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CROSSING OVER: WHY ATTORNEYS (AND JUDGES) SHOULD NOT BE ABLE TO CROSS- EXAMINE WITNESSES REGARDING THEIR IMMIGRATION STATUSES FOR IMPEACHMENT PURPOSES

Colin Miller*

INTRODUCTION

You are sitting in an empty bar (in a town you've never before visited), drinking a Bacardi with a soft-spoken acquaintance you barely know. After an hour, a third individual walks into the tavern and sits by himself, and you ask your acquaintance who the new man is. "Be careful of that guy," you are told. "He is a man with a past." A few minutes later, a fourth person enters the bar; he also sits alone. You ask your acquaintance who this new individual is. "Be careful of that guy, too," he says. "He is a man with no past." *Which of these two people do you trust less?*¹

You are a juror sitting in a courtroom (a place you've never visited), hearing an opening statement by a loud-mouthed lawyer you barely know. After an hour, a first witness walks into the courtroom and sits by himself on the witness stand. The lawyer's cross-examination of the witness implies, "Be careful of that guy. He is an illegal alien." A few minutes later, a second witness enters the courtroom; he also sits alone on the stand. The lawyer's cross-examination of the witness implies, "Be careful of that guy. He cheats on his wife." *Which of these two people do you trust less?*

According to the recent opinion of one federal appellate court, the illegal alien is the answer, and the second line of interrogation is prohibited. In *United States v. Almeida-Perez*,² the Eighth Circuit found that an extensive interrogation into the immigration statuses of defense witnesses was not plain error. The court relied upon First and Second Circuit opinions

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¹ CHUCK KLOSTERMAN, SEX, DRUGS, AND COCOA PUFFS: A LOW CULTURE MANIFESTO 132 (2004) (link).

² 549 F.3d 1162, 1173–75 (8th Cir. 2008) (link); see Posting of Colin Miller to EvidenceProf Blog, *It's No Fun Being An Illegal Alien: Eighth Circuit Finds No Plain Error In Magistrate's Questions About Witnesses' Immigration Status*, <http://lawprofessors.typepad.com/evidenceprof/2008/12/court-interroga.html> (Dec. 23, 2008) (link).

that found that the way individuals enter this country is relevant to their character for truthfulness.³ In reaching its conclusion, the Eighth Circuit also acknowledged—but was ultimately unpersuaded by—an analogous Eleventh Circuit decision.⁴ The Eleventh Circuit found that a district court erred when it allowed the State to question three defense witnesses about a letter written by the defendant/appellant, which proposed an adulterous liaison, because the letter did “not directly relate to the Appellant’s truthfulness and honesty.”⁵ The Eleventh Circuit’s opinion was in line with precedent from across the country, which generally holds that witnesses cannot be impeached through acts of misconduct unless such acts bear directly on their truth-telling capacity; evidence that a witness has engaged in unlawful trespass, the act most similar to entering this country illegally, cannot be used to impeach the witness under such cases.⁶

This Essay argues that courts err when finding that witnesses can have their character for honesty impeached through cross-examination regarding their immigration statuses. First, immigration status, in and of itself, does not directly bear upon (dis)honesty. Second, even if immigration status does have sufficient bearing on witness honesty, the probative value of immigration interrogation is substantially outweighed by the danger of unfair prejudice that it introduces. Finally, if an attorney seeks to impeach a witness based upon his immigration status or his alleged commission of some immigration-related crime, such as fraudulently obtaining documentation, the witness should be able to invoke his Fifth Amendment privilege against self-incrimination.

I. IMPEACHMENT’S REACH

Unless a witness has been convicted of a certain category of crime, his character for honesty generally may only be impeached through opinion and reputation testimony and not through testimony concerning specific instances of (mis)conduct. For instance, after a defendant testifies in his trial for a crime such as arson or assault, the State could call a witness to testify that he has been the defendant’s neighbor for ten years and that (1) in his opinion, the defendant is a liar and/or that (2) the defendant has a reputation in the neighborhood for being a liar. The prosecution witness could not, however, testify about those acts that constitute the basis for his opinion. In other words, if this prosecution witness thinks the defendant is a liar because he believes or has knowledge that the defendant committed embezzlement, the witness is nevertheless prohibited from testifying concerning this specific instance of misconduct.

³ *Almeida-Perez*, 549 F.3d at 1174.

⁴ *Id.*

⁵ *United States v. Ndiaye*, 434 F.3d 1270, 1290 (11th Cir. 2006) (link).

⁶ *See, e.g., Speers v. Univ. of Akron*, 196 F. Supp. 2d 551, 558 (N.D. Ohio 2002) (link); *State v. Gaytan*, 972 P.2d 356, 358 (Okla. Crim. App. 1998) (link).

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Federal Rules of Evidence 608(a) and (b) explain this dichotomy. In relevant part, Rule 608(a) states that “[t]he credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation”⁷ Conversely, Rule 608(b) begins by stating that in “attacking or supporting the witness’s character for truthfulness [specific instances of a witness’s conduct], other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence.”⁸

But Rule 608(b) goes on to state that:

[I]n the discretion of the court, *if probative of truthfulness or untruthfulness*, [specific instances of conduct may] be inquired into on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.⁹

In other words, if defense counsel responded to the prosecution witness by calling its own witness to testify that, in his opinion, the embezzling defendant is honest, the State could ask that witness on cross-examination whether he knew or had heard that the defendant committed embezzlement. Pursuant to the Rule, however, the State remains unable to prove the act in question through extrinsic evidence (in other words, with evidence from another witness or document); it is bound by the witness’s response.

Moreover, once the defendant’s character is at issue, the State may ask the defendant directly whether he committed embezzlement. The problem with this tactic is that Rule 608(b) ends by cautioning: “[t]he giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused’s or the witness’ privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.”¹⁰ Assuming, therefore, that he is not on trial for the embezzlement alleged, the defendant could invoke his Fifth Amendment privilege if questioned about the matter.¹¹ The defense witness, by contrast, cannot “plead the Fifth” because his testimony about the *defendant’s* embezzlement would not tend to incriminate him.¹²

⁷ FED. R. EVID. 608(a) (link).

⁸ FED. R. EVID. 608(b) (link).

⁹ *Id.* (emphasis added).

¹⁰ *Id.*

¹¹ The Advisory Committee Note to Federal Rule of Evidence 608 indicates that the last sentence of Rule 608(b) “constitutes a rejection of the doctrine of such cases as *People v. Sorge*, 301 N.Y. 198, 93 N.E.2d 637 (1950), that any past criminal act relevant to credibility may be inquired into on cross-examination, in apparent disregard of the privilege against self-incrimination.”

¹² Of course, the defense witness could still assert this privilege if asked about acts of embezzlement that *he* had committed.

II. IMMIGRATION INTERROGATION

In *United States v. Almeida-Perez*, the Eighth Circuit case referenced above, José and Porfirio Almeida-Perez appealed their convictions for being illegal aliens in possession of firearms transported in interstate commerce.¹³ They alleged, among other things, that the judge (rather than the prosecutor) improperly badgered defense witnesses¹⁴ concerning the defendants' immigration statuses.¹⁵ The Eighth Circuit denied their appeal, relying upon "two cases in which unlawful entry into the country or other violation of immigration laws was considered admissible because relevant to truthfulness."¹⁶

In addition to the two courts issuing the opinions relied upon by the Eighth Circuit, many other courts, both state and federal, would have reached the same conclusion.¹⁷ The Supreme Court of Wyoming in *Marquez v. State*,¹⁸ provides one example. In *Marquez*, Oscar Rodriguez Marquez appealed from first-degree assault and assault and battery convictions, claiming, *inter alia*, that the trial court improperly allowed him to be impeached based upon illegal alien status.¹⁹ The court denied his appeal, curtly concluding that Marquez's status as an illegal alien was probative of his character for truthfulness and that Marquez had "not directed us to any legal authority which would persuade us otherwise."²⁰

The Second Circuit in *United States v. Cambindo Valencia*,²¹ provides another example. In *Cambindo Valencia*, the defendant appealed from his convictions, which related to a conspiracy to commit narcotics offenses, claiming, *inter alia*, that the district court erred by allowing the prosecutor to cross-examine him about whether he had a green card.²² The district court permitted such interrogation, finding that it bore upon the defendant's credibility; the Second Circuit affirmed, simply concluding that the questioning was proper.²³

Conversely, other courts, such as the United States District Court for the Eastern District of New York,²⁴ have precluded the impeachment of

¹³ 549 F.3d 1162, 1164 (8th Cir. 2008) (link); *see also* 18 U.S.C. § 922(g) (2006) (link).

¹⁴ Under the Federal Rules of Evidence, a judge may interrogate witnesses. FED. R. EVID. 614(b) (link). However, this right must be exercised with care so that the judge does not become an advocate. *See, e.g., United States v. Melendez-Rivas*, 566 F.3d 41, 50 (1st Cir. 2009) (link).

¹⁵ *Almeida-Perez*, 549 F.3d at 1173–75.

¹⁶ *Id.* at 1174.

¹⁷ *See, e.g., United States v. Cardales*, 168 F.3d 548, 557 (1st Cir. 1999) (link).

¹⁸ 941 P.2d 22 (Wyo. 1997) (link).

¹⁹ *Id.* at 26. Note that Wyoming Rule of Evidence 608(b) is identical to Federal Rule of Evidence 608(b). WYO. R. EVID. 608(b) (link).

²⁰ *Marquez*, 941 P.2d at 26.

²¹ 609 F.2d 603 (2d Cir. 1979).

²² *Id.* at 606, 633.

²³ *Id.* at 633–34.

²⁴ Interestingly, this was actually the district court in *Cambindo Valencia*. *Id.* at 606.

witnesses based upon their immigration statuses because of the lack of an established link between such status and credibility.²⁵ According to these courts, individuals enter the United States for a variety of reasons and under a variety of circumstances. Thus, “[a]n individual’s status as an alien, legal or otherwise, . . . does not entitle [the government] to brand him a liar.”²⁶ Still other courts have held that a witness cannot be impeached solely based upon his status as an illegal alien, but may be impeached if the witness has committed some immigration-related crime, such as falsifying his identity.²⁷

III. THE TRUTH OF THE MATTER

To determine which courts are acting correctly, we must consider the types of conduct typically covered by Rule 608(b). As the text of the Rule reveals, attorneys may cross-examine witnesses only regarding acts that are probative of (un)truthfulness.²⁸ Although courts vary somewhat in enumerating what those acts are, many courts, including the Second and Eighth Circuits, hold that Rule 608(b) only permits inquiry into specific acts “related to *crimen falsi*, e.g., perjury, subornation of perjury, false statement, embezzlement, [or] false pretenses” that could lead to arrest.²⁹ Most illegal immigrants enter the country without inspection,³⁰ meaning that the act of illegal entry is usually not an act relating to *crimen falsi* because it does not involve deceit of or false statements to government officials or bodies. It follows that the opinions in *Almeida-Perez* and *Cambindo Valencia*, which made no reference to the impeached witnesses’ use of lies or deceit to enter this country, were wrongly rendered because the courts issuing those opinions otherwise only allow impeachment based upon acts of deception.

Some courts have held that Rule 608(b) permits inquiry into a broader range of acts, such as property crimes. For instance, in *State v. Williams*, the Court of Criminal Appeals of Tennessee reversed an appellant’s armed robbery conviction after concluding that the trial judge erred when he precluded the appellant from impeaching a prosecution witness by inquiring in-

²⁵ See *Mischalski v. Ford Motor Co.*, 935 F. Supp. 203, 207–08 (E.D.N.Y. 1996) (link).

²⁶ *Figeroa v. INS*, 886 F.2d 76, 79 (4th Cir. 1989) (link).

²⁷ See, e.g., *EEOC v. Bice of Chicago*, 229 F.R.D. 581, 583 (N.D. Ill. 2005). According to the court, it is only such acts of deceit, and not their connection with immigration status, that can be elicited during cross-examination. See *id.*

²⁸ FED. R. EVID. 608(b).

²⁹ *United States v. Amahia*, 825 F.2d 177, 181 (8th Cir. 1987) (link); see *Martin v. Nat’l R.R. Passenger Corp.*, No. 97 Civ. 8381(RLE), 1998 WL 575183, at *3 (S.D.N.Y. Sept. 9, 1998) (construing Rule 608(b) narrowly in accordance with *United States v. Hayes*, 553 F.2d 824, 827 (2d Cir. 1977)).

³⁰ See, e.g., Jeff Sessions & Cynthia Hayden, *The Growing Role for State & Local Law Enforcement in the Realm of Immigration Law*, 16 STAN. L. & POL’Y REV. 323, 332 n.43 (2005).

to an act of larceny the witness had allegedly committed.³¹ The court simply found that “[l]arceny is a bad act constituting dishonesty.”³²

Even the courts that read Rule 608 broadly, however, find that trespass, the act most similar to entering the country illegally,³³ is not an act involving dishonesty or false statement. Accordingly, they hold such activity is beyond the scope of Rule 608(b). To wit, in *State v. Philpott*, a Tennessee trial court found that “[c]riminal trespass is not a crime involving dishonesty or false statement.”³⁴ Later, recognizing the similarity between illegally entering this country and trespassing, the same Tennessee appellate court that found larceny to be a crime of dishonesty relied upon *Philpott* in finding that a trial court properly precluded a defendant from interrogating a witness regarding his illegal work status.³⁵ Conversely, no court has explained how immigration status is a proper subject for impeachment while trespassing is not, nor has any court provided anything more than a cursory comment “to support the conclusion that the status of being an illegal alien impugns one’s credibility.”³⁶ This lack of sound reasoning is particularly disturbing given that there are reasons even beyond the plain language of Rule 608(b) for excluding inquires into a witness’s illegal alien status.

IV. DIVIDE AND PREJUDICE

Even if cross-examination regarding a witness’s immigration status was sufficiently relevant on the issue of (un)truthfulness under Rule 608(b), a court would still have to foreclose such inquiry if: (1) its probative value were substantially outweighed by its prejudicial effect under Rule 403, and/or (2) it were necessary to protect the witness from harassment or undue embarrassment under Rule 611(a).³⁷ Indeed, in *Almeida-Perez*, the Eighth Circuit acknowledged on the one hand that “the relevance of an im-

³¹ 645 S.W.2d 258, 259, 260 (Tenn. Crim. App. 1982) (link). Tennessee has expressly adopted Federal Rule of Evidence 608. See *id.* at 260 (citing *State v. Morgan*, 541 S.W.2d 385 (Tenn. 1976)).

³² *Id.* at 260.

³³ Indeed, in 2005, a New Hampshire sheriff began applying a criminal trespass law to illegal aliens because they trespassed according to the plain language of the law. See Teresa A. Miller, *A New Look at Neo-Liberal Economic Policies and the Criminalization of Undocumented Migration*, 61 SMU L. REV. 171, 181 n.67 (2008). Although the trial court in the New Hampshire case ultimately dismissed the suit because it found the State’s interpretation of the law unconstitutionally usurped the Federal Government’s power to regulate immigration, the New Hampshire example evidences how closely the two crimes are associated. *Id.* at 181 (citing *State v. Barros-Batistele*, No. 05-CR-1474 (D.N.H. Aug. 12, 2005)).

³⁴ 882 S.W.2d 394, 403 n.16 (Tenn. Crim. App. 1994) (link).

³⁵ *State v. Hughey*, No. W2004-01074-CCA-R3-CD, 2006 WL 2000734, at *12 (Tenn. Crim. App. July 18, 2006) (“The state compares an illegal work status to criminal trespass, which this court has stated does not involve dishonesty.”) (link).

³⁶ See *Mischalski v. Ford Motor Co.*, 935 F. Supp. 203, 207–08 (E.D.N.Y. 1996) (link) (“[Plaintiff] has cited no authority, and the court is aware of none, to support the conclusion that the status of being an illegal alien impugns one’s credibility.”).

³⁷ See FED. R. EVID. 608(b) advisory committee’s note (link).

migration violation to character for truthfulness is at the least debatable,” and on the other that “the use of such evidence is fraught with the danger of prejudice to a defendant by introducing the possibility of invidious discrimination on the basis of alienage.”³⁸ Although the Eighth Circuit ultimately found that the immigration interrogation in the case before it navigated the Rule 403 tightrope,³⁹ it should not have done so based upon the tendency of such questioning to divide and prejudice jurors against the illegal alien.⁴⁰

In making its decision that immigration interrogation is not reversible error, the Eighth Circuit relied on precedent from the First and Second Circuits. The First Circuit case, *United States v. Cardales*, is a 1999 opinion in which the appellate court found that the district court did not err by allowing the prosecution to impeach the defendant’s character based on its interrogation into his unlawful entry into Puerto Rico.⁴¹ That opinion failed to reference Rule 403. The Eighth Circuit thus would have been better served relying upon the First Circuit’s 2004 opinion in *United States v. Amaya-Manzanares* because, unlike *Cardales*, *Amaya-Manzanares* actually addressed the prejudicial effect of immigration interrogation.⁴²

Amaya-Manzanares illustrates the unfair prejudicial effect of immigration interrogation. The *Amaya-Manzanares* court reversed a defendant’s conviction for false use of a green card, finding that the district court erred by failing to consider such effect under the Rule 403 balancing test before allowing the prosecution to cross-examine him regarding his unlawful entry into the United States.⁴³ In reversing, the First Circuit acknowledged that Amaya’s unlawful entry was relevant to the question of whether the green card was false because such entry would make “it more likely that the card is false than it would be without evidence of such entry; after all, an unlawful entrant would have use for a false green card, while a lawful entrant would have a far better chance of qualifying for a valid card.”⁴⁴ Nonetheless, the court found that “[n]o sensible judge would be likely to let in the unlawful entry evidence to show falsity”⁴⁵ because, among other things:

Proof of Amaya’s unlawful entry is prejudicial in the sense intended by Rule 403. This is not because it hurts Amaya—all relevant evidence by the government does that—but because it introduces a factor into the case that

³⁸ *United States v. Almeida-Perez*, 549 F.3d 1162, 1174 (8th Cir. 2008) (link).

³⁹ *See id.*

⁴⁰ *See, e.g., Salas v. Hi-Tech Erectors*, 177 P.3d 769, 774 (Wash. Ct. App. 2008) (“The issue of immigration status is divisive and prejudicial.”) (link).

⁴¹ 168 F.3d 548, 557 (1st Cir. 1999) (link).

⁴² 377 F.3d 39, 45–46 (1st Cir. 2004) (link).

⁴³ *Id.*

⁴⁴ *Id.* at 43.

⁴⁵ *Id.* (emphasis added).

might encourage the jury to dislike or disapprove of the defendant independent of the merits.⁴⁶

Some courts also have found that immigration interrogation violates Rule 403 and/or Rule 611(a) when the party impeached is a civil plaintiff. For example, one case in the United States District Court for the Southern District of New York proscribed a defendant-employer from inquiring into the immigration status of a former employee who sued the company for employment discrimination.⁴⁷ In so doing, the court affirmed the findings of a magistrate judge who had concluded that the probative value of such interrogation would be substantially outweighed by the harm it would cause by “discouraging illegal alien workers from litigating unlawful discrimination and other employment-related claims for fear that [being forced to] publicly disclos[e] their unlawful presence in this country would subject them to deportation proceedings”⁴⁸

Other opinions illustrate the divisive nature of immigration interrogation. For instance, in *Salas v. Hi-Tech Erectors*, an undocumented immigrant brought a personal injury action against a scaffolding contractor, and the trial court allowed the defendant to question the plaintiff and his brother regarding the plaintiff’s immigration status at length.⁴⁹ The Court of Appeals of Washington deemed this decision to be erroneous, concluding that “[t]he issue of immigration status is divisive and prejudicial.”⁵⁰ Because immigration interrogation is lacking in probative value and has this tendency to divide and prejudice jurors, courts should preclude it, even if it is warranted under Rule 608(a).

V. IMMIGRATION INCRIMINATION

Although most illegal immigrants enter this country without engaging in acts that might be construed as constituting *crimen falsi*, in some cases, immigrants do illegally enter this country through the use of some type of deceit or false statement; in other cases, immigrants not only enter this country illegally, but also commit some further immigration-related crime that has direct bearing upon their honesty. For instance, in the previously mentioned *Marquez* opinion, the defendant not only entered the country illegally but also used a false Social Security number.⁵¹ Although in one sense such acts of *crimen falsi* present a stronger argument for impeachment than the bare act of entering the country illegally under Rule 608(b),

⁴⁶ *Id.* at 45.

⁴⁷ *Avila-Blum v. Casa De Cambio Delgado, Inc.*, 236 F.R.D. 190, 191 (S.D.N.Y. 2006).

⁴⁸ *Id.* The court also denied the defendants’ motion to set aside a protective order barring inquiry by the defendants into the plaintiff’s immigration status. *Id.*

⁴⁹ 177 P.3d 769, 774 (Wash. Ct. App. 2008) (link).

⁵⁰ *Id.*

⁵¹ *Marquez v. State*, 941 P.2d 22, 26 (Wyo. 1997) (link).

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the interrogator faces a common obstacle under the Rule in any of the above-mentioned scenarios: the Fifth Amendment. If an attorney or judge seeks to impeach a witness based upon his immigration status or his alleged commission of an immigration-related crime of dishonesty (and that witness is not the subject of a deportation proceeding or a criminal defendant facing charges for one of those alleged crimes),⁵² the witness should⁵³ be able to invoke his Fifth Amendment privilege against self-incrimination. Rule 608(b) ends by cautioning that “the giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused’s or the witness’ privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.”⁵⁴

When asked about his immigration status or one of these honesty-related crimes, an illegal alien should be able to invoke his Fifth Amendment privilege against self-incrimination⁵⁵ because his response would create a “real and appreciable” hazard of incrimination and prosecution that is not “so improbable that no reasonable man would suffer it to influence his conduct.”⁵⁶ Indeed, in an Advisory Opinion issued on January 30, 2009, the Maryland Judicial Ethics Committee instructed judges not to inquire into a defendant’s immigration status at either a bail or sentencing hearing because a defendant who entered the country illegally can be subject to criminal penalties, triggering the Fifth Amendment privilege.⁵⁷

CONCLUSION

As the Maryland Judicial Ethics Committee noted in its recent Advisory Opinion, “[i]t is public knowledge that there are millions of illegal aliens in the United States and that the issues arising from that fact are controversial, high-profile, and perceived by members of the public as involving national origin, race, and socioeconomic status.”⁵⁸ This Essay opened by asking whether a prospective juror should trust an illegal alien less than an adulterer. According to courts allowing for immigration interrogation, the illegal alien is less deserving of a juror’s trust. But are these decisions based on the fact that immigration is a hot-button issue, or are they based

⁵² See *Rajah v. Mukasey*, 544 F.3d 427, 441 (2d Cir. 2008) (link).

⁵³ As discussed in the paragraphs *infra*, as a legal matter it seems clear that witnesses undergoing impeachment based on their immigration statuses can, in fact, invoke the Fifth Amendment. See *infra* notes 54–57 and accompanying text. Practically, however, it seems unlikely the witness will be aware she can do so.

⁵⁴ FED. R. EVID. 608(b) (link).

⁵⁵ See *United States v. Bin Laden*, 132 F. Supp. 2d 168, 181 (S.D.N.Y. 2001) (holding that the Fifth Amendment applies to non-resident aliens on trial in the United States) (link).

⁵⁶ See *Brown v. Walker*, 161 U.S. 591, 599–600 (1896) (link).

⁵⁷ Md. Judicial Ethics Comm., Advisory Op. 2008-43 (2009), available at http://mdcourts.gov/ethics/opinions/2000s/2008_43.pdf (link).

⁵⁸ *Id.*

upon illegal immigrants actually being less trustworthy than those who have committed adultery, trespass, and other acts held to be non-deceitful?

Data shows that most illegal immigrants come to this country to work and to reunify their families.⁵⁹ You are a juror. The lawyer's cross-examination of a first witness implies, "Be careful of that guy. He is an illegal alien. He is trying to provide for and pull together his family." The lawyer's cross-examination of a second witness implies, "Be careful of that guy. He cheats on his wife. He is tearing his family apart." Which of these two people do you trust less?

⁵⁹ Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 CONN. L. REV. 555, 562 & n.17 (1996).