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## **OF 1,286 SLAYING CASES, 1 IN 4 ENDS IN CONVICTION *D.C.'S CRUSHING CASELOAD HAMPERS SYSTEM, POST STUDY FINDS***

### **MURDER ON TRIAL**

**BY ATHELIA KNIGHT**

**Washington Post Staff Writer**

Two hours into the new year of 1988, Michael Saunders Jr., 19, was shot in the head in Southwest Washington, the first **murder** victim of the year when homicides began to skyrocket in the District. Three years later, at 9:40 p.m. **on** Dec. 30, 1990, Darryl T. Morgan, 19, was gunned down in Northwest, the last **murder** victim of that year.

Between the Saunders and Morgan killings, there were 1,284 other homicides in those three years, more than at any previous time and representing the highest homicide rate in the nation. The Washington Post set out two years ago to follow each of the 1,286 homicides through the city's criminal justice system and examine a central question: How often were the killers brought to justice?

The answer: Someone was convicted of first-degree **murder**, second-degree **murder** or manslaughter in just **one** of every four homicides. The percentage increases **only** slightly, to 28 percent, if convictions for any crime are included.

Using a computerized database assembled from police and court records, The Post also found:

- \* In four of every 10 homicides, no **one** ever was arrested.
- \* In **one**-third of the 727 homicides in which arrests were made, charges later were dropped and, in most cases, never reinstated.
- \* Nearly a third of the 261 defendants who went to **trial** were acquitted.

Behind these grim numbers is a criminal justice system that can't keep up with its crushing caseload. Gone are the days when police solved four out of five homicides; now, homicide detectives say they are so busy that they don't have time to fully investigate every homicide. Prosecutors find that some arrests are based **on** evidence so weak that they refuse to present them to the grand jury for an indictment. Judges sometimes dismiss charges, allowing **murder** suspects to go free, because prosecutors and defense lawyers say they aren't ready to go to **trial** or have a competing case going **on** elsewhere.

The inefficiency of the court system showed up in how long it took to bring to account those convicted of **murder**: 15

1/2 months from the date of arrest to the date of sentencing for 1990, compared with the national average of 11 1/2 months that year.

Delays can have real consequences. In November 1988, 25-year-old Andre Johnson was shot several times **on** a Southeast Washington street corner, the victim of a rivalry between two drug organizations. A suspect was arrested within a week. It took more than eight months to indict him and an additional 19 months to bring him to **trial**. In the meantime, three prosecution witnesses were killed -- at least **one**, prosecutors alleged in court, to keep him from testifying. The defendant later was acquitted.

Judges who must move the cases along through a docket crowded with other violent crimes often are frustrated by the simple logistics of setting **trial** dates. "The scheduling conflict is **one** of the most serious obstacles we run into," said Fred B. Ugast, the chief judge of D.C. Superior Court who retired earlier this month after 20 years **on** the bench.

There is no opportunity for police, prosecutors, defense lawyers and judges to catch their breath. Since 1990, 1,320 more homicides have been recorded in the District, sending an unending stream of new cases into a courthouse already sagging under the weight of 14,000 serious criminal cases a year.

"It's system gridlock," said Isaac Fulwood Jr., who was D.C. police chief from August 1989 to October 1992. "It's not necessarily any **one** person's fault. The process is overwhelmed and not ready to deal with these cases. The larger issue is the quality of the criminal justice process. The number of cases stretches the system. It's like a rubber band. . . . The quality deteriorates because of the pressure."

It is difficult to assess the performance of the criminal justice system from the yardsticks that the police, the prosecutors and the courts traditionally use. Each group has developed measurements that reflect **only** its role in the process. Police cite their clearance rate, defined as the number of cases closed by arrest or other means. Prosecutors prefer to talk about their conviction rate, which they base **on** cases in which someone is indicted rather than arrested. Judges are concerned with applying the law fairly and the time it takes to get a case through court.

By following the twists and turns of three years of homicides, The Post's study provides a broader picture of how the District has dispensed justice for this deadliest of crimes. This approach also made it possible to calculate exactly how many cases ended with someone held accountable for **murder**, a statistic that homicide studies almost never include. It is difficult to compare The Post's findings **on** the District with other major cities without doing a similar study of each **one**.

Though sentencing data were collected from the court records, The Post determined that it could not obtain a complete and precise picture of sentencing without following each case through the appeals process and the parole system. The Post did check the status of the 94 defendants convicted of first-degree **murder** and found that all were in prison. Excluding cases under appeal, the earliest date that any of these inmates can be released **on** parole is 2008.

The city's law enforcement officials and political leaders have reacted to the escalating violence with more resources

nave reacted to the escalating violence with more money and people. They set up special police task forces, enlisted the help of federal agents, nearly doubled the number of homicide detectives, quadrupled the number of prosecutors handling **murder** cases and assigned three more judges to help the two who were presiding over most **murder** trials.

For the most part, however, police, prosecutors and judges operate independently. Their computer systems aren't compatible, they have no formal mechanism for sharing information, and they don't meet regularly to talk over their common problems.

D.C. Police Chief Fred Thomas, who became chief in January, said in an interview that he wished his department tracked **murder** cases through the system. Learning more might help the department figure out how to train detectives better, he said. "We investigate cases the same way we did 50 years ago," he said. "These are times in which we need to reexamine everything we do."

#### Clearance Rates Drop as Killings Soar

Homicide detectives may use some of the same techniques as their brethren did 50 years ago, but they face entirely different challenges.

In the 1940s, police investigated fewer than 100 homicides a year in a city whose population was 200,000 more. Domestic violence was the cause of more homicides then, guns were not as easy to obtain, detectives had more time to pursue leads and check alibis. And they closed more cases: 97 percent in 1948, according to Justice Department records.

Even as recently as 1986, when the city had fewer than 200 homicides, police reported a clearance rate of more than 80 percent. After the homicides topped 300 a year, the clearance rate dropped below 65 percent, about the same as the national average.

The clearance rate, however, obscures the full story. Not all homicides are closed by arrest; police also define a case as closed if they have formally identified a suspect, even if they haven't made an arrest. That includes suspects who have died, those at large **on** outstanding warrants and those being held **on** unrelated charges somewhere else.

If an arrest is made and the charges are later dropped, police don't revise the clearance rate to reflect that the case is open again. For all practical purposes, unless police get a tip or someone confesses, most such cases remain uninvestigated and unsolved.

There are exceptions. After a judge dismissed charges in the highly publicized 1992 slaying of Senate aide Tom Barnes, citing insufficient evidence, police assigned its "cold case" squad to reinvestigate. Detectives, including agents **on** loan from the FBI, pursued the case for months before charging another man with the slaying.

The regular homicide squad doesn't have that kind of time or extra help. In 1985, when the city had 148 homicides, Detective Patrick McGinnis and his partner were responsible for investigating nine or 10 slayings during the year. A few years later, as the homicide rate soared to more than 400, McGinnis and his partner sometimes found themselves investigating as many as nine or 10 a month.

...engaging as many as nine or 10 a month.

It was so stressful, McGinnis said, that he took three months' sick leave in late 1989. "The homicide detective is like the last man in the circus, the guy with the shovel who cleans up after everyone else -- the parent, the pastor, the teacher -- has failed," McGinnis said.

The stress finally drove him to accept a transfer to another unit in 1991. This year, he retired from the force at age 47. "A lot of pressure was self-imposed," he said. "If you're there, you're a professional. You want to do your job well. You're concerned about the quality of the investigation. But when quantity takes over quality, it bothers the true professional."

The homicide squad built its reputation as an elite unit by attracting skilled veterans. In recent years, however, the squad has been so decimated by transfers and retirements that most detectives have five years of experience or less. The remaining veterans have little time to train newcomers. Daniel Hickson, who became a homicide detective in 1986 after 11 years **on** the force, said he worked for months as an understudy before taking the lead **on** an investigation; now, rookie detectives can be put in charge of an investigation within weeks of joining the squad.

Law enforcement officials cite another reason for their difficulty in solving killings: their dependence **on** reluctant, scared and often unreliable witnesses to prove their cases. "There's nothing magical about solving homicides," said former chief Fulwood. "It's people coming forward and giving information. If nobody gives up information, the detectives don't have anything to go **on**."

Sgt. Walter Staples, a veteran supervisor in the homicide unit, likens **murder** investigations to building a house. "If you don't put it together right, it won't stand," he said. "We're responsible for the foundation, making sure there are no cracks."

#### Tight Schedules Delay, Deny Justice

Even when detectives have something to go **on**, it often isn't enough. Of the 500 suspects arrested **on** first-degree **murder** charges, 393 were indicted **on** that charge; the rest were indicted **on** reduced charges or their cases were dismissed. Fewer than **one**-fifth -- 94 of 500 -- of the defendants arrested for first-degree **murder** were convicted of that charge.

Prosecutors and police blame each other for some of the dropped cases. Prosecutors say they have to drop some cases because police sometimes charge suspects **on** little more than the say-so of **one** witness. In 1991, several prosecutors grew so frustrated that they complained to detectives, telling them to find more witnesses.

Detectives had another explanation: Prosecutors, busy with scheduled **trials**, couldn't find time to bring cases to the grand jury. Delays can damage a case beyond repair. As the months go by, some witnesses back away from their willingness to testify, according to the detectives.

Court rules require prosecutors to file formal charges -- usually a grand jury indictment -- within nine months of an arrest. In theory, prosecutors are supposed to toss out weak cases as soon after arrest as possible. In reality, The

Post's study shows, they often wait until the end of the nine-month deadline to make a decision. Of the 225 cases dismissed before indictment, 58 were dropped in the last 10 days before the nine-month time limit had expired.

In 1989, the prosecutors began to feel the effects of the record number of homicides. The 10 prosecutors handling **murder** cases at the time warned then-U.S. Attorney Jay B. Stephens in a memorandum that "current caseloads and working conditions here prevent us from discharging our responsibilities in a reasonable and professional manner."

Stephens added prosecutors and created a unit to deal exclusively with homicides. Adding prosecutors eased the workload, according to David Schertler, an assistant U.S. attorney who directs the 32 lawyers who now work **on** homicides. Schertler says the typical prosecutor's caseload has dropped from 30 to 10.

Nonetheless, delays continued to plague the system. Almost everyone -- judge, prosecutor, detective, defense lawyer -- has a horror story about scheduling conflicts. There's a domino effect: If a case is postponed, it bumps up against other scheduled cases, causing more postponements, and so **on**. There's no way for the court to catch up.

Some judges say such problems in the system shouldn't become an excuse for failing to act **on** pending cases. In 1990, Judge Henry F. Greene took the unusual step of dismissing **murder** charges in several cases that had been long delayed. In a strongly worded ruling, the judge publicly reprimanded the U.S. attorney's office. He called the delays "a pattern and practice by the government of misuse of the grand jury process."

The U.S. attorney's office issued a statement rebuking Greene. "The wave of drug-related **murders** that have swept the nation's capital has strained the entire criminal justice system of this city. . . . The release of brutal, cold-blooded **murderers** back **onto** the streets of our community is not an appropriate response to this crisis."

#### Frustration for Victims' Families

Behind the statistics, away from the daily grind of juggling cases, are families of victims that find their encounter with the criminal justice system nothing short of bewildering.

The victims, like the defendants, come disproportionately from Washington's black community. Blacks make up more than two-thirds of the District's population; 93 percent of the homicide victims were black, The Post's study shows.

Deborah Wilson-Johnson, whose younger brother was killed five years ago, calls the prosecutor's office periodically to check **on** the investigation. "I don't want him to be lost in their shuffle of papers and backlog of cases piled up," she said.

Kenneth Wilson, a 25-year-old computer technician for a Reston firm, was gunned down in the Mount Pleasant area. Someone opened fire **on** the car he was driving, apparently aiming for a passenger. Six or seven shots hit Wilson; the passenger was wounded but survived. Police told Wilson's family that he was in the wrong place at the wrong time, the innocent victim of a feud turned violent.

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"You near it's still under investigation," Wilson-Johnson said. "Is it really? Or is that just a blanket statement they say, like 'the check's in the mail'? I like to think the fact that we are pursuing this encourages them to do something."

Last year, after months without hearing a word, she found a voice mail message at her office **one** day from the prosecutor, G. Paul Howes. He was returning her call. "We're getting closer because we've now been able to piece together an organization responsible for as many as 12 **murders**," his message said, "and I believe that we will in time close your brother's case and be able to tell you exactly who did it and how . . ."

No indictments have been issued, making the case **one** of 475 homicides from the three-year period that are still open. "I'm not satisfied with whatever it is they have supposedly done," Wilson-Johnson said.

Howes said last week that the investigation is active.

Mary Mansfield wants police to find the killer of her son, Charles, who was slain more than five years ago. She said that she kept in touch with the police for six months after the homicide but that she hasn't heard anything since. She said she thinks the 30-year-old Air Force veteran was using and selling drugs. But "it doesn't give anybody the right to kill him. The person who killed him should be punished," she said.

Fulwood understands the pain of these cases. His cousin and brother were killed, and no **one** has been arrested for his brother's slaying in November of last year. "Speaking personally, if somebody kills a relative, you want that person arrested. If no **one** is arrested, the family feels that the police didn't care enough about their loved **one** to do anything, that the government didn't care," he said.

For Charles E. Walker, justice was done, but at a pace he found "painfully excruciating." Police arrested a suspect the day after his son, Aaron, a 20-year-old college student, was stabbed during a fight in Georgetown in October 1989.

The **trial** was first set for October 1990, put off until January 1991, then delayed again until late February before finally getting underway. Walker attended every proceeding, taking time off from his job at a computer company, and was in the courtroom when his son's assailant was sentenced to eight to 24 years for voluntary manslaughter.

Walker couldn't believe how often hearings were postponed and how everyone accepted the delays as routine. "It never seemed to go when it was supposed to go," he said.

"This is not 'L.A. Law,' " said Walker, referring to the popular television series. "At the end of an hour show, there are five cases that have been solved. That's just not the way the process works."

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## **SATURDAY NIGHT, OCT. 28, 1989 A DOUBLE SLAYING PUTS OTHER CASES ON THE BACK BURNER.**

**MURDER ON TRIAL  
BY ATHELIA KNIGHT**

For Hearn and Hickson, it was frustrating enough to break off their investigation into Brown's *murder*, given the number of witnesses to interview. It was even more frustrating to discover, when they arrived at the scene of Broome's *murder*, that there wasn't much they could do to help Perez. No *one* seemed to know how Broome ended up near the trash bin. So, with Perez in charge, Hearn and Hickson saw a chance to return to the Brown case.

About 4:30 a.m., they headed for the medical examiner's office near Robert F. Kennedy Memorial Stadium for their first look at Brown's body to see what the gunshot wounds might tell them. As they were examining Brown's body, a medical technician asked, "Who's handling the double in Southeast?"

Hearn thought it was a joke. It wasn't. *On* his portable police radio, Hearn heard a dispatcher calling for a homicide unit to go to the scene of a double homicide near the Prince George's County line.

Once again, they put the Brown case *on* hold.

When they arrived at the scene *on* 22nd Street SE, Young, the lead detective, was already there. Young was working alone because his partner, McGinnis, had the night off.

Young told Hearn and Hickson that a man had flagged down a uniformed officer to report the *murders*. His name was Stevie Patton. He had blood *on* his clothing. And he shared the apartment with *one* of the victims, Brenda Sams, 34. Patton became the leading suspect.

Inside, police also found the body of Sams's 13-year-old niece, Keaena, who was spending the night with her aunt because the D.C. family court had placed her in Sams's care for safekeeping. Both had been brutally stabbed. An 8-month-old infant, the son of Sams and Patton, was unhurt in his crib.

Because Patton lived there, the detectives needed a search warrant to examine the scene. After sealing off the apartment and leaving uniformed officers outside to keep *on*lookers away, they drove back downtown. Because Young was the rookie and working alone that night, Hickson, an expert at preparing warrants, helped him do the necessary paperwork.

In the office, they ran into Perez and Treadwell, who were investigating another new death -- the shooting of Jose Ortiz, 26, who had died about 4 a.m. Ortiz had been shot about 2 a.m. a few blocks from Catholic University by Francisco Martinez, who told Treadwell that he was showing Ortiz his shotgun when it accidentally went off. Treadwell would need to check out Martinez's account; meanwhile, Martinez was charged with involuntary manslaughter.

The squad's eight-hour shift was supposed to end at 6:30 a.m., but with five new cases **on** their watch, going home wasn't an option. The entire squad was working **on** the Sams double **murder**, hoping to close it quickly with an arrest.

By 10 a.m., the search warrant had been approved by a prosecutor and signed by a judge at home. By the time the detectives had returned to the gruesome scene, residents and relatives had gathered outside. A short time later, TV camera crews and reporters arrived. The detectives felt the pressure building.

Perez questioned Patton at D.C. General Hospital, where he was being treated for cuts. The suspect said that he had discovered two intruders assaulting Sams and her niece. He said he had struggled with them before hitting his head **on** the television and being knocked out.

Perez went back to the scene to see whether Patton's story made sense. There was no sign of the struggle that Patton had described. A vase **on** the TV set was undisturbed. It didn't add up.

Painstaking attention to detail at the **murder** scene is important, which is why the first few hours of an investigation are so crucial. "**Murder** scenes talk to you," said Sgt. Walter Staples, a veteran homicide investigator. "You have to listen to them."

Other evidence against Patton piled up. Inside the apartment, detectives found a copy of a month-old civil complaint in which Sams said she feared for her safety because Patton constantly threatened and beat her. Neighbors told police they had heard the couple arguing earlier in the evening.

Patton's mother said her son and Sams had been at her house a couple of hours before the killings. She said Patton was high **on** drugs and had grabbed a butcher knife and tried to kill himself. She and Sams took the knife from him.

At 6 that night, about 13 hours after the killings and 20 hours after coming **on** duty the previous night, the squad had enough evidence to arrest Patton **on** two counts of first-degree **murder**. In less than five hours, they would have to be back at work for the next midnight shift.

SUNDAY NIGHT, Oct. 29; Detectives look for witnesses; death toll remains steady.

Still exhausted, the detectives arrived at 10:30 p.m. to tie up loose ends for the next day's appearances in court for Patton and Martinez. The squad got a break: No **one** was killed during the shift.

That gave Hearron and Hickson another chance to pick up the Brown case again. Even though they had **one** eyewitness, they knew they should have had more. Dozens of people had been **on** the street the night Brown was killed. Instead of stepping forward, most had scattered when police arrived. Those who remained said they didn't see what had happened. It was frustrating and all too familiar.

The detectives drove back to the neighborhood **once** more and found someone who knew the shooter but **only** by his



and found someone who knew the shooter, but only by the nickname: "Million Dollar Mike." They headed for the 5th District police station to ask the officers who patrolled that neighborhood for help in finding "Mike" and a woman named Lorraine Minor, who the eyewitness had said was involved in the drug dispute that led to the shooting.

By the end of the shift, however, they had nothing more to show for their efforts.

Meanwhile, Young and McGinnis went back to the Sams apartment to look for more evidence while Perez continued to check out Patton's alibi. He questioned Patton's friends, asking about possible enemies who could have been the "intruders" Patton described.

Several members of the squad spent part of Monday, during their normal time off, in D.C. Superior Court helping prosecutors with the Patton and Martinez cases. Patton was jailed under the city's preventive detention law, which permits judges to hold defendants charged with first-degree **murder**; Martinez, facing a less serious charge of manslaughter, was released without bond.

MONDAY NIGHT, Oct. 30; A witness is found but has little to say. A killing near the Capitol sets a record.

When Hearron got to the office for this shift, he found Lorraine Minor waiting for him. A 5th District officer had located her. She didn't have much to say, either before or after Hearron told her that the eyewitness had said she was involved in Brown's death. Minor started complaining of chest pains. Hearron thought she was faking but called for medics to take her to a hospital. The Brown case was back in limbo.

Meanwhile, Perez couldn't do any work **on** the Broome case -- the **one** in which the victim was found near the trash bin -- because he was still checking out Patton's story.

About 4 a.m. Tuesday, the squad's workload increased again. Darrell Oliver was found slumped over the steering wheel of his green Datsun 240Z, which friends later told police he picked because it was the color of money. Oliver, 20, had been shot in the face. The car, its radio blaring, was parked in the 1400 block of Potomac Avenue SE, less than a mile from the Capitol.

Oliver became the 370th homicide victim of the year, breaking the city's record set the year before.

It was McGinnis's turn as lead detective. It was raining as he and Young questioned neighbors awakened by the sirens. No **one** had seen or heard anything. There were no suspects.

TUESDAY NIGHT, Oct. 31; **On** Halloween, a fatal brawl in Georgetown goes to the top of the homicide squad's list.

It was Halloween night, and though the detectives knew thousands of people would be celebrating **on** city streets, they were hoping for a quiet shift to catch up **on** paperwork and work **on** the unsolved cases. But Hearron had no sooner walked in the door than Hickson said they had a homicide **on** Third Street NE, near McKinley High School.

Bloodstains were **on** the sidewalk where the victim, Timothy Divers, 28, fell after he was shot several times. Witnesses

told the detectives that two drug dealers from New York had killed Divers. They knew them **only** by their nicknames, "H" and "D," which the two had trimmed into their hair.

The detectives drove to headquarters to help take formal statements from the witnesses. But their plans to return to the crime scene had to be shelved for yet another killing, **one** that soon had the entire squad involved.

A fight had broken out in Georgetown as a large crowd of Halloween-costumed revelers was going home. Two of the brawlers were stabbed. So was a bystander, Aaron Walker, 20, who bled to death shortly after being rushed to Georgetown University Hospital in a police cruiser.

Uniformed officers, who were in the area for crowd control, arrived first. Witnesses told them that a man dressed up like Crocodile Dundee and wearing a sheath knife had stabbed the victims in the 3200 block of Prospect Street NW after an argument involving others dressed as Batman and Wonder Woman. A man wearing a tutu pointed out Crocodile Dundee to police, and they gave chase. Crocodile Dundee fled, but police found two knives along his escape route; **one** knife bore a name, Craig L. Barton, and a date. It turned out to be Barton's birth date; he was 20.

This time, the detectives had almost too many witnesses. They were worried about conflicting stories. Some witnesses had seen **only** part of the brawl. Others were involved in the fight or had friends who were, giving them a reason to lie.

The squad arriving for the day shift was surprised to find the office filled with people in costumes. They pitched in to help take statements.

Later that morning, Barton called the homicide office from a suburban Maryland shopping mall and said he would be willing to talk. Two detectives picked him up. After meeting with his lawyer, he declined to give a statement. He let the detectives take a Polaroid picture of him and agreed to a search of his apartment, which Hickson said he would carry out before returning to work that night.

Meanwhile, local officials were calling for an end to Halloween celebrations in Georgetown. Walker's death made all the local television news shows. The police chief, Isaac Fulwood Jr., said he was monitoring the investigation. The squad put the case at the top of its list; there would be no time that night for the Brown, Broome, Oliver or Divers cases.

WEDNESDAY NIGHT, Nov. 1; After a busy day for many, an arrest is made in the Georgetown slaying.

When the detectives arrived for the last night of their midnight shifts, they were dragging. Some hadn't had a chance to go home to change clothes because they had been too busy **on** the Georgetown slaying.

Hickson brought in a pair of boots that he took from Barton's apartment during the voluntary search. The boots, which Barton said he had been wearing the night of the killing, didn't match the description of eyewitnesses.

Perez, meanwhile, started to put together photographs to show witnesses. He wanted to see whether they could pick

out Barton. But a problem arose: Barton was a young white man, and almost all the available photographs of suspects were of black men. So Thursday morning, two detectives went looking for young white men. They walked down the street to the U.S. attorney's office and the D.C. Superior Court building, where they asked several lawyers and court employees whether they could snap their picture. They then showed nine photographs to an eyewitness, who picked out Barton.

Perez stayed until 11 a.m. to meet Barton, who had returned with his lawyer for more questioning. Barton, who lived in Greenbelt, was arrested and charged with second-degree **murder** because there was no evidence he had killed Walker intentionally.

Staff writer Charles R. Babcock and staff researcher Lucy Shackelford contributed to this report. William Casey, director of computer-assisted reporting, did the computer analysis.

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## WHEN CLOGGED COURTS FAIL TO SPEED JUSTICE *ONE CASE* *SHOWS HOW DELAYS AND* *DISMISSALS CAN POSE RISKS*

**CORRECTION:** The age of Lanard Cloyd, a murder suspect, was incorrectly reported yesterday in the Murder on Trial series. Cloyd was 18, not 15, when charges against him were dismissed in September 1922. Another suspect in the case was 15.

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### MURDER ON TRIAL

BY ATHELIA KNIGHT

Washington Post Staff Writer

If all had gone as scheduled in Courtroom 212 of D.C. Superior Court **on** Nov. 7, 1991, a jury would have heard testimony that David Lamont Gibson had pumped several bullets into Cornell Thomas, a New York drug dealer, with a submachine gun.

But nothing went as planned that day, or **on** many other days in this prosecution. The case has such a tangled history that the docket sheet of proceedings runs for 13 pages, chronicling a series of delays that has become all too common in the D.C. court system.

"Is the government ready for **trial?**" Judge Stephen F. Eilperin asked prosecutor Oliver M. McDaniel that November morning.

"No, Your Honor," McDaniel said, explaining that his wife was recuperating from surgery, his lead detective was caring for a hospitalized son and other **trial** work had prevented him from preparing the case.

Gibson's lawyer objected. The case had been postponed before, and Gibson had been in jail more than a year, ever since his arrest. Eilperin had to weigh Gibson's rights against McDaniel's request. Eilperin decided that Gibson, then 18, had been locked up too long.

"I am dismissing the case," Eilperin announced. The prosecution could bring the charges again, but for now, Gibson was free. Letting a **murder** suspect go was a risk, but under the law, Gibson had to be considered innocent until proved guilty.

Once Gibson was back in the community, however, the justice system did not treat him as a big risk. McDaniel said in court papers that he intended to seek new charges against Gibson by the end of the month, but Gibson was not re-indicted until two months after he was set free.

Even then, the system did not move with urgency to bring Gibson back into custody. Following routine procedures, the court clerk's office mailed a notice of the charges to Gibson at his mother's house, telling him to appear in court two weeks later. Gibson never showed up.

While he was free, the risk became real: **On** Jan. 5, 1992, police allege, Gibson and two other gunmen killed Winston Palmer, another drug dealer, ambushing him as he rounded a corner in Northeast Washington. A month later, **on** Feb. 5, 1992, Gibson held up a teenager at a bus stop with the help of two accomplices, stripped him of his clothes and then tried to shoot a police officer who gave chase -- crimes of which Gibson has since been convicted.

Rarely is a defendant freed and then immediately accused of another **murder**. But what happened in Eilperin's courtroom is typical of the struggle the D.C. criminal justice system faces every day: At any point along the way -- from arrest to indictment to **trial** -- a case can go awry. A Washington Post study of all 1,286 homicides from 1988 through 1990, results of which were first published in Sunday's newspaper, shows that charges were dismissed in 36 percent of the 866 homicide cases filed in D.C. Superior Court. (Because some cases involved multiple defendants, those 866 defendants are charged in 689 homicides; 38 other homicides were handled in Juvenile Court.)

Judges and prosecutors are not required to note in the court file why charges have been dropped. But it is clear from interviews with those involved in the system, as well as transcripts of court hearings, that several factors are involved:

- \* The soaring homicide rate has overwhelmed the ability of police to investigate cases thoroughly before bringing charges. Detectives, eager to close a case, sometimes make an arrest **on** evidence that prosecutors later determine is insufficient.

- \* The vicious nature of many slayings deters witnesses from coming forward to give information or testify in court. Sometimes, the **only** witnesses are convicted criminals whose credibility is questionable.

\* Prosecutors, such as McDaniel in the Gibson case, have found themselves juggling so many investigations and **trials** that they cannot keep up. Unable to work out scheduling conflicts, they frequently seek postponements when cases come to **trial**.

This is the result, in part, of the structure that former U.S. attorney Jay B. Stephens implemented for prosecuting homicides. Stephens, who headed the office from 1988 until March of this year, believed that it was best for prosecutors to have responsibility for all aspects of a case, from the time it came into the office, through the grand jury phase and then **on** to **trial**.

An arrest is "just the beginning," Stephens said in an interview, pointing out that much of the case is put together after police file charges. "It really adds a significant degree of professionalism to be able to draw **on** the experience of the prosecutor to handle the case from start to finish where possible."

This approach might work without a hitch if the prosecutors weren't so overwhelmed. But their caseloads were so heavy -- even though Stephens quadrupled the number of prosecutors handling homicides after getting complaints from the overworked staff -- that they didn't have time to be understudies to each other.

So when Oliver McDaniel wasn't ready **on** the scheduled day for Gibson's **trial**, no **one** else knew much about the case. Nor could anyone else take over the prosecution **on** a moment's notice.

#### Out of Jail and Into Trouble

David Gibson's case began like so many others **on** the homicide docket: **On** Oct. 18, 1990, he was arrested and charged with killing Cornell Thomas in the early morning hours of June 24, 1990. A witness told police that Gibson fired at Thomas repeatedly while chasing him through the courtyard of the Lincoln Heights public housing complex in Northeast Washington.

Gibson was jailed **on** \$10,000 bond, which meant he had to post \$1,000 in cash to be released. He did not make bail, so he remained in jail. The Post study found that nearly two-thirds of the 866 homicide defendants stayed in jail while their cases were being resolved, either by dismissal, plea bargain or **trial**.

Two months after his arrest, Gibson was indicted **on** a first-degree **murder** charge and two gun possession charges; a co-defendant was charged with a gun violation. Gibson's lawyer, Stephen Russell, discussed a plea bargain with McDaniel over the next several months. Those negotiations broke down in May 1991, and because of scheduling conflicts, Nov. 7, 1991, was the earliest **trial** date they could agree **on**.

Russell emphasized the time lag when McDaniel made his request for a postponement that morning in Eilperin's court. "While I certainly can understand his predicament, I would ask the court to consider the predicament of my client," Russell told Eilperin. "It has been an inordinate amount of time since Mr. Gibson has had his day in court."

The hearing lasted five minutes. By that afternoon, Gibson

The hearing lasted five minutes. By that afternoon, Gibson was out of jail.

Because the charges were dismissed "without prejudice," the prosecutor's office could re-indict Gibson as soon as it could present the case again to a grand jury. For several weeks, nothing happened. Stephens said that McDaniel took time off to be with his wife while she was recuperating and then had to prepare and prosecute another **murder** charge in December.

Stephens said McDaniel moved as quickly as possible, given the circumstances. First, he said, McDaniel had to schedule time before a grand jury. Several grand juries operate at the same time, but they are busy and rarely meet more than three days a week. The grand juries did not meet at all for two weeks during the Christmas holidays, Stephens said, so it was January before McDaniel was able to obtain a new indictment.

Gibson's re-indictment Jan. 7, 1992, revealed another flaw in the system. In contrast with the flurry of activity that occurs when police first arrest a **murder** suspect, a re-indictment is handled as though the charge is far less serious. The court mails a notice to the defendant, unless the prosecutor asks a judge to issue an arrest warrant.

The day after the indictment, the court mailed such a notice to Gibson, asking him to appear in court **on** Jan. 22. There's no record of any request for a warrant until Gibson failed to show up that day for his court hearing.

McDaniel declined to discuss the case. But he told Kevin Ohlson, a spokesman for the U.S. attorney's office, that he did request a warrant. "McDaniel states unequivocally that he requested a bench warrant be issued in that case," Ohlson said.

The police warrant squad, the marshal's office and the police officers **on** the street added Gibson's name to the list of several hundred wanted **on** a variety of charges.

On Feb. 5, D.C. police Officer Dorian DeSantis was chasing three suspects after an armed robbery. **One** suspect, later identified as Gibson, aimed a .38-caliber gun at DeSantis, who jammed his finger into the trigger guard to keep Gibson from firing. DeSantis said later that he felt lucky to be alive.

Gibson told detectives that his name was Stacy Brookman. By the time he appeared in court the following day, police had discovered his true identity and the outstanding warrant. This time, he was jailed without bond.

While Gibson was in jail awaiting **trial on** the armed robbery charges, detectives began to hear from witnesses that Gibson had been responsible for killing Winston Palmer **on** Jan. 5. **On** Feb. 13, police charged him with Palmer's **murder**.

Gibson now stood accused of two **murders** and an armed robbery.

A Conviction, for Robbery

Who is David Gibson? Now 20, he grew up in Washington neighborhoods east of the Anacostia River, lived with his mother and father and later his stepfather, and several brothers and sisters. In sixth grade, he said in a recent

interview, he was arrested with a group of friends for beating a classmate and breaking his ribs. At 13, he was sent to juvenile detention after being caught in a stolen car that had struck and seriously injured a woman.

He dropped out of school in ninth grade, he said, and eventually became a drug dealer. He said he sold crack cocaine in his Lincoln Heights neighborhood, which he calls the Hill. He was a week shy of his 17th birthday when, police allege, he **murdered** New York drug dealer Thomas in October 1990.

When Gibson went back to court **on** the Thomas **murder** charge **on** June 3, 1992, both the prosecutor and judge had changed. McDaniel had been promoted, and Eilperin had rotated to other duties. Now, it was Russell, Gibson's lawyer, who wanted a postponement, saying he had another case about to begin in federal court.

Judge Robert I. Richter grumbled that "this is such an old case" but agreed to a new **trial** date because the prosecutor had no objection. They set a new **trial** date for late September.

In late June, Gibson came to **trial on** the armed robbery charges. For the first time, **one** of Gibson's alleged victims was able to testify. Tavares Holmes, then a D.C. 11th-grader, gave this account:

He said he was standing at a bus stop near the Anacostia Metro station about 9 p.m. **on** Feb. 5, 1992, listening to his Walkman. Three young men approached him and **one** -- Holmes identified him as Gibson -- opened up his jacket to reveal the butt of a gun.

Gibson ordered Holmes to walk with him around the corner, where he showed Holmes that the .38-caliber gun was loaded. "He said he wasn't a joke and if I ran, he would kill me," Holmes said.

Gibson ordered Holmes to strip. In the near-freezing cold, Holmes took off his jacket, shirt, jeans, socks and boots. Clad **only** in boxer shorts, he knelt **on** the ground. Gibson choked him, and Holmes said he slumped to the pavement, pretending to be dead. When he looked up to see what was happening, Gibson choked him again. This time, he stayed still until Gibson and his accomplices fled with his clothing, \$40 and a pair of new Nikes he had bought that evening with money he earned as a grocery clerk.

Holmes said that he wasn't going to bother "to call the police because they weren't going to find them." But a witness who saw the incident from her apartment window called 911, resulting in DeSantis's chase and arrest of Gibson and two accomplices.

At the **trial**, Gibson was the **only** defendant to testify. Dressed in jeans and a white shirt buttoned at the collar, he told the court that he didn't have a gun, didn't rob Holmes and didn't assault DeSantis. DeSantis "tried to put a gun in my hand," Gibson said.

The jury took about four hours to convict Gibson and his two co-defendants. He was sentenced to 14 years and eight months in prison.

One Delay, **One** Dismissal

Gibson was scheduled to be tried in the first slaying **on** Sept. 28, 1992. But it was postponed again, in favor of the second **murder** case, which involved two co-defendants and was harder to reschedule.

When it came time for the second **murder** case to start two days later, however, prosecutor Stephanie G. Miller wasn't ready.

"Your Honor," she told Judge Harold L. Cushenberry, "all that I will or can say is that I tried my very best to get prepared. I had been in **trial** for five weeks and I worked every single weekend and I was unable to get the officers together to get the witnesses lined up and subpoenaed and ready for the **trial** date."

Cushenberry faced the same dilemma as Eilperin had earlier, although the risks were a little different. Gibson, because of his conviction in the armed robbery case, would stay in jail. But **one** of the co-defendants, Lanard Cloyd, who had been in jail since his arrest in February, would be released. Cloyd, 15, had been charged as an adult, a rare occurrence for a juvenile of his age.

"Obviously, this is a difficulty for the court," the judge said. "I heard the preliminary hearing in this matter and the evidence in this case was compelling." But he said that he was dismissing the case and that the prosecutors could seek re-indictments.

As Gibson and Cloyd were escorted out of the courtroom, they smiled and talked loudly. "Hold it down," a marshal admonished them.

D.C. homicide Detective Mitchell Credle, who was there as a scheduled witness, shook his head in disgust. "You mean Cloyd is going to be released?" he asked Miller after the hearing. The prosecutor nodded her head.

"Damn," Credle said. "Cloyd is going to be out **on** the street. Damn. Did you see him smile?"

No Conclusion After 2 Years

In December 1992, the first **murder** charge came up for **trial** a third time. But prosecutor Michael L. Volkov wasn't ready either.

"We're looking for a witness, but more importantly I -- to be honest with the court -- I just have not had the time to prepare this case to get ready for **trial**," Volkov told Judge Richter.

"It's a lame excuse," Richter said. "It's a first-degree **murder** case. . . . You've already had it 'dwipped' {dismissed for want of prosecution} **once**. It's been continued a whole lot of times."

Volkov argued that a postponement wouldn't hurt Gibson because "he is serving a long sentence at this point."

Richter said "that's an argument that you could make for delaying this thing endlessly. And we're almost at a point where it is endless and for you to say I was too busy to get ready is in a lot of ways to me about as lame an excuse as I could get. Maybe it is not your fault. Maybe it's your office's fault for giving you these extra responsibilities. But from my



fault for giving you these extra responsibilities. But from my perspective, from Mr. Gibson's perspective, it's no excuse."

Volkov pleaded again for more time. "Your Honor, all I'm telling the court is that I have been assigned almost full time to those other matters. I alerted people in my office to this situation. And I was told to go ahead and seek a continuance."

"I'm not damning you," Richter said. "I'm just saying your office makes its choices and . . . that's an inconvenience for you to have to re-indict if indeed you have your witnesses and you can make this case."

Richter dismissed the charge -- for the second time. In the 10 months since, Gibson hasn't been re-indicted in the first slaying.

Gibson and Cloyd were re-indicted in December for the other slaying. Since then, the **trial** has been postponed twice. It is now scheduled for Dec. 1.

'I Hope I Beat It'

In the meantime, Gibson is serving his sentence **on** the armed robbery charges at Lorton prison. He is eligible for parole in 2005. In two recent interviews, he talked about himself, looking subdued, rarely smiling or making eye contact.

He maintains that he did not commit the two slayings and that he was wrongly convicted in the armed robbery case. At the same time, he was willing to describe his life as a drug dealer.

He said he was attracted to the drug trade at an early age because he saw youths his age driving flashy cars. "Dudes had BMWs, and I wanted **one** of them," he said. He was too young to get a license, he said, but he had a couple of cars -- none of them BMWs. He drove with temporary tags until the police confiscated them when they caught him driving without a driver's license or registration.

He said he **only** sold crack cocaine and didn't use it. Asked to explain why traces of cocaine were found in his urine when he was arrested, he rubbed his fingertips together and said the drug had somehow gotten in his system through his pores.

He brightened as he talked about his days **on** the street. His nickname was Billy the Kid; the police called him and his friends "Young Guns" because they were known for shooting up the neighborhood. Though his friends were part of the reason he got in trouble, he said, "I'm always going to hang with them."

"Seems like I grew up in the criminal system," he said.

Gibson said that his mother told him about the court notice mailed to him after his re-indictment and that he knew his lawyer was trying to reach him, but that he had no intention of surrendering for a crime he said he didn't commit. He said he gave the police a false name because "I was **on** the run."

Since going to Lorton, he has volunteered to talk to youth from the city's juvenile facilities, a prison official said. Gibson said he tries "to persuade them not to come this

way, not to take the road that we went." He focuses **on** the youth "who's got the attitude I had. . . . Like he don't care. The **one** who's trying to get a name just like me."

At the same time, he said, "My attitude will never change. I'm just like the weather. I never know when I'm going to change. I could be me. Then the next minute I turn into Satan."

Gibson, leaning back in the chair, his legs stretched out under the table, said of the 14 years he has to serve for the armed robbery conviction: "I can handle it. . . . I'll be back out there soon, very soon."

"I'll be 34 years old," he said, after pausing to add up his age in his head. "That ain't old."

And the **murder** trial coming up again in December? "I hope I beat it like I did the other **one**," he said.

On Oct. 18, 1990, D.C. homicide detectives charged David L. Gibson with first-degree **murder** in the shooting of Cornell Thomas. Gibson, then 17, was accused of firing at Thomas repeatedly with a submachine gun. After his arrest, a court file was opened. A portion of the first page, pictured above, shows early developments in the case. **On** Dec. 20, 1990, a grand jury indicted him **on** the charges; **on** Jan. 3, 1991, he appeared in court for arraignment. Thus began a case with such a tangled history that the docket takes 13 pages to tell it.

PAGE 5

Feb. 5 to Apr. 18, 1991

During this period, prosecutor Oliver McDaniel and Gibson's lawyer, Stephen Russell, discuss a possible plea bargain. The docket shows **only** that Judge Stephen Eilperin is holding routine status hearings to monitor the progress of the case.

PAGE 6

May 20 to Oct. 28, 1991

The plea bargain negotiations go nowhere. At a May 20 status hearing, the docket shows, Eilperin sets a **trial** date for Nov. 4. As the **trial** date nears, schedule conflicts push the **trial** back to Nov. 7.

PORTION OF PAGE 7

Nov. 7, 1991

On the day of **trial**, McDaniel requests another postponement, citing personal reasons and scheduling conflicts. Eilperin rejects the request and dismisses the charges against Gibson, who had been in jail for nearly a year. Gibson is freed. The docket records the judge's decision: "The defense oral motion to Dismiss for Want of Prosecution is granted." **On** Jan. 7, 1992, the next docket entry shows, Gibson is re-indicted and notified that he must appear for arraignment **on** Jan. 22, 1992.

PAGE 8

Jan. 7 to Jan. 23, 1992

The new indictment brings a new judge, Robert I. Richter. **On** Jan. 22, the docket notes, Gibson does not show up for arraignment. A bench warrant is then issued for his arrest.

PAGE 10

Feb. 10 to March 31, 1992

Gibson is arraigned **on** Feb. 10 and a new **trial** date is set for June 3, 1992. Police learned of his whereabouts **only** because he was arrested for an armed robbery that he committed after he was freed. Police later allege that he also committed a second **murder** while free. Two new dockets, not shown here, are opened in those cases.

PAGE 12

May 29 to Sept. 28, 1992

The June 3 **trial** is postponed at the request of Gibson's attorney, and rescheduled for Sept. 28. That, too, is postponed -- until Dec. 2.

PORTION OF PAGE 13

Dec. 2, 1992

It is now more than two years since Gibson was first arrested for Cornell Thomas's **murder**. There's a new prosecutor in the case, Michael Volkov. But as the docket shows, he is not ready for **trial** either. So Richter dismisses the charges against Gibson for a second time. This is the last entry in the docket of case number F-11687-90. Gibson has not been re-indicted **on** these charges.

Staff writer Charles R. Babcock and staff researcher Lucy Shackelford contributed to this report. William Casey, director of computer-assisted reporting, did the computer analysis. Assistant Art Director Jackson Dykman designed the graphics.

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## SETTING A TRIAL DATE: A LESSON IN CRAMPED SCHEDULES

**MURDER ON TRIAL**  
BY ATHELIA KNIGHT

Perhaps no scene shows better why some **murder** cases take so long to resolve in D.C. Superior Court than this **one** in courtroom 102 **on** Nov. 14, 1991:

Judge Henry H. Kennedy Jr. had just granted prosecutor Silvia Gonzalez's request to postpone a **murder** trial, and he was ready to set a new date. Looking down at his large

desk calendar, Kennedy said: "The court will continue this to the next available date . . . and that seems to be -- well, February 25 . . . "

"Your Honor, I have a **trial on** February 20, which I expect will go **on** that date," said Gonzalez, her eyes fixed **on** her calendar. "It's been continued before."

"March 5? March 12?" asked Kennedy, moving his pen along the page of his calendar.

"I have a **trial on** March 6 and March 24," Gonzalez said.

"April 2?" Kennedy said.

Still no good. Gonzalez was concerned that her March 24 **trial** might not be over by April 2. "I would ask for **one** additional week to make sure that case is finished, so we won't be in the same bind," she told Kennedy.

"April 7?" said Kennedy, seeming irritated and resting his bearded chin in the palm of his right hand.

That date wasn't good for the defense attorney, Peter Krauthamer, who had a **murder** trial set for April 6. "It will take five days to try, maximum."

Finally, Kennedy had had enough. The case had been postponed twice already. "Counsel, it's going to be either April 2 or **one** of these other dates . . . it gets just to a point where the court should not accommodate counsels' schedules because of your other cases."

They compromised **on** April 2, almost two years after the initial arrest in the case.

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## AFTER 19 MONTHS IN JAIL AND 5 DELAYS, A SUSPECT IS FOUND NOT GUILTY

**MURDER ON TRIAL**  
**BY ATHELIA KNIGHT**

Most **murder** suspects in the District can count **on** spending many months in jail before the overwhelmed D.C. criminal justice system manages to resolve the charges against them. A Washington Post study of the 1,286 homicides from 1988 to 1990 found that nearly two-thirds of the 866 defendants stayed in jail while awaiting resolution of the charges against them, and 200 were jailed more than a year, including 36 who eventually were acquitted.

Marvin McCaskill, 22, a car mechanic with no criminal record, was **one** of the 36. He spent 19 months in jail before a jury acquitted him in the fatal shooting of Michael

Lee, 24.

McCaskill was arrested within hours of Lee's slaying **on** Feb. 23, 1990. He maintained his innocence, but several witnesses identified him to police as the killer. He was charged with first-degree **murder**, which meant he could be jailed without bond under the District's preventive detention law.

According to The Post's study, police charged 500 defendants with first-degree **murder** in the 1988-1990 homicides. McCaskill became **one** of 391 held initially **on** preventive detention, 310 of whom stayed in jail until their cases reached a conclusion. An additional 243 defendants stayed in custody for the duration of their cases because they couldn't afford the bond set by the judge.

The preventive detention law has been a controversial law enforcement tool since its inception in the early 1970s. Prosecutors argue that the law enables the courts to remove dangerous suspects from the street. Defense lawyers say it makes a mockery of the idea that defendants are innocent until proved guilty. They also complain that bonds are being set too high, and thus become another form of preventive detention.

One reason that so many stayed in jail for so long is that the system doesn't impose a strict deadline for bringing **murder** cases to **trial**. A D.C. law enacted in 1992 set a 120-day deadline for bringing certain kinds of cases to **trial** but imposed no time limit **on** first-degree **murder** cases.

The American Bar Association recommends that serious cases be resolved much faster. The ABA guidelines state that 90 percent of felony cases, including **murders**, should be resolved in court within 120 days after an arrest, 98 percent within six months and all within a year.

McCaskill was scheduled to go to **trial** in November 1990, nine months after his arrest. But the **trial** was postponed five times before it finally took place in September 1991. McCaskill's lawyer, Frances D'Antuono, requested two postponements. She said later that the delays, while unfortunate for her client, gave her more time to build a defense.

McCaskill gave her this account of the shooting:

He and a friend went to find Lee, who they suspected had been involved in the fatal shooting of McCaskill's nephew 14 months earlier. They set out together, but the friend got there first, grabbed Lee and led to him to a nearby parking lot **on** Morris Road SE.

McCaskill said he arrived moments after hearing a gunshot. He said the witnesses must have confused him with the real killer. McCaskill provided her with the name of his friend, who had told police that McCaskill was the triggerman. D'Antuono scoured the neighborhood and eventually discovered a witness who was not interviewed by police whose description of the shooter matched the friend's.

June Jeffries, the prosecutor in the case, said she believed that both McCaskill and the friend were involved in the shooting but that police could never develop enough evidence to charge the friend.

McCaskill did not testify at his nine-day **trial**. Neither did his

McCaskill did not testify at his nine-day *trial*. Neither did his friend, who had refused to testify at the grand jury *on* the grounds that he might incriminate himself. *On* Sept. 23, 1991, the jury pronounced him not guilty. Asked later about his 19 months in jail, McCaskill said: "I dealt with it the best way I could. . . . I believed I was coming home. I just had to deal with it until the time came."

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## STRATEGIES TO END THE CARNAGE *VIOLENT CULTURE AND UNCERTAINTY OF PUNISHMENT ARE TARGETED*

### MURDER ON TRIAL

BY ATHELIA KNIGHT

Washington Post Staff Writer

The red and green pins that dot two city maps *on* easels in D.C. Police Chief Fred Thomas's fifth-floor office represent the police department's latest strategy for bringing down the nation's highest homicide rate.

On *one* map, more than 300 red pins identify the scenes of this year's homicides. *On* the other, green pins mark the location of hundreds of shootings that left someone wounded, but alive. Often, Thomas said, the *only* thing that separates the red from the green is a gunman's aim.

Police now spend much of their investigative resources trying to solve homicides, but little *on* shootings. Thomas wants to attack the gun culture at its core, believing that the assailants behind the shootings also are responsible for many *murders*. Arresting them, Thomas said, may prevent some killings and reduce the fear that now grips some city neighborhoods. "We have to bring all the resources to bear before the homicides" happen, he said.

But attacking that culture is easier said than done. It has changed and evolved since the homicide rate began climbing to record levels in 1988, becoming the province of younger men willing to settle even the mildest disputes with gunfire.

Judge Reggie Walton, who left the D.C. Superior Court bench in 1989 to join the Bush administration's drug policy office, noticed the change when he returned to the court two years later. Instead of men in their twenties, he was seeing many more *murder* defendants who were 19, 18, even 17 years old.

Walton's impression is borne out by a Washington Post study of all 1,286 homicides from 1988 to 1990. Twenty-four percent of the defendants charged in the 1988 homicides were 16 to 18 years old at the time of the crime, compared with 34 percent in the 1990 homicides.

More than half of the 866 homicide defendants charged in

the three years were 21 or younger, the study found, and more 18-year-olds were charged as suspects than those of any other age.

Those figures do not include charges in 38 homicides referred to Juvenile Court: four in 1988, 11 in 1989 and 23 in 1990. In serious cases such as **murder**, prosecutors can send cases involving 16-, 17- and 18-year-olds to Juvenile Court or Superior Court. If prosecutors want to try a 15-year-old in Superior Court for **murder**, they first must show a judge that there is little likelihood that the suspect will be rehabilitated in the juvenile court system.

Mayor Sharon Pratt Kelly, as part of a 16-point proposal for reducing violent crime released Monday, said she wants legislation that would allow 14-year-olds to be prosecuted in adult court. The plan, which targets young offenders, also would provide stiffer penalties for gun possession.

Walton, a former prosecutor who is known for his tough sentences, said it seems easier than ever for young men to get high-powered guns in the District, and they seem to have no hesitation about using them. Police report that 83 percent of last year's homicides involved a gun. "Unless you do something about the proliferation of guns and the type of guns, neighborhoods -- and especially poor neighborhoods -- will continue to be ripped apart at the seam," he said.

Even defendants realize that times have changed. At his sentencing for armed robbery, 19-year-old Aubrey Bennett Jr. told Judge Henry Kennedy Jr.: "It ain't like it was when y'all were young. Y'all fought it out with a fist. They don't do that no more. They use a gun."

Bennett had pleaded guilty to participating in the robbery and shooting of a cabdriver -- just the kind of crime that Thomas is targeting. Although the police chief hopes this approach eventually puts a dent in the District's homicide rate, he and other law enforcement officials agree that making more arrests and sending more criminals to jail will not, by itself, stop the violence. By the time the police and courts become involved, the gun already has been fired, the blood already has been shed.

Jim Fyfe, a former New York City police officer and professor of criminal justice at Temple University, said, "The police and the criminal justice system are the social controls device of last resort. When family and community and religion and education don't affect the individual's behavior, we rely **on** the courts to do something. {That} effect can **only** be marginal.

"The police have an obligation to enforce the law. They have to make arrests. I'm a vigorous advocate of rigorous enforcement of the law. But I don't think rigorous enforcement alone will solve the crime problem," Fyfe said.

John E. Eck, of the Police Executive Research Forum, a Washington-based organization that studies ways to improve police effectiveness, said: "The police are like the Dutchman with the finger in the dike. We have to think of the police not as the builder of the dike, but someone who is buying a little time while someone else fixes the dike."

Getting at the Root of Ills

For some law enforcement authorities and public officials, fixing the dike has meant putting more police on the streets

fixing the dike has meant putting more police **on** the streets and building more prisons. This approach has led to a tripling of the nation's prison population in 20 years.

Nonetheless, other law enforcement officials are saying that the conventional strategies aren't enough. In the long run, they said, Washington and other cities also must change the underlying social and economic conditions that breed violent behavior.

"The crime and disorder which flow from hopeless poverty, unloved children and drug abuse can't be solved merely by bottomless prisons, mandatory sentencing minimums or more police," said FBI Director Louis J. Freeh at his swearing-in ceremony last month.

The nation's top criminal justice official, Attorney General Janet Reno, has been stressing the need to reach children at a young age -- before they begin hanging out with the drug crowd, before they buy their first gun, before they commit the crime that lands them in adult court.

At the same time, she said during a recent interview with Washington Post reporters and editors, "All kids have got to understand that there is no excuse for putting a gun up side somebody's head and hurting them or killing them. And that there are going to be firm and certain punishments that go with it."

Morgan Reynolds, an economist at Texas A&M University, said his study of sentencing and parole data has led him to conclude that convicted criminals don't serve enough time in jail. "We aren't making criminals fear retribution," he said. "The message criminals need most is that crime doesn't pay. The message they get today is that it does."

Before courts can punish killers, the killers have to be caught. The Post study found that no **one** was convicted of **murder** or manslaughter in nearly three quarters of the 1,286 homicides.

James Q. Wilson, a UCLA professor who has written extensively about crime and social behavior, said homicides are more difficult to solve today because they often involve gang violence and drug-related crime. But, he said, "The fact that it is harder doesn't mean it's impossible."

Wilson disagrees with those who say police can have **only** a marginal effect **on** the level of crime. "I think their comments, though true up to a point, really are a counsel of despair." Police may need more resources to do their job, he said. Mayor Kelly's recent call for help from the National Guard "suggests to me that the police are overloaded."

Thomas, who took office in January, already has set out to improve the department's investigation of homicides. This fall, the department began installing the first of about 500 personal computers so that homicide detectives and uniformed officers in the department's seven districts can cross-check their reports about various crimes. The homicide squad keeps most of its records **on** paper; several detectives brought in their own laptop computers to help them keep track of their growing caseloads.

At present, the department keeps statistics **on** the arrests made each calendar year: 60,000 last year. But it has no mechanism for tracking individual cases as they move through the courts. As a result, the department cannot do a



thorough analysis of its performance. "**One** of the things we ought to be doing is looking at the arrest rate, the closure rate, the dismissal rate," Thomas said.

The chief said he wants to hire research analysts to look at similarities and patterns in cases, and to determine possible links between suspects in seemingly unrelated crimes.

Thomas believes that **one** of the reasons the police are solving fewer homicides is "the inexperience and youth" of the detectives and overall police force. In 1985, when he retired after 20 years, Thomas said many of the homicide detectives, like most of the force, had 15 or more years of experience. "The longer **one** is out **on** the street, the more contacts you have **on** the street," he said. Now, about 54 percent of police officers have four or less years of experience, and **one** third of the officers were hired in 1990.

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very busy. But the fact is that if the system allows people involved to gain a little more time to be ready, they will ask for that. There is always something else that can be done **on** the prosecutor's side, the defense side and sometimes the court side. It goes back to human nature."

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So defense lawyers say they need extra time to find witnesses, interview them and figure out how to best represent their clients. "Of course, we want to protect our clients' rights to a speedy **trial**," Davis said. "This is particularly important for clients who are incarcerated. But without more reasonable discovery rules, it's oftentimes impossible to try cases as quickly as we would like."

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Fred B. Ugast, who retired as D.C. Superior Court chief judge this month after 20 years **on** the bench, noted that **murder** cases are **only** a small fraction of the entire court caseload. The courts have had a dramatic increase in other criminal cases, including child abuse and neglect cases, drug cases and serious shootings.

"All of us in the court keep thinking in terms of what are the root causes that are giving rise to the violence and breakdown of family," Ugast said. "Why is this happening? The criminal justice system is still being driven by drugs and violence. Is there something that we as a community could do to start turning around the behavior problem that is giving rise to all this violence? Frequently, it is too late by the time it gets in court."

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# STRATEGIES TO END THE CARNAGE *VIOLENT CULTURE AND UNCERTAINTY OF PUNISHMENT ARE TARGETED*

## MURDER ON TRIAL

By Athelia Knight

Washington Post Staff Writer

The red and green pins that dot two city maps *on* easels in D.C. Police Chief Fred Thomas's fifth-floor office represent the police department's latest strategy for bringing down the nation's highest homicide rate.

On *one* map, more than 300 red pins identify the scenes of this year's homicides. *On* the other, green pins mark the location of hundreds of shootings that left someone wounded, but alive. Often, Thomas said, the *only* thing that separates the red from the green is a gunman's aim.

Police now spend much of their investigative resources trying to solve homicides, but little *on* shootings. Thomas wants to attack the gun culture at its core, believing that the assailants behind the shootings also are responsible for many *murders*. Arresting them, Thomas said, may prevent some killings and reduce the fear that now grips some city neighborhoods. "We have to bring all the resources to bear before the homicides" happen, he said.

But attacking that culture is easier said than done. It has changed and evolved since the homicide rate began climbing to record levels in 1988, becoming the province of younger men willing to settle even the mildest disputes with gunfire.

Judge Reggie Walton, who left the D.C. Superior Court bench in 1989 to join the Bush administration's drug policy office, noticed the change when he returned to the court two years later. Instead of men in their twenties, he was seeing many more *murder* defendants who were 19, 18, even 17 years old.

Walton's impression is borne out by a Washington Post study of all 1,286 homicides from 1988 to 1990. Twenty-four percent of the defendants charged in the 1988 homicides were 16 to 18 years old at the time of the crime, compared with 34 percent in the 1990 homicides.

More than half of the 866 homicide defendants charged in the three years were 21 or younger, the study found, and more 18-year-olds were charged as suspects than those of any other age.

Those figures do not include charges in 38 homicides referred to Juvenile Court: four in 1988, 11 in 1989 and 23 in 1990. In serious cases such as *murder*, prosecutors can send cases involving 16-, 17- and 18-year-olds to Juvenile Court or Superior Court. If prosecutors want to try a 15-year-old in Superior Court for *murder*, they first must show a judge that there is little likelihood that the suspect will be rehabilitated in the juvenile court system.

Mayor Sharon Pratt Kelly, as part of a 16-point proposal for reducing violent crime released Monday, said she wants legislation that would allow 14-year-olds to be prosecuted in adult court. The plan, which targets young offenders, also would provide stiffer penalties for gun possession.

Walton, a former prosecutor who is known for his tough sentences, said it seems easier than ever for young men to get high-powered guns in the District, and they seem to have no hesitation about using them. Police report that 83 percent of last year's homicides involved a gun. "Unless you do something about the proliferation of guns and the type of guns, neighborhoods -- and especially poor neighborhoods -- will continue to be ripped apart at the seam," he said.

Even defendants realize that times have changed. At his sentencing for armed robbery, 19-year-old Aubrey Bennett Jr. told Judge Henry Kennedy Jr.: "It ain't like it was when y'all were young. Y'all fought it out with a fist. They don't do that no more. They use a gun."

Bennett had pleaded guilty to participating in the robbery and shooting of a cabdriver -- just the kind of crime that Thomas is targeting. Although the police chief hopes this approach eventually puts a dent in the District's homicide rate, he and other law enforcement officials agree that making more arrests and sending more criminals to jail will not, by itself, stop the violence. By the time the police and courts become involved, the gun already has been fired, the blood already has been shed.

Jim Fyfe, a former New York City police officer and professor of criminal justice at Temple University, said, "The police and the criminal justice system are the social controls device of last resort. When family and community and religion and education don't affect the individual's behavior, we rely **on** the courts to do something. {That} effect can **only** be marginal.

"The police have an obligation to enforce the law. They have to make arrests. I'm a vigorous advocate of rigorous enforcement of the law. But I don't think rigorous enforcement alone will solve the crime problem," Fyfe said.

John E. Eck, of the Police Executive Research Forum, a Washington-based organization that studies ways to improve police effectiveness, said: "The police are like the Dutchman with the finger in the dike. We have to think of the police not as the builder of the dike, but someone who is buying a little time while someone else fixes the dike."

#### Getting at the Root of Ills

For some law enforcement authorities and public officials, fixing the dike has meant putting more police **on** the streets and building more prisons. This approach has led to a tripling of the nation's prison population in 20 years.

Nonetheless, other law enforcement officials are saying that the conventional strategies aren't enough. In the long run, they said, Washington and other cities also must change the underlying social and economic conditions that breed violent behavior.

"The crime and disorder which flow from hopeless poverty, unloved children and drug abuse can't be solved merely by bottomless prisons, mandatory sentencing minimums or more police," said FBI Director Louis J. Freeh at his swearing-in ceremony last month.

The nation's top criminal justice official, Attorney General Janet Reno, has been stressing the need to reach children at a young age -- before they begin hanging out with the drug crowd, before they buy their first gun, before they commit the crime that lands them in adult court.

At the same time, she said during a recent interview with Washington Post reporters and editors, "All kids have got to understand that there is no excuse for putting a gun up side somebody's head and hurting them or killing them. And that there are going to be firm and certain punishments that go with it."

Morgan Reynolds, an economist at Texas A&M University, said his study of sentencing and parole data has led him to conclude that convicted criminals don't serve enough time in jail. "We aren't making criminals fear retribution," he said. "The message criminals need most is that crime doesn't pay. The message they get today is that it does."

Before courts can punish killers, the killers have to be caught. The Post study found that no **one** was convicted of **murder** or manslaughter in nearly three quarters of the 1,286 homicides.

James Q. Wilson, a UCLA professor who has written extensively about crime and social behavior, said homicides are more difficult to solve today because they often involve gang violence and drug-related crime. But, he said, "The fact that it is harder doesn't mean it's impossible."

Wilson disagrees with those who say police can have **only** a marginal effect **on** the level of crime. "I think their comments, though true up to a point, really are a counsel of despair." Police may need more resources to do their job, he said. Mayor Kelly's recent call for help from the National Guard "suggests to me that the police

are overloaded."

Thomas, who took office in January, already has set out to improve the department's investigation of homicides. This fall, the department began installing the first of about 500 personal computers so that homicide detectives and uniformed officers in the department's seven districts can cross-check their reports about various crimes. The homicide squad keeps most of its records **on** paper; several detectives brought in their own laptop computers to help them keep track of their growing caseloads.

At present, the department keeps statistics **on** the arrests made each calendar year: 60,000 last year. But it has no mechanism for tracking individual cases as they move through the courts. As a result, the department cannot do a thorough analysis of its performance. "**One** of the things we ought to be doing is looking at the arrest rate, the closure rate, the dismissal rate," Thomas said.

The chief said he wants to hire research analysts to look at similarities and patterns in cases, and to determine possible links between suspects in seemingly unrelated crimes.

Thomas believes that **one** of the reasons the police are solving fewer homicides is "the inexperience and youth" of the detectives and overall police force. In 1985, when he retired after 20 years, Thomas said many of the homicide detectives, like most of the force, had 15 or more years of experience. "The longer **one** is out **on** the street, the more contacts you have **on** the street," he said. Now, about 54 percent of police officers have four or less years of experience, and **one** third of the officers were hired in 1990.

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## **WHEN CLOGGED COURTS FAIL TO SPEED JUSTICE ONE CASE SHOWS HOW DELAYS AND DISMISSALS CAN POSE RISKS**

### **MURDER ON TRIAL**

**By Athelia Knight**

**Washington Post Staff Writer**

If all had gone as scheduled in Courtroom 212 of D.C. Superior Court *on* Nov. 7, 1991, a jury would have heard testimony that David Lamont Gibson had pumped several bullets into Cornell Thomas, a New York drug dealer, with a submachine gun.

But nothing went as planned that day, or *on* many other days in this prosecution. The case has such a tangled history that the docket sheet of proceedings runs for 13 pages, chronicling a series of delays that has become all too common in the D.C. court system.

"Is the government ready for *trial*?" Judge Stephen F. Eilperin asked prosecutor Oliver M. McDaniel that November morning.

"No, Your Honor," McDaniel said, explaining that his wife was recuperating from surgery, his lead detective was caring for a hospitalized son and other *trial* work had prevented him from preparing the case.

Gibson's lawyer objected. The case had been postponed before, and Gibson had been in jail more than a year, ever since his arrest. Eilperin had to weigh Gibson's rights against McDaniel's request. Eilperin decided that Gibson, then 18, had been locked up too long.

"I am dismissing the case," Eilperin announced. The prosecution could bring the charges again, but for now, Gibson was free. Letting a *murder* suspect go was a risk, but under the law, Gibson had to be considered innocent until proved guilty.

Once Gibson was back in the community, however, the justice system did not treat him as a big risk. McDaniel said in court papers that he intended to seek new charges against Gibson by the end of the month, but Gibson was not re-indicted until two months after he was set free.

Even then, the system did not move with urgency to bring Gibson back into custody. Following routine procedures, the court clerk's office mailed a notice of the charges to Gibson at his mother's house, telling him to appear in court two weeks later. Gibson never showed up.

While he was free, the risk became real: *On* Jan. 5, 1992, police allege, Gibson and two other gunmen killed Winston Palmer, another drug dealer, ambushing him as he rounded a corner in Northeast Washington. A month later, *on* Feb. 5, 1992, Gibson held up a teenager at a bus stop with the help of two accomplices, stripped him of his clothes and then tried to shoot a police officer who gave chase -- crimes of which Gibson has since been convicted.

Rarely is a defendant freed and then immediately accused of another *murder*. But what happened in Eilperin's

courtroom is typical of the struggle the D.C. criminal justice system faces every day: At any point along the way -- from arrest to indictment to **trial** -- a case can go awry. A Washington Post study of all 1,286 homicides from 1988 through 1990, results of which were first published in Sunday's newspaper, shows that charges were dismissed in 36 percent of the 866 homicide cases filed in D.C. Superior Court. (Because some cases involved multiple defendants, those 866 defendants are charged in 689 homicides; 38 other homicides were handled in Juvenile Court.)

Judges and prosecutors are not required to note in the court file why charges have been dropped. But it is clear from interviews with those involved in the system, as well as transcripts of court hearings, that several factors are involved:

\* The soaring homicide rate has overwhelmed the ability of police to investigate cases thoroughly before bringing charges. Detectives, eager to close a case, sometimes make an arrest **on** evidence that prosecutors later determine is insufficient.

\* The vicious nature of many slayings deters witnesses from coming forward to give information or testify in court. Sometimes, the **only** witnesses are convicted criminals whose credibility is questionable.

\* Prosecutors, such as McDaniel in the Gibson case, have found themselves juggling so many investigations and **trials** that they cannot keep up. Unable to work out scheduling conflicts, they frequently seek postponements when cases come to **trial**.

This is the result, in part, of the structure that former U.S. attorney Jay B. Stephens implemented for prosecuting homicides. Stephens, who headed the office from 1988 until March of this year, believed that it was best for prosecutors to have responsibility for all aspects of a case, from the time it came into the office, through the grand jury phase and then **on** to **trial**.

An arrest is "just the beginning," Stephens said in an interview, pointing out that much of the case is put together after police file charges. "It really adds a significant degree of professionalism to be able to draw **on** the experience of the prosecutor to handle the case from start to finish where possible."

This approach might work without a hitch if the prosecutors weren't so overwhelmed. But their caseloads were so heavy -- even though Stephens quadrupled the number of prosecutors handling homicides after getting complaints from the overworked staff -- that they didn't have time to be understudies to each other.

So when Oliver McDaniel wasn't ready **on** the scheduled day for Gibson's **trial**, no **one** else knew much about the case. Nor could anyone else take over the prosecution **on** a moment's notice.

#### Out of Jail and Into Trouble

David Gibson's case began like so many others **on** the homicide docket: **On** Oct. 18, 1990, he was arrested and charged with killing Cornell Thomas in the early morning hours of June 24, 1990. A witness told police that Gibson fired at Thomas repeatedly while chasing him through the courtyard of the Lincoln Heights public housing complex in Northeast Washington.

Gibson was jailed **on** \$10,000 bond, which meant he had to post \$1,000 in cash to be released. He did not make bail, so he remained in jail. The Post study found that nearly two-thirds of the 866 homicide defendants stayed in jail while their cases were being resolved, either by dismissal, plea bargain or **trial**.

Two months after his arrest, Gibson was indicted **on** a first-degree **murder** charge and two gun possession charges; a co-defendant was charged with a gun violation. Gibson's lawyer, Stephen Russell, discussed a plea bargain with McDaniel over the next several months. Those negotiations broke down in May 1991, and because of scheduling conflicts, Nov. 7, 1991, was the earliest **trial** date they could agree **on**.

Russell emphasized the time lag when McDaniel made his request for a postponement that morning in Eilperin's court. "While I certainly can understand his predicament, I would ask the court to consider the predicament of my client," Russell told Eilperin. "It has been an inordinate amount of time since Mr. Gibson has had his day in court."

The hearing lasted five minutes. By that afternoon, Gibson was out of jail.

Because the charges were dismissed "without prejudice," the prosecutor's office could re-indict Gibson as soon

as it could present the case again to a grand jury. For several weeks, nothing happened. Stephens said that McDaniel took time off to be with his wife while she was recuperating and then had to prepare and prosecute another **murder** charge in December.

Stephens said McDaniel moved as quickly as possible, given the circumstances. First, he said, McDaniel had to schedule time before a grand jury. Several grand juries operate at the same time, but they are busy and rarely meet more than three days a week. The grand juries did not meet at all for two weeks during the Christmas holidays, Stephens said, so it was January before McDaniel was able to obtain a new indictment.

Gibson's re-indictment Jan. 7, 1992, revealed another flaw in the system. In contrast with the flurry of activity that occurs when police first arrest a **murder** suspect, a re-indictment is handled as though the charge is far less serious. The court mails a notice to the defendant, unless the prosecutor asks a judge to issue an arrest warrant.

The day after the indictment, the court mailed such a notice to Gibson, asking him to appear in court **on** Jan. 22. There's no record of any request for a warrant until Gibson failed to show up that day for his court hearing.

McDaniel declined to discuss the case. But he told Kevin Ohlson, a spokesman for the U.S. attorney's office, that he did request a warrant. "McDaniel states unequivocally that he requested a bench warrant be issued in that case," Ohlson said.

The police warrant squad, the marshal's office and the police officers **on** the street added Gibson's name to the list of several hundred wanted **on** a variety of charges.

On Feb. 5, D.C. police Officer Dorian DeSantis was chasing three suspects after an armed robbery. **One** suspect, later identified as Gibson, aimed a .38-caliber gun at DeSantis, who jammed his finger into the trigger guard to keep Gibson from firing. DeSantis said later that he felt lucky to be alive.

Gibson told detectives that his name was Stacy Brookman. By the time he appeared in court the following day, police had discovered his true identity and the outstanding warrant. This time, he was jailed without bond.

While Gibson was in jail awaiting **trial on** the armed robbery charges, detectives began to hear from witnesses that Gibson had been responsible for killing Winston Palmer **on** Jan. 5. **On** Feb. 13, police charged him with Palmer's **murder**.

Gibson now stood accused of two **murders** and an armed robbery.

#### A Conviction, for Robbery

Who is David Gibson? Now 20, he grew up in Washington neighborhoods east of the Anacostia River, lived with his mother and father and later his stepfather, and several brothers and sisters. In sixth grade, he said in a recent interview, he was arrested with a group of friends for beating a classmate and breaking his ribs. At 13, he was sent to juvenile detention after being caught in a stolen car that had struck and seriously injured a woman.

He dropped out of school in ninth grade, he said, and eventually became a drug dealer. He said he sold crack cocaine in his Lincoln Heights neighborhood, which he calls the Hill. He was a week shy of his 17th birthday when, police allege, he **murdered** New York drug dealer Thomas in October 1990.

When Gibson went back to court **on** the Thomas **murder** charge **on** June 3, 1992, both the prosecutor and judge had changed. McDaniel had been promoted, and Eilperin had rotated to other duties. Now, it was Russell, Gibson's lawyer, who wanted a postponement, saying he had another case about to begin in federal court.

Judge Robert I. Richter grumbled that "this is such an old case" but agreed to a new **trial** date because the prosecutor had no objection. They set a new **trial** date for late September.

In late June, Gibson came to **trial on** the armed robbery charges. For the first time, **one** of Gibson's alleged victims was able to testify. Tavares Holmes, then a D.C. 11th-grader, gave this account:

He said he was standing at a bus stop near the Anacostia Metro station about 9 p.m. **on** Feb. 5, 1992, listening to his Walkman. Three young men approached him and **one** -- Holmes identified him as Gibson --

opened up his jacket to reveal the butt of a gun.

Gibson ordered Holmes to walk with him around the corner, where he showed Holmes that the .38-caliber gun was loaded. "He said he wasn't a joke and if I ran, he would kill me," Holmes said.

Gibson ordered Holmes to strip. In the near-freezing cold, Holmes took off his jacket, shirt, jeans, socks and boots. Clad **only** in boxer shorts, he knelt **on** the ground. Gibson choked him, and Holmes said he slumped to the pavement, pretending to be dead. When he looked up to see what was happening, Gibson choked him again. This time, he stayed still until Gibson and his accomplices fled with his clothing, \$40 and a pair of new Nikes he had bought that evening with money he earned as a grocery clerk.

Holmes said that he wasn't going to bother "to call the police because they weren't going to find them." But a witness who saw the incident from her apartment window called 911, resulting in DeSantis's chase and arrest of Gibson and two accomplices.

At the **trial**, Gibson was the **only** defendant to testify. Dressed in jeans and a white shirt buttoned at the collar, he told the court that he didn't have a gun, didn't rob Holmes and didn't assault DeSantis. DeSantis "tried to put a gun in my hand," Gibson said.

The jury took about four hours to convict Gibson and his two co-defendants. He was sentenced to 14 years and eight months in prison.

One Delay, **One** Dismissal

Gibson was scheduled to be tried in the first slaying **on** Sept. 28, 1992. But it was postponed again, in favor of the second **murder** case, which involved two co-defendants and was harder to reschedule.

When it came time for the second **murder** case to start two days later, however, prosecutor Stephanie G. Miller wasn't ready.

"Your Honor," she told Judge Harold L. Cushenberry, "all that I will or can say is that I tried my very best to get prepared. I had been in **trial** for five weeks and I worked every single weekend and I was unable to get the officers together to get the witnesses lined up and subpoenaed and ready for the **trial** date."

Cushenberry faced the same dilemma as Eilperin had earlier, although the risks were a little different. Gibson, because of his conviction in the armed robbery case, would stay in jail. But **one** of the co-defendants, Lanard Cloyd, who had been in jail since his arrest in February, would be released. Cloyd, 15, had been charged as an adult, a rare occurrence for a juvenile of his age.

"Obviously, this is a difficulty for the court," the judge said. "I heard the preliminary hearing in this matter and the evidence in this case was compelling." But he said that he was dismissing the case and that the prosecutors could seek re-indictments.

As Gibson and Cloyd were escorted out of the courtroom, they smiled and talked loudly. "Hold it down," a marshal admonished them.

D.C. homicide Detective Mitchell Credle, who was there as a scheduled witness, shook his head in disgust. "You mean Cloyd is going to be released?" he asked Miller after the hearing. The prosecutor nodded her head.

"Damn," Credle said. "Cloyd is going to be out **on** the street. Damn. Did you see him smile?"

No Conclusion After 2 Years

In December 1992, the first **murder** charge came up for **trial** a third time. But prosecutor Michael L. Volkov wasn't ready either.

"We're looking for a witness, but more importantly I -- to be honest with the court -- I just have not had the time to prepare this case to get ready for **trial**," Volkov told Judge Richter.

"It's a lame excuse," Richter said. "It's a first-degree **murder** case. . . . You've already had it 'dwipped' {dismissed for want of prosecution} **once**. It's been continued a whole lot of times."

Volkov argued that a postponement wouldn't hurt Gibson because "he is serving a long sentence at this point."

Richter said "that's an argument that you could make for delaying this thing endlessly. And we're almost at a point where it is endless and for you to say I was too busy to get ready is in a lot of ways to me about as lame an excuse as I could get. Maybe it is not your fault. Maybe it's your office's fault for giving you these extra responsibilities. But from my perspective, from Mr. Gibson's perspective, it's no excuse."

Volkov pleaded again for more time. "Your Honor, all I'm telling the court is that I have been assigned almost full time to those other matters. I alerted people in my office to this situation. And I was told to go ahead and seek a continuance."

"I'm not damning you," Richter said. "I'm just saying your office makes its choices and . . . that's an inconvenience for you to have to re-indict if indeed you have your witnesses and you can make this case."

Richter dismissed the charge -- for the second time. In the 10 months since, Gibson hasn't been re-indicted in the first slaying.

Gibson and Cloyd were re-indicted in December for the other slaying. Since then, the *trial* has been postponed twice. It is now scheduled for Dec. 1.

'I Hope I Beat It'

In the meantime, Gibson is serving his sentence *on* the armed robbery charges at Lorton prison. He is eligible for parole in 2005. In two recent interviews, he talked about himself, looking subdued, rarely smiling or making eye contact.

He maintains that he did not commit the two slayings and that he was wrongly convicted in the armed robbery case. At the same time, he was willing to describe his life as a drug dealer.

He said he was attracted to the drug trade at an early age because he saw youths his age driving flashy cars. "Dudes had BMWs, and I wanted *one* of them," he said. He was too young to get a license, he said, but he had a couple of cars -- none of them BMWs. He drove with temporary tags until the police confiscated them when they caught him driving without a driver's license or registration.

He said he *only* sold crack cocaine and didn't use it. Asked to explain why traces of cocaine were found in his urine when he was arrested, he rubbed his fingertips together and said the drug had somehow gotten in his system through his pores.

He brightened as he talked about his days *on* the street. His nickname was Billy the Kid; the police called him and his friends "Young Guns" because they were known for shooting up the neighborhood. Though his friends were part of the reason he got in trouble, he said, "I'm always going to hang with them."

"Seems like I grew up in the criminal system," he said.

Gibson said that his mother told him about the court notice mailed to him after his re-indictment and that he knew his lawyer was trying to reach him, but that he had no intention of surrendering for a crime he said he didn't commit. He said he gave the police a false name because "I was *on* the run."

Since going to Lorton, he has volunteered to talk to youth from the city's juvenile facilities, a prison official said. Gibson said he tries "to persuade them not to come this way, not to take the road that we went." He focuses *on* the youth "who's got the attitude I had. . . . Like he don't care. The *one* who's trying to get a name just like me."

At the same time, he said, "My attitude will never change. I'm just like the weather. I never know when I'm going to change. I could be me. Then the next minute I turn into Satan."

Gibson, leaning back in the chair, his legs stretched out under the table, said of the 14 years he has to serve for the armed robbery conviction: "I can handle it. . . . I'll be back out there soon, very soon."

"I'll be 34 years old," he said, after pausing to add up his age in his head. "That ain't old."

And the *murder* trial coming up again in December? "I hope I beat it like I did the other *one*," he said.

On Oct. 18, 1990, D.C. homicide detectives charged David L. Gibson with first-degree **murder** in the shooting of Cornell Thomas. Gibson, then 17, was accused of firing at Thomas repeatedly with a submachine gun. After his arrest, a court file was opened. A portion of the first page, pictured above, shows early developments in the case. **On** Dec. 20, 1990, a grand jury indicted him **on** the charges; **on** Jan. 3, 1991, he appeared in court for arraignment. Thus began a case with such a tangled history that the docket takes 13 pages to tell it.

PAGE 5

Feb. 5 to Apr. 18, 1991

During this period, prosecutor Oliver McDaniel and Gibson's lawyer, Stephen Russell, discuss a possible plea bargain. The docket shows **only** that Judge Stephen Eilperin is holding routine status hearings to monitor the progress of the case.

PAGE 6

May 20 to Oct. 28, 1991

The plea bargain negotiations go nowhere. At a May 20 status hearing, the docket shows, Eilperin sets a **trial** date for Nov. 4. As the **trial** date nears, schedule conflicts push the **trial** back to Nov. 7.

PORTION OF PAGE 7

Nov. 7, 1991

On the day of **trial**, McDaniel requests another postponement, citing personal reasons and scheduling conflicts. Eilperin rejects the request and dismisses the charges against Gibson, who had been in jail for nearly a year. Gibson is freed. The docket records the judge's decision: "The defense oral motion to Dismiss for Want of Prosecution is granted." **On** Jan. 7, 1992, the next docket entry shows, Gibson is re-indicted and notified that he must appear for arraignment **on** Jan. 22, 1992.

PAGE 8

Jan. 7 to Jan. 23, 1992

The new indictment brings a new judge, Robert I. Richter. **On** Jan. 22, the docket notes, Gibson does not show up for arraignment. A bench warrant is then issued for his arrest.

PAGE 10

Feb. 10 to March 31, 1992

Gibson is arraigned **on** Feb. 10 and a new **trial** date is set for June 3, 1992. Police learned of his whereabouts **only** because he was arrested for an armed robbery that he committed after he was freed. Police later allege that he also committed a second **murder** while free. Two new dockets, not shown here, are opened in those cases.

PAGE 12

May 29 to Sept. 28, 1992

The June 3 **trial** is postponed at the request of Gibson's attorney, and rescheduled for Sept. 28. That, too, is postponed -- until Dec. 2.

PORTION OF PAGE 13

Dec. 2, 1992

It is now more than two years since Gibson was first arrested for Cornell Thomas's **murder**. There's a new prosecutor in the case, Michael Volkov. But as the docket shows, he is not ready for **trial** either. So Richter dismisses the charges against Gibson for a second time. This is the last entry in the docket of case number F-

11687-90. Gibson has not been re-indicted *on* these charges.

Staff writer Charles R. Babcock and staff researcher Lucy Shackelford contributed to this report. William Casey, director of computer-assisted reporting, did the computer analysis. Assistant Art Director Jackson Dykman designed the graphics.

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## SETTING A TRIAL DATE: A LESSON IN CRAMPED SCHEDULES

**MURDER ON TRIAL**  
By Athelia Knight

Perhaps no scene shows better why some *murder* cases take so long to resolve in D.C. Superior Court than this *one* in courtroom 102 *on* Nov. 14, 1991:

Judge Henry H. Kennedy Jr. had just granted prosecutor Silvia Gonzalez's request to postpone a *murder* trial, and he was ready to set a new date. Looking down at his large desk calendar, Kennedy said: "The court will continue this to the next available date . . . and that seems to be -- well, February 25 . . . "

"Your Honor, I have a *trial on* February 20, which I expect will go *on* that date," said Gonzalez, her eyes fixed *on* her calendar. "It's been continued before."

"March 5? March 12?" asked Kennedy, moving his pen along the page of his calendar.

"I have a *trial on* March 6 and March 24," Gonzalez said.

"April 2?" Kennedy said.

Still no good. Gonzalez was concerned that her March 24 *trial* might not be over by April 2. "I would ask for *one* additional week to make sure that case is finished, so we won't be in the same bind," she told Kennedy.

"April 7?" said Kennedy, seeming irritated and resting his bearded chin in the palm of his right hand.

That date wasn't good for the defense attorney, Peter Krauthamer, who had a *murder* trial set for April 6. "It will take five days to try, maximum."

Finally, Kennedy had had enough. The case had been postponed twice already. "Counsel, it's going to be either April 2 or *one* of these other dates . . . it gets just to a point where the court should not accommodate counsels' schedules because of your other cases."

They compromised *on* April 2, almost two years after the initial arrest in the case.

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## AFTER 19 MONTHS IN JAIL AND 5 DELAYS, A SUSPECT IS FOUND NOT GUILTY

**MURDER ON TRIAL**  
By Athelia Knight

Most **murder** suspects in the District can count **on** spending many months in jail before the overwhelmed D.C. criminal justice system manages to resolve the charges against them. A Washington Post study of the 1,286 homicides from 1988 to 1990 found that nearly two-thirds of the 866 defendants stayed in jail while awaiting resolution of the charges against them, and 200 were jailed more than a year, including 36 who eventually were acquitted.

Marvin McCaskill, 22, a car mechanic with no criminal record, was **one** of the 36. He spent 19 months in jail before a jury acquitted him in the fatal shooting of Michael Lee, 24.

McCaskill was arrested within hours of Lee's slaying **on** Feb. 23, 1990. He maintained his innocence, but several witnesses identified him to police as the killer. He was charged with first-degree **murder**, which meant he could be jailed without bond under the District's preventive detention law.

According to The Post's study, police charged 500 defendants with first-degree **murder** in the 1988-1990 homicides. McCaskill became **one** of 391 held initially **on** preventive detention, 310 of whom stayed in jail until their cases reached a conclusion. An additional 243 defendants stayed in custody for the duration of their cases because they couldn't afford the bond set by the judge.

The preventive detention law has been a controversial law enforcement tool since its inception in the early 1970s. Prosecutors argue that the law enables the courts to remove dangerous suspects from the street. Defense lawyers say it makes a mockery of the idea that defendants are innocent until proved guilty. They also complain that bonds are being set too high, and thus become another form of preventive detention.

One reason that so many stayed in jail for so long is that the system doesn't impose a strict deadline for bringing **murder** cases to **trial**. A D.C. law enacted in 1992 set a 120-day deadline for bringing certain kinds of cases to **trial** but imposed no time limit **on** first-degree **murder** cases.

The American Bar Association recommends that serious cases be resolved much faster. The ABA guidelines state that 90 percent of felony cases, including **murders**, should be resolved in court within 120 days after an arrest, 98 percent within six months and all within a year.

McCaskill was scheduled to go to **trial** in November 1990, nine months after his arrest. But the **trial** was postponed five times before it finally took place in September 1991. McCaskill's lawyer, Frances D'Antuono, requested two postponements. She said later that the delays, while unfortunate for her client, gave her more time to build a defense.

McCaskill gave her this account of the shooting:

He and a friend went to find Lee, who they suspected had been involved in the fatal shooting of McCaskill's nephew 14 months earlier. They set out together, but the friend got there first, grabbed Lee and led to him to a nearby parking lot **on** Morris Road SE.

McCaskill said he arrived moments after hearing a gunshot. He said the witnesses must have confused him with the real killer. McCaskill provided her with the name of his friend, who had told police that McCaskill was the triggerman. D'Antuono scoured the neighborhood and eventually discovered a witness who was not interviewed by police whose description of the shooter matched the friend's.

June Jeffries, the prosecutor in the case, said she believed that both McCaskill and the friend were involved in

the shooting but that police could never develop enough evidence to charge the friend.

McCaskill did not testify at his nine-day *trial*. Neither did his friend, who had refused to testify at the grand jury *on* the grounds that he might incriminate himself. *On* Sept. 23, 1991, the jury pronounced him not guilty. Asked later about his 19 months in jail, McCaskill said: "I dealt with it the best way I could. . . . I believed I was coming home. I just had to deal with it until the time came."

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