

Smith, a lawyer, is defending a young woman named Joan accused of shoplifting a Christmas ornament costing \$2.00. Joan admits to Smith that she took the ornament with the intention of not paying for it. Before trial Smith interviews the store manager who tells him the following. He (the store manager) stopped Joan when he saw her walk through the store, star in hand, and toward the door to the street. When he stopped Joan and asked why she had taken the star without paying for it, she made no reply and burst into tears. He was then about to take her inside the security office when an employee called out "there's a fire." The manager then rushed inside and dealt with a small blaze in the camera section. Five minutes later he came back to find Joan sitting where he left her. He then took her to the security room and asked her if she would be willing to empty her pockets. Without a word she complied. She had a few items, none of which belonged to the store, and a \$10 bill. At the trial the store manager tells the same story he told Smith except he leaves out the part about Joan's waiting for him to return and about having \$10 in her pocket.

Should Smith bring up these points on cross examination of the store manager for the purpose of making it appear credible to the judge that Joan didn't intend to steal the ornament? If so, why? If not, why not?

MODERATOR/S ANSWER: Smith is morally required to bring up on cross examination the points that the store manager omitted to relate in his direct testimony. The prosecution at the trial must establish Joan's guilt beyond reasonable doubt. By bringing up the points that the store manager left out of his testimony, Smith simply puts the prosecution to the test of meeting its burden of proof. Smith's professional duty to represent his client zealously within the bounds of law requires that he make this effort. There is an element of deception here insofar as Smith seeks to create a belief in the minds of the jury and the judge which (presumably) he considers false. Nonetheless, the deception is justified in the circumstances given Smith's duty of zealous representation.

Case from the 1995 Intercollegiate Ethics Bowl. Copyright Robert Ladenson, Center for the Study of Ethics in the Professions, Illinois Institute of Technology, 1995.