REL. 16, 17 (1994); Beach, supra note 66). Nationally, fifteen percent of preschool children are cared for in the homes of licensed child care providers. Id. at 3 (citing LYNN M. CASPER, U.S. CENSUS BUREAU, CURRENT POPULATION REP. NO. P70-62, “WHO’S MINDING OUR PRESCHOOLERS?” (1997)).

“Kith” are friends and neighbors and “kin” are relatives. Id. at 4. One study found that rural residents are twice as likely as urban dwellers to use kith and kin arrangements. Id. (citing Atkinson, supra note 69, at 20). Low-income families are fifty percent more likely to use them than their wealthier counterparts. Id. (citing ANN COLLINS & BARBARA CARLSON, NAT’L CTR. FOR CHILDREN IN POVERTY, CHILD CARE BY KITH AND KIN: SUPPORTING FAMILY, FRIENDS, AND NEIGHBORS CARING FOR CHILDREN 3 (1998); Atkinson, supra note 69, at 18; Beach, supra note 66).

This flexibility includes options for drop-in child care and extended hours. Id. at 3.

These arrangements may include bartering or trading services, but most are on a fee-paying basis. Id. at 4.

Id. at 3–4. Local regulations governing licensure in rural areas are typically not as stringent as metropolitan ones. Id. at 3 (citing Beach, supra note 66).

See Struthers & Bokemeier, supra note 14, at 25 (stating that rural women believe parenting is “their most important job” and that household work is often based on “a gendered division of labor”); Tickamyer, supra note 6, at 738 (“Women with young children are more likely to engage in productive (economic) activities close to their reproductive (childrearing and household) responsibilities.”). But see Katherine MacTavish & Sonya Salamon, What Do Rural Families Look Like Today?, in CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY 73, 77 (David L. Brown & Louis E.
3. Housing

While the past several decades have seen many improvements in rural housing, almost thirty percent of non-metro residents still face housing problems, the most common being affordability. About 5.5 million rural households pay in excess of thirty percent of their monthly income for housing. Worse yet, housing costs consume more than half of the incomes of another 2.4 million. Housing quality presents another challenge in non-metro areas, where 1.6 million units are moderately or severely substandard. For example, while rural homes comprise only one-fifth of the nation’s total housing units, they account for over thirty percent of houses with inadequate plumbing.

Sixty-eight percent of the nation’s households are owner-occupied, representing an all-time high. While non-metro residents enjoy an even higher rate of home ownership, at seventy-six percent, this does not necessarily indicate greater wealth, wellbeing, or stability. The higher rate of rural home ownership is due in part to manufactured homes, which are twice as common in non-metro areas as they are nationwide. But manufactured homes are less beneficial to consumers

---

75 HAC, TAKING STOCK, supra note 23, at 24.
76 Id. at 31. “Over 6.2 million nonmetro households have at least one major problem . . . [About] 662,000 rural households have two or more housing problems.” Id. “Problems” include affordability, substandard quality, and crowding. Id.
77 Id. Recent research indicates that more rural households are experiencing housing difficulties since the implementation of welfare reform in 1996. Id. at 20. Rural welfare recipients have greater difficulty paying rent, and they are more often evicted than urban welfare recipients. Id. (citations omitted).
78 Id. at 28.
79 Id.
80 Id. at 30. This represents 6.9% of non-metro units. Additionally, people of color in non-metro areas are almost three times more likely to live in substandard housing than their white counterparts. Id.
81 Id.
82 Id. at 24–25.
83 Id. at 25.
84 The national median value of a home is $120,000, while that of a non-metro home is $80,000. Id. at 32.
85 Id. at 24. Although non-metro areas have less than a quarter of the nation’s housing units, these areas have over half the manufactured homes. Id. While the quality of manufactured homes has improved in recent years, more than a third of non-metro mobile home residents live in units at least twenty years old. Id. at 26. Manufactured housing is the fastest-growing segment of rural housing stock, accounting for thirty-eight percent of homes built between 1996 and 2001. Ezra Rosser, Rural Housing and Code Enforcement:
than conventional single-family homes because the former tend to depreciate in value\textsuperscript{86} and are financed with higher-rate, personal property loans.\textsuperscript{87} Rural housing assets also tend to be less liquid because rural home owners are often tied to their specific location as a consequence of greater attachment to nearby family, the community, or their land.\textsuperscript{88} Finally, recent shifts in emphasis by federal housing programs have reduced the amount of assistance available to rural households.\textsuperscript{89}

\textit{D. Summary}

Most rural areas are economically depressed and offer few opportunities for enhancement of human capital. Rural dwellers face particular structural obstacles, often related to the physical distances that separate them from services. While gender-specific data are not available regarding each of these barriers, it is reasonable to surmise that because rural women earn substantially less than rural men, they are less likely to own a vehicle or to be in a stable housing situation. Rural women are, in fact, one of the poorest populations in the United States.

\textit{Navigating Between Values and Housing Types, 13 GEO. J. ON POVERTY L. & POL’Y 33, 47 (2006) (citing a 2001 American Housing Survey).}

\textsuperscript{86} HAC, TAKING STOCK, supra note 23, at 32. “[M]anufactured homes depreciate at a rate of 1.5% annually compared to an annual appreciation rate of 4.5% for conventionally constructed single-family homes.” \textit{Id.} Further, “manufactured homes in rural areas appreciate less than those in more urbanized areas.” \textit{Id.} This is particularly troubling considering that a “home is the most valuable asset most Americans will ever own.” \textit{Id.} “The median purchase price of a new manufactured home in nonmetro areas is approximately $41,000, compared to $130,000 for a new single-family home.” \textit{Id.} at 26.

\textsuperscript{87} \textit{Id.} This type of loan is less beneficial for the consumer than conventional housing loans because of higher interest rates and shorter terms. \textit{Id.} at 26, 32. About one-tenth of non-metro owners with a mortgage pay an interest rate of ten percent or more. \textit{Id.} at 32. This is nearly double the proportion of metro owners who pay such high rates. \textit{Id.}

\textsuperscript{88} Rosser, supra note 85, at 43. Farmers often make their living from the land on which their homes are located, and non-farmers “are limited by the fact that these small towns cannot support a commercial rental market except on a very small scale.” \textit{Id.} Data show that “[r]ural residents are less likely to move than their metro counterparts.” HAC, TAKING STOCK, supra note 23, at 16. In 2000, fifty-nine percent of rural residents over the age of five lived in the same houses where they had lived in 1995. \textit{Id.} “Non-metro residents who moved between 1995 and 2000 were more likely than metro movers to relocate to different counties, but less likely to move to different states.” \textit{Id.}

\textsuperscript{89} HAC, TAKING STOCK, supra note 23, at 34. Federal assistance is crucial for many households, as indicated by a U.S. Department of Agriculture Economic Research Service study that found ninety percent of rural borrowers would probably not have been able to afford their homes without federal assistance. \textit{Id.} at 33. The shifts have been “to indirect subsidies such as loan guarantees and tax incentives.” \textit{Id.} at 34. However, only “3\% of guaranteed loans, as opposed to 44\% of the program’s direct loans, served very low-income households” in fiscal year 2000. \textit{Id.}
The social and political portrait of rural America also lends insights into expectations of the women who live there. Rural residents tend to hold more conservative political views, and their expectations of women’s roles are usually more traditional and more rigid. These factors, like economic and structural ones, severely limit women’s opportunities, as well as their day-to-day choices.

II. A ROLE FOR PLACE IN FEMINIST THEORY

At least two strands of feminist thought accommodate or facilitate theorizing about rural women and what distinguishes their situation from those of other women. Radical feminism’s focus on power disparities is useful for conceptualizing how rural women’s differences—not only from men, but also from urban women—operate to their disadvantage. Anti-essentialism scholarship acknowledges the complexity of each woman’s identity and circumstances. It can and should also attend to the role of place in women’s lives.

Radical feminist Catharine MacKinnon’s work centers on the experiences of women and the operation of power in society. She asserts that “[w]omen have systematically been subjected to physical insecurity; targeted for sexual denigration and violation; depersonalized and denigrated; deprived of respect, credibility and resources; and silenced—and denied public presence, voice and representation of their interests.” For rural women, these deprivations and denials, as well as the vulnerability and hardship they beget, are often aggravated by their geographical circumstances. Their low socioeconomic status magnifies their physical insecurity and denies them credibility and resources. So do the practical challenges they face in accessing child care, educational opportunity, good jobs, and government assistance. Rural women’s physical distance from those who can assist or rescue them exacerbates their vulnerability to physical

---

90 See, e.g., Harris, supra note 10, at 588 (arguing that “women’s experience” cannot be “described independent of other facets of experience like race, class and sexual orientation”); see also sources cited at supra note 2.

91 See generally Tickamyer, supra note 6 (arguing for greater attention to spatial issues in research and theorizing about women and poverty).

92 See, e.g., Catharine A. MacKinnon, Points Against Postmodernism, 75 CHI.–KENT L. REV. 687 passim (2000) (discussing women, power, and sexuality as it relates to the feminist movement).

93 MACKINNON, supra note 12, at 160.

94 Of course, many others have criticized Professors Catharine MacKinnon and Robin West for focusing solely on the role of gender in these social hierarchies while overlooking other markers of identity. See, e.g., Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 BERKELEY WOMEN’S L.J. 191, 201–04 (1988–90) (arguing that MacKinnon and West excluded the lesbian experience from their theorizing); Harris, supra note 10, at 585 (arguing that MacKinnon and West inadequately accounted for race, placing white women at the center of their work).
violence by intimates and others.\textsuperscript{95} Further, in their more traditional communities, rural women are more definitively relegated to the private sphere of hearth and home. Their only “public” presence, typically, is in low-wage, dead-end employment.

In a similar vein, radical feminist Judith Baer advocates what she calls situation jurisprudence, arguing that feminist legal theory must “develop analyses that will separate situations from the people experiencing them.”\textsuperscript{96} She asserts that failure “to discuss what has been done to women . . . leave[s] out a huge part of reality.”\textsuperscript{97} Baer distinguishes between situation jurisprudence and what she calls character jurisprudence, which focuses on the nature or character of women.\textsuperscript{98} Situation jurisprudence, she asserts, disputes liberalism’s presumption of autonomy, which our sexist society in fact denies women.\textsuperscript{99}

In support of her argument against this presumption of autonomy and her focus on women’s situation, Baer calls attention not only to women’s vulnerability, but also to the responsibility and duty they bear, particularly in relation to caregiving.\textsuperscript{100} She acknowledges that MacKinnon “captures the objectification, the danger, and the vulnerability” of being a woman, but Baer argues that MacKinnon overlooks or discounts “the work, the demands, [and] the domestic burdens heaped” on women.\textsuperscript{101} Regarding women’s duty, Baer writes: “It’s not only the lying down that oppresses, but the jumping up: the expectation that one is available to meet others’ needs is a crucial component of women’s situation.”\textsuperscript{102} This, too, is part of gendered power.

Baer discusses another way in which legal actors (scholars of character jurisprudence, in particular) use the theme of responsibility against women: the

\textsuperscript{95} See generally Boka, supra note 55 (discussing domestic abuse in a rural setting).
\textsuperscript{96} BAER, supra note 1, at 68.
\textsuperscript{97} Id. at 62.
\textsuperscript{98} See id. at 40−67. Baer writes:

Critiques of situation jurisprudence fall into the same trap as character jurisprudence: they let men and institutions off the hook while focusing women’s attention on themselves. Whereas character jurisprudence threatens to trap women in gender-role expectations, critical reaction to situation jurisprudence threatens to frustrate gender-role change. Character theory has produced an ethic of burden and obligation; situation theory has been read as an insult to women.

\textsuperscript{99} Id. at 62.
\textsuperscript{100} See id. at 55−59. Baer notes a rights conceptualization as problematic because “they isolate individuals in theory when they are not independent of one another in reality.” Id. (quoting Wendy Brown, Reproductive Freedom and the Right to Privacy: A Paradox for Feminists, in FAMILIES, POLITICS, AND PUBLIC POLICY 322, 331 (Irene Diamond ed., 1983)).
\textsuperscript{101} Id. at 57.
\textsuperscript{102} Id. at 58.
“popular idea” that people are responsible for their own trouble. She notes the specific examples of blaming victims of domestic violence and poverty for bringing those problems on themselves. Baer refutes the accuracy of these claims, suggesting that holding victims responsible for their problems is a “useful conservative tool.” She notes that it is easier to oppose policies that might reduce poverty and abuse if individuals are held responsible. Taking a battered woman as an example, Baer writes that “the abuse belongs to her, not to the abuser or the society in which the abuse occurs.” She complains that the “term ‘battered woman’ itself incorporates this premise; society defines the problem in terms of victims, not in terms of violent husbands and lovers.”

Baer’s attention to women’s situation in all of its complexity can obviously serve the interests of rural women, who are literally situated in physical isolation from each other, as well as from services, educational and economic opportunity, and more. Both aspects of “responsibility” that Baer discusses are also highly relevant to rural women. While women tend to bear greater responsibility than their male partners for the care of children and other dependents, rural women appear even more burdened than their urban counterparts, due in large part to the more rigid and traditional gender-role expectations of their communities. The poor educational and employment opportunities available to rural women, coupled with the dearth of quality child care, further constrain those who seek employment outside the home in lieu of—or in addition to—fulfilling these traditional roles.

103 Id. at 63.
104 See id.
105 Id. at 65.
106 See id.
107 Id. at 66.
108 Id. Baer asserts that the battered woman’s situation “may not be her fault in the sense of causation, but it is her fault in the sense of being her misfortune.” Id. The phenomenon Baer describes is illustrated in the judicial opinion of Swails v. State, discussed infra Part III.A, where the court uses the passive voice in writing that “Connie Landers was beaten by her boyfriend, Kevin Swails.” Swails v. State, 986 S.W.2d 41, 42 (Tex. App. 1999).
109 See JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 33 (2000) (discussing the increased conflict in households where men are expected to do significant amounts of domestic work, as well as the phenomenon of women quitting their jobs to avoid this conflict, thus allowing their husbands to be “ideal workers”); see also Tickamyer, supra note 6, at 725 (referring to agreement among feminists that women’s disproportionate responsibility for reproductive labor and care-giving contributes to high poverty among women); W. Jean Yeung et al., Children’s Time with Fathers in Intact Families, 63 J. MARRIAGE & FAM. 136, 148 (2001) (looking at the amount of time fathers spend with their children and finding, based on data collected in 1997, that “the relative time fathers in intact families were directly engaged with children was 67% that of mothers’ on weekdays and 87% that of mothers’ on weekends”).
110 See supra Part I.B (discussing the employment patterns of rural women).
As for the phenomenon of viewing women as responsible for their own woes, that is evident, too, in law’s responses to rural women. Law often fails to appreciate the influence of structural barriers that constrain rural women’s choices, instead blaming them for their unfortunate circumstances and consequences. I discuss this phenomenon below in relation to judicial adjudication of parental rights and intimate abuse questions. Judicial assumptions of individual responsibility—for both the consequences of having sex and of living in an inconvenient place—also loom large in the abortion context.

Next, my analysis draws on anti-essentialist scholarship to argue for inclusion of the critical context that place—and the rural milieu in particular—can represent in both theorizing women’s subordination and responding to it. Anti-essentialists have long maintained that gender is not the sole basis of women’s disempowerment. As scholars have drawn attention to the intersection of gender and race, or gender and sexual orientation (among others), I assert the need for attention to the intersection of gender and place. A rural setting is legally relevant to more issues, particularly women-specific issues, than the law currently acknowledges.

In her landmark 1990 article on anti-essentialism, Angela Harris explains that gender essentialism is dangerous because “experiences of women perceived as ‘different’ are ignored or treated as variations on the (white) norm.” In the rare cases when law has seen and engaged rural women, recognizing them in relation to place, it has viewed these women simply as variations on an urban norm. Frequently law has not seen or identified rural women as such; rather, it has looked right past their rural circumstances. This phenomenon is reflected in remarks by rural scholars who have observed, “[w]e are an urban society now, one that is pretty sure we know what ‘urban’ is, but not at all sure we know what ‘rural’ is.”

Just as Sylvia Law defined “heterosexism” as the “pervasive cultural presumption and prescription of heterosexual relationships,” we must query whether law functions under a pervasive cultural presumption of urbanism. But place—like race, sexual orientation, and class—is inextricably linked to the

111 See infra Part III.A–B.
112 See infra Part III.C.
113 See, e.g., Harris, supra note 10, at 587 (“[P]eople are not oppressed only or primarily on the basis of gender, but on the basis of race, class, sexual orientation, and other categories in inextricable webs.”).
114 A rich literature in critical geography and other disciplines attends to the relevance of place, as well as space, in women’s lives. See, e.g., Tickamyer, supra note 6, at 734–41 (citing sources) and sources cited supra note 3.
115 at 615.
experiences of rural women as they encounter law. To illustrate, I introduce some of the stories of rural women, as reflected in judicial narratives. In doing so, I attend to this crucial aspect of their context and bring them into the broader conversation about women and law.118

III. RURAL WOMEN IN THE PRESENCE OF LAW

This Part discusses judicial (in)attention to the realities of rural women in the contexts of intimate abuse, termination of parental rights, and abortion. The first two contexts are somewhat similar in that the relevant legal doctrines accommodate a multi-factor, contextual analysis that ultimately assesses the appropriateness of a woman’s actions. That is, adjudication of intimate abuse cases usually involves passing judgment on whether a woman was justified in defending herself or whether she acted under duress in responding to intimate abuse. Decisions to terminate parental rights are also multi-faceted, involving a comprehensive assessment of a parent’s behavior.

The relevant legal inquiry regarding abortion is somewhat narrower: What constitutes an undue burden on a woman’s right to terminate her pregnancy? While applying this test theoretically involves a fact-intensive analysis of the consequences of the regulation in question, courts have been very miserly about deeming regulations undue burdens, even in the face of highly compelling factual records. In several cases, the U. S. Supreme Court and other federal courts have disregarded the structural realities of rural women’s lives that, in combination with abortion regulations, prevent those women from exercising their right to an abortion.119

A. Intimate Abuse

Bring sanity to bear on the notion that a woman victimized by a physically abusive man must go to an outdoor toilet for refuge and cannot seek that refuge in her [car] where the doors lock and the victim has mobility to further escape if necessary.120

Intimate abuse is part of the factual background in many legal contexts, including those that adjudicate the assault, battery, or death of a battered woman or her abusive partner. Whether a woman’s behavior was appropriate or reasonable may become an issue, for example, if she harms or kills her assailant. A woman’s

---

118 See Harris, supra note 10, at 585 (writing that she introduces the voices of black women to “destabilize and subvert the unity of MacKinnon’s and West’s ‘woman’”).

119 See infra Part III.C.

120 State v. Hage, 595 N.W.2d 200, 204 (Minn. 1999) (statement of Cynthia Hage, a victim of intimate abuse charged with driving while under the influence of alcohol).
perception of the threat to her, along with her firmness in the face of that threat, may become an issue if she acquiesces to become her abuser’s partner in crime.

Lenore Walker, who coined the term “battered women’s syndrome,” brought to light the complexity of an abused woman’s psychological condition. Like Walker, many have criticized law’s unease with or incapacity to accommodate the battered woman scenario. Some calling for reform propose the substitution of a reasonable woman or a reasonable battered woman standard. Others call for a move away from the imminence standard, endorsing instead a jury determination of when deadly force is necessary.

This section considers how a woman living in a rural area, or merely present in one, may experience aggravated vulnerability based on spatial isolation from others, in particular from sources of aid. This section looks in detail at several cases in which a woman in a rural area claimed she responded under duress to intimate abuse. The decisions reflect a lack of understanding of the quandary that victims of such crimes, particularly when physical distance from those who could render assistance serves to heighten their dilemma.

121 See, e.g., LENORE E. WALKER, TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS 23–40 (1989) (arguing that the behavior of battered women who kill needs to be understood as normal, not crazy); LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 14–22 (1984); see also ANGELA BROWNE, WHEN BATTERED WOMEN KILL 127–30 (1987) (identifying some predictive factors for when women kill their abusers).


126 See Weissman, supra note 44, at Part III.B.3 (arguing that “[d]ecreased opportunities for neighbors and coworkers to provide social support, reduced police presence, and diminished social services have been linked to community crime generally, and especially to family dysfunction, including an increased risk of intimate partner violence.”). This is not to suggest that if people are present, as they typically are in urban
areas, they will necessarily assist a person in distress. The well-known incident of the attack on Kitty Genovese serves as evidence that people will not always assist. However, if people are not present, no opportunity to proffer aid exists.

A rural setting is sometimes relevant to the outcome of a domestic violence case for reasons other than enhanced vulnerability. Specifically, low population density sometimes fosters lack of anonymity among those in a rural community, and that familiarity may be legally relevant. See generally Boka, supra note 55, at 400. A 2004 decision of the Connecticut Superior Court is a good example of a court understanding the lack of anonymity that marks rural communities and applying the law in light of that reality. See Florence v. Town of Plainfield, 849 A.2d 7 (Conn. Super. Ct. 2004). The court held that the estate of a woman murdered by her ex-boyfriend could sue in negligence the small municipality in which she lived for failing to protect her. Id. at 15. The decedent had repeatedly sought protection from police, who failed for several weeks to execute an arrest warrant against the former boyfriend. Id. at 11. Indeed, the trial court found it “hard to imagine what more a desperate woman could have done to reach out for police protection . . . [and] to construct a situation of such delay and failure of the police to appreciate the gravity of the situation and act accordingly.” Id. at 15. The court suggested that because the parties lived in a small town, the police department would be expected to have working knowledge of such ongoing situations, making its failure to act even more inexcusable. Id. at 10. The court wrote that the police department in this rural area knew, or should have known, of the defendant and “his antisocial and criminal propensities by reputation if not by personal contact.” Id. Somewhat offensive was the court’s effort to distinguish the case at hand from other domestic violence situations, the significance of which it dismissed. The court wrote:

[T]his was not simply one of those, regrettably routine, calls for domestic violence assistance. Situations are presented to police departments daily where two ordinarily law-abiding citizens may be involved in an intrafamilial disturbance marked by threats or scuffling brought on by momentary anger or intoxication. There are many levels of complaints which require judgment and discretion on the part of the police officers engaged in the stressful daily pursuit of their duties. This was not an ordinary domestic violence case.

Id. at 14.

The South Carolina Supreme Court reached a contrary conclusion in a somewhat similar case. In Arthurs v. Aiken County, the court held the sheriff’s department not liable for failure to protect Deborah Munn from her husband, who threatened her and her family three times on the day he killed her. 551 S.E.2d 579, 585 (S.C. 2001). Munn declined sheriff deputies’ suggestions that she go to a safe house. Id. at 583. The court noted that because the husband was not present at the scene when the deputies responded, he was not subject to immediate arrest. Id. at 584. The court concluded that the officers neither owed nor breached a duty to Munn. Id. at 585. See also G. Kristian Miccio, Exiled from the Province of Care: Domestic Violence, Duty, and Conceptions of State Responsibility, 37 Rutgers L.J. 111 (2005) (arguing for greater state accountability in domestic violence cases).
In Swails v. State, the Texas Court of Appeals upheld a trial court’s refusal to instruct the jury regarding the defense of duress to murder. The refused instruction came in the face of the female defendant’s argument that she had been terrorized by her boyfriend, who initiated the murder plan. The majority opinion in the case recited these facts:

One evening in 1994, Connie Landers was beaten by her boyfriend, Kevin Swails, because she had no money to give him. Later, the couple went driving. During the drive, Kevin told Connie they were going to rob and kill an old man because Kevin wanted his money and guns. After this conversation, the couple drove to Waldo Blanke’s house and parked their car in front of his door. While Connie sat in the car, Kevin knocked on the door. Blanke answered, and Connie heard Kevin telling Blanke “we’re going to play a game old man” and then saw Kevin shock Blanke with a 2000 volt stun gun and begin pushing and hitting him repeatedly. Connie, still in the car, heard Blanke saying “oh God, Kevin, oh God.”

At first, when Kevin yelled at her to come inside, Connie did nothing. But then Kevin yelled that he would kill her if she did not come inside. Connie walked inside and, when Kevin told her to get something with which to strangle Blanke, she gave him a radio she found on a nearby table. As Connie watched, Kevin hit Blanke in the head with the radio, pushed him onto the couch, and fell with him onto the floor. Connie then saw Kevin put the radio cord around Blanke’s neck and pull on one end of the cord. Connie held the other end with her knee.

Kevin and Connie then took Blanke’s guns, jewelry, and money to their car. They married several days later.

Connie asserted the defense of duress in response to the State’s capital murder charges. She argued that Kevin presented a threat of death or serious bodily injury to her and that he had previously threatened, stalked, and physically assaulted her. Expert testimony supported her argument that a person of reasonable firmness might not have been able to resist Kevin’s efforts to force her participation in the crimes. The trial court nevertheless rejected Connie’s request for jury instructions regarding duress, and the jury found her guilty of capital murder.

127 986 S.W.2d 41, 47 (Tex. App. 1999).
128 Id. at 42.
129 Id.
130 Id.
131 Id. at 43.
132 Id.
133 Id.
134 Id.
The Texas Court of Appeals upheld the trial court’s decision not to instruct the jury regarding duress because the defense “was not raised by the evidence.” The court explained that a “defendant is ‘compelled’ to engage in proscribed conduct ‘only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.’” Further, “the threatened death or serious bodily injury is ‘imminent’ only if it will occur in the present, not in the future.” Finally, the court explained, for duress to apply, the defendant must not have “intentionally, knowingly, or recklessly placed [her]self in a situation in which it was probable that [s]he would be subjected to compulsion.”

The court did not see Kevin’s threats to kill Connie as evidence that she was “compelled to enter the house by a threat of imminent death or serious bodily injury.” It noted that, to the contrary, Connie knew of Kevin’s intent to rob and kill Blanke, and she knew that he entered the house with “only a stun gun,” an apparent reference to the fact he was not a serious threat to her. The court observed that Connie “sat alone in the car—outside the reach of Kevin,” for “some period of time,” suggesting that she should have taken “this opportunity to leave the scene.” Because she instead entered the house, the court found that if “Kevin’s threat is construed to mean he would hunt Swails down and kill her if she did not go inside Blanke’s house, it was a threat of future, not imminent, harm.”

Dissenting Judge Alma L. López pointed out the relevance of the rural setting to the determination of whether sufficient evidence supported Connie’s argument of duress. After reciting the history between Connie and Kevin, Judge López noted that “Kevin yelled, screamed and terrorized Connie and told her he would kill her, too” as they drove away from the murder scene. She noted that Connie had “visibly observed Kevin killing the victim” and that he had threatened to kill her, too, if she did not assist him. Judge López thus concluded it was “logical that Connie felt threatened and compelled to help Kevin or risk losing her life.” He had, after all, killed Blanke while armed “with only a stun gun.” She took issue with the majority’s implication that Connie was “necessarily free to leave the scene during the murder,” arguing that no evidence supported this assumption. In doing so, Judge López revealed some facts that the majority had omitted:

135 Id. at 45.
136 Id. (quoting TEX. PENAL CODE ANN. § 8.05(c) (Vernon 1994)).
137 Id. (citation omitted).
138 Id. at 45–46 (quoting TEX. PENAL CODE ANN. § 8.05(d) (Vernon 1994)).
139 Id. at 46.
140 Id.
141 Id.
142 Id.
143 Id. at 48 (López, J., dissenting).
144 Id.
145 Id.
146 Id.
147 Id.
The scene of the murder is located in rural Bandera County. Although the photographic exhibits suggest other lake homes in close proximity to the Blanke home, there is no testimony that any of these homes were occupied at the time of the offense so as to serve as an immediate source of aid or sanctuary.  

Noting that the car they had driven was parked “next to the front door, just a few steps from where Kevin was yelling his threats of violence to Connie,” Judge López also commented on the lack of evidence as to who controlled the car keys. She concluded: “Would a person of reasonable firmness, who had suffered three beatings that very day from him, have considered Kevin’s threats and commands to present only future danger to her under these circumstances? I think not.”

Judge López thus picked up on the enhanced vulnerability that women may experience when threatened in rural areas. Because they are physically removed from others who might rescue them or render assistance, these women are at even greater risk than those who are otherwise similarly situated. The majority’s assumption that Connie was not under duress as a result of Kevin’s threats depended, in part, on its perception of her ability to escape to a place where he could not reach her. Yet Judge López disputed the majority’s inference that because Kevin carried “only a stun gun,” he did not present an imminent threat to Connie so long as she was not within arm’s reach. While the majority appears to assume that Connie could outrun Kevin and make her way to a safe place with even a twenty-yard head start, Judge López was doubtful that Connie could have escaped Kevin. Indeed, she was skeptical of the existence of a safe place in the vicinity. Emphasizing the rural nature of the locale, Judge López would have permitted the jury to determine whether Kevin was, in fact, an imminent threat to Connie.

While scholars have argued for a legal standard other than imminence in cases of intimate abuse, Professor Holly Maguigan’s research indicates that the real problem in cases where battered women kill is not existing law. The legal standard of imminence is less the problem, she concludes, than judicial

---

148 Id.
149 Id.
150 Id.
151 Id. at 48–49.
152 See Holly Maguigan, Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals, 140 U. PA. L. REV. 379, 385, 457–58 (1991) (arguing that the real problem in cases where battered women kill is not existing law, but judges interpreting the law in such a way that self-defense instructions rarely get to the jury).
interpretation of the law in ways that keep questions of imminence from reaching juries. The Texas courts’ handling of Swails supports Maguigan’s argument.

In contrast to Swails, the jury in State v. Hage had an opportunity to consider the appropriateness of a woman’s actions in response to a battering incident. The jury there found the woman was not under duress when she used her car as refuge from her abusive boyfriend. On appeal in 1999, the Minnesota Supreme Court showed no more empathy than the jury had for the woman’s plight. It thus upheld her conviction for being in physical control of a motor vehicle while under the influence of alcohol.

On the day in question, Cynthia Hage’s boyfriend became violent with her. He had physically abused her in the past, and on this occasion he slammed her hand into a table with force sufficient to draw blood. She left their trailer home and took refuge in her car. A law enforcement officer responded to a report from Cynthia’s boyfriend that she was drunk and sitting in her car. The officer, who had responded to a domestic disturbance call involving that couple in the past month, found Cynthia sitting in the driver’s seat. The car was not running, but the keys were in the ignition. In dispute was whether Cynthia had driven the car from their home to the county road where the officer found her, or whether the car had been parked there all day and Cynthia had fled to it there as sanctuary. Both field sobriety and breathalyzer tests confirmed Cynthia’s intoxication, and she was charged with driving under the influence of alcohol.

The court denied Cynthia’s request for an instruction on “self defense/retreat” and instead instructed the jury on the defense of necessity. Specifically, it instructed the jury that Cynthia bore the burden of proof to show that her actions were necessary because of an emergency situation “where the peril is instant, overwhelming and leaves no alternative but the conduct in question.” After the

153 Id. at 458–59.
154 595 N.W.2d 200 (Minn. 1999).
155 Id. at 204.
156 Id. at 202.
157 Id.
158 Id.
159 Id.
160 Id. at 203.
161 Id.
162 Id.
163 Id. at 202. Because of record flooding in the area at the time, the property on which Cynthia, her boyfriend, and some of their neighbors lived was isolated from the surrounding area by flood waters for thirty-one days. Id. Although a gravel driveway led from County Road 93 to their home, some evidence indicated that it was not passable on the day in question. Id.
164 Id. at 203.
165 Id.
166 Id. at 203–04.
jury found Cynthia guilty, she moved for a judgment of acquittal on the basis that the jury had “failed to adequately consider her emergency circumstances.”\(^{167}\) She argued specifically “that the court bring sanity to bear on the notion that a woman victimized by a physically abusive man must go to an outdoor toilet for refuge and cannot seek that refuge in her [car] where the doors lock and the victim has mobility to further escape if necessary.”\(^{168}\) The trial court denied her motion. It noted that “other options were available to Hage besides seeking refuge” in the driver’s seat of her car,\(^{169}\) but it did not specify what these options were. The issue on appeal was whether the jury had been properly instructed; the Minnesota Supreme Court found no error.\(^{170}\)

It is difficult to squabble with a jury determination on an instruction such as the one given in *Hage*. Of course, the argument can be made that, as a matter of policy, the burden of proof that Cynthia was not facing an emergency should lie with the state. The real lesson from cases like *Hage*, though, may be one for defense lawyers. If Cynthia’s plea on her motion for judgment notwithstanding the verdict had been made instead to the jury in closing argument, perhaps it would have led to a different outcome. The jury might have empathized if focused more on the predicament Cynthia faced that day: remain in the trailer with an abusive man, hide in an outhouse, or sit in a car with locking doors. Outcomes like that in *Hage* suggest that defense lawyers should present these situations to juries in all relevant detail, playing the “rural card,” if you will.

Insensitivity to the peril of the female defendant in opinions such as *Swails* and *Hage* is ironic in light of judicial recognition elsewhere of the added vulnerability—even helplessness—associated with rural places.\(^{171}\) Judicial narratives in cases adjudicating other crimes often suggest the greater susceptibility of rural residents to crime, a vulnerability stemming from their physical distance from those who could thwart a criminal act or render assistance in its wake.\(^{172}\) In a

\(^{167}\) *Id.* at 204.

\(^{168}\) *Id.*

\(^{169}\) *Id.*

\(^{170}\) *Id.*

\(^{171}\) Courts sometimes expressly recognize that rural residents’ isolation exposes them to other perils, too. In a 1987 Mississippi case the court repeatedly noted the vulnerability of an elderly, rural woman whose phone service was wrongfully disconnected. S. Cent. Bell v. Epps, 509 So. 2d 886, 892–93 (Miss. 1987). The court suggested that the phone company’s injury to her was aggravated because she was such a vulnerable customer, and their wrongdoing left her unserved, without the lifeline she needed. *Id.* at 893–94.

\(^{172}\) See, e.g., Furman v. Georgia, 409 U.S. 238, 253 (1972) (stating that the defendant “entered the rural home of a 65-year-old widow . . . while she slept and raped her”); Stein v. New York, 346 U.S. 156, 160 (1953) (describing robbery and murder that occurred on “lonely country roads”); State v. Olson, 806 P.2d 963, 964 (Idaho 1991) (alleging that the shooting occurred on “a rural mountain road in Latah County”); McElmurry v. State, 2002 OK CR 40, ¶¶ 3–4, 60 P.3d 4, 13–14 (claiming that the defendant approached the victim’s rural house through the woods in order not to be seen).
1979 decision, for example, the Alaska Supreme Court upheld the maximum sentence for an escapee who fled to a remote fishing camp where he committed several thefts and broke into some smokehouses.\footnote{One v. State, 592 P.2d 1193, 1195–96 (Alaska 1979)} The court based its decision on the vulnerability of rural residents, even though the defendant injured no one there.\footnote{Id. at 1195.} By way of explanation, the court wrote that the residents don’t have the assurance that people in the more developed areas and communities might have that they can secure some protection by picking up the phone and calling a police officer from a nearby police station who can quickly get over to that area in a car. People are simply much more on their own and simply don’t have that kind of security . . . .\footnote{Id.}

Thus, the court concluded, the escapee’s actions “must be considered as a very serious offense against the public.”\footnote{Id.}

As a related matter, judicial narratives often note that the defendant took his victim to a rural area, suggesting the defendant could thereby evade detection.\footnote{See, e.g., Lingar v. Bowersox, 176 F.3d 453, 455 (8th Cir. 1999) (stating that the defendant drove the young male victim to a rural area and ordered him to disrobe and masturbate before shooting him); Fitzgerald v. Greene, 150 F.3d 357, 360–61 (4th Cir. 1998) (stating that the defendant took a thirteen-year-old girl to a rural area where he raped her); Anderson v. Hopkins, 113 F.3d 825, 827 (8th Cir. 1997) (noting how the victim was tricked into going to a rural place where he was then killed); Ponder v. State, 713 S.W.2d 178, 180 (Tex. 1986) (describing how the defendant kidnapped a female law enforcement officer and drove her into a rural area where he repeatedly sexually assaulted her under a bridge, leaving her handcuffed there); Pilkinton v. State, Nos. 05-04-00686-CR, 05-04-00702-CR, 2005 WL 852005, at *1 (Tex. App. Apr. 14, 2005) (describing how the defendant “drove the back roads” while beating his girlfriend for ten hours); State v. Fosnow, 2001 WI App 2, ¶ 2, 240 Wis. 2d 699, 702, 624 N.W.2d 883, 885 (stating that the defendant kidnapped a woman and took her to a “home in rural Crawford County” where he sexually assaulted her).}

Indeed, the vulnerable position in which some victims are put when taken to rural areas sometimes leads to conviction for a more serious offense. In a 2002 Texas case, the defendants kidnapped, sexually assaulted, and then released the victim in a rural area.\footnote{Wray v. State, Nos. 03-01-00626-CR, 03-01-00627-CR, 03-01-00628-CR, 2002 WL 3152588, at *2 (Tex. App. Nov. 15, 2002).} The defendants argued on appeal that they should not have been convicted of aggravated kidnapping, but rather of a lesser offense, because they had released the victim in a “safe place.”\footnote{Id. (citing TEX. PENAL CODE ANN. § 20.04(d) (West Supp. 2002)).} The appellate court agreed with the trial judge that the victim had not been released in a safe place, noting testimony that the place was “‘in the country,’” where there were “‘mainly fields and that sort
of thing’‖ with a few trailer houses and a bait shop.\textsuperscript{180}

Similarly, the U.S. Supreme Court found sufficient the jury instructions in a 1977 case in which the defendants kidnapped and robbed their victim before abandoning him without his trousers, boots, coat, or glasses, “on an unlighted, rural road.”\textsuperscript{181} In poor visibility from blowing snow and a temperature near zero, the victim was struck and killed by a speeding pickup truck twenty minutes later.\textsuperscript{182} The defendants argued that they could “not have anticipated the fatal accident.”\textsuperscript{183} The judge “advised the jury that ‘a person acts recklessly with respect to a result or to a circumstance . . . when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists.’”\textsuperscript{184} The perilous situation in which the defendants left the victim—including the rural location—thus supported the finding of “a substantial and unjustifiable risk” of death.

While most cases in which the vulnerability stemming from spatial isolation has influenced a legal outcome do not involve gender issues, a few do. For example, the Indiana Court of Appeals in 2004 upheld an administrative law judge’s ruling that an employer had sexually harassed two women who worked in his home, which served as the office for his elevator installation business.\textsuperscript{185} The court determined that the employer, sole proprietor of the business, harassed two secretaries who worked for him for consecutive periods.\textsuperscript{186} Among the allegations were that he appeared before them semi-clad (no shirt) and finished dressing in their presence; showed pictures of himself and his prior girlfriend skinny dipping; said his bathtub was large enough for two; called them into his bedroom to see something on television; and told them that he should put golden arches, standing for “2,000 served” over his bed.\textsuperscript{187} The court quoted the administrative law judge’s findings of fact (endorsed by the Indiana Civil Rights Commission), with respect

\textsuperscript{180} Id. at *3. The court continued:

CP had been sexually assaulted by two strangers, and the examining nurse later found thirty-six areas of acute physical trauma to her body. CP was clothed but barefoot, was still under the influence of alcohol, and did not know where she was. She was afraid that her assailants, who she believed were armed, would return. It was before dawn, and CP was unable to rouse the residents of the trailer houses in the area. Eventually, a passing car stopped and its occupants summoned help.

\textsuperscript{182} Id.
\textsuperscript{183} Id. at 148.
\textsuperscript{184} Id. at 149 (emphasis omitted).
\textsuperscript{186} Id. at 1201–05.
\textsuperscript{187} Id. at 1202–05.
to each woman, that the woman and her employer “worked in a house, with nobody else present, subject to visitors rarely and only by appointment and that the house was located in a rural, sparsely populated area.” In upholding the administrative findings, the court cited Seventh Circuit precedent for the proposition that the “presence or absence of other persons, and other aspects of context” are relevant to the determination of harassment. The opinion emphasized the rural location of the employer’s home-based business, noting it three additional times. The court thus clearly saw the rural setting—because it connoted the absence of the other persons—as critical context in assessing sexual harassment.

Similarly, some intimate abuse cases have also acknowledged the aggravated vulnerability associated with presence in rural areas. The Nebraska Court of Appeals in 2001, for example, cited a woman’s situation in a rural area as justification for shooting her husband. The court held that the sentencing judge had abused his discretion by imposing an excessive sentence on the woman. He explained that she was “in a rural area with an intoxicated and angry person with a history of physical abuse who had only moments earlier abused her.” Another case cited an abusive husband’s frequent threat while beating his wife, that “no one would hear a gunshot coming from their rural residence,” to justify a $340,000 damages award for intentional infliction of emotional distress. These decisions, as well as those in other criminal contexts that recognize the enhanced vulnerability attendant to distance from sources of assistance, are good models for appropriate legal responses to the intimate abuse of rural women.

---

188 Id. at 1203–05.
189 Id. at 1213 (quoting Baskerville v. Culligan Int’l Co., 50 F.3d 428, 431 (7th Cir. 1995)).
190 See id. at 1213 (“rural location”); id. at 1215 (“rural, isolated area”); id. at 1216 (“rural, isolated office”).
192 Id. at 288.
193 Id. at 289. The court continued:

These facts are not disputed. Kurt’s claim that he was “incensed” at having a gun pointed at him in his own home is a ridiculous excuse for charging at Charlene while she held a gun. It can only mean that he intended to take that gun away from her. No reasonable person in Charlene’s position, given the history of spousal abuse, would expect that Kurt would stop at merely taking the gun from her. Kurt’s rights in his own home can be no greater than Charlene’s right to be free from physical abuse in her own bedroom.

Id. The concurring judge offered an even more emphatic opinion reversing the trial judge. See id. at 291–92 (Hannon, J., concurring in part and dissenting in part).
195 Id. at *44–45.
B. Termination of Parental Rights

The reservation is in a very rural area and commuting to Las Vegas is fifty plus miles. And, we had at that time no suitable day care at the reservation. He was an infant. We had Head Start, but there was no way for her to leave him.196

The same structural barriers that contribute so significantly to rural poverty—poor educational and job opportunities, and lack of child care and transportation, among others197—frequently shape the situations that put rural mothers at risk for termination of their parental rights. Procedures and substantive law regarding termination of parental rights vary somewhat from state to state, but they usually involve a fact-intensive inquiry that scrutinizes a given parent’s behavior. Courts frequently discuss not only the parent’s history of interaction with the child(ren), but also employment records, education level, and other factors, such as tolerance of domestic violence.198 While some courts show considerable empathy for the particular challenges a rural parent faces, others appear oblivious to the realities confronting her.

In some cases, the very decision to live in a rural area is held against a mother. In such cases, the rural locale of the mother’s home appears to be the proverbial last straw, as other factors already weigh against her. For example, in a 2001 Iowa decision the appellate court opined that a mother had “not demonstrated

196 Recodo v. State (In re Bow), 930 P.2d 1128, 1138 (Nev. 1997) (quoting a social worker testifying about obstacles to employment facing a mother whose parental rights were at stake), overruled by In re N.J., 8 P.3d 126 (Nev. 2000).
197 Pruitt, supra note 53, at Part II (detailing the structural barriers to rural women’s economic self-sufficiency); see also Smith & Coward, supra note 42at 225 (discussing the impact of geographical isolation and “space relationships” on rural families).
that she can act in the best interests of her children." The court cited as evidence of this her rural home in a trailer park, "isolated from services, shopping, or neighborhood resources." It noted both the mother’s lack of transportation and the lack of services within walking distance, having already recited the mother’s history of abusive relationships, as well as her job and housing insecurity while her case was pending.

A 2002 Delaware decision looked unfavorably on a mother’s decision to live with her own mother, the child’s grandmother, “in rural New Castle County along Route 13 away from regular lines of public transportation,” which made her “dependent upon others to get to work.” While the court articulated other factors in support of its decision to terminate the mother’s parental rights, it also noted that the mother had rejected the option of relocating to a shelter where she could “receive services and live with her daughter.”

While these courts recognize the transportation challenges and attendant isolation from services that rural parents face, they appear to ignore these parents’ dearth of housing options other than those in the rural locale. By judging women harshly for living in rural areas and suggesting that they move to more populous ones, these decisions go beyond the remedial actions dictated in other contexts. For example, in the workers’ compensation and disability settings courts have held that rural residents need not relocate to a larger job market in order to secure

---

200 Id. at *7.
201 Id.
202 Id. at *6–7.
203 Div. of Family Servs. v. L.X., 801 A.2d 12, 21 (Del. Fam. Ct. 2002). The court also wrote:

Residing in Grandmother’s home may provide Mother with temporary shelter, but at what expense. Living there subjects Mother to complete dependence upon maternal Grandmother for food, transportation and the ability to be employed in addition to shelter. Grandmother’s residence lacks sufficient number of bedrooms, Mother having indicated that if K were returned to her there, Mother would sleep in the living room; it provides no access to public transportation which Mother requires in light of Mother’s inability to drive and the expressed reluctance by maternal Grandmother to assist Mother in Mother gaining driving experience through the use of Grandmother’s automobile; and ultimately residing there would place K back in an environment with an established history of interpersonal conflict as well as physical and emotional abuse.

Id. at 25.
204 See id.
205 Id. at 21.
replacement employment. Injured and disabled workers are allowed to receive benefits while continuing to live in rural areas where limited labor markets leave them without appropriate employment options.

By suggesting that a woman should move to the city in order to retain her parental rights, judges imply that places are fungible. In so doing, they overlook another rural reality: residents’ greater attachment to place. As discussed in Part I, many rural women are reliant on the networks they have accrued in their home communities, and abandoning these would represent a significant loss. By telling these women to move to the city, courts reveal an urban bias.

Other judges are more attuned to the realities of rural living and exhibit an understanding of its consequences. A dissenting judge in a 1997 Nevada case, In re Bow, showed particular sensitivity to the burdens associated with spatial isolation from educational options and foster homes, as well as the limited job opportunities available to rural parents. The Native American mother whose rights were at stake, Adrina Recodo, was living with her grandparents in rural southern Nevada when she gave birth to her son Michael. When Michael was

---


207 See infra notes 322–328 and accompanying text (discussing decisions that do not penalize rural residents for the limited job market and do not require the residents to move in order to secure replacement employment).

208 See HAC, TAKING STOCK, supra note 23, at 16 (“[R]ural residents are less likely to move than their metro counterparts . . . ”); Karen Anijar, Reframing Rural Education—Through Slippage and Memory, in THE HIDDEN AMERICA, supra note 37, at 234, 236 (indicating that most of the population for a study of students in the rural South were born in their area of residence); Robert M. Gibbs, College Completion and Return Migration Among Rural Youth, in RURAL EDUCATION AND TRAINING IN THE NEW ECONOMY: THE MYTH OF THE RURAL SKILLS GAP 61, 73 (Robert M. Gibbs et al. eds., 1998) (reporting that although “20% of all colleges are located in rural areas, 53% of rural students attend rural colleges,” indicating an attachment to place, or at least that which is familiar); Smith & Coward, The Family in Rural Society, supra note 42, at 225 (noting that rural attitudes about the relationship between people and the land may differ from those in urban areas); Rosser, supra note 85, at 42–44. This attachment to place may be linked to rural residents’ historical attachment to their land. See Pruitt, supra note 4, at 191 nn.156–57 (citing Paul S. Taylor, Public Policy and the Shaping of Rural Society, 20 S.D. L. REV. 475, 497 (1975) (discussing links between rural lives and land ownership in the context of arguing for a public policy that preserves family farms)).

209 See supra Part I.B.


211 See id. at 1135–38 (Springer, J., dissenting).

212 See id. at 1129. Recodo had four other children at the time of the hearing. Id. Three lived with her former husband, who had beaten her during their marriage. Id. Another daughter lived with Recodo at her grandmother’s house. Id.
fourteen months old, Recodo voluntarily placed him in foster care because she was unable to care for him.\textsuperscript{213} She and the tribe’s social worker made a six-month plan whereby Recodo would complete her GED, look for employment in Las Vegas on weekdays, and care for Michael on weekends.\textsuperscript{214}

During this time Recodo struggled to get into Las Vegas every day.\textsuperscript{215} She drove her grandfather’s car until she was unable to afford gas, and then she stayed with friends or studied and slept in her car.\textsuperscript{216} According to the case report, Recodo’s financial circumstances were so dire at this point “that often she would not eat for days just so she could afford to drive to Las Vegas to attend school and to try to find a job.”\textsuperscript{217} Eventually, Recodo no longer had access to a car, but she rode her bike or tried to get rides with friends into Las Vegas.\textsuperscript{218} Conflicting evidence was presented regarding the frequency of Recodo’s visits to her son, but a trial judge determined that she saw him only three times during one fifteen-month period.\textsuperscript{219} She held two jobs during part of that period but lost both because of insubordination.\textsuperscript{220}

A judge terminated Recodo’s parental rights to Michael following a hearing in May 1995, and the Nevada Supreme Court upheld the decision.\textsuperscript{221} Justice Springer disagreed, offering this alternative summation of facts in his dissent:

Adrina Recodo was the victim of an abusive domestic relationship, and she sought the help of a social worker on the Paiutes Reservation, stating that she was having problems taking care of her son after she got out of the relationship. She told her case worker that she had no income, no place to live and no transportation. In need of money, food and a place to live, the State’s response was to send Ms. Recodo to a psychologist. The State also decided to take her son away from her and to place him in foster care. Ms. Recodo was destitute; and on many occasions she was faced with the choice of eating or spending the money on transportation that would take her to school or to try and find a job.\textsuperscript{222}

Justice Springer said Ms. Recodo had “tried” to better her situation so that she could keep her son, and he criticized the State for its position that they held no

\textsuperscript{213} Id. In his dissenting opinion, Justice Springer disputed the voluntary nature of the placement. Id. at 1137 (Springer, J., dissenting).
\textsuperscript{214} Id. at 1130 (Springer, J., dissenting).
\textsuperscript{215} Id.
\textsuperscript{216} Id.
\textsuperscript{217} Id.
\textsuperscript{218} Id.
\textsuperscript{219} Id. at 1131.
\textsuperscript{220} Id.
\textsuperscript{221} Id. at 1134 (finding that sufficient evidence existed to support the decision and concluding that Ms. Recodo had not been denied her due process rights).
\textsuperscript{222} Id. at 1137 (Springer, J., dissenting).
responsibility for helping her. Justice Springer quoted the appellant’s social worker, who recognized that transportation and child care were major problems in light of Recodo’s rural home: “The reservation is in a very rural area and commuting to Las Vegas is fifty plus miles. And, we had at that time no suitable day care at the reservation. He was an infant. We had Head Start, but there was no way for her to leave him.” Justice Springer concluded by characterizing the obstacles put in the way of Ms. Recodo by the state as “almost insurmountable.” He thus not only offered a much more empathic vignette than the majority, Justice Springer also expressly discussed the particular burden that spatial isolation cast upon this rural mother.

Like Justice Springer’s dissent in Bow, other judges have been more sensitive to the particular structural barriers that rural parents face. One court lauded rural parents specifically for making bi-monthly visits to their children “despite the hardships attendant to living in a rural area without private transportation.” Another court reversed the termination of parental rights of a woman who left her daughter with a relative and did not reclaim her for several weeks. That court excused the mother’s actions because she had taken refuge from her abusive husband (who had recently sexually abused their other daughter) in a rural locale where she had no transportation or telephone.

Although none of these decisions turned solely on the rural setting, each court acknowledged it. Some understood its relevance in light of the structural challenges it presented for the rural parents and handled it as a mitigating factor. Others, however, did not, failing to grasp the significance not only of the aggravated disadvantage of spatial isolation from jobs and services, but also of long-time rural residents’ attachment to place.

C. Abortion

While traveling seventy miles on secondary roads may be inconsequential to my brethren in the majority who live in the urban sprawl of Baltimore, as the district court below and I conclude, such is not to be so casually addressed and treated with cavil when considering the plight and effect on a woman residing in rural Beaufort County, South Carolina.

---

223 Id. at 1137–38. Justice Springer expressed disapproval of the trial judge’s statement that “the [Welfare] Division cannot be expected to get Recodo a job, a home, and to provide financial stability.” Id. at 1137 (alteration in original).
224 Id. at 1138.
225 Id.
228 Id. at 157–58, 160.
Abortion is perhaps the only legal context in which the particular realities of rural women have been an explicit focus—if only barely and briefly—in making law. Several decisions have closely examined details of the obstacles that informed consent and waiting period requirements represent for rural women seeking abortions. While such consideration has not led to success in securing a less restricted abortion right, it has put rural women on feminists’ proverbial radar as a distinct population of women who share some significant challenges. The following sections scrutinize judicial responses to hardships that, collectively, are unique to rural women who are seeking abortion services.

Interestingly, many states that impose the greatest restrictions on abortion are states with significant rural populations. See Guttmacher Inst., State Policies in Brief: An Overview of Abortion Laws 3 (2007), available at http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf. Twenty-eight states require women to undergo pre-abortion counseling, id. at 1, and twenty-one mandate a twenty-four-hour waiting period, id. at 3. Of the thirteen most rural states in the country, six impose these restrictions. See id. In addition, seven states have partial-birth abortion bans that apply throughout pregnancy and eight have bans that lack an exception for the health of the mother. Guttmacher Inst., supra, at 2; see Gonzales v. Carhart, 127 S. Ct. 1610, 1638-39 (2007) (upholding the constitutionality of the Partial-Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531 (2006), against a facial challenge despite lack of a health exception, and distinguishing Stenberg v. Carhart, 530 U.S. 914 (2000), which struck down Nebraska’s ban as unconstitutional because it did not contain a health exception). About half of the states with partial birth abortion bans fall within the “most rural” category. See Guttmacher Inst., supra, at 2.

Prior to Casey, 503 U.S. 833, a few abortion decisions explicitly considered the situation of rural women. In Planned Parenthood League v. Belotti, the First Circuit Court of Appeals in 1981 struck down a Massachusetts law that imposed a twenty-four-hour waiting period. 641 F.2d 1006, 1023 (1st Cir. 1981). The court wrote that the burdens in terms of time, money, travel, and work schedules would be “substantial,” especially for the “poor, the rural, and those with pressing obligations.” Id. at 1015.

The federal district court in Hodgson v. Minnesota grappled with the realities of rural women’s lives—both in terms of spatial isolation from services and lack of anonymity. See 648 F. Supp. 756, 770, 779 (D. Minn. 1986), rev’d, 853 F.2d 1452 (8th Cir. 1988), aff’d, 497 U.S. 417 (1990). The district court wrote:

---


231 See, e.g., Caitlin E. Borgmann, Winter Count: Taking Stock of Abortion Rights After Casey and Carhart, 31 Fordham Urb. L.J. 675, 716 (2004) (arguing that individual restrictions on abortion “pile up,” especially for poor and rural women); Gillian E. Metzger, Unburdening the Undue Burden Standard: Orienting Casey in Constitutional Jurisprudence, 94 Colum. L. Rev. 2025, 2038 (1994) (noting that regulations constitutional in Pennsylvania might not be in more rural or poorer states); Valerie Pacer, Salvaging the Undue Burden Standard—Is It a Lost Cause? The Undue Burden Standard and Fundamental Rights Analysis, 73 Wash. U. L.Q. 295, 310 (1995) (arguing that the undue burden standard has a disparate impact on women who are poor, young, battered, and/or rural).
context as in several others, the law has turned a blind eye to the very real plight of the rural populace, especially those with the fewest resources.

1. Casey and the Undue Burden Test

In its 1992 decision Planned Parenthood of Southeastern Pennsylvania v. Casey, the U.S. Supreme Court reaffirmed the basic holding of Roe v. Wade: every woman has a fundamental right to obtain an abortion prior to fetal viability. But the Casey Court also made new law in setting forth the undue burden test for determining the constitutionality of laws that restrict abortion.

In view of the logistical obstacles facing Minnesota women who live in counties without a regular provider of abortion services, the court believes a 48 hour waiting period is excessively long. Travel to an abortion provider, particularly in winter from a rural area in Minnesota, can be a very burdensome undertaking. A requirement that a minor either bear this burden twice or spend up to three additional days in a city distant from her home cannot be justified by the State’s interests in encouraging parental consultation, because a shorter waiting period would effectuate that interest as completely.

Id. at 779. The Eighth Circuit’s reversal of the decision did not mention rural women. See 853 F.2d at 1457 (mentioning only briefly the concerns that the lower court had for rural women). Only Justice Marshall, dissenting from the Supreme Court’s affirmation of the Court of Appeals, again briefly acknowledged rural women. 497 U.S. at 476 (Marshall, J., dissenting). He noted that because judges in some counties refuse to hear bypass procedures, women must travel to judges who will. Id. He wrote that the burden of doing so, which often requires “an overnight stay in a distant city[,] is particularly heavy for poor women from rural areas.”

In the 1977 decision in Poelker v. Doe, the U.S. Supreme Court held that a city hospital’s refusal to perform abortions for indigent women, even though it provided full prenatal care to those carrying babies to term, was not an equal protection violation. 432 U.S. 519, 521 (1977). Justice Brennan, writing for three dissenters, called the unavailability of abortion in public hospitals an “insuperable obstacle” and noted that the decision would be “felt most strongly in rural areas, where the public hospital will in all likelihood be closed to elective abortions” and where demand for a separate abortion clinic will be insufficient. Id. at 524 (Brennan, J., dissenting).

The Court applied the test to several restrictions in a Pennsylvania law: a spousal notification requirement, a parental notification requirement, and a mandatory informed consent provision that included a twenty-four-hour waiting period. The Court explained that “[a] finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”

Unfortunately, the joint opinion in *Casey* did not provide much instruction about how lower courts should determine whether a regulation’s purpose is to impose an undue burden.

At first blush, the undue burden inquiry appears to be a fact-intensive one. Indeed, the *Casey* Court’s analysis of the so-called spousal notification provision—which it ultimately declared an undue burden, was fact driven. The plurality devoted twelve pages to discussing this provision, examining both the trial court’s extensive findings of fact and an American Medical Association summary of research about domestic violence. The Court acknowledged that between two and four million women are victims of severe domestic violence each year, with the worst abuse sometimes associated with pregnancy. The Court determined that the spousal notification provision was “likely to prevent a significant number of women from obtaining an abortion.” Because many instances of domestic violence (i.e., unreported marital sexual assault, psychological abuse, spousal

---

236 *Casey*, 505 U.S. at 879.
237 *Id.* at 877 (emphasis added).
238 Okpalobi v. Foster, 190 F.3d 337, 354 (5th Cir. 1999).
239 The spousal notification provision required a woman to produce a signed statement certifying that she had notified her husband of her intent to have an abortion. *Casey*, 505 U.S. at 887–98. The spousal notification provision contained some narrow exceptions, including for situations where the woman certified that her spouse was not the father of her child, that she could not find her spouse, that the pregnancy was the result of a sexual assault by her spouse that she reported, or that she had reason to believe that notifying her spouse would cause him, or another, to inflict bodily injury upon her. *Id.* at 908–99. A physician who performed an abortion without obtaining the required statement would have her license revoked and be liable to the woman’s husband for damages. *Id.*
240 *Id.* at 887–99.
241 *See id.* at 888–91. The district court found that “[t]he vast majority of women consult their husbands prior to deciding to terminate their pregnancy,” but it also determined that “[a] wife may not elect to notify her husband of her intention to have an abortion for a variety of reasons.” *Id.* at 888. The spousal notification requirement would “force women to reveal their most intimate decision-making on pain of criminal sanctions,” but “the confidentiality of these revelations could not be guaranteed, since the woman’s records are not immune from subpoena.” *Id.* at 889.
242 *See id.* at 891.
243 *Id.* at 889.
244 *Id.* at 893.
infliction of harm upon a woman’s family members) did not fall within the relatively narrow exceptions to the spousal notification requirement, it would not simply make abortions more difficult to procure, but would actually deter some women entirely, thus imposing an undue burden. Although the Court found that the provision imposed no burden on the vast majority of women seeking an abortion, it analyzed whether the provision was an undue burden only in relation to the admittedly very small population of women it would affect: those who were unwilling to share their decision with their spouse for fear of retaliatory violence.

Aside from the spousal notification provision, the Casey Court offered little close factual examination of obstacles created by other aspects of the Pennsylvania law. It upheld the law’s parental notification provision for minors by stating simply, “[w]e have been over this ground before.” The Court reaffirmed prior decisions holding that a law requiring a minor seeking an abortion to get parental consent is constitutional, so long as it includes an adequate judicial bypass procedure.

The Casey Court’s handling of the waiting period requirement is more complicated because of conflicts between the district court’s factual findings and those the Third Circuit chose to examine. The district court found that “for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others, the 24-hour waiting period will be ‘particularly burdensome.’” It then concluded that the waiting period would require every woman to make two trips to an abortion provider and that forty-two percent of women would have to travel more than an hour just to get to the nearest clinic.

The Third Circuit retreated, finding that the “waiting period may require . . . two visits to a clinic.” That court went on to conclude that “the wait

245 Id. at 893–94.
246 Id. at 894–95. Even though the spousal notification requirement would affect less than one percent of women seeking an abortion, the Casey Court decided that “the proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom it is irrelevant.” Id. at 894.
247 Id. at 899.
248 Id.
249 Id. at 886 (quoting Planned Parenthood of Se. Pa. v. Casey, 744 F. Supp. 1323, 1352 (E.D. Pa. 1990)).
250 See Casey, 744 F. Supp. at 1352. The district court noted that in 1988, fifty-eight percent of women getting abortions in the state had resided in just five of Pennsylvania’s counties, meaning women living in any of the “other 62 counties must travel for at least one hour, and sometimes longer than three hours, to obtain an abortion from the nearest provider.” Id.
251 Planned Parenthood of Se. Pa. v. Casey, 947 F.2d 682, 706 (3d Cir. 1991) (emphasis added). “[T]his means that the overall cost of an abortion to her may increase by a significant percentage.” Id. Planned Parenthood’s petition for certiorari discussed this
does not prevent any women from having an abortion.”\textsuperscript{252} Rather than adhering to the factual findings below, then, the appellate court seemed to alter them slightly to support a different result.

Although the Supreme Court purported to analyze the district court’s findings of fact, referring to some of them as “troubling in some respects,”\textsuperscript{253} it played a semantic game with the district court’s conclusions. The Supreme Court said the trial judge had not concluded “that the increased costs and potential delays amount to substantial obstacles,”\textsuperscript{254} the term the Court used to define “undue burden.”\textsuperscript{255} The plurality continued:

We also disagree with the District Court’s conclusion that the “particularly burdensome” effects of the waiting period on some women require its invalidation. A particular burden is not of necessity a substantial obstacle. Whether a burden falls on a particular group is a distinct inquiry from whether it is a substantial obstacle even as to the women in that group. And the District Court did not conclude that the waiting period is such an obstacle even for the women who are most burdened by it. Hence, on the record before us, and in the context of this facial challenge, we are not convinced that the 24-hour waiting period constitutes an undue burden.\textsuperscript{256}

From the beginning, then, the Supreme Court applied the “undue burden” standard inconsistently.

2. Waiting Periods and Rural Women Under Casey

Because the main focus of this Article is to reconsider the burden that abortion restrictions place on rural women, I return here to the district court’s detailed findings of fact regarding the waiting period. In addition to determining problem, noting that the Third Circuit had “substituted for the record actually developed here a factual finding implicitly adopted in a different case involving completely distinct issues.” Brief of Petitioner-Appellant at 50, \textit{Casey}, 505 U.S. 833 (Nos. 91-744, 91-902), 1992 WL 551419. Planned Parenthood argued that if undisputed factual findings could be “discarded so cavalierly, the ‘undue burden’ test was truly meaningless.” \textit{Id.} The Supreme Court, however, never touched on the substituted factual record and seems to have accepted the Third Circuit’s version of it.

\textsuperscript{252} \textit{Casey}, 947 F.2d at 707. The Third Circuit also wrote that “possible overinclusiveness of the provision does not render it irrational, especially given the serious and irreversible consequences of a hasty and ill-considered abortion decision.” \textit{Id.}

\textsuperscript{253} \textit{Casey}, 505 U.S. at 886.

\textsuperscript{254} \textit{Id.}

\textsuperscript{255} \textit{See id.} at 877. \textit{See Wharton, supra} note 235, at 336 (quoting Laurence Tribe, who characterized this semantic maneuver as “hypertechnical”).

\textsuperscript{256} \textit{Casey}, 505 U.S. at 886–87.
that the waiting period would force all women seeking abortions in Pennsylvania to make at least two visits to an abortion provider, the court found that the “waiting period” would cause “delays far in excess of 24 hours” because most clinics and physicians do not perform abortions every day.\textsuperscript{257} Because the mandatory wait would require women to double their travel time or stay overnight near an abortion facility, the court noted that many would not only incur added expenses for transportation, lodging, child care, and food, but would also “lose additional wages or other compensation” if forced to miss work twice.\textsuperscript{258} Further, the court noted, delays associated with the waiting period would push some patients into the second trimester, thus substantially increasing the cost and risks of the procedure.\textsuperscript{259}

The court concluded: “Finally, women living in rural areas and those women that have difficulty explaining their whereabouts, such as school age women, battered women, and working women without sick leave, will also experience significant burdens in attempting to effectuate their abortion decision, if a mandatory 24-hour waiting period were in place.”\textsuperscript{260} Although the district court did not utilize the undue burden standard, its findings indicate that the waiting period imposes significant burdens on some women. It enumerated rural women as one such group.

Two organizations that filed amicus briefs with the Supreme Court on behalf of Planned Parenthood also closely examined the effects of the twenty-four-hour waiting period and expressed concern for rural women. The American Psychological Association’s brief highlighted the district court’s findings regarding travel distances.\textsuperscript{261} The brief observed that “[i]n many geographic areas of the country, women live long distances, even hundreds of miles, from the nearest abortion provider.”\textsuperscript{262} It also cited research showing that the greater a woman’s distance from a provider, the less likely she is to procure an abortion.\textsuperscript{263}

\textsuperscript{257} Planned Parenthood of Se. Pa. v. Casey, 744 F. Supp. 1323, 1351 (3d Cir. 1991). The district court concluded that the delays were likely to vary from forty-eight hours to two weeks. \textit{Id.} at 1352.

\textsuperscript{258} \textit{Id.} at 1379 (emphasis added).

\textsuperscript{259} Brief for Amicus Curiae American Psychological Ass’n in Support of Petitioners at 29, \textit{Casey}, 505 U.S. 833 (Nos. 91-744, 91-902), 1992 WL 12006399. These included the fact that one clinic was the primary abortion provider for eighteen counties and that, among another clinic’s patients, 909 traveled at least 100 miles to reach the clinic. \textit{Id.} at 29 n.65.

\textsuperscript{260} \textit{Id.} at 28.

\textsuperscript{261} \textit{Id.} at 28–29 (citing Stanley K. Henshaw & Jennifer Van Vort, \textit{Abortion Services in the United States, 1987 and 1988}, 22 \textit{FAM. PLAN. PERSP.} 102, 105 (1990); James D. Shelton et al., \textit{Abortion Utilization: Does Travel Distance Matter?}, 8 \textit{FAM. PLAN. PERSP.} 260, 260 (1976)). In non-metro areas, ninety-three percent of counties have no provider, and eighty-three percent of (non-metro) women live in those counties. Henshaw & Van Vort, \textit{supra}, at 106.
The National Association for the Advancement of Colored People’s (“NAACP”) amicus brief focused in part on the waiting period’s impact on low-income urban women, and called special attention to the “acute” problem for rural women. The NAACP cited data and examples from rural states, including the fact that at the time not a single physician residing in North Dakota performed abortions, and only one South Dakota physician did so. The sole abortion clinic in northern Minnesota served twenty-four counties. The brief highlighted the fact that eighty-two percent of all U.S. counties—home to one-third of all reproductive-age women—had no abortion provider as of 1985 and that even more non-metro counties—ninety percent—presently had no provider. The NAACP thus argued that the mandatory waiting period would effectively prohibit abortion for poor women because of the increased cost of obtaining an abortion and the “barriers of distance and mobility.”

264 Brief of Amici Curiae of the NAACP Legal Def. & Educ. Fund, Inc. et al. in Support of Planned Parenthood of Se. Pennsylvania at 1–3, 21, Casey, 505 U.S. 833 (Nos. 91-744, 91-902), 1992 WL 12006401. It noted that “women with family incomes under $11,000 are nearly four times more likely to have an abortion than women with family incomes over $25,000.” Id. at 17 (citing GUTTMACHER INST., GOLD, ABORTION AND WOMEN’S HEALTH: A TURNING POINT FOR AMERICA? 5, 16 (1990)). “At least one study indicates that for women below the poverty level, six out of ten births are unintended, i.e., unwanted or mistimed, compared to three out of ten births to women above 200% of the poverty level.” Id. at 18 (citing Stephen E. Radecki, A Racial and Ethnic Comparison of Family Formation and Contraceptive Practices Among Low-Income Women, 106 PUB. HEALTH REP. 494, 500 (1991)). The brief attributed the higher rate of unintended pregnancies among poor women to the greater incidence of contraceptive failure and their preference for fewer children. Id. at 17.

265 Id. at 21–22.

266 Id. at 22. The brief noted the particular plight of Native American women, who often live in rural areas:

In particular, poor Native American women face some of the largest obstacles, since the Indian Health Services, which may be the only familiar provider of health care and the only health service available for hundreds of miles, is prohibited from performing abortions even if women can find the monetary resources to pay for the procedure themselves.

267 Id. at 20–21. The brief cited, as an example, the Women’s Health Services clinic in Pittsburgh, which serves thirty-four counties in Pennsylvania, portions of Ohio, West Virginia, Maryland, and New York. Id. That agency’s Executive Director stated that women often travel three or four hours to reach the clinic, sometimes much longer if they travel by bus. Id.

268 Id. at 22–23.

269 Id. at 20. “Overcrowded conditions at public facilities delay and frequently foreclose timely treatment. At Health and Hospitals medical clinics in New York City, for example, patients must wait six to twenty-two weeks to get a first clinic appointment;
In their arguments to the Supreme Court, both Planned Parenthood and amici curiae highlighted the plight of rural women as a group or class, with further emphasis on the aggraved burden for poor rural women. Yet the Justices in the Casey plurality were unmoved by evidence of these burdens. The Court concluded that while the increased cost and inconvenience to women might make it difficult for them to get abortions, it would not actually deter them. Indeed, in spite of the district court’s and plaintiffs’ attention to rural women, the word “rural” appears only once in 168 pages of Casey opinions. Justice Blackmun used the word in his separate opinion where he quoted the district court’s finding that the waiting period “would pose especially significant burdens on women living in rural areas and those women that have difficulty explaining their whereabouts.”

When a majority of Justices in Casey concluded that the threat of domestic violence from the spousal notification provision would deter women, but that the waiting period would merely inconvenience them, they set up a dichotomy between violence (or the threat of it) on one hand, and economic disaster (or the threat of it) on the other. The Court essentially assumed that women will forego abortion to avoid the former but not the latter. This assumption is unfounded. While I do not dismiss or downplay the significance and severity of physical abuse, it bears noting that many victims of intimate abuse remain with their abusers for financial reasons. For example, women sometimes opt not to leave women must wait four to fifteen weeks for an appointment with a gynecologist.” Id. at 20 n.13.

270 Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 937 (1992) (Blackmun, J., concurring in part and dissenting in part) (citing Planned Parenthood of Se. Pa. v. Casey, 744 F. Supp. 1323, 1378–79 (E.D. Pa. 1990)). However, the plurality did quote the district court as having found “that for those women who have the fewest financial resources, those who must travel long distances, and those who have difficulty explaining their whereabouts to husbands, employers, or others, the 24-hour waiting period will be ‘particularly burdensome.’” Id. at 886 (quoting Casey, 744 F. Supp. at 1352).


272 There is support for the proposition that women engage in a cost-benefit analysis before deciding to leave an abusive partner. Financial concerns, particularly when children are involved, make the final decision to leave more difficult. See Kristina Coop Gordon et al., Predicting the Intentions of Women in Domestic Violence Shelters to Return to Partners: Does Forgiveness Play a Role, 18 J. FAM. PSYCHOL. 331, 331 (2004) (suggesting that lack of personal income and low potential for securing employment are factors that weigh in favor of staying in the relationship); Helen M. Hendy et al., Decision to Leave
because without the male breadwinner they do not have the financial resources to support themselves and their children. They endure violence in order to avoid poverty. Ironically, the plurality in Casey recognized this phenomenon in analyzing the spousal notification provision, and it cited empirical research in support of it. The plurality nevertheless held that the waiting period does not constitute an undue burden—not even for rural women or others with severe financial constraints.

But survival is about more than avoiding a beating. If a woman will endure violence in order to be able to feed herself and her family, the chances are good that she will also forego an abortion in order to achieve the same end. Thus, the Casey Court was only half right about self-preservation in relation to abortion. It was correct about women’s likely response to the spousal notification provision, but it ignored the connection between the perils of physical violence on the one hand and economic disaster on the other. If, as even the Casey plurality recognized, women will endure physical violence to prevent financial ruin, they will forego abortion for the same purpose. The Court appeared oblivious to the fact that waiting periods risk that very tragedy for some women, as I illustrate in the following section.

3. Post-Casey Decisions

The Casey Court indirectly stated that it was deciding only the case before it, leaving the door open for other challenges to the provisions it upheld. Subsequent courts have nevertheless been reluctant to deviate from Casey’s holdings. As Gillian Metzger observes, “regulations that are not burdensome in Pennsylvania may well be burdensome in other states where there are fewer abortion providers or a more rural and poorer population.” By and large, however, courts have been unwilling to examine in detail the particular burdens on

Scale: Perceived Reasons to Stay in or Leave Violent Relationships, 27 PSYCHOL. WOMEN Q. 162, 163 (2003) (stating that women are “more reluctant to leave violent relationships when they have investments of time, marriage, money, children, or emotional attachment”).

Deborah Weissman has also recently argued for a paradigm shift in how we view domestic violence. See Weissman, supra note 44, at Part II. She proposes that we consider domestic violence in relation to economic instability. Id. Similar to my assertion, Weissman argues, for example, that it is not sensible to “speak of patriarchy separate from the material conditions of everyday life.” Id. at Part I. She asserts that patriarchy is “mediated by and a function of economic forces.” Id. at Part I.

273 See 505 U.S. at 891–92 (citing B.E. Aguirre, Why Do They Return? Abused Wives in Shelters, 30 J. NAT’L ASS’N SOC. WORKERS 350, 352 (1985) (arguing abused women may return to their abusers because they have no other source of income); Tracey Herbert et al., Coping with an Abusive Relationship: I. How and Why Do Women Stay?, 53 J. MARRIAGE & FAM. 311 (1991)).

274 See id. at 887.

275 Metzger, supra note 231, at 2038.
the women in a state whose abortion regulations are challenged. Yet states continue to enact regulations that prevent at least some women—including those living a significant distance from an abortion provider—from exercising their right to an abortion. These regulations not only impose waiting period and informed consent requirements, some also involve parental consent for minors.

(a) Mandatory Waiting Periods, Informed Consent Laws, and Spatial Isolation

Utah Women’s Clinic, Inc. v. Leavitt is an excellent example of the tendency of post-Casey courts to assess constitutionality based more on an abortion regulation’s text than on the factual record. The plaintiffs in Leavitt argued that because Utah is larger than Pennsylvania and has only one metropolitan area, a twenty-four-hour waiting period would be more burdensome in that state than an equivalent regulation in Pennsylvania. Nevertheless, because the Utah regulation was less restrictive than the provision upheld in Casey, the federal district court concluded that it must be constitutional. Finding no significant differences either between the text of the Utah and Pennsylvania laws or in how they would affect women in their respective states, the court went as far as to call the plaintiffs’ argument a “red herring.”

276 Id. at 2037–38.
277 844 F. Supp. 1482 (D. Utah 1994) (upholding a twenty-four-hour waiting period as constitutional), rev’d in part on other grounds, 75 F.3d 564 (10th Cir. 1995).
278 See Karlin v. Foust, 188 F.3d 446 (7th Cir. 1999). The Karlin plaintiffs similarly presented evidence of “factual and demographic differences between Pennsylvania and Wisconsin” focusing on “the geographic distribution and scarcity of abortion providers in relation to the female population of Wisconsin.” Id. at 486. The court was not convinced, however, concluding that “the demographic differences between the two states were not significant enough to suggest that Wisconsin women are quantitatively more burdened” by the Wisconsin law than Pennsylvania women had been by the mandatory wait in Casey. Id. at 486–87. The plaintiffs argued that Wisconsin and Mississippi were analogous, but the Seventh Circuit, like the district court, found the Mississippi study methodologically flawed. Id. at 487–88. The Seventh Circuit said the study had not controlled “for the persuasive effect of the law.” Id. at 487. That is, the Court of Appeals speculated that the number of abortions in Mississippi might have declined not because the waiting period made getting an abortion more difficult, but because the materials presented as part of the informed consent law convinced women not to get abortions. Id. at 487–88.
280 Id.
281 Id. at 1491.
282 Id. at 1491 n.11.
The *Leavitt* judge reasoned that all women seeking abortions must travel to a clinic for the procedure, but that because the “travel burden is not a factor of state law[,] . . . . getting to a clinic has absolutely nothing to do with the constitutional inquiry here.” The court offered this hypothetical to illustrate its logic:

A woman in Alaska, for example, could be required to travel 800 miles to get to an abortion clinic merely because she lives in one place and the nearest abortion clinic is on the other side of the state. But that certainly doesn’t constitute anything even approaching an undue burden. *Roe v. Wade* may have established a constitutional right to an abortion, but it did not require that a state provide abortion clinics in close proximity to every woman’s home.

On the other hand, a waiting period which may require two visits to a clinic imposes an additional burden. For some women, this burden will require that they double their travel time by making a second trip to the clinic. For other women, in a worst-case scenario where the distance is such that it is impracticable to make a return visit, the burden will require an overnight stay at a location near the clinic.

Thus, the district court in Utah concluded that the regulation’s greatest burden on any woman—no matter where she lived in proximity to an abortion provider—was an overnight stay near that provider. It dismissed the possibility that some women would have to make two trips and therefore never considered that multiple trips might each be several days long. Because the *Casey* Court had not viewed an overnight stay as an undue burden, the judge in *Leavitt* reasoned that the Utah provision also did not constitute one.

Other judges in the post-*Casey* era have shown greater empathy for the plight of rural women seeking abortion in the face of mandatory waiting periods. However, these judges are either federal district judges who were subsequently overruled or dissenters from the decisions of courts of appeals. They have nevertheless called attention to the circumstances of rural women despite colleagues who, like the district judge in *Leavitt*, disregarded details of the obstacles facing rural women, or who saw the obstacles as being “merely” financial.

Although the Mississippi Supreme Court in 1998 upheld state regulations that imposed a mandatory twenty-four-hour waiting period, Justice Sullivan’s dissent

---

283 *Id.*
284 *Id.*
285 *See id.*
286 *Id.*
287 *See infra* notes 290–293, 295–99, 306–08 and accompanying text.
288 *See, e.g., Leavitt*, 844 F. Supp. at 1491 n.11.
289 Pro-Choice Miss. v. Fordice, 95-CA-00960-SCT (¶ 74) (Miss. 1998) (not using the word “rural” in the majority opinion).
in *Pro-Choice Mississippi v. Fordice* highlighted the “undue burden on low-income women living in rural areas.” Disputing the chancellor’s characterization of this burden as “mere inconvenience,” Justice Sullivan argued that the plaintiffs successfully demonstrated that the restrictions would preclude “a substantial number of women from obtaining abortions altogether, and create[,] an undue burden due to travel and lodging expenses, child care costs, loss of wages and other compensation, and health risks.” Noting that only two Mississippi counties had abortion providers, Justice Sullivan argued that the law was unconstitutional even if it created an undue burden only for low-income women and those living in rural areas. He also pointed to plaintiffs’ evidence that the number of Mississippi women obtaining abortions had decreased by thirteen percent since the law went into effect, suggesting that the waiting period was actually preventing at least a tenth of the state’s women from terminating their pregnancies.

The Seventh Circuit in *A Woman’s Choice-East Side Women’s Clinic v. Newman* similarly upheld an Indiana informed consent law requiring that a woman be given information in the presence of her doctor eighteen hours before obtaining an abortion. This 2002 case was decided on probably the best-developed factual record in the post-*Casey* era. Yet the evidence presented swayed only Judge Diane Wood, in dissent, to agree with the federal district court that the law constituted an undue burden.

The Indiana district court, relying in part on an updated version of the Mississippi study cited in *Fordice*, struck down the Indiana law as unconstitutional. It found that the supplemented study adequately demonstrated

---

290 Id. ¶ 80 (Sullivan, J., dissenting).
291 Id.
292 Id. (citing Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 883, 887–98 (1992) (holding that the spousal consent law was unconstitutional based on the small number of women with abusive husbands, for whom it would create an undue burden)).
293 Id. ¶ 81. This study was later discredited in *Karlin v. Foust*, 188 F.3d 446, 486–88 (7th Cir. 1999), but supplemented prior to *A Woman’s Choice-East Side Women’s Clinic v. Newman*, 305 F.3d 684, 689–90 (7th Cir. 2002). The study also indicated that the number of second-trimester abortions in Mississippi had risen by eighteen percent since the law went into effect. *Fordice*, 95-CA-00960-SCT (¶ 81).
294 305 F.3d at 685–86, 691–93. The decision also debated the burden represented by a so-called “presence” requirement. The Indiana statute required information to be given to the women seeking the abortion in the “presence” of the physician or physician’s assistant. *Id.* at 685. Information about abortions could therefore not be given in a pamphlet, by telephone, or through a web site. *Id.* The “presence” requirement thereby required the pregnant woman to make two trips to the clinic—one for the information and the other to receive the abortion. *Id.* The court held that the presence requirement did not create an undue burden on a woman’s right to abortion. *Id.* at 693.
295 See *id.* at 704–17 (Wood, J., dissenting).
296 A Woman’s Choice-E. Side Women’s Clinic v. Newman, 132 F. Supp. 2d 1150, 1173–75 (S.D. Ind. 2001). The plaintiffs in *Karlin* relied on an earlier version of the same study, but the court in that case questioned its validity. See 188 F.3d at 487–88. It was
that the Mississippi law caused a ten- to thirteen-percent decrease in abortions among that state’s residents, as well as a significant increase in more expensive, more dangerous second-trimester abortions. Based on these findings and on those of a similar study conducted in Utah, the court concluded that the waiting period would also cause the number of abortions performed in Indiana to decrease by ten to thirteen percent. The court further determined that this decline was due, not to the persuasive nature of the materials, but rather to obstacles imposed by the waiting period.

Two of three members of the Seventh Circuit panel viewed the factual evidence differently. Judges Easterbrook and Coffey refused to accept the district court’s assessment of the study because the plaintiffs failed to demonstrate that Indiana and Mississippi were similar, and that the consequences of the Mississippi law were likely to be manifest in Indiana. They believed the ten-percent decline in abortions, rather than representing a practical consequence of the two-visit requirement, was simply a consequence of the persuasive effect of the information. Writing for the majority, Judge Easterbrook asserted that Indiana’s law should be “evaluated in light of experience in Indiana.”

Echoing Casey’s elevation of concerns about violence against women over other concerns about their well-being, he suggested that a two-trip requirement would constitute an undue burden only if it deterred women by increasing the possibility of violence against them. Judge Easterbrook referred specifically to the “threat or actuality of violence at the hands of those tipped off by a preliminary visit” and said if evidence of such violence came to light in Indiana, it would require reconsideration of informed consent laws across the nation.

Judge Coffey, also in the majority, openly flouted the hardships and concerns of the ten to thirteen percent of women who might be unable to obtain an abortion. He concluded that legislation posing no substantial obstacle for eighty-seven to ninety percent of a state’s women, and which “may have the incidental effect of

supplemented before the trial in A Woman’s Choice, correcting several aspects that had been criticized.

A Woman’s Choice, 132 F. Supp. 2d at 1173. The court also found that the Mississippi law caused a significant increase in the number of that state’s residents who traveled out of state to obtain abortions and a significant decrease in the number of other states’ residents who came to Mississippi for abortions. Id.

Id.

Id. at 1176.

A Woman’s Choice, 305 F.3d at 692.

Id. at 690.

Id. at 692–93. This insistence on not comparing states or analogizing between them is ironic in light of other courts’ tendency in the context of abortion regulations to eschew state-specific, fact-intensive inquiries. See supra notes 277–86 and accompanying text.

Id.

Id.
reducing the demand for abortions by merely 10 to 13%, is reasonable, sensible, and lawful. Judge Coffey apparently disregarded the fact that those women deterred from getting an abortion by the mandatory waiting period (as many as thirteen percent) were, in fact, unduly burdened by it. Rather than seriously evaluating the evidence that substantiated the argument that waiting periods create undue burdens for some women, both Easterbrook and Coffey determined that because the waiting period would probably not increase violence against women, it was constitutional.

Once again, it was the dissenting judge who attended to the concerns of rural women as a class. Judge Wood wrote that Indiana, “like all states,” has “significant rural areas and significant numbers of people living far from a reproductive health services facility.” She cited statistics indicating that Indiana, with eleven abortion providers, had one “for almost every 3,300 square miles.” These clinics, which are not “distributed with perfect geographical regularity,” are most likely concentrated in cities, Judge Wood observed, meaning that women in rural Indiana lived “substantial distances from the nearest facility.”

The majority contingent in each of these opinions, like the federal district judge in Leavitt, overlooked or denied the lived realities of many rural women. They also ignored a critical aspect of Casey’s undue burden analysis of the spousal notification requirement: the relevant group of women with respect to whom the requirement was to be assessed. Informed consent and waiting period provisions do, in fact, have a greater impact on— and are in fact a greater deterrent to abortion for— rural women. They are an even more onerous burden on, and deterrent to, those among that group with low incomes.

305 Id. at 704 (Coffey, J., concurring).
306 Id. at 711 (Wood, J., dissenting).
307 Id.
308 Id. Judge Wood continued:

At most, the details the majority demands might suggest that more Indiana women can withstand the burdens of the Indiana statute than their counterparts in Mississippi could. But the question is not, for example, whether Indiana women as a group live closer to abortion clinics. It is whether an Indiana woman living 60 miles away from a clinic in Indiana who cannot afford (either financially, socially, or psychologically) to make two visits, will respond the same way a Mississippi woman living 60 miles away from a clinic in Mississippi with similar constraints did. To repeat, Casey made it clear that the set of women we must consider are those who are burdened by the law, and it found 1% enough to justify striking down the spousal notification rule. Maybe 10% of the women in Mississippi have that problem and “only” 3% of women in Indiana do. No matter. The district court was quite reasonable to find that women in Indiana are like all other people and that their responses will be the same as those of women elsewhere.

Id. at 711–12.
The geography of Utah may be referenced to illustrate this point. Consider first a working-class woman in Salt Lake City who enjoys little work schedule flexibility. She would likely have difficulty securing time off both to go through the informed consent meeting and to have the abortion. Depending on her schedule, she could arrange the two different appointments on different days of the same week or on consecutive weeks. If she were without a vehicle but lived in the Salt Lake City metro area, she would have some public transportation options to facilitate her journeys. Making two trips would likely be inconvenient, even burdensome to her. Multiple journeys might, for example, significantly increase the cost of the abortion if a lack of work flexibility or the existence of other duties forced her to schedule her second appointment during her second trimester. Still, the burden of the waiting period on her is unlikely to be as great as that on a woman living in rural southern Utah, as far as 300 miles from Salt Lake City.

Imagine a woman living in Boulder, Utah, for example, in the shadow of Grand Staircase-Escalante National Monument and fifteen miles from Utah Highway 12. She would be 327 miles (seven hours) from Las Vegas; 367 miles (seven hours and fifty-five minutes) from Flagstaff, Arizona; 381 miles (seven hours and fifty-eight minutes) from Aspen, Colorado, and 261 miles (five hours and twenty-nine minutes) from Salt Lake City, the locations of the four nearest abortion providers. These one-way travel times assume the woman has access to private transportation. If she does not and must rely on public transportation, her situation is even more dire. Boulder, Utah, has no public transportation services. The nearest Greyhound bus stop is 143 miles (three hours and forty minutes) away in Parowan, Utah. Only two buses a day serve the Parowan-Salt Lake City route, and the journey each way is four hours. A woman without a car, living in Boulder would thus have to borrow a car or hitch-hike to Parowan, and then make a four-hour bus journey to Salt Lake City, the site of the nearest abortion clinic.

A working-class woman with little work schedule flexibility, but this time in

310 See id. (enter “Boulder, UT” and “Flagstaff, AZ” and click “Go”).
311 See id. (enter “Boulder, UT” and “Aspen, CO” and click “Go”).
312 See id. (enter “Boulder, UT” and “Salt Lake City, UT” and click “Go”).
313 See id. (enter “Boulder, UT” and “Parowan, UT” and click “Go”). See generally Eli Sanders, As Greyhound Cuts Back, The Middle of Nowhere Means Going Nowhere, N.Y. TIMES, Sept. 6, 2004, at A10 (discussing the impact on rural America of Greyhound’s dramatic cuts in service). Interestingly, a dissenting judge in another abortion case specically asserted the legal relevance of the lack of public transportation. See infra note 340 and accompanying text.
314 Greyhound offers two buses a day from Parowan, Utah, to Salt Lake City, one leaving at 2:50 a.m. and another leaving at 11:05 a.m. Each trip lasts four hours. Buses from Salt Lake City to Parowan leave twice a day, at 8:30 a.m. and 6:00 p.m. See Greyhound, Ticket Center, http://www.greyhound.com/scripts/en/TicketCenter/Step1.asp (last visited Mar. 6, 2007).
rural Utah, will face considerable practical and financial obstacles to terminating her pregnancy. If, as Leavitt assumes, she is able to secure consecutive days off from work, her burden may nevertheless be greater than an overnight hotel stay. If she must travel several hours to reach the bus station and several more by bus to reach the abortion provider (and again to return home) the woman may need three or more consecutive days off work—and several nights’ hotel stay—to accomplish the termination. If, contrary to the Leavitt court’s assumption, she is unable to take several consecutive days off work, the obstacles are much greater. A woman in such a situation will not only have to make two return journeys to Salt Lake City by whatever means are available, each of those journeys may require several days. Contrary to Leavitt’s conclusion, then, the worst-case scenario may not be merely an overnight stay. It may be several days’ stay. It may, in fact, require two journeys, each lasting multiple days, with attendant impacts on the woman’s employment, family, and financial circumstances.\footnote{A medical consequence of abortion further aggravates the barriers for rural women. Women who are sedated for abortions are not allowed to drive for twenty-four hours following the procedure, even though women whose abortions are performed under local anesthesia may do so. American Association of Nurse Anesthetists, AnesthesiaPatientSafety.com, Preparing for Anesthesia?, http://www.anesthesiapatient safety.com/patients/about/having.asp (last visited Apr. 16, 2007). This means that some women must find someone to accompany them in order to provide a ride home following the abortion procedure. Needless to say, this limits the options of rural women even more than those of urban residents. While the latter may be able to take a taxi home or rely on a friend to provide transport for the relatively short journey, a rural woman must either rely on a lengthy public transport journey or find a friend with sufficient flexibility to make the long journey with her.}

An even more dramatic example could be generated from the geography of Alaska, with its dearth of abortion services, which the Leavitt court used to illustrate its point that there is no constitutional right to convenience in procuring an abortion.\footnote{See Utah Women’s Clinic v. Leavitt, 844 F. Supp. 1482, 1491 n.11 (D. Utah 1994).} But Casey made accessibility relevant by adopting the undue burden standard, and at some point—even the Leavitt court might concede if it acknowledged detailed facts—waiting periods constitute an undue burden for the most isolated, most disadvantaged women.

My aim here is not to identify the most extreme example of hardship created by waiting periods. Rather, it is to demonstrate that courts have not seriously
considered the practical obstacles confronting rural women. As Judge Wood wrote in *A Woman’s Choice*, the undue burden question “is whether an Indiana woman living 60 miles away from a clinic in Indiana who cannot afford (either financially, socially, or psychologically) to make two visits” will be deterred from exercising her fundamental right. The undue burden inquiry is not only about the woman who is worst-situated for getting an abortion; it is about all those who will be deterred by the obstacle that the waiting period presents.

Certainly, some women in rural areas will be better situated to secure abortions than others, even in states with mandatory waiting periods. Women with job flexibility and security, and access to a car, child care, and—of course—money, will more easily overcome the obstacles. But the *Casey* Court said that, for the purposes of analyzing any regulation, “[t]he proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” Further, the *Casey* Court found sufficient the mere one percent of all women who would be deterred by the Pennsylvania spousal notification requirement. Even taking *Casey’s* parsimonious approach to the undue burden test as the starting point, courts applying the standard have been both unrealistic and insensitive about the impediments that regulations create for rural women seeking abortion.

While *Leavitt* may be correct that *Roe v. Wade* did not guarantee the right to convenience in procuring an abortion, waiting periods create so much “inconvenience” for some women that they impede exercise of that right for those women. That is, waiting periods effectively preclude exercise of that right. This is surely the case for many rural women who live literally hours from the nearest abortion provider. Their hardship is exacerbated by the specific circumstances that mark many of their lives: inadequate transportation, limited or nonexistent child care, lack of job flexibility and security, and overall economic vulnerability. The existence of each of these circumstances aggravates the burden that the mandatory waiting period imposes on a given rural woman.

In contrast to these abortion decisions, precedents in other areas of the law acknowledge not only the reality, but also the legal relevance of the hardships created by spatial isolation from centers of commerce and the services located there. For example, in disability, workers compensation, and insurance coverage

---

317 *A Woman’s Choice*- E. Side Women’s Clinic v. Newman, 305 F.3d 684, 711 (7th Cir. 2002). Specifically, at this point in the opinion, Wood was arguing that a Mississippi study had shown that the state’s informed consent law had deterred Mississippi women from pursuing abortion. See id. at 712–15.


319 See id.

320 See discussion supra Part I.B–C.

321 In a rare civil procedure case addressing the practical effect of rural locale, a federal district court held that, because they “live in rural areas and lack resources and access to transportation,” migrant workers seeking to opt into a class action need not have their consents authenticated because it “could well present a heavy burden, if not an
settings, courts recognize that those who live in rural areas are at a disadvantage in seeking replacement employment, in receiving appropriate rehabilitation, and in obtaining medical care. These judicial decisions appropriately accommodate the fact that many rural residents must travel significant distances for access to such services and opportunities.

A trilogy of Colorado workers’ compensation cases is illustrative. The Colorado Supreme Court held in these consolidated cases that rural workers who could not secure replacement employment because of their limited rural labor markets could nevertheless receive benefits. Each of the cases involved a rural-dwelling worker with relatively few skills and each had reached maximum insuperable obstacle to their participation.” Roebuck v. Hudson Valley Farms, Inc., 239 F. Supp. 2d 234, 240 (N.D.N.Y. 2002); see also State v. Morgan, 907 P.2d 116, 118 (Idaho Ct. App. 1995) (finding the trial court had made an adequate inquiry into the defendant’s absence from trial when it waited half an hour, called his home, and then proceeded in his absence, but noting that such an effort might be insufficient if “the defendant resides in a rural area many miles from the courthouse”); Rancourt v. State Dep’t of Licensing, Div. of Fin. Responsibility, 666 P.2d 955, 956 (Wash. Ct. App. 1983) (assuming defendant’s receipt of notice to appear in court was delayed because of the nature of rural mail delivery and giving him a second opportunity to appear when he received a notice to appear only thirteen days after the mailing).

See, e.g., Brodsky v. City of Phoenix Police Dep’t Ret. Sys. Bd., 900 P.2d 1228, 1232 (Ariz. Ct. App. 1995) (holding that a police officer with a knee injury was still capable of a “reasonable range of duties” in an urban police department and thus not eligible for disability, although the court recognized that a similarly disabled officer in a rural setting with a smaller force might not be able to perform a reasonable range of duties for his department).

In a 2001 decision, the Court of Appeals for the District of Columbia held that a former custodian with the transit authority who sued under the Americans with Disabilities Act (“ADA”) was not “substantially limited” in his ability to work because his back injury did not prevent him from finding alternate employment. Duncan v. Wash. Metro. Area Transit Auth., 240 F.3d 1110, 1115–17 (D.C. Cir. 2001). Concurring, Judge Randolph complained of the “geographic disparity” that would result from this rule. Id. at 1118 (Randolph, J., concurring). He observed that if identical individuals with identical impairments worked for the same company, the one working in a rural area would “wind up being classified as disabled under the ADA more readily” than one in a “major metropolitan area where more jobs are available.” Id.


Id. at 556–57.

Two of these were laborers with limited English skills who had completed the fourth grade in Mexico and the third was a custodian whose injury prevented her from driving long distances. Id. at 552–53. In the first two cases, the court of appeals had affirmed the administrative law judge’s consideration of “the claimant’s commutable labor market” in deciding “permanent total disability.” Id. at 559. In the third case, the court of appeals reversed, declaring “‘disability is a function of impairment, not geography or job availability.’” Id. at 553 (quoting Spady Bros. v. Indus. Claim Appeals Office, 942 P.2d
medical improvement. The crux of the inquiry, the court said, was whether employment is “reasonably available to the claimant given his or her circumstances.” The court did not blame these rural workers for the fact that the rural economy provided them no job opportunities; it therefore determined they were entitled to benefits. The court did not suggest that the resident move or commute long distances to secure replacement employment.

Other courts have been similarly empathic regarding the practical consequences of rural residents’ spatial isolation, holding that an insurer must pay the transportation costs associated with obtaining necessary treatment. As one court expressed, “for citizens living miles from our cities the inability to obtain compensation for transportation expenses may result in life sustaining medical treatment being unavailable.” In another matter, the Colorado Supreme Court held that an insurer should reimburse a claimant’s wife for providing home health care services, which had been prescribed by his physician, when home health care services were unavailable in his rural community. In a similar vein, the Alabama

1340, 1342 (Colo. Ct. App. 1997)). In all three cases, both administrative law judges and administrative appellate bodies had declared the workers to be permanently and totally disabled, see id. at 552–53; only the court of appeals had reached inconsistent results.

326 Id. at 557. In Parsons v. Employment Security Commission, a woman who had worked as a grocery clerk quit her job and moved with her husband, who had been laid off, to property they owned in a rural community with only one grocery store. 379 P.2d 57, 58–59 (N.M. 1963). The woman was unable to secure work at the grocery store, or at either of the two stores within commutable distance. Id. at 58. She did not want to work as a waitress or secretary and was therefore unable to secure employment. Id. The Commission found that her voluntary unemployment made her ineligible for benefits, but the New Mexico Supreme Court reversed, finding that she had made reasonable efforts to secure employment. Id. at 61; see also Wood Mosaic Co. v. Brown, 199 S.W.2d 433, 434 (Ky. Ct. App. 1947) (finding a sixty-four-year-old laborer who had worked as a carpenter, blacksmith, and coal miner to be permanently disabled when he injured his arm and noting that in the rural area where he lived, alternative “vocational opportunities” were restricted to very few fields).

327 See Weld County, 955 P.2d at 558.

328 See id. at 560–61 (Kourlis, J., dissenting). While the court never explicitly mentioned the claimants’ spatial isolation, it recognized the rural job market realities in its decision to uphold their status as permanently and totally disabled. Indeed, the court wrote that considering a claimant’s access to employment “is both reasonable and consistent with the Act’s purpose of assisting injured workers who are unable to secure employment.” Id. at 557. Dissenting Justice Kourlis explicitly mentioned the rural nature of the claimants’ locales, stating that they “may have to move to find work, just as someone who is laid off may need to move.” Id. at 560–61 (Kourlis, J., dissenting). He argued vigorously that “access to employment within the labor market where a claimant resides is not an appropriate factor to consider in awarding permanent total disability benefits.” Id. at 558.


330 Id. at 1388.

Supreme Court ruled that an insurer must pay for a physician-prescribed hot tub in the claimant’s home when the rural locale in which he lived made travel to a health club unfeasible.\footnote{Cont'l Cas. Ins. Co. v. McDonald, 567 So. 2d 1208, 1220 (Ala. 1990). The insurer in that case was found liable for intentional infliction of emotional distress for unreasonably delaying payments to the claimant’s health care providers, causing some of them to deny him services and pain medication. \textit{Id.} at 1210. With respect to the hot tub, the insurer had challenged the doctor’s recommendation, repeatedly asking him to justify it. \textit{Id.} at 1214–15. The insurer then took the position that “the unavailability of a health spa was due to McDonald’s own decision to live in a rural area and that [the insurer] would not want to pay for an expensive hot tub and then have to install another one if McDonald moved.” \textit{Id.} at 1215. The appellate court upheld the intentional infliction of emotional distress judgment. \textit{Id.} at 1221–22.}

Cases such as these demonstrate judicial empathy for the hardships—including financial costs—associated with spatial isolation, a hallmark of rural life. They also recognize that such hardships aggravate the economic vulnerability that is a constant for many rural residents. Such decisions stand in stark contrast to the lack of understanding judges have shown about these hardships and vulnerabilities in relation to abortion access and other issues that particularly impact rural women.

\textit{(b) Judicial Bypass Procedures and Lack of Anonymity}

Rural women have also been acknowledged in abortion litigation challenging judicial bypass procedures for minors. At issue in the Sixth Circuit Court of Appeals’ 1999 decision in \textit{Memphis Planned Parenthood v. Sundquist}\footnote{1999 FED App. 0162P (6th Cir.), 175 F.3d 456.} were both the spatial isolation associated with rural places and the lack of anonymity people experience there.\footnote{Sparsity of population tends to produce a “high density of acquaintance” in rural areas. Robert M Moore III, \textit{Introduction} to \textit{THE HIDDEN AMERICA}, supra note 37, at 16 (citing Flora and Flora 1993).} \textit{Sundquist} examined a Tennessee law that permitted minors to seek judicial bypass of the parental consent requirement, but imposed several restrictions on the process.\footnote{\textit{Id.} at 2–3, 175 F.3d at 459.} For example, the minor was required to file her petition in either the county in which she resided or in which the abortion was sought, and to swear that she had consulted with a physician about the abortion before seeking the bypass.\footnote{\textit{Id.} at 4, 175 F.3d at 459–60.} The majority upheld the law as constitutional.\footnote{\textit{Id.} at 8–16, 175 F.3d at 462–66.}

Judge Keith, in dissent, discussed at length the particular hurdles faced by rural minors seeking to use the procedure.\footnote{See \textit{id.} at 30–40, 51–57, 66–67, 175 F.3d at 473–78, 484–87, 492–93 (Keith, J., dissenting).} He focused on both transportation and confidentiality problems.\footnote{See \textit{id.}.} With regard to the former, he noted the lack of trains...
and the fact that even “buses do not reach the rural areas.” With respect to the latter, Judge Keith observed that a “minor’s actions can easily be detected by relatives and friends” in rural areas. He included in his dissent numerous detailed anecdotes from the testimony of officials at Memphis’s and Knoxville’s abortion providers. The Director of Counseling at the Knoxville Center for Reproductive Health testified about problems arising from the law’s venue restriction:

The areas surrounding Knoxville where many of our patients come from are very rural. It is next to impossible to go to any public place completely undetected. One minor patient told us she couldn’t pursue a waiver from the local court because her aunt worked there. Another tried to pursue a waive [sic] in her home county, only to discover the judge assigned to her case was her former Sunday school teacher. She was so afraid of appearing in front of someone who knew her and her parents that she left and did not pursue the waiver.

While lack of anonymity prevented minors from applying for judicial bypass in their home counties, the director also expounded on the difficulties created by the alternative: traveling to the county where the abortion provider is located to apply for judicial bypass there. Noting that some patients must travel as far as six hours to reach Knoxville for an abortion, the director testified that most minors can only get there once—for the medical procedure.

The Director of the Memphis Center for Reproductive Health similarly touched on the confidentiality and transportation issues that plague minors living in rural areas. She shared the anecdote of a patient who was reluctant to get a money order made payable to the abortion clinic. The woman had feared that the tellers at her local bank, who knew her, might disclose her activities to others. The director attested to the particular difficulties minors have in going undetected because the lack of public transportation in rural Tennessee leaves them relying on friends or extended family for transportation, while also factoring in as much as

340 Id. at 36, 175 F.3d at 476 (quoting the declaration of Connie Simpson, Director of Counseling at the Knoxville Center for Reproductive Health).
341 Id. at 32, 175 F.3d at 474. “Minors who do not have cars, which are most of our clients, must arrange transportation with a friend or a trusted relative. Often rides do not show up and they have to reschedule.” Id. at 36, 175 F.3d at 476 (quoting the declaration of Connie Simpson, Director of Counseling at the Knoxville Center for Reproductive Health).
342 See id. at 31–36, 175 F.3d at 473–76.
343 Id. at 52, 175 F.3d at 485.
344 Id. at 52–53, 175 F.3d at 485.
345 Id.
346 See id. at 55, 175 F.3d at 486.
347 Id.
four hours of travel time each way. Judge Keith responded to this evidence with a compelling and compassionate summation of the situations faced by many young women seeking abortions. He gave special attention to the additional challenges facing those who live in rural areas:

Sitting in its “ivory tower,” the majority ignores the realities of the situation and claims that making phone calls over a forty-eight hour period cannot be characterized as a substantial burden, thereby mocking the plight of these young girls for whom making a single telephone call, particularly during the court’s business hours, may mean walking a long distance in a rural area to make a toll call from a public telephone, all without arousing suspicion or having her conversation overheard and her confidentiality destroyed.

. . . Furthermore, in the case of small rural towns where this type of bypass may most likely be sought, the minors may feel that their confidentiality and anonymity are also at stake if they have to contact a law office where a relative or acquaintance may be employed as support staff.

Judge Keith thus took seriously the hardships the Tennessee law created—because of spatial isolation and lack of anonymity—for young rural women in particular.

Judicial responses to lack of anonymity in other contexts have been similarly realistic and empathic. As is the case with spatial isolation, courts outside the abortion context have held the lack of anonymity for rural residents is legally relevant. Opinions in both civil and criminal decisions note that rural residents are aware of community events and each others’ lives. For example, one court assumed that an informant was more credible because the basis of his knowledge sprang “from rural soil rather than from the faceless anonymity [sic] of an urban swarm.” The court characterized reputation in a rural place as “better

---

348 Id. at 55–56, 175 F.3d at 486–87.
349 Id. at 40, 175 F.3d at 478.
350 See supra note 126.
The lack of anonymity associated with rural communities arises most often in relation to whether a defendant can get a fair trial in a rural venue. A North Carolina decision held the defendant could not have gotten a fair trial in a “small, rural and closely-knit county where the entire county was, in effect, a neighborhood.”

The issue of bias stemming from familiarity in rural communities arises in civil cases, too. Judges sometimes refer to “word-of-mouth publicity,” or even “gossip” that may impede seating an unbiased jury in a rural venue. The North

---

353 Id.; see also State v. Missamore, 761 P.2d 1231, 1232 (Idaho Ct. App. 1988) (recounting the fact that a police officer stopped the defendant driver based on the officer’s personal knowledge that the defendant had no driver’s license).

354 See, e.g., Knapp v. Leonardo, 46 F.3d 170, 181 (2d Cir. 1995) (Oakes, J., dissenting) (arguing for grant of habeas petition because eighty-three percent of 1417 members of the jury pool were disqualified for cause from an emotionally super-charged trial in rural New York); State v. Hunter, 740 P.2d 559, 565 (Kan. 1987) (suggesting jury selection should be more closely scrutinized in rural areas where it is “inevitable that members of jury panel will be acquainted with trial participants or victims”); State v. Brown, 610 P.2d 655, 660–61 (Kan. Ct. App. 1980) (stating the exercise of peremptory challenges in chambers is acceptable in rural areas because jurors are often known to parties and counsel).

355 State v. Jerrett, 307 S.E.2d 339, 348 (N.C. 1983); see also State v. Vereen, 324 S.E.2d 250, 257–58 (N.C. 1985) (distinguishing the case at bar from Jerrett). In Jerrett, the court overturned the conviction and granted a new trial to a defendant who had been tried in a county with fewer than 10,000 inhabitants. 307 S.E.2d at 348–49. The victim in that case was “a well-known and respected dairy farmer,” and a third of potential jurors had “acknowledged familiarity” with him or some member of his family. Id. at 348. But cf. State v. McKisson, No. COA02-955, 2003 WL 21649214, at *6 (N.C. Ct. App. July 15, 2003) (upholding denial of change of venue where jurors did not personally know the victims or their families, in spite of the defendant’s arguments that the crime had “rocked” the rural county and pretrial publicity had “infected” the jury pool).


357 See, e.g., People v. Nesler, 941 P.2d 87, 109 n.1 (Cal. 1997) (Baxter, J., dissenting) (stating that a “hometown trial [in a rural community] entailed the strong chance that jurors would hear gossip about the case and about defendant,” and referring to the “likelihood of local gossip, rumor, and discussion of the case within this close-knit community”); State v.
Dakota Supreme Court in 1994 characterized most of the state’s counties as places where “most jurors know something about every person in the county, their families, or their businesses.”

In light of judicial recognition of the lack of anonymity that characterizes rural areas, judicial failure to take seriously this reality as it relates to abortion regulations is especially striking and unfortunate. In an early essay on Roe v. Wade, Catharine MacKinnon argued that most women do not control the conditions under which they have sex. She asserted that women may be reluctant to use birth control because of its social meaning—specifically signaling a woman’s sexual availability. A related argument applies to rural women, who may be less likely to use contraceptives because of their lack of anonymity in seeking such services in their communities. This is surely also true regarding abortion, particularly given the more conservative attitudes rural residents tend to hold regarding it. The prevalence of such attitudes is all the more reason rural women may be deterred from abortion by judicial bypass processes that so casually risk their anonymity, and it is all the more reason such processes should respond to this rural reality.

Breding, 526 N.W.2d 465, 468–69 (N.D. 1995) (refusing change of venue and noting that to accept the defendant’s argument—that "rumor, gossip, and speculation 'small community living generates as a matter of course' should have been sufficient alone to support his motion"—would require a change of venue in every serious criminal prosecution in a rural county).

See, e.g., Wolfe v. Brigano, 2000 FED App. 0394P at 8 n.1 (6th Cir.), 232 F.3d 499, 504 n.1 (Wellford, J., concurring) (quoting the trial judge’s acknowledgment that “we’re in a small community and you hear matters, and . . . you read things” (alteration in original)); Roberts v. C.W. Adams & Son Co., 110 S.W. 314, 316 (Ky. 1908) (describing a rural neighborhood “where everybody knows in a general way everybody’s business”).

State v. Brooks, 520 N.W.2d 796, 802 (N.D. 1994) (Meschke, J., concurring) (justifying North Dakota Rule of Evidence 606(b), which does not permit affidavits, evidence, or testimony by a juror about the jury’s discussion, even when a juror discloses to the others some personal knowledge about a party); see also Farmers Union Grain Terminal Ass’n v. Nelson, 223 N.W.2d 494, 499–500 (N.D. 1974) (noting the difficulty in finding a family in a rural community who had not done business with the defendant-owned or -operated facility, but that this would not indicate a direct relationship that should disqualify the person from jury service).


Id. at 93–102.

Professor Fiene’s study of rural Appalachian women found a common ideology that “[a] good mother welcomes all of her pregnancies and does not attempt to terminate any of them . . . . A good mother does not consider abortion a reproductive option even when her pregnancy is the result of rape.” FIENE, supra note 30, at 44–45.

See supra notes 31–32 and accompanying text.
4. Summary

Given that abortion is the sole legal context in which courts have been confronted with realities of rural women as a class, it is an understatement to say that the response has been disappointing. *Casey* and its progeny have consistently discounted or denied the impact that spatial isolation and lack of anonymity have on rural women who seek to exercise their constitutional right to procure an abortion. Suggesting that physical distance, lack of transportation, economic vulnerability, and lack of anonymity are insufficient to deter women from pursuing an abortion—that these are not substantial obstacles—is callous and insulting. This is particularly so when those deciding sit, as Judge Hamilton put it in his dissent in *Greenville Women’s Clinic v. Bryan*, amidst an urban sprawl, with myriad services and with public transportation to facilitate their access and use.  

These decisions are especially disappointing in light of the law’s recognition elsewhere of the hardships associated with these aspects of rural living. They are also somewhat puzzling because federal judges in another abortion context have called attention to the plight of rural women. In contrast to the lack of empathy the same courts have shown to rural women in relation to application of the undue burden test, courts upholding the constitutionality of the Freedom of Access to Clinic Entrance Act ("FACE") and have relied on the needs of rural women to justify their decisions.

For example, in 2000 the Third Circuit, in *United States v. Gregg*, upheld FACE, concluding that the misconduct it proscribes exacerbates the “shortage of abortion-related services [that] exists in this country.” The court noted that eighty-three percent of all U.S. counties have no abortion provider, and that the shortage is particularly acute in rural areas because reproductive health clinics tend to be “located primarily in metropolitan areas.” Ironically, this is the same court of appeals that, in *Casey*, dismissed a statistic demonstrating that eighty-two

---

364 See *Greenville Women’s Clinic v. Bryan*, 222 F.3d 157, 202 (4th Cir. 2000) (Hamilton, J., dissenting); see also supra notes 253–256 and accompanying text (discussing *Casey’s* core holding regarding mandatory waiting periods); supra Part III.C.2 (discussing the burden that a waiting period imposes on rural women).


366 226 F.3d 253, 263 (3d Cir. 2000) (citing S. REP. NO. 103-117, at 17); see also *United States v. Bird*, 124 F.3d 667, 679 (5th Cir. 1997) (upholding the constitutionality of FACE, relying on Congress’s commerce clause power; among the supporting facts was that the only abortion provider in South Dakota commutes from Minnesota); *United States v. White*, 893 F. Supp. 1423, 1426 (C.D. Cal. 1995) (finding that violent attacks on abortion facilities “sharply curtail access to health care for many women, particularly women living in rural areas” (citation omitted)). Indeed, *Terry v. Reno* discusses how abortion violence in some rural areas forced medical clinics to “stop providing not only abortions, but other reproductive services as well, including pre- and postnatal care.” 101 F.3d 1412, 1416 (D.C. Cir. 1996).

367 *Gregg*, 226 F.3d at 264.
percent of Pennsylvania counties have no provider. “In a rural community,” the Third Circuit wrote in Gregg, “only one provider usually exists in a large geographical area, thus making it a preferred target for anti-abortionists because elimination of that provider eliminates abortion services for all women in that area.”

While Gregg and other FACE decisions have acknowledged rural realities associated with physical distance in the context of concluding that an interstate market for abortion services exists, courts applying the undue burden test have stubbornly downplayed this fact and the gravity of the obstacles it creates for rural women. Gregg observed that the closure of an abortion clinic would “eliminate[] abortion services for all women” in a rural area that had a single abortion provider. Casey and its progeny, by contrast, have assumed that rural women will be able to get abortions regardless of the distance they must travel to an abortion provider, even if they must stay overnight or make the trip twice. Current “undue burden” precedents—in sharp contrast to Gregg’s “elimination” language—conclude that rural women will simply experience inconvenience in exercising this fundamental right.

369 Id. (emphasis added).
IV. CONCLUSION

No law addresses the deepest, simplest, quietest, and most widespread atrocities of women’s everyday lives. The law that purports to address them . . . does not reflect their realities or . . . is not enforced. It seems either the law does not exist, does not apply, is applied to women’s detriment, or is not applied at all. The deepest rules of women’s lives are written beneath or between the lines, and on other pages.370

Angela Harris argued almost two decades ago that, “to energize legal theory, we need to subvert it with narratives and stories, accounts of the particular, the different, the hitherto silenced.”371 I have sought to do precisely that here: to surface the stories of rural women, one group who have been overlooked, misunderstood, and thus silenced. Rural women have been silenced not only because of the lack of power that stems from socioeconomic disadvantage, but also because of their physical distance from public places, from centers of power, from services, and from opportunities of all sorts.372 The deepest atrocities of their everyday lives have often gone unseen, without legal redress, due in part to that geographic isolation, but also because of our society’s pervasive urban presumption.

The vulnerability and hardship with which rural women live have been discounted as the state has taken away their children and faulted them for their acts of self-preservation. The fundamental right to abortion has been denied to many of them as restrictions on that right have been upheld as inconsequential, even as evidence has shown how heavily the restrictions weigh upon them. To the extent the law has recognized the difficulty inherent in their situations, it has often blamed the women for their circumstances.

Judges in many of the cases discussed in this Article may not understand that rural women generally have less economic, social, cultural, and political power than both urban residents and rural men. They may not understand that spatial isolation and lack of anonymity limit these women. If judges are not from rural areas or have no first-hand information about them, they may have no ability to empathize with rural people—and rural women in particular.373 The lack of knowledge or ability to empathize suggests that judges may be making decisions based on unfounded assumptions about how rural people live.374 If, on the other

370 MACKINNON, supra note 1, at 34.
371 Harris, supra note 10, at 615.
372 See Tickamyer, supra note 6, at 740–41.
373 Professor Lynne Henderson has written of the significance of empathy in judging. See generally Lynne N. Henderson, Legality and Empathy, 85 MICH. L. REV. 1574 (1987).
374 This statement is drawn from similar language by Justice Thurgood Marshall: “[I]t is disgraceful for an interpretation of the Constitution to be premised upon unfounded
hand, legal decision makers are familiar with and do understand rural realities, they are wrong to assume that these women are free, equal, and responsible when they fail to hold a job or contact their children, do not simply walk away from an abusive relationship, or cannot get an abortion in the face of very real obstacles.\textsuperscript{\ref{feminist}} R

Rural women do not play on the same field as urban women any more than women of color play on the same field as white women. We no longer presume laws serving the interests of women in the United States will always serve the interests of women in other countries. We understand that laws do not operate in a social or cultural vacuum. Just as we have become sensitive to place and culture on an international level,\textsuperscript{\ref{international}} we must recognize its variance domestically. We must become sensitive to rurality, which we can only begin to do by acknowledging its very existence, by first seeing it.

While I have described rural women here as a group with many common concerns, I am acutely aware of differences among rural communities,\textsuperscript{\ref{rural}} as well as assumptions about how people live.” United States v. Kras, 409 U.S. 434, 460 (1973) (Marshall, J., dissenting), quoted in Henderson, supra note 373, at 1574.

\textsuperscript{\ref{feminist}} This statement is analogous to one by Catharine MacKinnon, who wrote: “The assumption is that women can be unequal to men economically, socially, culturally, politically, and in religion, but the moment they have sexual interactions, they are free and equal.” CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 8 (2006).

\textsuperscript{\ref{international}} See, e.g., Leti Volpp, Feminism Versus Multiculturalism, 101 COLUM. L. REV. 1181 (2001) (arguing that feminism should not be pitted against multiculturalism); Madhavi Sunder, Piercing the Veil, 112 YALE L.J. 1399 (2003) (arguing that women in Islamic cultures are fighting to construct their identities within those religious and cultural communities). Such accommodation of place and culture is also reflected in the doctrine of margin of appreciation as applied by the European Court of Human Rights. The doctrine seeks to balance the sovereignty of contracting parties with their obligations under the European Convention on Human Rights. It recognizes the “diversity of political, economic, cultural and social situations” in the various societies. See THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 83 (Ronald St. J. Macdonald et al. eds., 1993).

Interestingly, Cynthia Bowman has recognized the significance of the rural/urban axis in the context of intimate violence in sub-Saharan Africa. She has observed, for example, that different legal responses may be appropriate in rural settings, where customary law still holds greater sway, than in urban ones. See, e.g., Cynthia Bowman, Domestic Violence: Does the African Context Demand a Different Approach? 26 INT’L J. L. & PSYCH. 473, 486-87, 491 (2003) (concluding that “a diversity of remedies and approaches is necessary to address the problem of domestic violence in the diverse communities that exist in America as well”).

\textsuperscript{\ref{rural}} A common expression among rural scholars is, “When you’ve seen one rural area, you’ve seen one rural area.” See RURAL POVERTY RESEARCH CTR., supra note 34, at 3; see also Charles W. Fluharty, Refrain or Reality: A United States Rural Policy, 23 J. LEGAL MED. 57, 58 (2002) (noting that diversity among rural areas creates a public policy challenge); J. Dennis Murray & Peter A. Keller, Psychology and Rural America: Current Status and Future Directions, 46 AM. PSYCHOL. 220, 222 (1991) (noting diversity in cultures, occupations, wealth, lifestyles, and physical geography across rural America).
among rural women. I acknowledge that my analysis has tended to essentialize the rural; indeed, it has also essentialized certain characteristics associated with rural places. But “[e]ven a jurisprudence based on multiple consciousness must categorize,” for without categorization, each individual is isolated, thus impeding social change. But “[e]ven a jurisprudence based on multiple consciousness must categorize,” for without categorization, each individual is isolated, thus impeding social change.378 I have therefore named the category “rural women,” even while agreeing with Angela Harris that such categories should be “explicitly tentative, relational, and unstable.”379

Like any other aspect of one’s situation or any marker of identity, living in a rural area or “being a rural woman” does not exist in isolation. Barbara Ching and Gerald Creed, in arguing for scholarly attention to the rural-urban dichotomy, observed that 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 oppression in the city can take a different form from that in the countryside. . . . [C]ontemporary discussions of the fragmentation and recombination of identities locate this process almost exclusively in the city.380

Thus, law’s failure to see the role of place and to take seriously the ways in which rural places differ from the presumed urban norm has seriously restricted our understanding not only of place, but also of other aspects of identity.381 Law’s assumption of an urban setting fails not only to recognize rurality, but also to see how rurality “inflects other dimensions such as race, class, gender, and ethnicity.”382 This must change if the law is to do justice in the lives of rural women.

Other opportunities for investigating the intersection between gender and place thus present themselves. This Article has focused largely on two aspects of rurality: spatial isolation and lack of anonymity. More work remains to be done not only regarding other characteristics associated with rural places, but also regarding social constructions of rural identity.383 In addition, considering women’s productive and reproductive roles in an explicitly rural context, while also assessing the links between these roles and rural culture, can help us further appreciate their complexity.384

378 Harris, supra note 10, at 586.
379 Id.
380 Creed & Ching, supra note 9, at 3.
381 See id. at 27.
382 Id. at 22.
383 Id. at 3 (noting the lack of interest in the rural-urban dichotomy among those studying identity politics).
384 See Tickamyer, supra note 6, at 723 (calling for inquiry into the “complexities of the relationship between women’s productive and reproductive roles and activities, the
While I have begun in this Article the task of theorizing the rural, practical lessons may also be taken from my analysis and critique. First, it does not pay to be subtle about rural realities. Lawyers litigating cases such as those discussed must be willing to describe rural settings in detail and to explain how the rural context alters power dynamics and limits actors’ options, whatever the legal right or issue at stake. Judges and other legal decision makers must be taught how rurality creates disadvantage and constrains autonomy.

Second, use of this word “rural” may disserve rural women. I have characterized as “rural” many of the situations and settings discussed, just as the litigants, attorneys, or judges did. However, rural women as litigants might be wiser to use terms such as “spatial isolation” or “lack of anonymity” to focus on the precise rural characteristic that describes the critical aspect of context. Doing so should help moderate the rhetorical potency of the term “rural,” which so often carries positive, even idyllic associations. Those associations and the notion that rural hardships are ameliorated by the scenic and serene aspects of rural living may otherwise obscure the challenges the rural resident is facing.

As Judith Baer has observed, “[f]acts do not interpret themselves.” Judges and juries apply law to facts and, in so doing, give legal consequence (or the lack of it) to those facts. Those who care about the well-being of women—all women—

ways these link to other societal and community roles and responsibilities, and notably, the intersection between gender and spatial dimensions of poverty and welfare”).

See Baer, supra note 1, at 80. “While we claim to derive theory from experience, the human mind cannot make sense of experience without some sort of theory, however rudimentary . . . [I]t is misleading to say that theory comes from practice; they reinforce each other.” Id.

See Pruitt, supra note 4, at 161–68.

Rural sociologists have observed the “largely nostalgic and romantic image of rural living,” along with the myth of “country living and family life as simple, pure, and wholesome; slower paced; free from pressures and tensions; and surrounded by pastoral beauty and serenity.” Raymond T. Coward & William M. Smith, Jr., Families in Rural Society, in RURAL SOCIETY IN THE U.S., supra note 22, at 77. Rural communities are commonly envisioned as “safer, friendlier, better places to raise children, as having a simpler lifestyle, cleaner environment, and as being closer to outdoor recreation.” Andrew J. Sofranko, Transitions in Rural Areas of the Midwest and Nation, in RURAL COMMUNITY ECONOMIC DEVELOPMENT 21, 34 (Norman Walzer ed., 1991); see also W.K. Kellogg Found., THE MESSAGE FROM RURAL AMERICA 2004 VS. 2002, at 1 (2004), available at http://www.wkkf.org/Pubs/FoodRur/Media_Coverage_of_Rural_America_00253_04093.pdf (finding seventy-seven percent of the terms the media used to describe rural America in 2004 had a positive tone, including praise for residents’ behavior such as “good values” and “strong work ethic,” and aesthetic judgments such as “picturesque” and “pastoral,” while only twenty-three percent were negative); W.K. Kellogg Found., PERCEPTIONS OF RURAL AMERICA 6–8 (2004), available at http://www.wkkf.org/pubs/FoodRur/Pub2973.pdf (discussing the “overwhelmingly positive view of the people, the values, and the culture of rural America”).

Baer, supra note 1, at 80.
must find new ways to help legal decision makers understand the relevance of the sometimes harsh reality in which rural women live and make decisions. Catharine MacKinnon has written that it is an “aspiration indigenous to women across place and across time” to be “no less than men . . . not to lead a derivative life, but to do everything and be anybody at all.” Rural women share that aspiration, and feminist theory can inform practice to help them realize it.