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Rosa Lopez, David Letterman, Christopher Darden, and Me: Issues of Gender, Ethnicity, and Class in Evaluating Witness Credibility

*Maria L. Ontiveros*

Introduction

When California's heavy rains of 1994-95 washed out the only direct road between my home and my office, my commute escalated to three hours a day. Driving alone in the closed cocoon of my car, listening to the O.J. Simpson trial on the radio, much about the trial struck me as intensely personal. As a lawyer, I was naturally interested in the "trial of the century." As a new teacher of Evidence, the arguments over evidentiary motions, which filled the court's morning calendar and my morning commute, captivated my intellect and wound their way into my syllabus. Post-trial, radio call-in shows accompanied my drive home and gave me a glimpse into the public's view of the day's events. The episode from the trial that most touched me, regarded the presentation and vilification of Rosa Lopez."
As a Latina who grew up in Los Angeles, I felt a kinship with the Salvadoran housekeeper who worked next door to O.J. Simpson. I thought that it was odd that I would feel such empathy with this woman. What did we have in common? Rosa Lopez is a Salvadoran with a fourth grade education; I am a third generation Mexican-American with three graduate degrees. I grew up in a comfortable, secure home to become a lawyer and law professor; she grew up as a field worker and housekeeper in war-torn El Salvador, losing three children during childbirth and losing two to the war. Across the borders of economic and cultural differences, however, some similarities of gender and culture survived such that I felt that I knew and understood her.

I was shocked and disturbed by the laughter and derision that met Lopez's testimony. I flinched whenever David Letterman punctuated his top ten list with a “Rosa Lopez” joke. My mouth dried up when commentators decried her credibility. Something ached in my stomach when prosecuting attorney Christopher Darden called her a liar. I felt that these people missed something in Rosa Lopez's testimony, and in Rosa Lopez, in treating her so dismissively.

This essay revisits the ordeal surrounding Rosa Lopez in order to examine her testimony and test its credibility. My motivation for writing this essay springs from a desire to understand why my reaction to her was so different from the reactions of others and to explain why this differing reaction is significant. The first section of this essay summarizes Rosa Lopez's testimony before the court. The second section explores two of the differing views of her credibility: the dominant view propounded by the prosecution and found in the media commentary, and an alternative view considering issues of culture, class and gender. Finally, the third section draws some conclusions about her credibility specifically and, also, the importance of viewing all witness credibility through the lenses of culture, class and gender.

I. Rosa Lopez and her Testimony

Rosa Lopez may become the most famous non-witness in U.S. history. Although the public heard and watched Lopez tell her story, she never appeared as a witness before the jury. She appeared twice before the court. First, on Friday, February 24, 1995, in the middle of the prosecution's case, she appeared at a hearing to determine whether she was

5. Id.
a flight risk. Following her testimony and cross-examination on that day, the court determined both that her testimony was material and that she was likely to leave the jurisdiction and not return. The court, thereby, granted the defense motion to videotape conditional testimony. On Monday, February 27, 1995 and continuing on Thursday and Friday, March 2 and 3, 1995, Rosa Lopez presented direct testimony that helped establish an alibi for O.J. Simpson and also faced extensive cross-examination on this testimony. After a brief description of Rosa Lopez’s background, this section will summarize and discuss her testimony.

A. ROSA LOPEZ’S BACKGROUND

Born in El Salvador, Rosa Lopez grew up as one of ten children. After she left school at the age of ten, when her parents could no longer afford pencils and paper, she went to work in the fields with her parents. As an adult, she gave birth to seven children. Three of her children did not survive infancy. Of her four remaining children, one son became a helicopter pilot and was killed in El Salvador’s civil war. Her daughter, at age 15, disappeared during the war and is presumed dead. Lopez came to the United States 27 years ago, but she returns to El Salvador once or twice a year and still considers it her home. She became involved with the O.J. Simpson case while working as a housekeeper for one of Simpson’s neighbors.

B. TESTIMONY AT HEARING ON RISK OF FLIGHT

During her direct examination, Rosa Lopez testified regarding two major areas of inquiry. First, she presented substantive testimony which was material to the case. Lopez testified that O.J. Simpson’s Ford Bronco was parked in front of his house sometime after 10:00 p.m., the alleged time of the murder. Lopez said that she saw the car when she took her

6. If the court determined that she would not be available at a later date, it could have ordered either that the defense be allowed to present her testimony before the jury out of order or that her testimony be videotaped for possible playback to the jury if she was not available during the defense case.
7. After her testimony was videotaped, Lopez returned to El Salvador, yet her videotaped testimony was never heard by the jury.
9. Id.
10. Id.
11. Id.
12. Id.
employer's dog outside to relieve itself. She also testified to hearing other voices outside her employer's house that night, and to a conversation that she had with Detective Mark Fuhrman.

The second major area on which her direct testimony was centered regarded her plans to leave the United States and not return. Rosa Lopez gave several reasons for planning to leave: she feared the media attention from the case; her daughter had already asked Lopez to leave her daughter's home because of the potential danger related to Lopez's testimony; she feared for her physical safety if she stayed in the United States; finally, she had business to attend to in El Salvador, including reburying her son with a decorated headstone. Lopez testified that she had made airline reservations in order to leave, and that she was ready to go.

During cross-examination, Christopher Darden attacked her credibility in several ways. He argued that Lopez had previously given incomplete or differing reasons for wanting to leave, and that her action in filing for unemployment was inconsistent with her statement of intent to leave. Darden also argued that Rosa Lopez had no reasonable fear for her physical safety. Finally, he established that she had not, in fact, purchased tickets or made airline reservations to leave the country.

18. Id.
19. Id.
22. Id. at *14.
23. Id. at *21.
25. The cross-examination about the airline reservation is as follows:
   Darden: You've been planning to go to El Salvador for a month?
   Lopez: Yes.
   Darden: Okay. But you haven't purchased a ticket yet, correct?
   Lopez: No.
   Darden: Okay. You don't have a ticket?
   Lopez: No, sir.
   Darden: And you just made the reservation, didn't you?
   Lopez: Yes.
   Darden: And you made that today?
   Lopez: Yes.
   Darden: Prior to coming to court this morning?
C. **Videotaped Testimony**

Rosa Lopez’s direct testimony mirrored her testimony at the flight risk hearing. She testified to seeing the Bronco, hearing voices, and subsequently talking with Detective Mark Fuhrman. As in the earlier hearing, her testimony was given through an interpreter. The attorney’s questions to Lopez were translated from English to Spanish and Lopez’s answer, which was in Spanish, was translated back into English.

Christopher Darden’s cross-examination was broad-ranging. He attacked the alibi evidence, suggesting that Lopez had poor eyesight, did not go out at 10:00, and could not have seen the Bronco from her alleged position in the front yard. Finally, his questions implied that she either manufactured the sighting or changed the timing of the sighting at the suggestion of the defense.

Darden also spent time attacking Rosa Lopez’s credibility on collateral issues. For example, he revisited the inconsistencies from the earlier hearing regarding her statements about airline reservations. He found inconsistencies in her answers about filing a claim for unemployment. He challenged her regarding conflicting names, birth dates and addresses.

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Lopez: Yes.


Mr. Darden later continued:

Darden: Okay. Miss Lopez, we just called the airline. They don’t show a reservation for you. Can you explain to the court why it is that you just told us you have a reservation?

Lopez: Because I am going to reserve it, sir. As soon as I leave here, I will buy my ticket and I will leave. If you want to, the cameras can follow me.

Darden: So you have not made a reservation?

Lopez: But I will make it as soon as I leave here.

Darden: Okay. You have not made a - -

Lopez: I can’t call at 1:00 in the morning because the airlines are closed at that time. I have to wait.

Darden: You just told us that you already made a reservation.

Lopez: But I will make the reservation, sir, and I will leave, that is for sure, today.

Darden: Okay. So when you told us you already made a reservation, you were lying?

Lopez: No. Because I will make it, sir.

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28. Id. at *25.
29. Id.
31. Id. at *21.
on official documents completed by Lopez under penalty of perjury. Darden argued that Lopez was biased against Nicole Simpson because Ms. Simpson had once slapped a housekeeper and, finally, that Lopez had been bribed by the defense.

Evaluators of Rosa Lopez's credibility found her demeanor to be just as important as her actual answers during cross-examination. She often (fifty to one hundred times) said that she "did not remember" having seen or said something. She often appeared to agree with Darden's questions, answering "if you say so, sir." She sometimes appeared to concede or change her answers. She often appeared hesitant and unsure. Sometimes her answers were non-responsive or did not seem to make sense.

Two particular exchanges capture the flavor of the cross-examination. The first exchange addressed the time of the sighting and the possible influence of the defense, specifically, the influence of investigator Bill Pavelic:

Question by Mr Darden: Well, did Mr. Pavelic tell you or mention to you first that you saw the Bronco at 10:15 or 10:20?
Lopez: All I said was that it was after 10:00.
Darden: So you don't know how long after 10:00, correct?
Lopez: No, sir. . . .
Darden: Okay. Mr. Pavelic is the one that first suggested 10:15 or 10:20, correct? . . .
Lopez: If that is what he is saying, that is fine. . . .
Darden: During the conversation you had with Mr. Pavelic you would give times and he would give other times, correct? . . .
Lopez: If you say so, sir.

The second exchange addressed the filing for an unemployment application:

33. Id. at *28-29.
35. Bill Pavelic was employed by the defense team as private investigator. Michael Miller, Simpson Prosecutor Attacks Key Alibi Witness, RUETERS WORLD SERVICE, Mar. 2, 1995, available in LEXIS, NEWS/HOTTOP.
Darden: Okay. When you told us last Friday that you hadn't filled out your unemployment forms, that wasn't true, was it? . . . That was a lie, correct?
Lopez: No.
Darden: You had filled out your unemployment forms, hadn't you?
Lopez: I was referring to the application that is - - that one is given for one to take it back.
Darden: Okay. You never applied for unemployment?
Lopez: Yes.
Darden: Okay. You told us last week that you weren't turning in your forms for unemployment because you were leaving the country, correct?
Lopez: Yes.
Darden: But in fact you had turned in your forms, correct? . . .
Lopez: No, I didn't understand you.
Darden: Have you filed for unemployment?
Lopez: Yes, sir.
Darden: And you filed for unemployment on what, February 15th, correct?
Lopez: Yes.
Darden: You filed for unemployment knowing that you were going to leave the country for several months, correct?
Lopez: If I was given unemployment, sir, there was no reason for me to leave the country . . . .
Darden: So if I understand you correctly then, if you get unemployment insurance you won't leave the country; is that right? . . .
Lopez: I have thought of leaving right away when I am out of here, you know.37

II. Two Views on the Credibility of Rosa Lopez

A. THE REACTION FROM THE PRESS AND PROSECUTION: ROSA LOPEZ AS "DAMAGED GOODS"38

Following Rosa Lopez's testimony, one member of the press characterized her as being "hammered on the witness stand . . . contradicting herself on key points and claiming not to remember scores of other

37. Id. at *6-7.
details."39 Another said that the prosecution “caught her in several lies, contradictions and inconsistencies.”40 One editorial argued that no “conscious human being could accept as gospel the muddled testimony of the pathetic Rosa Lopez.”41 Roy Black, an attorney-commentator, called her “an unmitigated disaster,”42 and the New York Post summed up her testimony with three words: “Bye-bye alibi.”43

Perhaps the award for the most offensive characterization goes to the Palm Beach Post, which took law professor Robert Pugsley’s statement that Lopez was “irreparably damaged” as a witness and turned it into the heading “DAMAGED GOODS?”44 This term has been used for decades to demean women who are no longer considered virgins. The term portrays women as property or goods, and it assumes that a woman’s only value is her unmarred sexuality.45 By applying the term to Rosa Lopez in this context, the press further twisted an already sexist statement and suggested that unchaste women are liars who cannot be believed. Further, the term implies that women lack value when they cannot provide the services required of them, usually sexual. Here, the use of the term relating to Lopez portrayed her as having failed, not because she could not provide chaste sex, but because she could not provide a credible alibi. Thus, she was three times tarnished and thrice diminished in value: portrayed as a piece of property, a liar, and one who could not fulfill her duty.

Television comedians also took potshots at Lopez. She became a standard in David Letterman’s Top Ten Lists. For the “Top Ten Surprises in Clinton’s Whitewater Testimony,” number one was, “[h]is only witness . . . Rosa Lopez.”46 For the number one “[s]ign Mayor Giuliani has

43. Id. (quoting THE NEW YORK POST).
44. O.J. The Fifth Week, PALM BEACH, Mar. 5, 1995, at 25A.
45. See, e.g., Katharine T. Bartlett, Mackinnon’s Feminism: Power on Whose Terms?, 75 CALIF. L. REV. 1559, 1562 (1987) (reviewing CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987)). In other cultures, this concept has been used in extreme ways to, for example, force a woman to marry the man who raped her. Nilda Rimonte, A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense, 43 STAN. L. REV. 1311, 1319-20 (1991).
46. Late Show with David Letterman: Surprises in Clinton’s Whitewater Testimony (CBS television broadcast, Apr. 24, 1995) available in The Internet (Surprises in Clinton’s Whitewater Testimony: http://www.cbs.com/lateshow/lists/950306.html) (address as of
Gone Nuts,” Dave deadpanned, “[h]is new housekeeper? Rosa Lopez.” Even Jay Leno got into the act, cracking that “Rosa Lopez should be President Clinton’s nominee for CIA director: She speaks several languages, her hobby is spying on the neighbors, and if she’s ever captured, she won’t give a straight answer.”

Clearly, most of the U.S. media agreed with the prosecution’s portrayal of Rosa Lopez. In his argument opposing the motion to take conditional testimony, Darden argued:

Rosa Lopez has taken the witness stand. She took the Oath. She promised to tell the truth and she did the exact opposite. . . . There are contradictions here, contradictions made under penalty of perjury. You can’t believe anything Rosa Lopez says . . . given the complete and total lack of credibility that Rosa Lopez has . . . . [H]er accounts, her views, her positions and her testimony changes with the wind, your honor. It changes with the seconds. It changes with time, and she will change and modify that testimony and her view and her position at any given moment . . . .

Outside the courtroom, the prosecution was less eloquent. Christopher Darden simply called her a “liar.”

B. CREDIBILITY VIEWED THROUGH THE LENSES OF CULTURE, CLASS AND GENDER

I would not be writing this essay if I agreed with the vast majority of the U.S. media, and if I did not find their evaluation of Rosa Lopez’s credibility shallow and troublesome. During her testimony, many things occurred which made Lopez look less credible to commentators than to

9/17/95; transcript on file with the Hastings Women’s Law Journal.

47. Late Show with David Letterman: Signs Mayor Giuliani has Gone Nuts (CBS television broadcast, Mar. 6, 1995) available in The Internet (Signs Mayor Giuliani has Gone Nuts: http://www.cbs.com/lateshow/lists/950306.html) (address as of 9/17/95; transcript on file with the Hastings Women’s Law Journal).


me. She appeared to change her answers, especially when challenged; she spoke in generalities; she often responded, "I don't remember;" and some of her answers seemed nonsensical. Commentators perceived Lopez's lack of specificity and her hesitancy to answer questions directly as destructive to her credibility. This perception, however, lacks any understanding of how Lopez's culture, gender and class affected her testimony. When gender, culture and class are considered, Lopez's credibility must be evaluated differently. This section discusses the roles of these factors, and examines three aspects of her testimony: language differences and the use of translators; equivocation in the substantive evidence on Simpson's alibi; and collateral areas of impeachment.

1. Language Differences and Translators

The impact of language differences occurs on many levels. At the most basic level, the use of two different languages gives rise to misunderstanding and confusion. CNN commentator Richard Hirsch argued that this was not a problem:

[I]n a city like Los Angeles, court interpreters are used every day in every language. The interpreter interprets from English to Spanish. If the witness doesn't understand the question, she would ask for a re-interpretation. It was very clear what she was told and she responded different ways on different occasions.

Translation in actual use, however, does not operate this smoothly. In the Simpson trial, for example, Judge Ito replaced one Mexican interpreter with a Salvadoran interpreter, perhaps in response to calls from all over the country, complaining to the court that the translator was not sufficiently familiar with Salvadoran dialects and idioms. People recognized that misunderstanding can result from misinterpretation. A mistranslated or


misinterpreted answer by Rosa Lopez, or any witness, will seem less sensible and the witness will, therefore, seem less credible.

As one federally certified court interpreter remarked, “Central American [Spanish] is definitely a different vocabulary. If you’re not familiar with it, you could lose a lot of meaning.”55 One classic example is the phrase, “Yo esperaba la guagua,” which in Cuba means “I was waiting for the bus,” and in Chile, “I was pregnant.”56 Such everyday phrases obviously carry great opportunity for misunderstanding.

In the course of legal proceedings, such misunderstandings can be disastrous. In one case, a man signed a murder confession after receiving a Miranda warning translated as, “[i]f you do not have an attorney, we will give furniture to one for you.”57 An applicant in an asylum hearing tried to explain that there were discrepancies between his testimony and his written application because the application was filed “muy preciso.” The interpreter at the hearing translated this as “very precisely,” when in fact it meant, “being rushed, not having much time.”58 Since translation provides so many opportunities for miscommunication, non-English speaking witnesses cannot present themselves as clearly and credibly as the attorneys or witnesses who speak in English.

Unfortunately, given the structure of the legal system, these mistakes are very difficult, if not impossible, to catch. Although transcripts of the Simpson trial are readily available to many, no service can provide the actual Spanish words used by Rosa Lopez in her testimony. In part, the problem is due to the fact that court reporters do not record any non-English testimony. Rather, they record only the translation.59 Appeals based upon faulty translation thus become extremely difficult to pursue because there is no record of the words actually spoken by a non-English speaking witness.60 As a result, courts require defendants to settle questions about the accuracy of translation at the trial, impeaching the translation in the same manner that witnesses are impeached.61 Thus, cultural problems based on basic language differences can occur and can be very difficult to detect.

A more subtle and important problem occurs when a certain phrase has different meanings depending on the culture, gender and class of the

56. Simon, supra note 54.
57. Mark Caro, Interpreters Speak Volumes about Linguistic Confusion, CHI. TRIB., Sept. 26, 1994, at N1 (The warning should read, “if you do not have an attorney, we will furnish one for you.”).
58. Freinkel, supra note 55.
59. Caro, supra note 57.
60. Freinkel, supra note 55.
witness. For example, all interpreters and court watchers agree that when Rosa Lopez said "no me recuerdo, señor," she was saying, "I don't remember, sir." What she meant to communicate, however, by saying "I don't remember," is unclear. She may have indeed remembered but felt unable to continue to repeat herself. As a Latina, Lopez may not have wanted to continually disagree and confront the prosecution, and therefore used the phrase as a more subtle, indirect and less confrontational way of saying "no." Similarly, when Lopez replied, "if you say so, sir," to Christopher Darden, she may not have intended to communicate agreement but rather deference.\(^\text{62}\) Listeners should find Rosa Lopez's credibility much less impaired when they understand these differences.

Linguist Vincent C. Gilliam sent a letter to the court summarizing these issues:

First, a point that may easily be lost to Americans is the difference in cultures being manifested by Miss Lopez's responses. Not only does she display a tendency to defer somewhat meekly to people in authority (Mr. Darden) by saying, quote, 'if you say so, sir,' as one might suspect from someone from a humble background and from El Salvador at that, but Spanish-speaking cultures are much more subtle than one such as the U.S. Thus, when Miss Lopez says, 'no,' and then 'no, I don't remember having said that, sir,' with further prodding, it is not an equivocal response, nor is it prevaricating that she change her response. It is simply that [she] comes from a more indirect and less confrontational type of culture. And more importantly, quote, 'not [sic] I don't remember having said that,' end quote, does not mean, 'possibly yes' as Mr. Darden was attempting to make it mean.\(^\text{63}\)

On re-direct examination, Rosa Lopez confirmed that her use of the phrase "no me recuerdo" meant "no," and that this was a common usage of the phrase in El Salvador.\(^\text{64}\)

Through recognition of Ms. Lopez's class, gender and culture, her responses become much less damaging to her credibility. An uneducated Salvadoran female housekeeper could easily be overwhelmed and confused by the strange court proceedings and the male lawyers in their expensive suits. All three factors—her class, her gender, and her culture—push her

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\(^\text{62}\) Her constant use of the word "sir" stems from both her class consciousness and her gender.


towards deference rather than confrontation and denial. The prosecution provided little opportunity for Rosa Lopez to question the proceedings or the surrounding events. When she asked Darden why he wanted her true name, he replied, "This is a court of law and I'm a lawyer and I'm asking the questions." The proceedings must have been confusing to Lopez since only the examination questions and her answers to those questions were translated for her. Objections by the defense, responses by the judge, and all other matters discussed in the courtroom were spoken only in English.

Members of the public, and possibly members of the jury, took Lopez's class, gender and culture into account when considering her credibility. I heard many people calling the post-trial radio talk shows to express their willingness to believe Rosa Lopez. On Court TV, commentator Michael Marcus agreed:

I believe that a juror, or jurors can find a position, in other words say, I want to believe her and if they adopt that position, then they will very easily throw out all of the inconsistencies, all of the motives all of the failures or recollection and say, she was consistent on this point [seeing the Bronco after 10:00]. I found her demeanor to be good, I don't care, she's a humble person, she was taken advantage of by a very sharp and aggressive prosecutor.

Newspaper reporters found others who also believed Rosa Lopez. In one interview, Tom Hamilton, an owner of a bookstore specializing in books by and about blacks, said, "I love Rosa Lopez. I'm going to start calling her Saint Rosa. I think she came off very strong." Sister countrywomen understood her situation and did not feel that her demeanor and supposed equivocation should have been held against her. One woman commented, "[t]hey're asking her a lot of questions, and she's very ignorant . . . . She doesn't have any education." Another said, "[t]he poor woman is scared stiff . . . . I understand why she's afraid.

67. Kenneth B. Noble, Many Blacks View OJ Simpson as Victim of White Establishment, ST. LOUIS POST DISPATCH, Mar. 6, 1995, at 5B.
She fears for her family and doesn't want to lose her work.\textsuperscript{69} Although these supporters do not command the media in the same way as her detractors, they certainly exist. They understand her background and her ordeal, and they showered her with gifts—flowers, clothes, and other items—as evidence of their support.\textsuperscript{70}

By reviewing the difficulties of language translation and by understanding the subtle differences in meaning caused by a witness' class, gender, and culture, a different view of Rosa Lopez's credibility begins to emerge.

2. \textit{The Substantive Alibi}

Rosa Lopez provided one key piece of testimony for the defense, an alibi. Her credibility appeared damaged in this area because she could not give what the prosecutors and commentators, and maybe even the interpreter, considered a "specific time" for seeing Simpson's Bronco. She could only say that it was "after ten." Many commentators felt that this level of generality made her less credible. On the other hand, Rosa Lopez may have considered this a "specific time."\textsuperscript{71} When cultural differences in perceptions of time and the importance of specific, rather than general, information are taken into account, her answer becomes much less equivocal.

Many Western cultures, including that in the United States, consider time to be objective, something true and mathematical that can and must be precisely measured.\textsuperscript{72} Other cultures approach time differently; they


\textsuperscript{71} The cross-examination of Rosa Lopez reads as follows:

\begin{verbatim}
Lopez: I did give him a specific time.
Darden: Okay. What specific time did you give him?
Lopez: I said after 10:00, sir.
Darden: Okay.
The Interpreter: One moment. Correction. The answer was "I did not give him a specific time."
Darden: Is the interpreter correcting the previous answer?
The Court: All right. Why don't you ask the question and answer again.
Darden: Okay. What specific time did you give Mr. Bill?
Lopez: I told him after 10:00, sir.
\end{verbatim}


\textsuperscript{72} Don Oldenburg, \textit{You It's About Time}, \textit{WASH. POST}, Apr. 26, 1985, at F4. This and the following footnotes draw heavily from work done by the anthropologist Edward T. Hall which deals with cultural perceptions of time and cultural differences in styles of communication. See \textit{Edward T. Hall, The Dance of Life: The Other Dimension of Time} (1983).
see it as a general reference for coordinating activity, not as a set schedule. These cultures, including Latino cultures, have been characterized as "polychronic," as opposed to the "monochronic" United States. In polychronic cultures, set time schedules are not as important as forming and nurturing human relationships, even if that requires "taking" more time or being "late." Information in these societies is often handled differently as well, in a highly contextual, more general manner. Such non-specific information is understood in conversation because of the stronger relationships and networks between those talking. Thus, many Latinos naturally view information about time more generally, and they simply cannot understand the judicial system's need for specificity and exactitude.

Legal practitioners in the immigration field routinely see their client's testimony given less credibility by judges and immigration officials because of these cultural differences. For example, when one immigrant was only able to provide a general time frame of events due to cultural reasons, an immigration officer found the immigrant to lack credibility because the immigrant was either unable to answer specific questions or appeared hesitant when doing so. Even though a general time frame was the only information that the official needed, the immigrant was denied asylum because the official believed the witness to be a liar. A similar dynamic may well have affected the perception of Rosa Lopez's testimony regarding times.

3. Collateral Impeachment

Much of the prosecution's attack on Rosa Lopez's credibility was based on collateral matters. On these issues, the prosecution's lack of cultural, gender, and class awareness became apparent. For example, Christopher Darden sought to attack Lopez's general credibility by pointing out that she used several different addresses. Harriet Murphy,

75. Id.
76. This may also explain why we are always late.
78. Id.
a Texas newspaper reader commented in a round table discussion, "Darden shows little understanding of low-income people without a permanent address. It is common to give one's relative's address as a residence for mail while living with another relative or friend and not be lying." 81

Darden asked several questions regarding the fact that Lopez never mentioned the events to her employers, even though she saw them every day in the morning and the evening. 82 His implication, that she must not have seen anything because she obviously would have said something to her employers, ignores class differences. Lopez was not likely to have intimate conversations with them while she was serving them their meals. 83 Even the commentators on Court TV recognized that this might not be a very convincing line of impeachment because of the class relationship between the players. 84

Other differences in perspective caused by class differences echoed throughout the cross-examination. When trying to insinuate that Rosa Lopez lied about taking her employer's dog out at 10:00 p.m., Christopher Darden challenged, "[w]ell, why would you take the dog out a second time if you had already taken it out once?" 85 Rosa Lopez responded, "[s]ir, because I don't want the dog to urinate inside the house, sir." 86 Darden then snidely asked, "[s]o you knew the dog was about to urinate inside the house?" 87 Lopez, responding from her own experience, an experience obviously far from his, stated, "[w]ell, I don't know, but I have to take her out because I don't want to mop the dog’s pee the next day, sir." 88 Her actions suddenly seemed quite credible, given the reality of her life. 89

In addition to issues of class difference, many of Darden's attacks during cross-examination appear hollow when the listener understands

83. Id. Darden also tried to impeach her with what she had told her former employer Sylvianne Walker. When Darden tried to characterize Walker as a "friend" of Lopez, Rosa Lopez responded: "She's not my friend, sir. She's my boss. She is too rich to be my friend." Id. at *22.
86. Id.
87. Id.
88. Id.
89. Similarly, Darden challenged Lopez to explain why Lopez disliked Nicole Brown Simpson since Brown Simpson never slapped Lopez, but only Brown Simpson's housekeeper (a pointless challenge, I think). Lopez responded in a way that showed her class consciousness: "But we are friends. We are both housekeepers and we earn our living with the sweat of our brow." People v. Simpson, No. BA097211, 1995 WL 85408, at *28 (Cal. Super. Ct. Mar. 2, 1995), available in WESTLAW, OJ-TRANS.
certain cultural differences. For example, in the hearing on whether Rosa Lopez was a flight risk, Darden questioned her assertion that she feared for her personal safety if she stayed in the United States. He asked, "[n]o one has threatened to beat you up, correct?" and, "[b]ut no one has threatened you with physical harm, correct?"90 She answered, "[n]ot me," and, "[b]ut many of my friends tell me to be very careful because this case is very difficult and that I could even be killed."91 When further pressed by Darden, she responded "no," indicating that no one had threatened her with physical harm.92

Although Darden implies with these questions that Rosa Lopez is not really afraid, he ignores several realities in her life. First, in El Salvador, thousands of people, including her own 15-year-old daughter, "disappeared" during the war.93 Most were taken and killed by the government, even though they were never first "threatened with physical harm."94 Additionally, Rosa Lopez had already heard about the arrest of another defense witness, Mary Ann Gerchas, whom the prosecution pursued on forgery charges.95 The prosecutors later justified Lopez's fear of arrest when they considered the possibility of prosecuting her for address and name discrepancies on official forms.96 Since being "arrested" in El Salvador could be life-threatening, Rosa Lopez's fears seem much more believable.

During the main hearing, Darden suggests that the witness is dishonest because she has used several different last names. Ms. Lopez tries her best to answer his questions, but she does not see any problem with her name usage.97 The difference in perception stems from Darden's

92. Id.
94. Id.
96. People v. Simpson, No. BA097211, 1995 WL 85408, at *34 (Cal. Super. Ct. Mar. 2, 1995) (Judge Ito points out that answers to questions regarding name discrepancies could provide proof of a crime, even though "it's not something we normally prosecute a whole lot of people for") and People v. Simpson, No. BA097211, 1995 WL 88129, at *2 (Cal. Super. Ct. Mar. 3, 1995) (Darden says he is "not about to grant Miss Lopez immunity" on the issue.).
97. In response to the question, "[w]hat is your true and correct name?" the transcript reads:

   Lopez: Rose Maria Lopez.
   Darden: Have you ever gone by the name of Maria Reyes?
ignorance of Latino naming conventions. In traditional Latino culture, people use the last names of both their mother and father, with their father's name appearing first. 98 I should be Maria Linda Ontiveros Luna, and neither Ontiveros nor Luna (or both) would be my "last name." Because of this difference in appellations, U.S. officials routinely make mistakes on official forms. 99 Finally, the court interpreters in the Simpson case explained that Reyes could easily be a religious name, given because Rosa Lopez was born on January 6, the feast of kings. 100 Again, the information that Darden tries to portray as lies simply displays his own lack of cultural knowledge.

Cultural issues are especially troublesome for the prosecution where a jury has a better understanding of ethnic and class diversity than do the attorneys. 101 The general public's perception of Rosa Lopez may be more in line with the jury's perceptions than with those of the prosecuting attorneys, Marcia Clark and Christopher Darden. 102 Many viewers

Lozpez: I — that way in my birth certificate, but they tell me here that those be two last names.
Darden: So you're also known as Maria Reyes then?
Lozpez: Yes. Yes, sir. I've already said so.
Darden: Okay. Are you known by any other name?
Lozpez: Not that I know.
Darden: How about Martinez?
Lozpez: Martinez because of my father.
Darden: And Lopez because of what?
Lozpez: For my mother.
Darden: Okay. And Reyes because of what?
Lozpez: Because that's the name, sir.
Darden: Did you pick that name, Maria Reyes?
Lozpez: Sir, how could I choose that name if when I was born I couldn't talk.
Darden: Okay. Did you choose Martinez and Lopez?
Lozpez: I would have to ask my father.


98. Marge Landrau, How Metropolitan Life Direct Markets to Hispanic-Americans, DM NEWS, Aug. 1, 1989, at 38. To further complicate things, married women may insert "de" into their name, leading to misfiling. Id. Additionally, many married women do not take their husband's last name. Shelly Emeling, Undertaking Understanding from Lawsuits to Birth Announcements, New Hispanic Project is Bridging a Gap, ATLANTA J. AND CONSTITUTION, Oct. 1, 1992, at G2.

99. See, e.g., Emeling, supra note 98 (birth certificates) and Bob Rowland, Poway Rape Case Figure Held By INS, SAN DIEGO UNION-TRIBUNE, July 8, 1988, at B2 (arrest records and Border Patrol files).


101. As of May 28, 1995, the jury was composed of eight African Americans, two whites and two hispanics, with varying backgrounds and occupations. Jessica Seigel, Dismissed Juror Denies Anti-Simpson Leanings, CHI. TRIB., May 28, 1995, at News 10.

102. See Jeffrey Toobin, Putting It in Black and White, NEW YORKER, July 17, 1995, at 31, 32 (The African-American press, which accurately reflects the views of the African-
found the prosecution team offensive and insensitive to issues of class and culture. Lead prosecutor Marcia Clark's statement that, "Rosa Lopez is living better now than she ever may have in her life,"\(^{103}\) implying that Rosa Lopez was not suffering through the ordeal because she was staying in a luxury hotel provided by the defense, sparked especially strong reactions.

In a small L.A. furniture factory employing Latino workers, Clark's remark caused a Salvadoran furniture worker to throw a hunk of wood at the wall.\(^{104}\) Clark's treatment of Rosa Lopez also angered many blacks. A retired school administrator commented, "I think it's terrible how she insults the witnesses, like calling people liars, I don't think the judge should permit that in court."\(^{105}\) A store owner said, "[y]ou talk about white supremacy, you saw a good example of that when Marcia Clark made th[at] comment . . . . That was an outrageous statement. That clearly shows you what white people, in many ways, think of people of color, that somehow they're freeloaders who are taking advantage of us all."\(^{106}\)

**III. Conclusion**

As my never ending commute continued, I thought more about Rosa Lopez and her credibility. Given her gender, her class, and her culture, I certainly did not find her to be the clear-cut liar depicted by the prosecution and ridiculed in the press. I think that the prosecution's attacks on both collateral matters and Lopez's style are misguided and do nothing to prove that she is a liar. On the other hand, I did not find her totally believable. When she discussed the substantive alibi, she reminded me of my tías or my parents' comadres and compadres who enjoy taking a kernel of truth and embellishing it for everyone's entertainment, something which no one considers lying because everyone knows what is going on.\(^{107}\) I think that there is that kind of truth in the testimony of Rosa Lopez. I think that she probably saw the Bronco late in the evening.

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\(^{103}\) David Margolick, *Prosecutor Contends that Witness for Simpson was Coached*, N.Y. TIMES, Mar. 1, 1995, at A14.

\(^{104}\) Seigel, *supra* note 101.

\(^{105}\) Noble, *supra* note 67.

\(^{106}\) *ld*.

\(^{107}\) My tías are my aunts; comadres and compadres are the friends of my parents who are close enough to be considered familia or family. The only press portrayal that comes close to reflecting my feelings is an *L.A. Times* interview of many Latinos which concludes, "Several compared her to a chatty aunt or grandmother—staples of the telenovela genre—whose ill-considered comments have enmeshed her in a legal web far more intricate than she ever could have imagined." McDonnell, *supra* note 69.
while walking the dog. I doubt, though, that she knows what time she saw it.

The differences between my perception of her testimony and the portrayal of her testimony by the prosecution and the press suggest several possible lessons for lawyers and the justice system. First, I have portrayed the prosecution as ignorant of issues of class, race, and gender in formulating their cross-examination strategy. Others have suggested that the strategy was intentional; the prosecution was simply doing its job, knowingly using certain stereotypes regarding class, race and gender which it calculated would make a Salvadoran maid appear less credible to the jury. If this is true, then a new vision of cross-examination is in order. Attorneys must learn to challenge the credibility of a witness, while still respecting his or her class, ethnic and gender identity. Professor Ellen Yaroshefsky, writing about the cross-examination of crime victims, has suggested an ethical rule for attorneys which prohibits intentional reliance upon race or gender stereotypes. An ethical rule, such as this, coupled with new visions in teaching trial advocacy, provide some hope for the future.

In the meantime, the role of the defense attorney must also be evaluated. In many ways, defense attorney Johnnie Cochran, and the rest of the defense team, seemed just as ignorant as to how class, race and culture affected their witness’ credibility as the prosecution. During redirect, they produced no information on their own to highlight the issues addressed in this essay. The only two efforts made to explain the cultural aspects of Rosa Lopez’s apparent equivocations came from outside the defense team. Attorneys offering witnesses whose credibility is attacked because of ethnic, class or cultural stereotypes must educate themselves and rehabilitate the witness upon redirect examination.

Finally, Rosa Lopez’s testimony and ordeal provide me with an important lesson to pass on to my evidence students. When evaluating a witness’ credibility, issues of class, culture and gender must be taken into account. Jurors, who more likely mirror the opinions expressed by the general public than those by television commentators and comedians, will take these things into account. Jurors often have a better understanding of

108. Colleagues with whom I have shared and discussed this essay.
110. In one case, the court translators offered an explanation for Lopez’s use of different names. People v. Simpson, *supra* note 100. Additionally, linguist Vincent Gilliam sent a letter to the court explaining the use of “no me recuerdo.” People v. Simpson, *supra* note 63. Although the latter of these two examples was offered by the defense at the beginning of their re-direct, they could not provide a sufficient foundation for the unsolicited letter which was faxed to the court in order to have it admitted into evidence. Id.
these issues than we privileged attorneys. If attorneys fail to take issues of class, gender and culture into account, they can seriously misread the impact of a witness on a jury. I will tell my students that it is simply “good lawyering” to understand these differences and to take them into account. In discounting Rosa Lopez, Christopher Darden may assume he has David Letterman in the jury box. He could be sadly surprised to find me there instead.

111. Perhaps changes in jury selection rules to ensure such diversity are also needed.