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# Criminal Investigations: Getting The Technicalities Right

**Julie Barratt**

Director CIEH Wales

Cyfawyddwraig yng Nghymru,

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# Getting what right?



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- Choosing the right offence
- Authorisations and delegations
- Matters of evidence
- Witnesses
  - Members of the public
  - Professionals
  - Experts
- Instructions to solicitors
- Sentencing

# The need to get it right



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- Case not sufficiently robust to take to court
- Case lost at court
- Wasted time/costs
- Loss of credibility and reputation
- Dissatisfied complainant
- Defendant who 'gets away with it'

# Getting the right offence



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- Make sure that what is complained of actually constitutes an offence
- Ensure that the Council is the prosecuting authority
- Check that anything that should have been done to 'activate' the legislation was done
  - Notices in the press for the required period
  - Adoption by resolution of the Council
- Check that you are in time!

# Authorisations & Delegations



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- Ensure that all the officers engaged in the inquiry are authorised to the appropriate level – watch out for students!
- Make sure delegated authority for all decision making is in place before decisions are taken
- Get RIPA authorisations in place before surveillance is undertaken
- Get the legalities right – R -v- Johnson 1989

# Matters of Evidence



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- Getting enough evidence
- Keeping the evidence admissible

# Sufficiency of Evidence



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- Burden of Proof – prosecution prove every element of what they say *beyond reasonable doubt*
- AB being the owner of a restaurant premises at 123 High Street did on or about the X date of Y, without reasonable excuse do some thing dreadful and thereby breached regulation 3 of the Blahblahblah Regulations 1990
- Traps
  - ‘in the opinion of the council....’
  - ‘without lawful excuse...’
  - ‘with malice aforethought...’

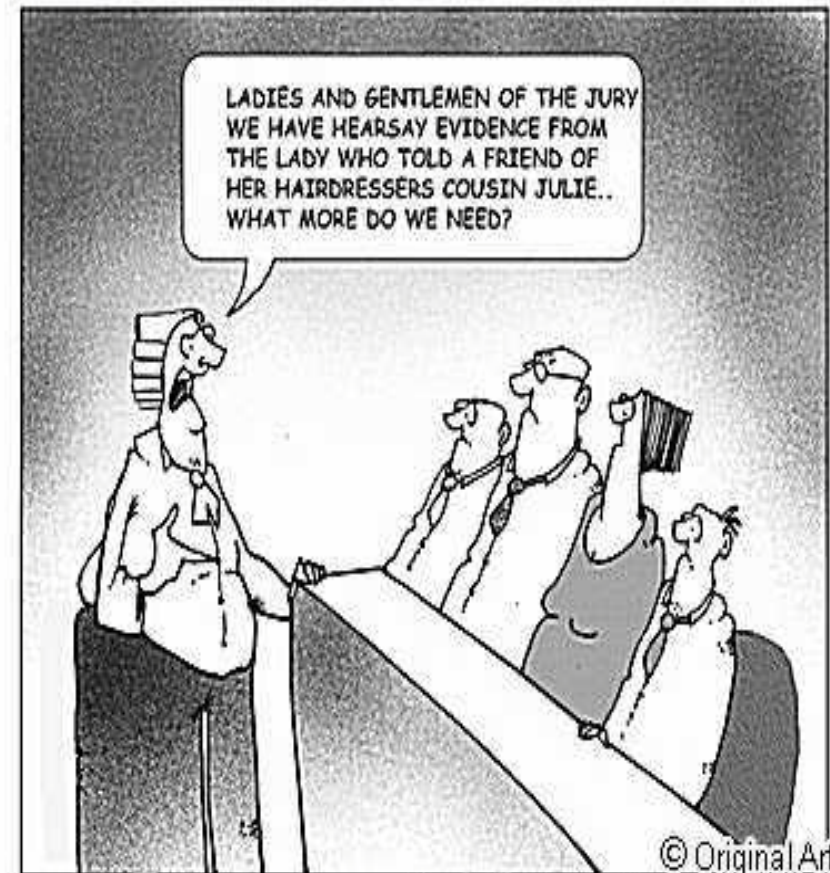
# Admissibility of Evidence



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- Critical need to keep **all** evidence admissible
  - Locked evidence cupboard and management regime
  - Ensure evidence unchanged
  - Apply management regime to documents, photographs etc
- Ensure security of evidence
  - physical and intellectual



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# Witnesses



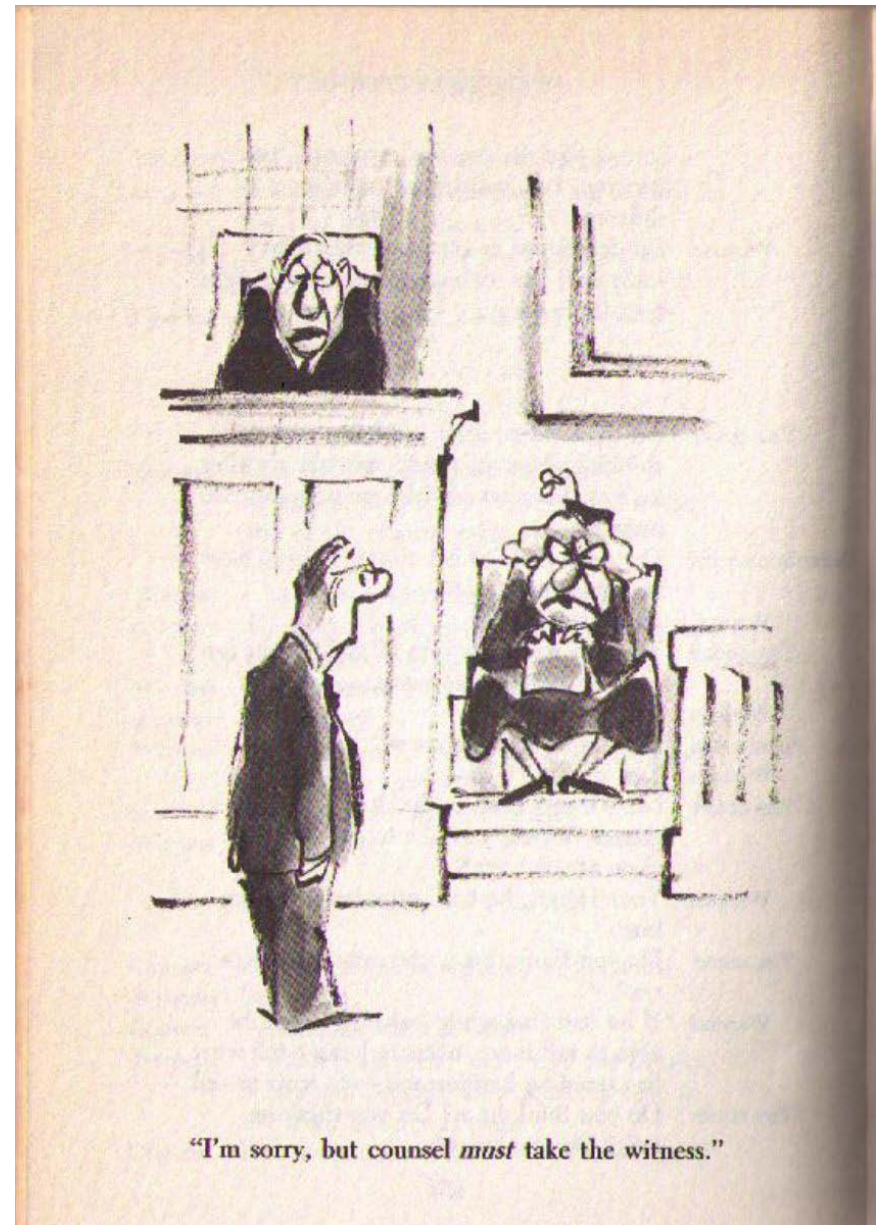
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- Lay witnesses
- Professional officers
- Expert witnesses

# Lay witnesses

- May be essential to the case
- Quality of evidence often not good
  - Own agenda
  - Lack of understanding of the legal requirements
- Can be compelled to attend, but not good tactically
- Hard to control



# Professional Officers

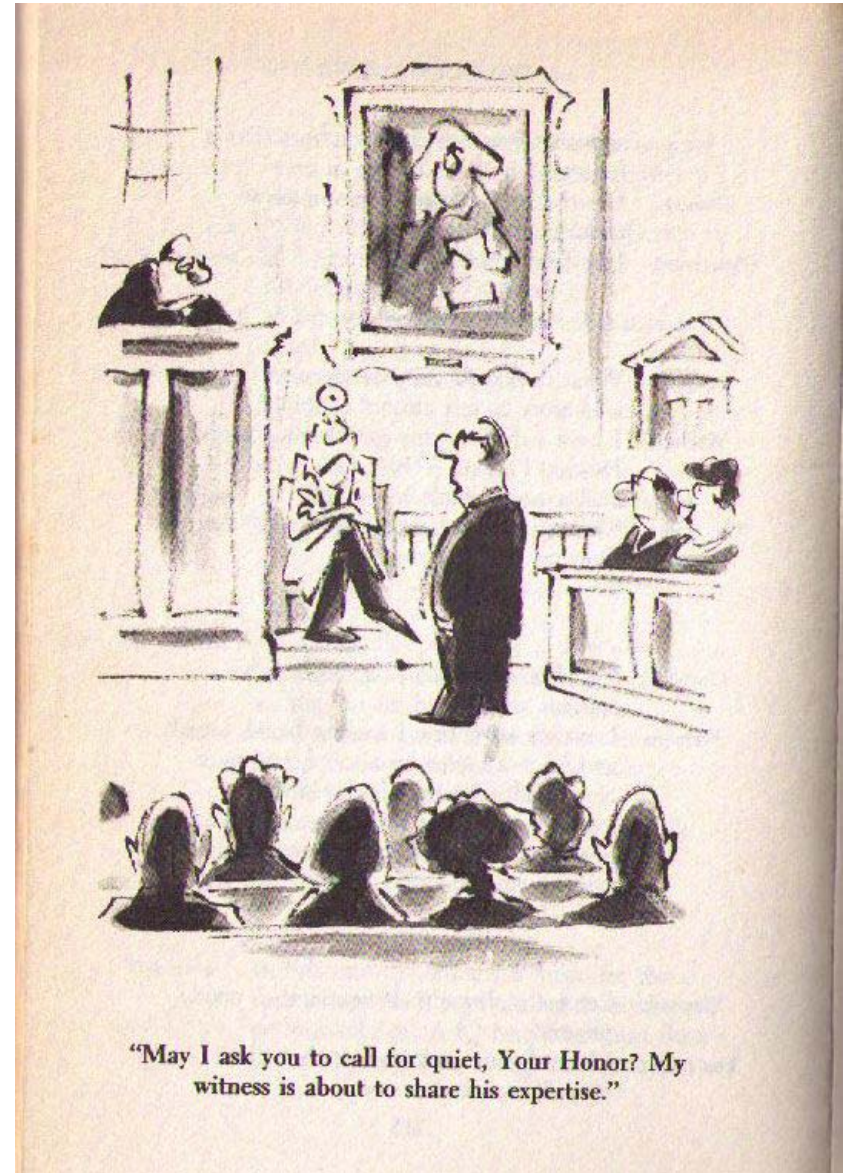


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- Will know the facts of the case and know what needs to be proved
- May have experience of attending court
- May know too much
  - may appear rehearsed
  - may give inadmissible evidence
- Can be compelled to attend

# Expert Witnesses

- Must be a need for an expert
- Court must consent to the expert being called
- Expert must be recognised as such
- Expertise must be relevant
- Expert assists the case, not the side calling him



# Briefing your Lawyer



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- What is acceptable by way of plea bargain?
- Guideline cases
- What else you want
  - Costs
  - Destruction Order
  - Confiscation Order



# Sentencing



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- Previous Convictions
- Friskies Schedules
- Guideline cases



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# Previous Convictions

- Assists the court in understanding the character of the defendant
  - May show that the defendant has not learned anything from previous sentences
  - May show defendant has changed if previous convictions old, or much more serious
- Must be served on the defendant before trial and accepted
- Must not be disclosed to the court until after plea of Guilty or conviction

# Guidance for the Sentencer



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- Friskies Schedule
- Victims Personal Statement
- List of matters to be Taken Into Consideration ( TICs)
- Guideline cases – similarities and distinguishing points

# Salutary points to remember



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Defence counsel is obliged to do his best for his client

- Look for and exploit legal technicalities
- Remove the defence witnesses
- Get the prosecution evidence dismissed
- Discredit the witnesses
- Talk up the defence case

# Finishing thoughts



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- The criminal is to go free because the constable has blundered
  - Justice Benjamin N Cardozo
- The defence does not win. The defence merely demonstrates to the satisfaction of the court that the prosecution has not, and that is victory enough.