

You are the attorney for the defense in a case in which your client has been accused, you believe falsely, of a robbery committed at 16th and P Streets at 11 :00 p.m. He tells you at first that at no time on the evening of the crime was he within six blocks of that location. However, you are able to persuade him that he must tell you the truth and that he was at 15th and P Streets at 10:55 that evening , but that he was walking east, away from the scene of the crime, and that, by 11 :00 p.m. he was six blocks away. At the trial there are two prosecution witnesses. The first mistakenly, in your view, but with some degree of persuasion identifies your client as the criminal. At that point the prosecution's case depends on a single witness, who might or might not be believed. Since your client has a prior record you do not want to put him on the witness stand. The second prosecution witness is an elderly woman who is somewhat nervous and who wears glasses. She testifies truthfully and accurately that she saw your client at 15th and P at 10:55 p.m. If you destroy her reliability through cross-examination designed to show that she is easily confused and has poor eyesight you may be able to make sure the first witness's testimony will not be corroborated.

Should you destroy the elderly woman's testimony, which you believe to be true, in your cross examination of her? If so, why? If not, why not?

Answer: You should attempt to discredit the elderly witness's testimony. A defense attorney's principal duty is to provide the most effective defense she can for her client within the bounds of law. An effective defense, in almost every case, requires the cooperation of the defendant, at least to the extent that he speaks truthfully to his defense attorney. A defendant will not do so, however, if he has reason to think that his attorney will decline to attack the credibility of witnesses whose testimony the attorney knows is true as a result of what the defendant has disclosed to her.

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