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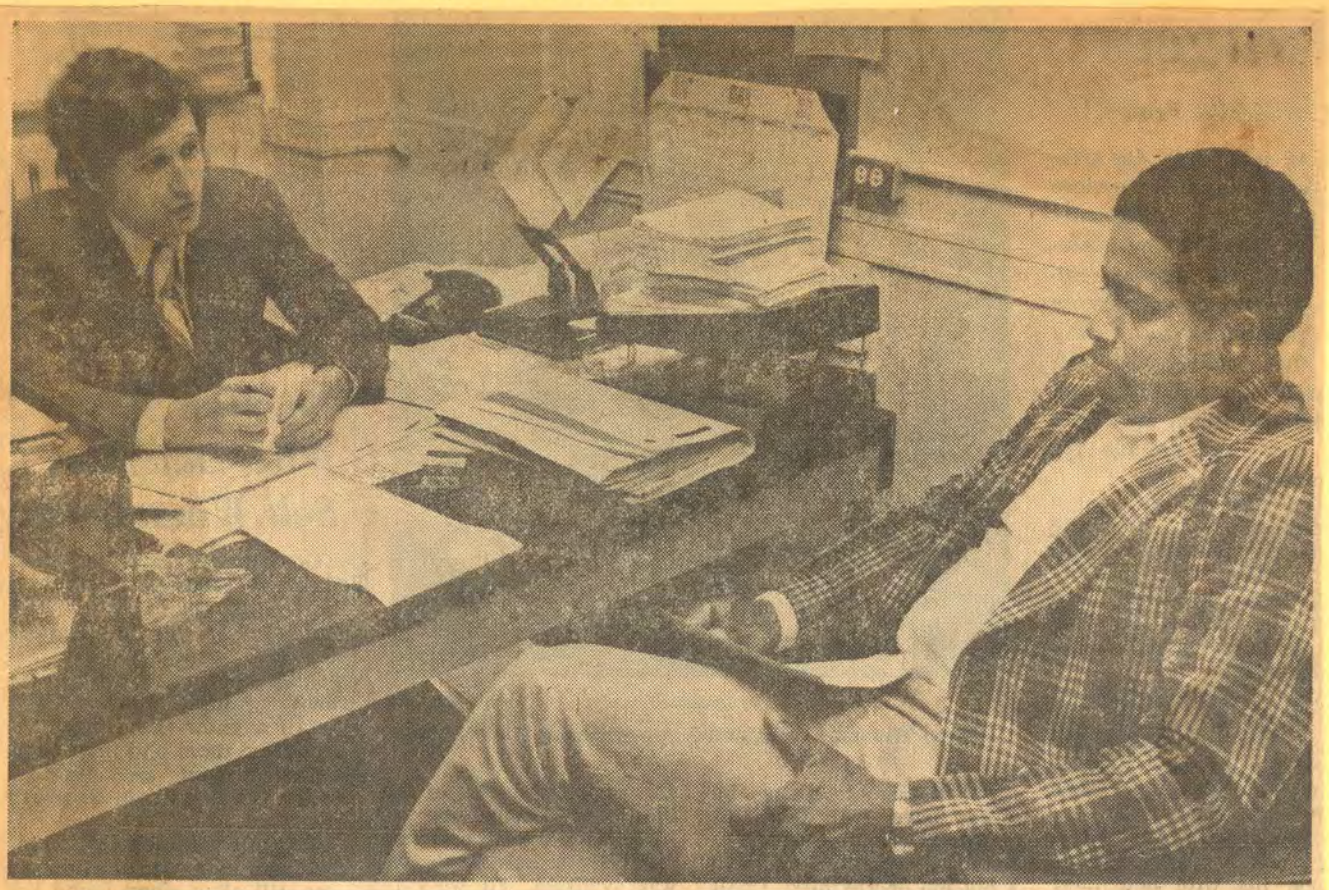

By Ellsworth Davis—The Washington Post

Mark H. Touhey III, left, an assistant U.S. attorney, discusses case with metropolitan Officer Roosevelt Lewis.

A Step in Process of Justice

Behind-the-Scene Maneuvering at D.C. Superior Court

By Eugene L. Meyer
Washington Post Staff Writer

It is a gray, rainy spring Monday in Washington. In the dingy cellblocks of D.C. Superior Court, about 30 men and women are newly behind bars—jailed by police for weekend crimes.

In a sparsely furnished office in the U.S. attorney's area of Superior Court, federal prosecutor Mark H. Touhey III, 28, and two years out of Fordham University Law School, listens to two metropolitan policemen describe an Anacostia robbery in which they have arrested two suspects.

"We got three false calls right behind each other," said Officer James R. Shaw. "I told my partner somebody was up to something."

The 90-minute conversation that ensued between Touhey and the police in this case—and dozens of similar conversations of other cases each week—is a crucial step in the process of justice in the city, as well the surrounding jurisdictions and in courts throughout the nation.

The decision—to prosecute a person on the charge for which he was arrested, to lower the charge or drop it entirely—would be made by Touhey, who is one of about seven assistant U.S. attorneys who customarily handle the Monday morning cases. On the basis of their decision the long process that includes lineups, grand juries, plea bargaining or trial, freedom or further incarceration will move forward.

The "initial screening," or so-called "papering" process, occurs before the arrested appears before a judge and is almost always a one-sided affair. There is the prosecutor and the arresting officer. There is no defense attorney. Virtually all defendants are too poor to hire their own and will not have one until the "arraignment judge" appoints one later the same morning.

Sometimes, there are the accused and the accuser, but only where they know each other and police wonder whether in fact a crime has been committed.

One out of every six felony arrests will be dropped entirely. The process of weeding out goes on six mornings a week, affecting the lives of the accused, and the victims, and the public perception of criminal justice.

In the immediate case at hand, two men had beaten and robbed two women, one elderly, inside an apartment house lobby, then dropped the purses as one victim emitted "one of those high notes," Shaw said, and he and his partner Wayne W. Epps, arrived to give chase.

Epps, one year on the force, jumped over a metal fence in pursuit, losing his footing and injuring his leg and left hand, which was bandaged.

Shaw caught a suspect. The other ran into a nearby building, changed his clothes and, "acting like nothing happened," followed Epps back to the crime scene.

"All hell broke loose when she (a victim) identified him," Shaw said. "I don't know how Epps held on to him. His hand was already hurt. The suspect's father "came up and kicked me in the face when I was trying to handcuff his son," said Shaw.

One suspect was 19 with a 1972 arrest for assault with intent to kill. The other was 24, with prior charges for robbery and bail violation, and a 1970 drug conviction.

Touhey listened and asked questions and after 90 minutes concluded, "This is a pretty strong case. We have the crucial elements. Witnesses who were victims. Corroboration by officers who

See DECISION, C5, Col. 1

DECISION, From C1

saw the subjects fleeing. On-the-scene identification of both subjects by victims."

The charge, signed by Touhey: The United States of America alleged that the two suspects had committed robbery with force and violence, a felony punishable by 5 to 15 years in prison.

The two suspects then were scheduled to appear before a Superior Court judge whose job was to decide whether they should be released on their own word that they would return for future court appearances, or whether they should be compelled to raise a bond and in what amount in order to gain their release from jail and insure their return.

Next would come a preliminary hearing before another Superior Court judge at which the government must present evidence to show that there is reason to believe a crime has been committed and that the case should be sent to the grand jury. The grand jury will decide whether the suspects should be indicted and on what charge.

Touhey, curly-haired father of a young son and husband of a social worker who deals with alcoholics, has spent nine months listening to arresting officers in this setting. Before that, Touhey papered and tried misdemeanors. Soon he will move on to the more cerebral appellate section, dominated more by prior case law and reflection than quick judgments on immediate cases.

In the complaint presented by Officer Shaw, Touhey took note of other factors outside the specific complaint in arriving at his decision.

One victim lived next to her assailant. "If he makes bond," Touhey said, "I'll put in big red letters on his (case) jacket, 'Stay away from complaining witness.'"

And there was the suspect's father, charged only with failing to move on. Shaw argued for assault on a police officer, a felony. Touhey promised to bring it to the grand jury.

"It surprised me when I looked up and saw this big man lying on top of me, and I was already rolling with his son," said Shaw. "Jesus Christ, they really do it to us out there, but what can you do? I got hit over the head once foe issuing a $5 parking ticket.The jury let the guy go."

Touhey, who is the son of an ex-FBI agent and former public safety commissioner of Rochester, N.Y., said, "A policeman in the line of duty shouldn't have to put up with that . . ."

In a computer study of major violent crimes committed here in 1973, 622 out of 3,814 arrests (16.3 per cent) were dropped entirely by "papering prosecutors." The crime brought by the police was charged in 2,857 cases (74.9 per cent). A lesser charge was made in 335 cases (8.7 per cent).

The study, conducted for The Washington Post by the nonprofit Institute for Law and Social Research, revealed that the charge most often reduced by prosecutors at initial screening is serious assault.

Officer Sylvia Wilson, 21, who said she likes the excitement of police work, presented such a case. Sent to a Capitol Hill Safeway foodstore by the police dispatcher, she said she found the defendant standing at a cigarette machine rubbing his eyes after having been squirted in the face with a chemical disabling agent by the store manager.

The store manager, suspecting the 53-year-old man had stolen some merchandise, had asked to inspect his bags, according to Wilson. An argument ensued, during which the man allegedly threatened to cut the manager's throat but "just kept the knife in his hand and didn't cut him," Wilson said.

The store manager was the only witness. "The store was crowded," Wilson said, "but everyone else didn't want to get involved."

It turned out that the man had paid for everything inside his shopping bag. He had been arrested for assault with a deadly weapon (knife), which upon conviction carries a maximum 10-year prison term.

Touhey decided more appropriate charges were simple assault and possession of a prohibited weapon, if indeed the blade was 3 inches long, also a lesser offense.

"In this case, the defendant did not inflict any wounds or injuries on the complainant," Touhey explained in stilted legalese. "The defendant does not appear to have a prior history of assaultive type of conduct."

Then, reflecting, Touhey said, "It's easy to charge a felony right down the line—boom,boom, boom. But one likes to think this is more than a mere mechanical exercise."

Det. Earl Wade, 32, from Bears Fork, W. Va., (population, 200) joined the D.C. police force almost five years ago, like many rural whites, in return for a six-month early Army discharge. He filled out his application in Vietnam. He is now a foot soldier in the war on crime in Anacostia.

Wade has come to Touhey to argue that the arrest by other officers of two Anacostia youths and one adult for burglary had been a mistake.

In this case, Wade said, the self-described victim had apparently himself been on the other side; he was a convicted junkie with 24 arrests on a variety of charges who had flagged an officer to report his apartment was being burglarized.

A man was, in fact, found rummaging inside the apartment. On other information from the complainant, police also arrested two juveniles and charged them with removing items from the apartment earlier.

What actually had happened, Wade said he learned from his followup investigation, was that the complainant, a man in his 40s, owed $1,489 in back rent, and had been absent more than present from his apartment. The juveniles had removed his property for safekeeping.

The man found inside the apartment could properly be charged with unlawful entry, Touhey said, but the complainant, whose whereabouts are unknown, was an unreliable witness. Because of this, Wade said it would be a waste of taxpayers' money to try the man for anything.

Touhey agreed to drop charges against the adult, and notified the D.C. corporation counsel, who prosecutes juveniles, of his action. Charges against the juveniles were also dropped.

Wade had spent four days proving "the guilty" innocent.

"A lot of people have a stereotyped notion of the police officer trying to lock everybody up," Wade said. "I can't see putting a charge on someone who didn't do it. I'm trying to get these guys off. You'd think I'm working for the defense."