

Although the evidence in every criminal case is a matter of public record, I have changed everybody's names – from clients to witnesses to lawyers – as well as their physical description and the location of their case to ensure that no one is identifiable. Sometimes I have also changed their gender and racial origin and a distinguishing piece of evidence but otherwise each story is entirely true. I have done so because this book is not about the individuals involved in the cases I have described, but about what we can learn from the events that took place and how they shape our society. Every family law chapter is the result of blending several different cases together and presenting it as one when it is really a mash of many. In these too, names, descriptions, genders and locations have all been changed. This is to preserve the anonymity the family courts demand, but it also shows how, so often, the issues are the same even when the facts are different. In my 'Notes on the Law' I have explained any technical terms and supporting statistics, and given details of any changes to law and procedure.

Following a case from its beginning to its end you will learn something of the law and its process. I hope you will also discover what it feels like to be the one in the wig, standing up before judge and jury as an instrument of the system. This is not a book of anecdotes; it is a book of people. These are stories of heartache and humour, of high drama and quiet pain, which have challenged my preconceptions and taught me that nothing is ever one thing. For me each case brought to life ideas which otherwise so often appear in abstract: fairness, justice, truth. I hope that, in reading them, they do the same for you.

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Dominic

Oxford Magistrates' Court
and Oxford Crown Court

Children and Young Persons Act 1933

Section 50 – Age of criminal responsibility

It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence.

When I was at law school I was taught to memorize things I would rarely use again. The difference between various types of Will. How to distinguish a joint tenancy and a tenancy-in-common. Why an 'invitation to treat' was not as exciting as it sounded. What I was not taught was how to represent a child.

In my first few years as a barrister I realized that this was a skill so vital I must master it for myself. I began to understand that representing those charged with a criminal offence meant that I was more than just a source of advice, or a mouthpiece for my client's case. I needed to be a psychiatrist, a counsellor, a social worker, a mother, and many other things besides, none of which had appeared on the pages of my law books. I had to learn how to identify mental health problems, victims of domestic abuse, alcohol and drug addictions. I grew to know who might, after court had finished, go home and try to end their life.

But the cases that first asked the most of me were those in the youth court. I would sit with my teenage clients in the hallway of the courthouse, trying to take their instructions on the trial they were about to face as they stared at their phones, or the floor, or the sky through the window, or anywhere but at me. I became familiar with courtrooms made up of desks rather than benches. Our hearings had breaks to maintain their short attention spans, and reminders to use language my child offender could understand. I learned to play paper-scissors-stone with my younger clients under the desk, to keep them occupied while we waited for the magistrates to return with their inevitable guilty verdicts. I worked out how to talk to twelve-year-olds in a Ritalin stupor; how to ask them about the summer when they robbed, threatened and stabbed their way through the nights. I also discovered, crucially, that my clients did not want me to try to be their friend. Too often they would treat the social worker – who came in lieu of an absent parent, with a sing-song voice and

DOMINIC FELT the metal tang of blood in his mouth as he ran, fast, through the tunnel. His breath came out in rasps, echoing against the brick. He could hear the footsteps of the five police officers as they entered the mouth of the underpass behind him. The muscles in his legs burned as he tore out of the gloom and into the summer dusk, and he felt his knees weaken. He stumbled, slowed, and came to a stop. Panting hard, he bent and rested his hands on his thighs. Lifting his head, he looked at the hill path ahead of him. He was never going to make it. Almost with relief, he stood and staggered back to the exit of the tunnel, waiting for the officers to reach him. He leaned back against the raw brick and realized that he was still very drunk. As the officers got closer, Dom held up his left hand towards them, palm outwards, and looked down to spit out a shining gobbet of saliva. A moment later, he felt himself taken forward with a force so great it sent him face downwards on to the dirt path. He recognized the wrench in his shoulders as his arms were pulled back, and the rub of metal to his wrist bones as handcuffs closed around them. He felt the deeper pain of a thick-soled boot in his ribs, on his spine; the full weight of a grown man kneeling on the back of his legs. He managed to turn his head just in time to see the tread of a large black boot closing down upon his face. In the background he could hear his friend, Caz, who had now caught up with them, screaming. As his body buckled, Dom remembered, almost in abstract, that it was his nineteenth birthday.

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attempts at camaraderie – with withering contempt. I tried to convince my young clients that deference was not the same as weakness. In doing so I gained their trust and, occasionally, respect. This respect would enable me to hush the gang of twenty waiting in the corridor for their missing member; or to chase my teenage client down the court stairwell, persuading them to come back to the courtroom and face their custodial sentence.

When I first met Dominic he had turned eighteen, and so, now technically an adult, his criminal career had moved from the youth court up to the magistrates' and crown courts. But it was the youth court that marked his first conviction for burglary, not long after his eleventh birthday. In that same year, still not into adolescence, Dominic was sentenced twice more, just three months apart. If he had lived anywhere else in Europe he would, at eleven years old, still have been considered a child. But Dominic lived in England and so, from the age of ten, he was old enough to be a criminal. Over the three years following his first conviction, another four burglary offences were added to his record. Then, at fourteen, a period of forced respite came with his first incarceration. He entered adulthood, therefore, as someone already marked – the landscape of his future shrunk to a single pathway, leading in only one direction.

Over the years Dominic had developed – or been taught – an old-fashioned kind of criminal code. Never grass anyone up. Treat the police, sex offenders and men who hit women with contempt and violence, but your lawyers with respect. Burglaries should only ever be commercial, not domestic – it is not right to break into people's homes. Bigger shops were worth less guilt, as they all had insurance and the staff turnover was high, and *no one really cared about working there anyway*. But post offices and independent retailers deserved letters of apology which said he knew he would be sent down but, when he

got out, could he come and work there for free, to make it up to them? And if you were stupid enough to get caught, then you pleaded guilty – but only if the evidence was there to get you. Whenever I walked down into the bowels of court and to our conference room in the cells, Dom would stand up to greet me – *Morning, Miss!* – as though I were his headmistress and he was in detention.

But when I was first given one of Dominic's cases, I did not know any of this about him. I only knew that he had been charged with assaulting three police officers, and that his solicitor would pay me £125 to set off to Oxford Magistrates' Court for the next two days to represent him at his trial.

The case papers arrived in my pigeonhole in chambers – as was always the way before they were sent digitally – and I read through them with a sinking heart. Now nineteen, Dom had as many pages of previous convictions as years of life. He would surely have to plead guilty, I thought, scanning through the police officers' statements. They were almost identical, although I knew from experience that the officers would deny, with expressions of horror, any suggestion of collusion.

I wondered who was likely to be prosecuting the trial. The magistrates' court – unlike the crown court – rarely has independent barristers representing the state. Instead, the Crown Prosecution Service will often send the same in-house lawyer to court. There they will prosecute each and every case which comes into their courtroom that day. This, inevitably, means they are as much a part of the place as the legal advisor, who runs the court and advises the magistrates on the law; or the court ushers, who rush in and out of court with flapping black gowns, ensuring everyone is where they need to be; or the magistrates, the panel of three citizens who volunteer to sit in judgment on those who appear before them. Walking into this as a defence

barrister can be a lonely business. In those early years, when I would walk into a magistrates' courtroom to find the prosecutor sharing a joke with the legal advisor and the court usher, the chances of an acquittal seemed to melt in my hands. So I worked hard to push myself in; to make sure they liked me, trusted me, had confidence that I knew what I was doing. In part, that trust was formed by an understanding that I had carefully read and understood the evidence against my client and, if the case was hopeless, that I had told my client so. And, I conceded, zipping Dominic's case papers into my wheellie bag, there was no trial so hopeless as five police officers giving evidence against a nineteen-year-old with whom they were so familiar that all were on first-name terms.

Two days later, I walked across the forecourt of Oxford train station. I decided to take the back route to court and, as I bumped my case down the steps and walked alongside the river, I noticed it was lined with spring wildflowers. At the end of the path I turned the corner and rattled my bag over the cobbles and through the quiet, winding lanes. Eventually I came to the rectangular brick building, ingloriously overlooking a car park, that is the magistrates' court. Opposite the court, almost hidden, is an alleyway. Standing there in the sunshine, I longed to cross towards it and wind my way down its narrow path. I knew that, were I to do so, I would come out opposite the crested gates of Christ Church, its meadow heavy with life about to burst into bloom. Instead I turned away, and walked towards the court, preparing myself to do what I could, in the hour we had before his case began, to persuade my client not to have a trial.

I moved past the people dragging on the end of a last cigarette, before hauling my bag past the security guards and up

the long flight of stairs into court. Oxford Magistrates' Court is set along one floor. One wall is lined with a row of tiny brick conference rooms, the other punctuated by double swing doors leading to four courtrooms, and a small thin door leading to the windowless advocates' room. The main part of the floor is taken up by a waiting area filled with rows of bolted-down seats and the noisy chaos of those waiting their turn on the wheel of justice. Once you have pushed open the heavy oak doors to the courtroom, however, all inside is quiet grandeur. The doors are stained dark brown and covered with the same studded green leather that pads the three magistrates' chairs, elevated at one end. These look down on two rows of advocates' benches and – at the back of court – a glass-slatted dock.

That morning, I walked into the courtroom to find the prosecutor in Dominic's trial alone, going through her papers. I knew this was probably the first time she had ever seen them. I greeted her cheerfully and checked to see which of the police officers had arrived, ready to give evidence. She asked, half-joking, whether we were 'really going to waste the day on such a hopeless trial'. I smiled in response, and said I had to go and find my client. As I pushed open the courtroom doors I longed to be able to turn and promise her that I would be back within the hour, ready to watch my client plead guilty to all three charges.

But then I met Dominic.

I stood in the waiting room and called his name. A tall, slim boy with dark curly hair and hard blue eyes rose in answer, picked up his bag and came towards me with a languid confidence. He had been waiting with a gang of friends who had come to watch his trial from the court's public gallery. Among this cluster of boys sat two girls. One was Caz, his co-defendant, and the other Dom's older sister, Rosie. I could feel the frisson among the group, and knew from experience what sport Dom's

friends would make of the trial, rising to their feet upon his inevitable conviction, and hurling swear words and outrage at us all.

Dominic and I sat opposite one another in one of the conference rooms. He had a frenetic energy to him, but there was a misplaced nobility about his face, as though it belonged to a time of aristocratic hedonism. He listened carefully as I went through the evidence and tested the version of events he had told the solicitors. His case was simple: it was the officers who had assaulted him, not the other way round. He had been drinking in town with some friends, celebrating his birthday. He heard a police officer call out to him, summoning him over, but instead of obliging he had run away, for no reason other than he did not want to be stopped and searched, again. The police had followed him, thrown him to the ground, then kicked and punched him. Caz had run after the police when they gave chase, and when she saw the officers on top of Dom she had tried to pull them off. When their attention turned to Caz, Dom had seen his moment and tried to escape. With handcuffed wrists still behind his back, he had soon been caught by the officers. They had put him on the ground again and sprayed CS gas straight into his face, before hustling him into a police van and arresting him for assault.

I glanced at my notebook and the chart that I had prepared of the officers' evidence, sighed, and warned Dom to prepare himself to be disbelieved. They were police officers and he was Dominic, and that was life. But Dom did not care. He did not care whether the police thought he was scum, or whether the magistrates were irritated by the cost in time and public money, and the taking of five officers off the streets to answer to someone like him. He did not even really care about the punishment he got. What he cared about, he told me, was pleading guilty to

something he did not do. If he was found guilty then so be it, but he could not – would not – plead to it. Then he reached down and pulled a bundle of photographs from his bag. They had been taken by his sister, Rosie, after she collected him from the police station the day after the alleged offence, Dom said. The date and time were stamped on the pictures in red digits. Rosie would give evidence to say when she had taken the photographs and what his injuries had looked like. I paused, staring at the pictures, then pulled out the transcript of his police interview, skipping through to the last section. Dom knew well enough that simply alleging he had been injured by the officers would never be enough, so he had got the interviewing officers to confirm his injuries, on tape. I checked the interview against the photographs. Sure enough, the officers had agreed they could see red bruising and grazes to his ribs, his back and down the side of his face; cuts to the back of his hand; a lump and graze to his right temple; a lump and a cut to the middle of his forehead. The bruises had come out overnight and bloomed into green and purple welts, flashed by the camera into technicoloured glory.

I felt a sort of thrill, as the day began to shift. We left the room, and I sent Dom back to his friends as I went into court alone to show the prosecutor the photographs and tell her what she did not want to hear. We were going to have a trial.

I grew up in a cathedral city where the police were our protectors. If I was walking home from town at night and saw two on patrol, I would cross the road to go their way for as long as I could because it made me feel safer. I made them tea when we were burgled; pointed them in the right direction after one man laid a blow on another, then ran off. The only other contact I

had with them was benign – teenage cider-drinking, the confiscation of a fake ID, my mother shouting ‘Duck!’ to the six children crammed on the back seat of our ancient car – and little trouble came from it. When I became a barrister, my voice and presentation guaranteed respectful treatment from the police, even when I was on the opposite side of the courtroom from them. It was only through defending that I began to see, and understand, why those I represented often viewed them so differently from me.

There are some police officers whom I rarely cross-examine. These ones are earnest and keen, view their job as a vocation, and strive to be fair. I have met a good number of them, but I rarely need to test their evidence in court for, most often, they tell the truth. Some are lazy and apparently without independent thought, but are not dishonest. Others are old hands who have seen their powers eroded and red tape strangle their investigations. They will break and bend rules and cut corners to ensure that – as they see it – justice is done, but they usually hover just on the right side of the line. As a defence barrister, my experience of challenging police in court usually involves a different type of officer. These are the ones who use their badge for no reason other than to legitimize their bullying, their brutality and their deception. In their witness statements they lie and exaggerate, which means that my client – who may well have done something wrong, just not the wrong of which they are accused – will cry ‘No! That is not what happened!’ So, rather than pleading guilty, we must come to court to admit the true parts and dispute the rest.

The police in Dominic’s case were made up of this latter type of officer. And, on the second day of the trial, their evidence began to unravel.

The magistrates, as arbiters of Dominic’s guilt, came into

court knowing nothing but his name and the charges he faced. They had not seen the police officers’ witness statements before the trial because criminal evidence is what is said in court, under oath, and not what is written down beforehand. I, of course, had read them. In their statements, the police officers said they had suspected Dom of an offence, had approached him, and then chased him when he ran. When they caught up with him they took him to the ground, where he had then assaulted them. As a result, they had handcuffed him. Caz had tried to pull them off and, when they turned to deal with her, Dom had tried to run away, so they had sprayed him with gas and put him into the back of a police van. In evidence, however, the officers’ attempts to minimize their own actions and exaggerate Dom’s began to undo them. As each officer described a different version of events, I tried to keep up – circling the evidence in my notebook, attempting to keep track of who said what.

Then the final officer gave evidence. He was the one who had thundered into Dominic’s side, taking him down. He was the one, Dom said, who had put his boot on Dominic’s head and kept it there, crushing it into the ground, and who later sprayed gas into his face. He was the one who had got into the police van with Dom to finish him off. With every question I asked, the officer turned and addressed his answer to the magistrates with extravagant deference. It had the effect of aligning him with them as he stood, hands clasped before him, barely pretending to take my questions seriously.

‘So, officer, am I right in suggesting that when you saw Dominic in the street, you immediately went over to him?’

‘Yes, that’s correct, Your Worships. Just before the defendant absconded and we pursued him.’

‘You mean he ran off and you chased him?’

The officer stared at me, hard. There I was, a nice middle-class girl in a black suit with a smart accent. He must think that, surely, I should be on his side.

'In a manner of speaking, Your Worships.'

'And he seemed perfectly all right when you saw him? I mean, there were no marks or injuries to his face or hands, or elsewhere, that you could see?'

'None whatsoever.'

'When you caught up with the accused he was bent over, hand raised, at the end of the tunnel – is that correct?'

'I don't recall his position. My aim was to prevent his further escape.'

'By taking him to the ground?' I asked.

'Yes, Your Worships.'

'And, just outside the tunnel, there was a patch of grass. You say that was where you took him to the ground?'

'Indeed, Your Worships.'

I paused and looked at my notes. 'And tell us exactly, officer, how you detained him on the ground.'

'In a Home Office approved manner, Your Worships.'

'Right. And what is a Home Office approved manner?'

'It is a technique designed to prevent injury, Your Worships.'

'To you?'

'Yes, Your Worships.'

'And to the detained person?'

'Exactly, Your Worships.'

I had him. At last, I had him.

'I see. And was that, in part, why you detained him on the soft grass, rather than the hard pathway . . . ?'

The officer turned to the magistrates, pleased with himself.

'Of course, Your Worships.'

I looked at the magistrates as I framed the next question. 'I

see, officer. So, to be clear, using the Home Office approved manner on the grass would have protected both you and the defendant from any injuries – have I understood this?'

'Exactly.'

I slid my notebook off the photographs, and sensed the prosecutor twitch. I had shown them to her beforehand, but she could not have predicted that the officer's evidence would make their existence impossible. I held the pictures up, watching as the magistrates craned forward to look at the bruises, lumps and cuts in glossy close-up.

'So, officer – can you explain how my client got *these*, then?'

We sat in court in silence waiting for the magistrates to return, the clerk having summoned us from the waiting room. They had decided on their verdicts. I glanced quickly behind me at the dock where Dom stood, staring at the floor. Caz, next to him, looked up as the magistrates filed into court. The legal advisor, walking ahead of them, returned to her seat below their bench. She waited for everyone in the courtroom to sit, then asked Dom and Caz to stand once again, ready to hear their verdicts.

I spread the photographs out before me, even though they could make no difference now. The magistrates would not stop, midway through their verdict, and change their minds just because they caught sight of them. Perhaps, I thought, looking at Dom's bruised and cut flesh, I just wanted proof I was entitled to feel outraged.

The lead magistrate, seated in the centre of the three, leaned forward slightly. Like so many magistrates I have appeared before, she presented as a cliché: well-spoken, greying hair, small half-moon glasses pulled down to the end of her nose. She looked over them and at the dock as she spoke.

'We have listened carefully to the evidence from the five officers, the two defendants and their witness. We have also re-read the defendants' interviews and taken account of the advice given to us by our legal advisor. Firstly, Caroline Wood, you are accused of striking and kicking a police officer. You say you acted in defence of your co-defendant and denied that your actions were as described. We find you did make contact with the officer . . .'

I noted down her words and resisted the temptation to sigh.

' . . . but because of the conflicting stories given by the police officers and the evidence of the injuries to Dominic Parker, we find that your actions *were* in defence of another. We therefore find you not guilty.'

I held my breath. The magistrate adjusted her gaze.

'Dominic Parker, we have also listened carefully to the evidence against you. Firstly, you are charged with assaults on both PC Smith and PC Duncan. Because of the conflicting evidence, we find you not guilty, and find that any contact you made was accidental in the circumstances. Lastly, you are charged with an assault on PC Davis. We find that the spitting, which is the nature of the assault, did take place, but that this was as a result of the effect of the CS gas you had suffered, and was therefore also accidental. We therefore find you not guilty of all offences.'

I stood up, and hoped my voice was level. I had assumed that these three people, who were so different from those who appeared before them, could never have preferred a defendant's account over a police officer's. I had been wrong. I was embarrassed to have applied the same prejudices to them that I assumed they would apply to my client. The magistrates had not, of course, explicitly said the officers were lying. Over the

following years I would never hear a magistrate accuse a police officer of poor practice, of lying or of planting evidence, even when the evidence suggested exactly this. The defendant's vindication had to lie in his acquittal. I glanced behind me to look at Dominic, and knew that, for him, that was enough.

'May the defendants be released, Madam?'

'Of course. Please unlock the dock.'

After our first victory, I went on to represent Dominic many times. His crimes were almost always theft, with occasional light violence and plenty of public disorder. He would target cash, alcohol and cigarettes, which he knew he could sell on fast, but which never made him sufficient money to survive on for long. He was not, I soon discovered, a good thief. His crimes were opportunistic, usually unplanned, and often committed when he was too drunk to think about the trail of evidence he was leaving behind him like breadcrumb crumbs.

Unfailingly, I would read the evidence against him and find myself laughing out loud. Once, climbing backwards out of an office window, he became stuck. Spotted by a passerby he had to wait, suspended in mid-air, for the police to come and arrest him. Another time he tore his bag on the way out of a window so that the bottles of alcohol he had just stolen fell and smashed, calling over curious witnesses to investigate the noise. In another drunken break-in, he left behind a tool covered in his fingerprints, and smears of blood from a cut to his hand. But my favourite piece of evidence was a letter, carefully placed on his pillow as though it were a love note, for the police to find when they raided his flat: 'Fuck You Pigs! Can't Catch Me! Ha Ha Ha Ha Ha Ha. Dom xxx'. They did, of course.

I was involved in only one other trial in which Dom

refused to plead guilty. It involved a break-in at a local college and the evidence against him was slim, but the prosecution decided to charge him anyway. They knew that his previous convictions for burglary showed a propensity to commit the crime, and that this meant they were admissible by law into the trial. During his evidence, I asked Dom about his past, getting there before the prosecutor's cross-examination, hoping to deaden the punch.

'Dominic,' I said, as he stood in the witness box. 'You are twenty-one years old and you have twenty-three previous convictions for burglary.'

He clasped his hands in front of him, dropping his head. All we could see was his halo of dark hair.

'Yes, Miss, I have.'

'And how did you plead to those burglaries, Dominic?'

He looked back up and straight at me. 'Guilty, Miss, to every single one of them.'

'So Dominic, *why* aren't you pleading guilty to this one?'

'Because . . .' he said, turning to stare beseechingly at the magistrates, all of whom gazed back, ' . . . I didn't do this one.'

As the not guilty verdict was read out and Dom skipped away from court with the friends who had been waiting for him, I found myself wondering whether I, like the magistrates, had just been deceived and, if so, whether I was glad he had got away with it.

The more I represented him, the more I began to understand something else. Dominic might be a terrible criminal, but he was not stupid. He would talk me through the evidence, what charges he thought we might persuade the prosecution to drop, which ones he should plead guilty to. He had a working knowledge of the sentencing guidelines, to which all courts are bound, and which predetermined his fate with a flow chart to his future. Dom would tell me which level of the guideline for

his offence did, or did not, apply to him. He would point to details of the case which meant the judge could go below the sentence starting point. But his special skill was writing beautiful, heartfelt letters to the court, full of pleas and promises of reformation and his commitment to a life beyond crime, where, having never had one, he would hold down a job. He wrote with great charm; his spelling and syntax were better than most of the police statements that had imprisoned him, and more than one judge remarked how articulate they were, even if they rarely worked. He was canny enough to check which judge was sentencing him. 'Oh, right,' he once said, crunching his handwritten letter into a ball. 'He's had one of these before.'

Dom had so many court hearings that sometimes barely a week went by without my seeing him. I began to believe that he did not care about getting caught, nor about the consequences. Sometimes, on my way home from court, I would gaze out of the train window as dusk fell and lose myself in a fantasy where I took him from his life. I would help him find somewhere to live, get him a job, show him ways to focus his energy and rebellion and character. I would indulge myself in this daydreaming aware that it could surely never work, and that I would surely never try.

Some six years after I first met Dominic I found myself representing him for the last time, although I did not know it then.

I went into chambers, collected the case papers from my pigeonhole and started flicking through the evidence. Dom was due to appear in court to be sentenced for a burglary spree. He had set out into the autumn night with two friends, drunk and armed with a claw-hammer. The three of them had smashed their way into a row of local shops. A dry-cleaner: bottom pane of its

door shattered, £15.23 of change stolen. A Tesco Express: door smashed, £320.21 of alcohol stolen. Next a newsagent: £500 of cigarettes and £26 of alcohol taken. Then an estate agent and a launderette, where, running out of energy, they left empty-handed, two splintered doors the only sign they had been there at all.

Dom knew he had to plead guilty. A fairytale trail of blood, fingerprints and DNA had led the police directly to him. However, twelve months earlier he had been sentenced for a different burglary. He had been released from prison halfway through this sentence, as the law required. Then he committed these new offences, with only a month left to go before that sentence expired. This meant that Dom was immediately sent back to prison, to serve out the rest of his existing sentence. When the month passed, we agreed there was little merit in asking a judge for bail. The guidelines said that the maximum sentence for this kind of burglary was fifty-one weeks' imprisonment. Dom had pleaded guilty, which meant he was entitled to one third off his sentence. We both knew, however, that any judge would look at the guidelines, and his previous convictions, and sentence him to the longest period he could. Dom might as well stay in prison and clock up some time, which would then be taken off his sentence as time he had already served.

Dominic was still in prison when his co-defendants were joined to his case. He was also still in prison when they pleaded not guilty and their trial date was set. Their trial was to be a 'floater'. It could begin on any day in a given week, but whether or not it actually began depended on another trial collapsing. If another defendant pleaded guilty, or a witness failed to attend court, or some other unexpected happening occurred which meant that a court became free, then this one would be waiting in the wings to take its place. If, however, no court

became available and the week came to an end without the trial beginning, then everyone would be sent away to relive the experience months later.

Knowing that Dom had to wait until his co-defendants' trial was over before he could be sentenced, I persuaded the judge to grant him bail. By this point he had been back in prison for twenty weeks. Dom was in grave danger, I told the judge, of spending more time in prison waiting for his sentence than his eventual punishment could ever be. The judge agreed, and released him with a list of bail conditions, a requirement to report at the police station every day and a strict curfew monitored by an electronic tag.

On the first day of their trial, Dominic's co-defendants changed their pleas to guilty. I did not know why they had taken eight months to admit their crimes. I only wanted to make sure that Dom got credit for all the time he had spent abiding by his onerous conditions, waiting to receive his punishment. Every day of curtailed liberty spent on a tagged curfew, says the law, is worth half a day in prison. Preparing his case for his sentencing hearing, I wrote down the numbers in my notebook and circled them. Dom had spent 111 days on remand in custody on these offences, and 176 tagged on a curfew. Twenty-eight weeks in total, the same length of time he would have spent in prison had he been given a fifty-six-week sentence. He had already served a longer sentence than any judge was likely to pass.

I checked Dom's date of birth, printed at the top of his previous convictions. He had just turned twenty-four – only eight years younger than I was. The futility of it all, the inevitability of the cycle, crushed down on me. My fantasy of the life Dom could have, were he spirited away from his current one, seemed suddenly vain and absurd, and, as I packed the bundle

of papers into my bag with my wig and gown, I felt embarrassed to have indulged in it.

In my hand I held Dom's pre-sentence report. This slim bundle of papers contained a probation officer's analysis of Dominic: an outline of his life, what remorse, if any, he felt about the crimes he had committed, and details of whatever sentence the probation officer recommended to the judge. I raised my head as the judge frowned down at me.

'But, Miss Langford, I have read the report. Your client professed to the probation officer to *want* a community sentence. He said he did not want to go back to prison yet again. He claimed he needed a chance to stop his quite frankly appalling offending and address his alcohol problem, and that he would be willing to undertake *any* community programme I might make?'

Dom's report had been written shortly after he had pleaded guilty, many months beforehand. He had used all his charm to persuade the probation officer that, despite breaching every other Community Order he had ever been given, this time it was different. He had done various food and hygiene courses in prison, he said. He'd learned to cook for himself when he was growing up, and now he wanted to train to be a chef, given the chance. He really thought he would be good at it. I could imagine how persuasive he had been, how charismatic. How the probation officer must have looked at the guideline starting point of eighteen weeks custody, then at this smiling young man before her, claiming he just needed a break, and remembered the reasons she had wanted to do this job. To help people, not to send them to prison. And she had gone back to her office and typed the words: 'Exceptionally, I recommend that this should be disposed of with a long community sentence.'

But when Dom had told her all this, he had no idea that he would, in effect, serve more than the maximum sentence for his crime while waiting for his sentence. Now, after many months in prison and even more on a tag, the prospect of spending the next year in weekly meetings with a probation officer, attending courses and doing unpaid work – even though he had already done his time – meant that he had, understandably, changed his mind.

I rolled the arguments around, weighing up the judge. He was a recorder: a barrister who sat as a judge for a limited number of days a year. His speciality was not, I knew, in criminal law, but in civil disputes. I tried again.

'Yes, I realize that my client *said* that, Your Honour. But, may I respectfully remind Your Honour once more of the sentencing guidelines for this matter? I fear the probation officer has been wildly optimistic in her recommendation. Your Honour will see that for a Category Two non-domestic burglary the starting point – regardless of plea or previous convictions – is a custodial sentence of eighteen weeks. Your Honour will also have noticed that the maximum sentence in this bracket is fifty-one weeks. My client has, therefore, already served a sentence in *excess* of the maximum, and that does not take into account the one-third discount he is entitled to for his early guilty plea. I respectfully *urge* the court to be careful that it does not pass a sentence which would prove... excessive.'

The judge looked down at the copy of the guidelines I had handed up. He paused, and I wondered whether I should push the point again. The sentencing guidelines were designed to create uniformity between courts, and had largely done so, but they also risked removing the skills and perception of the judge who has to decide an individual's fate. I thought of a maverick judge before whom I used to appear. He was once

due to sentence my client, a man with a history of fighting who had meted out a number of injuries in a bar brawl and who should, according to the guidelines, have gone straight to prison. Instead this judge bellowed at him: 'Lay off the booze, stay out of trouble, get a bloody job, and come back here saying as much in a year's time or you will be going straight down for eighteen months. Now get out of my court.' A year later my client and I returned to show that he had faithfully obliged. He had new qualifications, a new job, a new home and a fiancée, and had kept out of trouble. Ever since I have been convinced that, in keeping him out of prison, that judge saved his life. But now, for Dominic, I needed the opposite. I looked at the judge, willing him to understand my plea, urging him to sentence Dom to prison so that he could walk free from court today.

'Yes, thank you, Miss Langford. Is there anything further?' I hesitated, and confirmed there was not, then retook my seat. My two co-defending counsel then stood and, in turn, pleaded with the judge for leniency. Their clients had seen the inside of a prison cell before, their barristers implored, and knew that now was the time for change. It was their last chance. They urged the judge not to commit them to the cycle of custody with which the courts were all too familiar, and to enable them to swerve their future on to a different path.

The judge nodded. As he cleared his throat and looked towards the dock, I realized I was holding my breath.

'You are kidding?' My solicitor swore down the phone.

'No. I know,' I said. 'He gave him a Community Order. Twelve months of supervision to address his alcohol problem, an Enhanced Thinking Skills programme, and one hundred

and twenty hours' unpaid work. The other two got pretty much the same.'

'Ridiculous. Didn't he see his record? Dom will never do it! We'll be back in court within weeks for a breach. It's just setting him up to fail...'

'I tried to say as much, but the judge didn't get it. He agreed it was a Category Two burglary. He agreed that it was aggravated by there being more than one break-in, and that they had gone prepared with a claw-hammer, at night, under the influence of alcohol. I mean, that *alone* should have meant an immediate custodial sentence. He was clearly on some sort of reformation mission – or maybe he thought he had to follow probation's recommendation, I don't know. He went through all of Dom's previous convictions and said that, despite the various remedies that had been applied – including prison – he had not learned his lesson and now was the time to do it.'

'But what about all the time he'd spent on remand – how could the judge just ignore it?'

'He didn't – he said he was not going to pass a prison sentence *because* of the time spent on remand. In effect, he used it as mitigation. I asked for permission to appeal, which, of course, he refused. Don't worry, I'll draft you an application to the Court of Appeal.' I paused. There was silence at the end of the line. 'The problem was that Dom had banged on to the probation officer about needing to change. He insisted that, although he had breached Community Orders in the past, he wanted the chance to try again – he knew this was the moment to really make a go of it, he said. The probation officer was convinced apparently; she went into some detail about his changed motivation.'

'I see.' My solicitor paused. 'I imagine that, by now, he is somewhat *less* motivated...?'

I hesitated. 'You could put it like that.'

After we had come out of court I had stood in the corridor while Dom spat his fury at me. I understood why. The complaints he made were not new: the pointlessness of the brief appointments with the supervising probation officer crammed into an overloaded timetable, which offered just enough time to sign a name and ask a few questions but never enough to pull at the deep and secret thread that might undo the reasons for his offending. I watched Dom as he raged before me. He had put on weight in the last year, and the boyishness of his frame was giving way to slovenliness. Something else was different: there was a sullenness to him, a meanness and hardness I had not seen before. I looked at the other defendants, gathering in groups outside the courtroom doors, waiting for their turn, and realized that, for the first time, it was difficult to distinguish him from the rest of them.

My application to the Court of Appeal against Dom's sentence was refused. A few months later, I stood on the railway station platform after court and listened to a voicemail from my clerk. Dom had a hearing in court the day after tomorrow and his solicitor had asked if I could cover it. He had refused to go to his supervision appointments after the application for permission to appeal was refused, declaring them a waste of time. The court would be asked to find him in breach of his order and to sentence him for it. The voicemail reminded me that I already had another case in my diary for the same day. It was a civil case: a hopeless whiplash claim on behalf of a client who was, it was clear, part of a group of professional claimants who organized crashes for cash. Usually, I would have done anything to get out of it. I knew that as long as there was a competent, warm body in my place, the solicitors would not care who bore the judge's wrath towards my client on their behalf. I called my clerk back and, as he answered, I pictured Dominic the last time I had seen him.

'The thing is, I know I represented him at the sentence and that there should be continuity of counsel, but the other case was in my diary first so, technically, I have to do it.' I paused. 'I've also done loads of work on it. I won't get a penny if it goes to someone else and the breach hearing will barely cover my train fare to Oxford, right?'

All this was true. It was also irrelevant. A year or so before-hand, I would not have thought about it: I would have covered Dom's case. But the truth was I no longer wanted to witness his pointless and predictable lurch between prison and court, court and prison. I no longer wanted to watch the justice system fail to help him, and Dom fail to help himself. It not only made me feel impotent, it also made me feel complicit. I called the solicitor to explain why I couldn't cover the hearing and tried to ignore the gnawing of guilt in my gut. After that, although she asked me to cover other cases, the solicitor never again gave me one of Dom's. I never knew whether it was Dom himself who asked for someone else because, despite all the years of representing him, I, like others, had given up on him, and he would not forgive me for it.

A few years after I turned down Dominic's case, I was staying in Oxford on another trial and went out for dinner with a friend to a bistro near her flat, slightly out of town, in an area I did not know well. It was relaxed and noisy, the staff and diners a collection of students. When we finished I walked over to the till to pay. Behind it was the door to the kitchen, swinging on its hinges as staff walked in and out carrying dishes full and empty. As I waited, a girl with a pile of plates walked past me and into the kitchen. I looked up, curious to see the action behind the door. There, balancing against a stainless-steel countertop, I saw - for two long seconds - a man who looked exactly like Dominic. He was wearing a white kitchen jacket

and chequered trousers, and his face was in profile as he laughed at someone out of sight. The door swung shut.

I wondered about it for a long time afterwards. The next time I saw Dominic's solicitor I nearly asked her if I could be right, but fear stopped me. Fear that I had got it wrong; fear that I had seen another man – for I wanted, above all else, to believe I had seen Dom. I wanted to think that some unknown trigger – something someone said, something someone did – had made him want to change, want to stop. I wanted to believe the judge had been right to put someone else in charge of his life long enough to change it. I knew that this was not what the statistics told me and I knew it was wishful of me to think it, but I hoped that he – like others I had represented – had at last settled on a life that meant I would never see him again.

There are too many cases – too many faces – to remember them all. But sometimes, going through the many blue notebooks in which I wrote down all the evidence, a particular fact or name will bring my client and their case back to me so strongly I feel as though I am in the courtroom with them once again. These are the people who, for one reason or another, have touched my life. These are the people who will stay with me for ever. And Dominic was the first of them.

2

Derek

Newport Magistrates' Court,
Isle of Wight

Sexual Offences Act 2003

Section 71 – Sexual activity in a public lavatory

(1) A person commits an offence if—

- (a) he is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise,
 - (b) he intentionally engages in an activity, and,
 - (c) the activity is sexual.
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