

IN THE COMMON PLEAS COURT OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CRIMINAL TRIAL DIVISION

RECEIVED
APR 25 1997
PCRA-UNIT

COMMONWEALTH : PCRA
VS. : CP 83-07-0305

ANDRE HARVEY :
- - -

COMMONWEALTH : PCRA
VS. : CP 83-07-0309

HOWARD WHITE :
- - -

COMMONWEALTH : PCRA
VS. : CP 83-07-0314

RUSSELL WILLIAMS :
- - -

PHILADELPHIA, PENNSYLVANIA

FEBRUARY 18TH, 1997

BEFORE: HONORABLE GENECE E. BRINKLEY, JUDGE

JUDGE GENECE E. BRINKLEY
CHAMBERS

APR 11 1997

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APPEARANCES:

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CHRISTOPHER DIVINY, ESQUIRE
ASSISTANT DISTRICT ATTORNEYS
FOR THE COMMONWEALTH

GEORGE NEWMAN, ESQUIRE
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FOR THE DEFENDANT WHITE

JEREMY C. GELB, ESQUIRE
COUNSEL FOR DEFENDANT WILLIAMS

*

I N D E X

<u>PETITIONER'S EVIDENCE</u>	<u>DR</u>	<u>CR</u>	<u>RED</u>
Maxie Lee Harris-Jiles	31	61	75
Sharon Artis	95	106	--
Douglas Atwell	119	128	145

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MR. NEWMAN: Your Honor, our position, of course, is this other individual has nothing to do with the petition presented before the Court. This is whether or not Mr. Atwell himself was afforded these favors, which the jury was not informed of. This is a very -- Your Honor has focused this issue rather squarely, and regardless of our procedural objections, you've made your ruling and, of course, we accept that, and it's regarding Mr. Atwell, not regarding, I don't even remember the name of this other individual.

MS. GODFREY: And our position, of course, Your Honor, is this issue of favors, including sexual favors, has been considered by the Trial Court, that Detective Gerrard has been asked about this issue and has categorically denied

it already; that the Trial Court made findings and accepted that denial.

Archie Scott was not the only witness to testify about sexual favors, there was also Franklin Lee who testified at the hearing below. Mr. Lee was Charles Atwell's cellmate at Holmesburg, and Mr. Lee was also called at the evidentiary hearing in order to impeach Mr. Atwell.

Mr. Lee testified, and by the way, Mr. Lee was not an eyewitness to this case, Mr. Lee testified that the detective brought him to the PAB. They let his girlfriend come see him there and they told him that he had two hours to do what he wanted to do, and that he had sex.

THE COURT: This is the account as told from Charles

Atwell to Franklin Lee?

MS. GODFREY: I'm
sorry?

THE COURT: Is this
the account that Charles Atwell
told to Franklin Lee?

MS. GODFREY: Mr.
Lee --

MR. NEWMAN: Was
speaking for himself.

MS. GODFREY: Was
speaking for himself.

MR. NEWMAN: No one
spoke for Mr. Atwell.

THE COURT: Franklin
Lee is saying I was offered this?

MS. GODFREY: That's
right.

And finally, Anthony
Singleton --

THE COURT: Were sexual
favors offered to get certain testi-
mony?

MS. GODFREY: That's what these witnesses are suggesting. These witnesses were giving information on other homicides as well at that time, and the Court --

THE COURT: But not this one?

MS. GODFREY: Including this one.

MR. STRUTIN: Judge, for sake of accuracy, the specific view Judge Biunno, in each of the three defendants' cases as well as the Supreme Court opinion, in each of the three Petitioners' cases show that this issue was not specifically raised. It was raised perhaps because these three witnesses, or two witnesses were not who are not the subject of this particular hearing this morning, mentioned it during the course of their testimony during post

sentence motions' hearings. It was not an issue. Of course, Detective Girard or whoever it was or Gilbert denied allowing these individuals to have sex at the PAB, but it wasn't an issue specifically raised.

The only issues which were specifically raised were addressed by Judge Biunno in his disposition of the post trial motions. So these issues which concern sexual favors allowed by Detectives Gilbert and Gerrard to Charles Atwell, was never raised until specifically addressed in our amended post conviction petition. So it's not an issue that has been previously litigated.

MS. GODFREY: Your Honor, all three defendants raised general after discovered

claims, all three presented numerous witnesses to impeach, as I said, or attempted to impeach Mr. Atwell's testimony at trial. All of them essentially testified to things that Mr. Atwell had told them while in prison. And as part of the testimony of these two witnesses and as part of their after discovered evidence claims, these claims did come out and again were rejected.

MR. STRUTIN: Judge, again, the claims were not raised as a result they could not have been rejected.

THE COURT: You're saying as to Charles Atwell?

MR. STRUTIN: As to Charles Atwell.

THE COURT: I understand the distinction you're making.

MR. STRUTIN: I know the Court understands, but also the claims as to the witnesses Scott and Franklin are not even addressed by Judge Biunno or the Superior Court in that direct appeal.

MR. NEWMAN: They were not issues, I looked through the briefs, they were not raised in the briefs, Your Honor. You're the first Court to squarely address this issue.

MS. GODFREY: Your Honor, that's not true, because in the opinion of the Trial Court he states, the defendant alleged that after his trial he learned from Archie Scott, Franklin Lee, Gerald Sanders, Aaron Helms, Edward Williams and Anthony Singleton, that while incarcerated with Charles Atwell, Atwell had

told him he lied about seeing Frank Rainey murdered and had perjured himself in testifying against the defendant.

So the Court did consider these witnesses and did rule that after discovered evidence claim with respect to them was without merit.

THE COURT: That's not the issues we are dealing with today. Go on with the rest of the summary.

Did you finish?

MS. GODFREY: One more point, Your Honor.

Anthony Singleton, who I believe is not going to be testifying today but will come up in the testimony of Sharon Artis, also testified at the post verdict evidentiary hearing along the lines of all the other witnesses, to

impeach the Commonwealth witness Charles Atwell. And Mr. Singleton made no reference whatsoever of any favors of a sexual nature in his testimony.

I just wanted to point that out to Your Honor.

With that I have concluded my procedural summary.

THE COURT: Either Counsel, Petitioners' Counsel, have anything to add to that or change, other than the characterizations that have already been made?

MR. STRUTIN: Just about Anthony Singleton, specifically, that supports our contention that the issue of sexual favors at the PAB, as we call it, was not an issue during post sentence proceedings. As a result, Mr. Singleton did not testify to that specifically

and Ms. Artis who we intend to present today, did not testify during post sentence proceedings, and with that, that's all.

MR. GELB: On behalf of Mr. Williams, I would agree with Counsel's observations and I don't have anything further to add by way of procedural history.

THE COURT: Counsel?

MR. NEWMAN: I concur.

THE COURT: Okay, we can bring the three Petitioners in.

(WHEREUPON, THE THREE PETITIONERS WERE BROUGHT INTO THE COURTROOM.)

THE COURT: Is the Commonwealth going to be putting on any witnesses?

MS. GODFREY: Yes, Detective Gerrard, but he's not available today.

THE COURT: Anyone

else?

MS. GODFREY: That's

all.

(OFF THE RECORD.)

- - - - -

THE COURT: All right,

I was trying to allow Counsel an opportunity to bring their clients up to date on exactly what we are going to do today, if that had not been done previously, but we need to go ahead and proceed.

We are here today at the request of Petitioners' Counsel to conduct an evidentiary hearing for which I determined the sole issue will be whether sexual favors was provided to Charles Atwell, in order to induce him to falsely implicate the Petitioner Russell Williams.

In support of requests for the evidentiary hearing on that

issue three affidavits were submitted, one of Sharon Artis, dated the 29th day of March, 1993; Maxie Lee Harris-Jiles, dated 2-7-96; and, Douglas Atwell, dated March 5, 1996.

Who do you intend to call first?

MR. NEWMAN: Maxie Lee Harris.

THE COURT: So Douglas Atwell and Sharon Artis have to step out of the room now.

MR. DIVINY: Your Honor, in an abundance of caution, given the nature of the gallery today, it's a full Courtroom and apparently no other cases on the list, in an abundance of caution, I would ask you to explain sequestration.

MR. GELB: Your Honor, I took the liberty of sequestering the witness Sharon Artis, Mr.

Atwell I believe is in custody.

THE COURT: Okay, and
who is in the room?

MR. NEWMAN: Ms. Harris
is here, she will be the first wit-
ness.

THE COURT: Okay.

Ladies and gentlemen,
I understand that most of you are
probably here because you have some
interest in this case. I have
sequestered the other two witnesses
as only one witness can appear in
the Courtroom at a time. The
sequestration order means that you
cannot discuss what you've heard
in this room with any of the wit-
nesses who are sequestered. If
you do, that violates my sequestra-
tion order. If I find out about
it you can be put in custody for
violating my order, that means
you're in contempt for not

following my orders.

So I just want you to understand that since there are several people in the Courtroom today, and I wouldn't want anyone to make the mistake of having discussed facts heard in this room with someone outside the room that might impact upon the testimony in here.

Okay, let's proceed.

MR. NEWMAN: We call Maxie Lee Harris-Jiles, if we may, Your Honor.

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PETITIONER'S EVIDENCE
- - - - -

MAXIE LEE HARRIS-JILES, having first been duly sworn, was examined and testified as follows:

- - - - -
THE COURT: You may proceed.

- - - - -
DIRECT EXAMINATION
- - - - -

BY MR. NEWMAN:

Q. You prefer to be called Ms. Harris-Jiles?

A. Harris.

Q. Good morning, Ms. Harris.

A. Good morning.

Q. Mrs. Harris or Ms. Harris?

A. Ms. Harris.

Q. I know this is going to be a bit uncomfortable to you because of the subject matter that we are going to ask you to talk about, but, of course, the Court is only interested in seeking the truth. So I apologize to you for the embarrassment that will be involved in the questions, but I need to ask these questions; is that okay?

A. It's all right.

Q. Thank you. And I know you don't want to be here and I know this is difficult, but please bear with us.

Ms. Harris-Jiles, did you know a Charles Atwell in the early 1980's?

A. Yes.

Q. And what was your relationship with him?

A. He was my boyfriend.

Q. Did you see him or did you live with him, did you just see him or did you live with him?

A. I did live with him once.

Q. Did you have any children with him?

A. Yes.

Q. How many children?

A. Two.

Q. And is he currently your boyfriend?

A. No.

Q. Are you currently married?

A. Yes.

Q. And what does your husband do?

A. He's a minister.

Q. You live with your husband and your children?

A. Yes.

MS. GODFREY: Your Honor,
I object to the relevance of these
questions.

MR. NEWMAN: Your Honor,
I think the Court needs to know who

- - - - -
DIRECT EXAMINATION
- - - - -

BY MR. NEWMAN:

Q. You prefer to be called Ms. Harris-Jiles?

A. Harris.

Q. Good morning, Ms. Harris.

A. Good morning.

Q. Mrs. Harris or Ms. Harris?

A. Ms. Harris.

Q. I know this is going to be a bit uncomfortable to you because of the subject matter that we are going to ask you to talk about, but, of course, the Court is only interested in seeking the truth. So I apologize to you for the embarrassment that will be involved in the questions, but I need to ask these questions; is that okay?

A. It's all right.

Q. Thank you. And I know you don't want to be here and I know this is difficult, but please bear with us.

Ms. Harris-Jiles, did you know a Charles Atwell in the early 1980's?

A. Yes.

Q. And what was your relationship with him?

A. He was my boyfriend.

Q. Did you see him or did you live with him,
did you just see him or did you live with him?

A. I did live with him once.

Q. Did you have any children with him?

A. Yes.

Q. How many children?

A. Two.

Q. And is he currently your boyfriend?

A. No.

Q. Are you currently married?

A. Yes.

Q. And what does your husband do?

A. He's a minister.

Q. You live with your husband and your children?

A. Yes.

MS. GODFREY: Your Honor,
I object to the relevance of these
questions.

MR. NEWMAN: Your Honor,
I think the Court needs to know who

she is, where she's coming from as she speaks, that's relevant.

THE COURT: No, it's not.

The objection is sustained as to her husband being a minister.

MR. NEWMAN: Who she lives with, what her life is now, Your Honor? I'll move on, Your Honor.

THE COURT: Okay.

What's really relevant is what happened in the early 1980's.

MR. NEWMAN: I'll move to that, Your Honor.

BY MR. NEWMAN:

Q. Was Charles ever in prison?

A. Yes.

Q. And when was that, if you recall?

A. I don't recall.

Q. Was it in the early '80's, mid '80's, late '80's. the '90's?

A. Mid '80's.

Q. Do you recall if he was in jail in the early '80's, specifically 1983?

A. Yes.

Q. And did you ever visit him while he was incarcerated?

A. Yes.

Q. Do you remember where you visited him?

A. At Holmesburg.

Q. Did you also visit him anywhere else where he was in custody, I'm not talking about in prison, but where the police were holding him?

A. Yeah, at the Roundhouse.

Q. Do you recall how many times you visited him at the Roundhouse?

A. Eight, eight times.

Q. Now, when you say eight, is that because you specifically remember each of the eight, or is that because you looked over the records which have helped to refresh your recollection about how many times you visited him?

A. The records.

Q. Do you remember how you wind up -- where did

see him at the Roundhouse?

A. Where?

Q. Where did you actually physically see him?

A. In a room.

Q. Do you remember what floor of the Roundhouse it was on?

A. I don't remember the floor.

Q. When you would see him would you be alone or with somebody else?

A. I'd be alone with him.

Q. And how long would you be alone with him in the room that you were in?

A. (Pause.)

Q. If you can remember?

A. I don't remember how long.

Q. Was it more than ten minutes?

A. It was more than ten minutes.

Q. Was it more than an hour?

A. I don't remember.

Q. Now, do you recall who brought you down to see him or how you got in touch with Charles?

A. I remember a detective, I don't remember the name.

Q. Was he White or Black?

A. White.

Q. Do you know if he was the detective -- did you see the detective or talk to him on more than one occasion?

A. Yes.

Q. Was he the one who always called you to come down to see Charles, or just sometimes?

A. Sometimes.

Q. And would he meet you at the Roundhouse, this detective who called you down there?

A. Yes.

Q. Where would he meet you?

A. In front of the building.

Q. Would you come in through the front desk that's glassed in where there's a sergeant or corporal that's sitting logging people in, would you come in through that entrance?

A. Yes.

Q. The one by the parking lot?

A. I don't remember no parking lot.

Q. Okay, again, I know it's a long time, do you recall if he signed you in?

A. I don't remember.

Q. Do you remember whether someone else signed you in, whether the detective signed you in?

A. Somebody signed me in, but I don't remember who?

MR. NEWMAN: Could you mark these D-1, these are the records

--

THE COURT: Mark that P-1. Petitioner's 1.

MR. NEWMAN: That's fine, Your Honor.

THE COURT: Well, mark that Petitioner, what's your client's name?

MR. NEWMAN: His name is Andre Harvey.

THE COURT: Petitioner Harvey Exhibit 1.

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(WHEREUPON, RECORDS MARKED P-HARVEY-1, FOR IDENTIFICATION PURPOSES.)

- - - - -

MR. NEWMAN: May I approach the witness, Your Honor, to point something out to her?

THE COURT: Yes.

(WHEREUPON, MR. NEWMAN

APPROACHES THE WITNESS.)

BY MR. NEWMAN:

Q. Ms. Harris, I show you what's been marked Harvey-P-1 and I'm going to the third page, actually the fourth page of that, and I show you, on June 28 of 1983, do you see the name I'm pointing out there?

A. Yes.

Q. And could you read that to the Court, please?

A. "Maxie Harris".

Q. That's your name?

A. Yes.

Q. That's your handwriting?

A. No.

THE COURT: What date was that?

MR. NEWMAN: June 28,

1993.

BY MR. NEWMAN:

Q. You see the name of the escort?

A. Yes.

Q. And who is that?

MR. NEWMAN: Could we agree it's Detective Gerrard?

THE WITNESS: Gerrard.

6:55 p.m.

BY MR. NEWMAN:

Q. Do you remember Detective Gerrard?

A. I don't remember him.

Q. Okay.

The time-in, can you read that to the Court, please?

A. 6:55.

Q. Could you read the time-out, please?

A. 8:30 p.m.

Q. So you were there about an hour and a half; is that correct, a little over an hour and a half?

A. I don't remember.

Q. Would that be consistent with what you recall at this point in time, at the time you were there an hour and a half, perhaps more, perhaps less, on given

occasions?

A. I think it was less.

MS. GODFREY: Judge,
I would object to the leading nature
of the question.

THE COURT: Sustained.
Rephrase your question.

MR. NEWMAN: We'll be
moving these records anyway, so I'm
not going to go through each entry,
if Your Honor will permit, unless
you --

THE COURT: She's
already said she only remembers
this if you show her, she doesn't
remember the dates and the time.

MR. NEWMAN: Okay, I'll
go through it then, Your Honor.

BY MR. NEWMAN:

Q. Going to the entry on July 14th of 1983, you
see the name that's listed there, ma'am?

THE COURT: Which one
is that?

MR. NEWMAN: I'm sorry,
July 14th, 1983, it's the entry at
3:46 p.m., Your Honor. They're
chronological.

BY MR. NEWMAN:

Q. Do you see the name there?

A. Yes.

Q. What name is that?

A. Maxie Harris.

Q. Who is that?

A. Me.

Q. Do you see the name of your escort there?

A. Yes.

Q. Could you read that, please?

A. Gilbert.

Q. Do you recall if it was Detective Gilbert who
took you upstairs?

A. I don't remember.

Q. Read the time-in and time-out, please.

A. 3:46 p.m. to 5:05.

Q. P.M.?

A. P.M.

Q. And going to the next, do you specifically

recall that second visit as you sit here now?

A. No.

Q. Now, I'm going back to July 20 of 1983, which would be the 7:35 p.m. entry, what name is that, please, ma'am?

A. Maxie Harris.

Q. And who was your escort?

A. Gerrard.

Q. What time are you in?

A. 7:35 p.m.

Q. To?

A. 9:30 p.m.

Q. Do you recall on July 20 being there approximately two hours?

A. I don't remember how long.

THE COURT: Let me ask you this, do you remember being there?

THE WITNESS: Yes.

THE COURT: You don't remember how long?

THE WITNESS: No.

BY MR. NEWMAN:

Q. Now, just go through this, do you see an entry for August 3, 1983?

A. Uh hum.

Q. Do you see your name there?

A. Yes.

Q. You see who the escort was, what was that?

A. Gerrard.

Q. Time-in?

A. 4:11 p.m.

Q. Time-out?

A. 5:45 p.m.

Q. Moving to the 17th of August to the entry for 2:22 p.m., do you see who, is that your name there, ma'am?

A. Yes.

Q. And do you see who your escort was?

A. Yes.

Q. Who was that?

A. Gilbert.

Q. That was Detective Gilbert?

A. Yes.

Q. You were in at what time?

A. 2:22 p.m.

Q. You were out what time?

A. 6 o'clock p.m.

Q. Do you recall that particular visit sticking out in your mind where, according to this log, you were there for more than three and a half hours? Do you recall, an especially long visit?

A. I know I was there for a while, I don't remember the times.

Q. Okay. I understand.

Turning to September 7th, 1983, do you see your name there again on that date?

A. Yes.

Q. And who was your escort that day?

A. Gerrard.

Q. And do you see the time there?

A. 5:30 p.m.

Q. Is there any time listed for you, time-out?

A. No time-out.

Q. Is there any time listed there for other entries, is there any time-out for --

MR. DIVINY: I would object, Your Honor. This woman certainly can't authenticate any

other entries, and to try to refresh her recollection improperly I would ask you to sustain that.

THE COURT: Sustained.

MR. NEWMAN: I'm asking

if she --

THE COURT: You're referring to the two other entries other than her own in looking at the document, that's what he's objecting to. She's not authenticating the document itself.

BY MR. NEWMAN:

Q. Now, moving to October 7, 1983, do you see your name there?

A. Yes.

Q. Do you see who your escort was?

A. Yes.

Q. Who was it?

A. Gilbert.

Q. And do you see the time-in?

A. Yes.

Q. What time was that?

Q. Excuse me?

A. No, Gerrard.

Q. What does it say right before his name?

A. Det.

Q. What time did you go in that day?

A. 6:20 p.m.

Q. What time did you leave?

A. 9:10 p.m.

Q. Do you recall, as you sit here today, does that refresh your recollection as to you having been, on that last time that you visited Mr. Atwell in the Homicide Unit, do you recall it being nearly a three-hour visit? Is that consistent with your recollection?

A. I don't know.

Q. Do you recall that on the last time you were there you were up in Homicide for nearly three hours? Does looking at this entry refresh your recollection of having been up there for approximately three hours?

A. I don't remember the times.

Q. Now, when you were up there with Charles Atwell, and again, I'm sorry, to ask you these questions, but I have to. What did you do with him in that room?

A. We had sex.

Q. Was this on every occasion, one occasion or some of the occasions?

A. Some of them.

Q. Would anybody else be there or be watching or be supervising when you were in a room alone with Mr. Atwell?

A. No.

Q. How was the room furnished; if you recall?

A. A chair and desk.

Q. There was no bed in there, I take it?

A. No.

Q. So would it be fair to say that when you engaged in sexual relations, you would either use the floor or chair?

MS. GODFREY: Objection

to the leading.

BY MR. NEWMAN:

Q. How would you have -- I don't want to know the very specifics, but you didn't use a bed, you had sex without using a bed; correct?

A. Yes.

Q. And was it always in the same room; if you

recall?

A. I don't remember.

Q. Having looked at the logs with the names Gerrard and Gilbert, does that refresh your recollection as to who called you up to bring you down to the Roundhouse, to see and engage in sexual relations with Mr. Atwell?

A. Yes.

Q. And who were the detectives, who had you come down?

A. Gerrard and Gilbert.

Q. You remember those two gentlemen?

A. I remember their names.

Q. You saw them and you recognized them?

A. No.

Q. I know it's been 15 years.

Did Charles explain to you how he set up these visits?

A. No, he did not.

Q. Did the detectives ever discuss it with you?

A. No.

Q. The first time that you went and had relations

with him, were you expecting that?

A. No.

Q. After the first time, would it be fair to say you were expecting that that was a possibility?

A. Yes.

Q. Did you ever discuss with Charles what he was doing for anybody, in order for them to give him these privileges of engaging in relations with his girlfriend, common-law wife?

A. No.

Q. Did he ever explain to you that he had set this up with the detectives?

A. He never explained this to me.

Q. You do recall giving a statement to an investigator who worked for the Defense back on April 6th of 1995?

A. Yes, I talked to a detective.

Q. This would be an investigator?

A. Yes.

MR. DIVINY: Judge, we are going to need some time, we have never been given this statement.

MR. NEWMAN: It's not

lengthy.

MS. GODFREY: This is not the affidavit, it's a prior interview.

THE COURT: We'll take a five-minute recess.

MR. NEWMAN: Very well, Your Honor.

THE TIPSTAFF: This Court will recess for five minutes.

- - - - -
(BACK ON THE RECORD.)

THE COURT: Did you have an opportunity to read the statement?

MS. GODFREY: Yes, Your Honor.

Thank you.

MR. NEWMAN: May I proceed, Your Honor?

THE COURT: Yes.

BY MR. NEWMAN:

Q. I just have a few more questions, Ms. Harris. Did Charles ever tell you how he set up these

visits with you?

A. He never told me anything like that.

Q. Do you recall again, and I'm going to refer to this statement which was taken from you on April 6th, 1993, that's the one I just gave you.

MR. NEWMAN: May we have this marked Harvey-P-2, Your Honor?

THE COURT: Yes.

- - - - -

(WHEREUPON, STATEMENT OF
MAXIE LEE HARRIS, 4-16-93, MARKED
EXHIBIT HARVEY-P-2, FOR IDENTIFICATION.)

- - - - -

MR. NEWMAN: May I again approach the witness?

THE COURT: Yes.

BY MR. NEWMAN:

Q. Do you recognize this statement which is dated April 6th, 1993?

A. (Whereupon, witness reading statement). Yes.

Q. You recognize that?

A. Yes.

Q. You've read the first page; is that correct?

A. Yes.

Q. There's a second page which you're welcome to read.

A. (Witness complies.) This part right here I don't understand this.

Q. Why don't you read the rest of it and I'll ask questions related to it, all right?

A. All right.

(Witness complies.)

Q. Okay, is that your statement, ma'am?

A. Yes.

Q. And you signed the bottom of both pages of P-2; is that correct?

A. Yes.

Q. Okay.

A. But this part right here I don't understand it. Right here (indicating).

Q. Correct me if I'm wrong, does this read, "I don't remember a lot about it because I got real sick after my first son was born in 1983," is that what you told them?

A. Yes.

Q. Is that correct also?

A. Yes.

Q. And look at the last question and answer, the question I just asked you before I showed you this:

"Did Charles ever tell you how he set up these visits with you?"

"No, all he said was that he set it up with the detectives."

Do you recall being asked by the investigator that question and giving that answer?

A. I don't remember.

Q. Does that refresh your recollection?

A. Yes. Now it does, yes.

Q. Is that, in fact, what Charles said to you?

A. Yes.

Q. Okay, so Charles did say to you that he had set it up with the detectives; is that right?

A. Yes.

Q. And do you recall, ma'am, if he told you that he was actively working with the detectives?

A. No.

Q. You don't recall that?

A. No.

Q. Well, you also signed an affidavit on February

7 of 1996, which like the other document was notarized.

MR. NEWMAN: This is already of record, I believe, Your Honor. Do I need to admit this?

THE COURT: Well, if you are going to use it for purposes of refreshing recollection, you need to mark it P-3, Harvey P-3.

MR. NEWMAN: Thank you very much, Your Honor.

- - - - -
(WHEREUPON, AFFIDAVIT OF
FEBRUARY 7TH, 1996, MARKED EXHIBIT
HARVEY P-3, FOR IDENTIFICATION.)
- - - - -

BY MR. NEWMAN:

Q. Now, ma'am, I show you what's been marked Harvey P-3, which is an affidavit a little over one page, do you recognize this?

A. Yes.

Q. And looking at Page 2 of this document of this affidavit, is that your signature there?

A. Yes.

Q. It's dated, could you read the date, please?

A. February 7th, 1996.

Q. And do you recall this item was notarized?

A. Yes.

Q. So you were telling the truth when you told this; isn't that correct?

A. Yes.

Q. In fact, at the very beginning it starts off with, "I, Maxie Lee Harris-Jiles, hereby swear and affirm..." and it goes on to give a narrative. Is that correct?

A. Yes.

Q. Now, do you recall in this reading, does it now refresh your recollection reading this affidavit that you were transported to the PAB for purposes of having sexual relations with Charles Atwell, which you did in a small room at the Police Administration Building. Is that correct?

A. Yes.

Q. And is it also correct, that even though you did that, Charles Atwell, and again I'm reading from the affidavit asking you if this refreshes your

recollection, even though Charles Atwell did not discuss it in detail his dealings with the detectives in relation to the Fred Rainey homicide and the charges against Andre Harvey and the other two gentlemen, you knew that Charles was actively working with the detectives. Is that accurate?

A. Yes.

Q. And you also knew, according to this affidavit which is signed, that part of the consideration, part of what he was getting out of it for his cooperation was to engage in sexual relations with you, while he was locked up. Isn't that correct?

A. Yes.

Q. And does it refresh your recollection, excuse me; I stumbled over those words, also refreshed your recollection as to what Charles told you he was getting out of this?

A. Yes, but he never told me in words, he just told me he was doing something for the detectives, that's all he said.

Q. Understood.

And that in exchange for him doing something for the detectives, he was allowed to have sex with you?

A. For me to see him, it wasn't just for me to go down there and have sex, I was coming down there to see him.

Q. Right.

And you would be allowed to see him from anywhere between one and three and four hours at a time alone in a room at the PAB, correct?

A. Yes.

MR. NEWMAN: I have no further questions at this time, Your Honor.

Thank you.

THE COURT: Cross-examine.

And let me understand, Mr. Harvey is putting this witness on, you two are not; is that correct?

MR. GELB: No, we would also be offering the witness.

THE COURT: You have any direct questions of her at this

time?

MR. GELB: No.

MR. STRUTIN: No ques-
tions.

THE COURT: Cross-examine.

- - - - -

CROSS-EXAMINATION

- - - - -

BY MS. GODFREY:

Q. Ms. Harris, how did you come to be here today,
who contacted you?

A. The investigator.

Q. Was that the investigator who contacted you
when you told him the answer in this document that
Counsel has shown you?

A. Yes.

Q. Do you remember his name?

A. Paul.

Q. Excuse me?

A. Paul.

Q. Do you know who he works for?

A. No. It wasn't -- it was another name, I
don't remember his name.

Q. Did he tell you which defendant he worked for, ma'am?

A. Yes.

Q. Who?

A. For the Harvey case.

Q. For Andre Harvey he worked for, and did he call you or did you call him?

A. He called me.

Q. And he called you sometime before April the 3rd of 1995, when you talked to him and he wrote this out?

A. Yes, yes.

Q. Do you remember how long before that date of April 3rd, '95 he called you?

A. No, I don't remember.

Q. And did you go somewhere to meet him or did he come to your home?

A. He came to my home.

Q. And this is not your handwriting, right?

A. Right.

Q. That's his handwriting?

A. Yes.

Q. Was anyone else present when you spoke to

the investigator?

A. No.

Q. Now, after the investigator left, when was the next time someone got in touch with you about this case?

A. I think it was like a couple of months afterwards.

Q. And who was that person?

A. The same guy.

Q. He came and saw you again?

A. Yes.

Q. Was it the same man who took down your statement that was dated February 7th, 1996?

A. Yes.

Q. That was the same man?

A. Yes.

Q. And did he come to your home that time as well?

A. Yes.

Q. So you spoke to this man, whose name you don't remember, two times about the case?

MR. NEWMAN: Objection
to the form of the question.

THE COURT: Which part

of it?

MR. NEWMAN: This man whose name you don't remember.

THE COURT: Well, she said she didn't remember the name.

MR. NEWMAN: I thought she said Paul, Your Honor.

THE COURT: Then she said she didn't remember.

The objection is overruled.

BY MS. GODFREY:

Q. The second time you spoke to this investigator was anyone else present?

A. No.

Q. Just the two of you?

A. Yes.

Q. Now, in your affidavit, and I'm referring to Exhibit, I believe, P-3, Your Honor, in your affidavit of February 7th, 1996, there are certain words you used.

I want to ask you if these are your words. Did you use the words when you said, "I knew that

Charles was actively working with these detectives..."
Is that your word, "actively" or is that someone
else's word?

A. That's not my word, that's someone else's.

Q. Are these words, "And part of his consideration
for his cooperation was to engage in sexual
relations?"

A. No, that's not my words.

Q. Did you say anything like that?

A. No.

Q. Ma'am, have you ever been threatened by anyone
because of Charles Atwell's testimony in this case?

A. No.

Q. Never?

A. No.

Q. Incidentally, ma'am, did you tell Mr. Newman
during the break someone today in this Courtroom
called you a bitch?

A. Yeah.

Q. Is that person still in the Courtroom?

A. Oh yeah, she's here.

MS. GOFFREY: Judge,
I would ask that person to stand

up and be identified for the record.

THE COURT: Any objection?

MR. NEWMAN: No, Your Honor.

I understand that's Charles Atwell's girlfriend.

THE COURT: Currently?

UNIDENTIFIED WOMAN: Yes, the last 16 years.

MR. NEWMAN: There you go. She threatened this witness.

THE WITNESS: She didn't threaten me.

UNIDENTIFIED WOMAN: I didn't threaten anybody. My name is Darlene Parker.

MR. DIVINY: You can have a seat, ma'am.

BY MS. GODFREY:

Q. Your Honor, I'd like to show the witness an investigation Interview Record, please, and have

it marked first as Commonwealth Exhibit C-1.

THE COURT: Mark that

C-1.

- - - - -

(WHEREUPON, INVESTIGATION
INTERVIEW RECORD MARKED COMMONWEALTH'S
EXHIBIT C-1 FOR IDENTIFICATION.)

BY MS. GODFREY:

Q. Ma'am, could you take a look at that and please
tell me if that's your signature on all three pages?

MS. GODFREY: For the
record, Your Honor, it's an
Investigation Interview Record
conducted by Detective Lagera, De-
cember 20, 1984, 10:50 p.m.

THE COURT: What's the
name of the detective?

MS. GODFREY: L-a-g-e-r-a.

BY MS. GODFREY:

Q. Ma'am, is that your signature on that document?

A. Yes.

Q. Do you recall talking to Detective Lagera

back in 1984?

A. No.

Q. Do you recall, ma'am, the following questions and answers:

"Maxie, tell me about the threats that have been made against you?

"Answer: On Tuesday, 12-18-84 at about 2 o'clock p.m. I was on the corner of Newkirk and Master Street and a guy named Mike, came up to me and said that if Charlie didn't go down and tell them that everything he said in Court was a lie, he was going to kill him and me and my kids."

Do you remember telling that to a detective in 1984?

A. No.

Q. Did that happen, ma'am?

A. No. I don't remember saying that.

Q. Were you, in fact, threatened by a guy named Mike in '84?

A. No.

Q. Okay, ma'am, but you are telling us that this is your signature on the bottom of the document?

A. Yes.

Q. You just don't remember this conversation?

A. Right.

Q. Do you remember this question and answer on the same document:

"Why would Mike threaten you and your kids?

"Answer: Because he knows I am Charles', I call him Beyah, girlfriend and that I stay with him."

Do you remember that?

A. No.

Q. Do you remember this question, ma'am:

"What is the reason that Mike would threaten you and Charles Atwell?

"Answer: Because Charles was a witness against the guys that killed Fred Rainey."

Do you remember that?

A. No.

Q. Do you remember this next question, the next following question:

"Did you receive any notes that threatened your life?

"Answer: One came to the house, it said, 'We gonna kill Charles Atwell', that's all it had on it."

Do you remember that?

A. No.

Q. So you don't remember that note was put in your mailbox?

A. No.

Q. Ma'am, you stated that you lived with Charles Atwell in the early 1980's?

A. Yes.

Q. So you were living with him then before he went to prison in May of 1983?

A. No.

Q. When did you stop living with him?

A. I think it was a couple of years before he went to prison.

Q. Okay, so at the time that you were going to visit him at Holmesburg, you had not been living together for several years; is that what you are saying?

A. Yes.

Q. Okay. And you have two children with Mr. Atwell; is that correct?

A. Yes.

Q. Okay, and you are no longer together with Mr.

Atwell?

A. No.

Q. When did you stop seeing each other?

A. 1987.

Q. Ma'am, referring back to your first statement you gave to the investigator, and that's in April of 1995, you stated there's a part that you couldn't make out the writing?

A. Yes.

Q. "I don't remember a lot about it because I got real sick after my first son was born in 1982."

Is that true?

A. Yes.

Q. So were you sick then in 1983, is that what you were saying?

A. No, it was in '84 -- I don't really remember the date because my last son, before I had my last son I was sick, so between '83 and '84, because he was born in '84, December the 2nd of '84 --

Q. What kind of sickness was it, ma'am?

A. I had Steven Johnson syndrome.

Q. What's that?

A. It's a nervous condition. I was given the

wrong medication and it burned, well, all of my body, I lost memory, everything.

Q. So is your memory impaired still today?

A. Yes.

Q. So, ma'am, is it fair to say that most of what you're testifying to you don't remember very well, you just are stating either what you were told by someone else?

A. No. I remember some of it, but lots of stuff I don't remember.

Q. Now, you went to visit Mr. Atwell at the Roundhouse eight times; is that correct?

A. Yes.

Q. And you said that some of the time you had sex but not all of the time?

A. Yes.

Q. So there were times when you just sat and talked?

A. Yes.

Q. There were times when you brought his children to see him?

A. Yes.

Q. At the Roundhouse?

A. I don't remember taking the kids down there.

Q. Never took them?

A. No, because I only had one son I think then.

Q. In 1983?

A. That was Charles, my last son wasn't born.

Q. Did you ever take him down there dinner?

A. I don't remember.

Q. But sometimes you just sat in the room and talked?

A. Yes.

Q. And those times was the door open, ma'am, or closed?

A. It was closed.

Q. Ma'am, during any of the visits did you see Mr. Atwell with drugs?

A. No.

Q. Have you ever at any time since before the trial in this case, during the trial or after, talk to Charles Atwell about his testimony?

A. No.

Q. Did Charles Atwell ever indicate to you that he was scared about his testimony?

A. No.

Q. That he was scared for his safety?

A. No.

Q. That he had been threatened?

A. No.

MS. GODFREY: May I have
a moment, Your Honor?

THE COURT: Yes.

(BRIEF PAUSE.)

BY MS. GODFREY:

Q. Ma'am, you stated to the extent that you talked
to Charles about any sort of arrangement he may have
had with the detectives, it had to do with your coming
to visit him at the Roundhouse, not your coming to
have sex with him. Is that right?

A. That's right.

MS. GODFREY: Thank you,
ma'am.

Your Honor, I have no
further questions.

MR. NEWMAN: If Your
Honor would indulge me?

THE COURT: Yes.

- - - - -

REDIRECT EXAMINATION

- - - - -

BY MR. NEWMAN:

Q. Ma'am, let me ask you just a few questions.

The District Attorney when she was questioning you about the affidavit you signed, that would be P-3, remember me showing you that typed-up statement?

A. Yes.

Q. She said, were they your words or were they someone else's words. In other words, someone else is typing this up as you spoke to them; is that correct?

A. Yes.

Q. Okay, they were using their terminology not your terminology; is that correct?

A. Yes.

Q. But, in fact, you read this and determined that it was accurate, didn't you?

A. Yes.

Q. And you signed it and you swore to it under oath; isn't that true?

A. Yes.

Q. And whether it was your own words, the words you

would have chosen or whether or not it was someone else's words, what you said in here was the truth, wasn't it?

A. Yes.

Q. That, in fact, you knew that Charles was working with the detective, you knew that for a fact, didn't you?

A. Yes.

Q. And you knew for a fact that part of what he was getting out of it for his cooperation was to be allowed to have sex with you, isn't that true?

MR. DIVINY: Judge, I'm going to object --

THE WITNESS: To see me.

MR. DIVINY: First of all, it's already been rebutted by the witness' previous testimony.

THE COURT: Yes. Her testimony was that of the eight times she'd been going there she did not have sex all the time?

MR. NEWMAN: Correct.

THE COURT: Her purpose

for going down there was to visit Mr.
Atwell.

BY MR. NEWMAN:

Q. And you also knew that you were being left with
him in a private room, you, his girlfriend?

MR. DIVINY: Objection
to leading, it's improper, Your Honor.

THE COURT: Rephrase your
question.

Sustained.

BY MR. NEWMAN:

Q. There was no limit placed on the amount of time
that you were placed in the room along with him,
right?

A. No.

Q. There was nobody who restricted you from having
sex; isn't that correct?

MR. DIVINY: Objection.
It's leading and an
improper question.

THE COURT: Rephrase
the question.

BY MR. NEWMAN:

Q. Was there any restriction placed on you whether or not you had sex?

A. I mean, I went to visit him, nobody told me I could do this, don't do that, I was in there seeing him.

Q. You went ahead, you had freedom of sex with him in there; isn't that correct?

A. Yes.

Q. How old were you at the time, we are talking 1983, 14 years ago?

A. Eighteen. Seventeen or 18.

MR. NEWMAN: I have no further questions, Your Honor.

THE COURT: Does either Counsel have any other redirect questions?

MS. GODFREY: Nothing further, Your Honor.

THE COURT: I have a couple of questions.

You indicated you were Charles Atwell's girlfriend at the time you went to see him in prison;

is that right?

THE WITNESS: Yes.

THE COURT: How long had you been his girlfriend before you went to see him? How long before then?

THE WITNESS: Ever since I was 16.

THE COURT: Would that be two years or three years?

THE WITNESS: Three.

THE COURT: You described a nervous condition that you had, Steven Johnson syndrome, because you were given the wrong medication, that your memory was impaired. Would you describe your memory impairment, please?

THE WITNESS: I'm starting to remember.

THE COURT: As of when?

THE WITNESS: I was sick in 1983. It took me like a year, two

years to recover as far as getting my memory back, my skin, my fingernails, my eyesight, my speech, my walk.

THE COURT: At what point didn't you have eyesight?

THE WITNESS: While I was in the hospital.

THE COURT: When was that?

THE WITNESS: It was back in 1984.

THE COURT: This is after your visit to him in prison, was it before?

THE WITNESS: Yes, this happened after.

THE COURT: When you said you're starting to get your memory back, what do you mean by that?

THE WITNESS: I had a lot of my memory lost, I couldn't

remember nothing. I was a vegetable.

THE COURT: And you stated today that you remember some of the things that happened in 1983 when you went to jail and some of the other things you don't remember?

THE WITNESS: Yes.

THE COURT: You indicated that you did not remember how many times you had sex; is that right?

THE WITNESS: Yes.

THE COURT: But that you went there several times?

THE WITNESS: Yes.

THE COURT: You said you never spoke to Atwell about this testimony or that he was scared or that he had been threatened. Is that because you don't remember it or he never said it? I'm trying to understand what the state of your memory is then and now.

THE WITNESS: I never talked to Charles about that testimony.

THE COURT: You remember that you never talked to him about that?

THE WITNESS: Yes.

THE COURT: How did you get to the Roundhouse when you went down there?

THE WITNESS: I don't remember.

THE COURT: So the approximate eight times you went to visit him at the Roundhouse, do you remember how you got there any of the times you went?

THE WITNESS: I think a bus.

THE COURT: So nobody picked you up and brought you down there?

THE WITNESS: I don't

remember.

THE COURT: And how did you know when to go to the Roundhouse to see him?

THE WITNESS: I received a phone call at my house.

THE COURT: At your house you received a phone call?

THE WITNESS: Yes.

THE COURT: Do you know from whom the phone call came?

THE WITNESS: It was a detective.

THE COURT: Did the detectives ever tell you their names on the phone when they called you?

THE WITNESS: Probably did, but I don't remember.

THE COURT: And you said that when you were signed in you were taken up to the room where Mr. Atwell was by a detective?

THE WITNESS: Yes.

THE COURT: And how was it determined how long you would stay there?

THE WITNESS: I don't know.

THE COURT: Did someone just come knock on the door and say time's up?

THE WITNESS: Yes.

THE COURT: For the entire time that you were visiting him, were you inside the room?

THE WITNESS: Yes.

THE COURT: Did anyone ever come into the room while you were there?

THE WITNESS: No.

THE COURT: Did anyone ever go with you to the Roundhouse and stay in the room with you?

THE WITNESS: Anyone besides myself?

THE COURT: Anyone

period?

THE WITNESS: No.

THE COURT: At any time
did you take anything with you when
you went?

THE WITNESS: As far
as?

THE COURT: Food, cloth-
ing?

THE WITNESS: No.

THE COURT: Personal
items?

THE WITNESS: No.

THE COURT: Were you
searched prior to going into the room
at the time?

THE WITNESS: I don't
remember.

THE COURT: Did anybody
pat you down?

THE WITNESS: I don't
remember being searched.

THE COURT: You stated

on direct examination that you remember a White detective who would meet you at the front door. Do you remember one person or more than one person who would meet you?

THE WITNESS: Only one.

THE COURT: Only one?

THE WITNESS: Yes.

THE COURT: Would you remember what that person looked like today?

THE WITNESS: No.

THE COURT: When the person -- when the detective would call you, would it always be the person giving you the same name or a different name?

THE WITNESS: When they called me from home?

THE COURT: When they would call you at your home to come down to the jail, would the person who called you, would that be the

same person or would that person give you the name every time they called you?

THE WITNESS: No, because lots of times I did not answer the phone.

THE COURT: How would you then know to go to the Roundhouse?

THE WITNESS: Because whoever would answer the phone would say they're bringing Charles down today and for me to go ahead down there.

THE COURT: Oh, how many times did you actually speak to the person on the phone yourself?

THE WITNESS: Three, three times.

THE COURT: Of the three times you spoke to a person yourself, was it the same person or did the person give you the same name?

THE WITNESS: Yes, it was the same person.

THE COURT: And did the person give you a name?

THE WITNESS: Yes.

THE COURT: And what was the name?

THE WITNESS: Gerrard.

THE COURT: You said the first time you went down to the jail you didn't know that you would be having sex?

THE WITNESS: No.

THE COURT: So when you got there, what did you expect?

THE WITNESS: He wanted to see me, just talk, whatever. I didn't know it was going to go that far, but it did.

THE COURT: Let me ask you, the first time you went down there did you speak to the detective or someone down there on the phone at that time, or someone took a message?

THE WITNESS: I think they brought me down.

THE COURT: So somebody came to your home, picked you up and dropped you down to the jail. Do you remember who that was?

THE WITNESS: No.

THE COURT: Do you remember whether the person was in uniform or out of uniform?

THE WITNESS: They were out of uniform.

THE COURT: Was it male or female?

THE WITNESS: A male.

THE COURT: Do you remember what kind of car it was, was it a marked car, unmarked car?

THE WITNESS: No, I don't remember.

THE COURT: You don't remember that.

Did the person that

picked you up at your home take you to the little room, you know, through the front door, up the elevator into the room, was that the same person?

THE WITNESS: Yes.

THE COURT: Did that happen after that time, the first time?

THE WITNESS: Excuse me?

THE COURT: You said that the first time you made a visit that somebody picked you up and took you down there?

THE WITNESS: Yes.

THE COURT: Previously, when I asked you how you got there, you said you had taken public transportation. So what I'm asking you now is, were there any other times that someone picked you up at your home and took you down to the

Roundhouse?

THE WITNESS: No. Just that one time.

THE COURT: All the other times somebody called you or you got their message and took public transportation down?

THE WITNESS: Yes.

THE COURT: I don't have a copy of the handwritten affidavit of March, excuse me, April 6th. May I see that, please?

MR. NEWMAN: Certainly, Your Honor. This is the document marked Harvey-P-2, Your Honor.

THE COURT: In your statement, April 6th, 1995 statement you indicated you lived with Mr. Atwell at that time?

THE WITNESS: At what time?

THE COURT: I guess in the early eighties.

THE WITNESS: Yes.

THE COURT: Were you living -- you weren't living with him at the time the police brought him up to the jail, the police brought you down to the jail, were you?

THE WITNESS: I was 16, I was living with him, I stayed with him like a year.

THE COURT: What I'm asking you now, were you still living with him at the time you made the first trip to jail to visit him, when the officer picked you up?

THE WITNESS: Yes.

THE COURT: Do you remember?

THE WITNESS: I always stayed on that block, I lived down the street from him with a grandmother.

THE COURT: Your

grandmother?

THE WITNESS: She was my play grandmother, right down the street from him.

THE COURT: So, do you know whether you were living with him or with your play grandmother at the time that you first --

THE WITNESS: I'm not sure, either him or my grandmother.

THE COURT: One or the other?

THE WITNESS: Yes.

THE COURT: Does anyone have any questions to follow-up to mine?

MR. NEWMAN: No, Your Honor.

MR. GELB: No, Your Honor.

MR. STRUTIN: No, Your Honor.

MR. DIVINY: No, Your

Honor.

THE COURT: Thank you,
ma'am. You're excused, you can step
outside.

(WITNESS EXCUSED.)

- - - - -

MR. NEWMAN: If Your
Honor please, we would call Sharon
Artis.

THE COURT: Do you expect
her testimony to be longer or shorter?

MR. NEWMAN: I would hope
it would be shorter, Your Honor, at
least judging from the affidavit.

THE COURT: Okay, we'll
take our lunch break after we hear
from Ms. Artis.

MR. NEWMAN: Very well,
Your Honor.

I believe she's in the
hallway.

- - - - -

SHARON ARTIS, having first

been duly sworn, was examined and testified as follows:

- - - - -
THE COURT: You may proceed.

- - - - -
DIRECT EXAMINATION

BY MR. NEWMAN:

Q. Good afternoon, Ms. Artis.

A. Hello.

Q. How are you?

A. All right.

Q. I'm going to ask you some questions again, as I told the last witness some of my questions may seem a bit embarrassing.

A. Just come on.

Q. My intent is not to embarrass you or give you a hard time, I just simply want to ask you these questions to establish what the truth is.

Ms. Artis, did you know a, or do you know a gentleman by the name of Anthony Singleton?

A. Yes, I do.

Q. And what was your relationship with him in the past?

A. That was my ole man. He was my ole man, my son's father.

Q. Okay.

He was your boyfriend at one point in time?

A. Yeah.

Q. Can you tell us when that was?

A. About 15 years ago.

Q. Okay.

Do you recall whether he was in jail in 1983?

A. Yes, he was.

Q. And did you ever visit him when he was in jail?

A. Uh huh, yes.

Q. When I say jail, tell us which jail, jail or jails you saw him in; if you recall?

A. Harrisburg, Camp Hill.

Q. Was he in jail in Philadelphia?

A. Graterford and Holmesburg.

Q. Did you see him at all in those places?

A. Uh huh.

Q. I'm sorry, say yes.

A. Yes.

- Q. Ma'am, did you ever see him at the Roundhouse, at the Police Administration Building?
- A. Yes.
- Q. And please tell the Judge what would happen, how that would happen. Go ahead.
- A. Oh, he would call me, he would call me.
- Q. Anthony would call you?
- A. Uh hum.
- Q. What would happen?
- A. He would call me, I would come down there when he got down there.
- Q. How would you get down there?
- A. On the bus.
- Q. Okay.
- I've got to ask the questions because the Judge doesn't know.
- A. Okay.
- Q. You get down there on the bus, then what would happen once you got down there?
- A. I get signed in, whatever.
- Q. Let me ask you about that.
- Do you recall who would sign you in?
- A. No, it's been so long ago.

Q. Do you remember if you signed in or someone else signed you in?

A. I'm not even sure.

Q. Once you were signed in or let in, what would happen?

A. They would take me up to the floor that he was on.

Q. Would you go up the stairs or by the elevator?

A. On the elevator.

Q. Do you remember what floor you would go to?

A. I'm not sure.

Q. Do you remember what unit you'd go to?

A. No, I don't remember.

Q. Do you recall if it was the Sex Crimes' Unit, the Homicide Unit, the Photographic Unit?

A. I don't recall.

Q. Where would they take you to once they got you upstairs?

A. To a little room.

Q. Who was in the room?

A. He was.

Q. Was anybody else in the room?

A. No.

- Q. Would whoever brought you up stay with you, or would they leave you in the room alone with Anthony?
- A. They left us alone.
- Q. How long would you stay alone with him in that room?
- A. About an hour maybe sometimes.
- Q. Was it sometimes more?
- A. Yeah.
- Q. Sometimes less?
- A. Yes, according to how far we got.
- Q. Do you recall how many times you were left alone in the room with him, somewhere upstairs in the Police Administration Building?
- A. Twice or three times.
- Q. Two or three times.
- Do you recall what was in that room in way of furniture or furnishings?
- A. Chair and desk.
- Q. Anything else?
- A. No.
- Q. No bed?
- A. No.
- Q. Now, what would you and Anthony do, again, I'm

sorry to ask that question.

A. Well, have sex.

Q. How would you have sex, would it be on the floor?

A. It could be in the chair, standing up, wherever we wanted to.

Q. How did you know that this was okay for you to do this?

A. Because he told me it was all right.

Q. Anthony told you?

A. Yes.

Q. What did he tell you?

MR. DIVINY: Objection,
Your Honor.

MR. NEWMAN: It goes to
the practice and pattern of these
detectives.

MR. DIVINY: Regard-
less of what it goes to it's hearsay.
They can ask Mr. Singleton.

THE COURT: You have any
exception for that hearsay evidence
that you want me to consider?

MR. NEWMAN: I think that exception of the hearsay rule is to establish a pattern and practice and course of conduct, and it goes to her state of mind also, Your Honor, as to what she understood while she was there.

THE COURT: What is your response?

MR. DIVINY: Judge, she can certainly state her state of mind. We don't need what Mr. Singleton told her for her state of mind. Did you understand you were to have sex, that's a proper question.

Now, if they want Mr. Singleton to come in here and testify, they ought to bring him in.

MR. NEWMAN: I think it goes to her state of mind, again, as to why she understood

this was acceptable behavior on the second floor of the Police Administration Building along with Anthony Singleton in the same room. It goes again to her state of mind. It's not offered for the truth of whether or not --

THE COURT: Okay,
overruled.

You can answer.

BY MR. NEWMAN:

Q. So what would Anthony tell you about why you were up there, how this came about?

A. We met up there to enjoy ourselves.

Q. Did he tell you why you were permitted this privilege?

A. Yes.

Q. Why?

A. He said because he got that privilege for testifying against things unknown to me, but he got that privilege.

Q. In other words, he was giving information to the police?

A. Yes.

MR. DIVINY: Judge, I would object to Counsel's "other words".

THE COURT: Sustained.

Rephrase your question.

BY MR. NEWMAN:

Q. You did sign an affidavit, you recall doing that, a statement?

A. Uh hum.

Q. You've seen that statement since you signed it, haven't you?

A. Yes.

MR. NEWMAN: And may we mark this Harvey-P-4, Your Honor?

THE COURT: Yes.

MR. NEWMAN: Thank you, Your Honor.

- - - - -

(WHEREUPON, STATEMENT OF SHARON ARTIS WAS MARKED HARVEY-P-4 FOR IDENTIFICATION.)

- - - - -

BY MR. NEWMAN:

Q. Is this the statement you made, ma'am?

A. Yes, it is.

Q. Is that your signature at the bottom, ma'am?

A. Yes.

Q. You see a notary seal, was it notarized?

A. I don't know.

Q. You don't recall that?

A. No.

Q. When you see the date here March 29th, 1993, does that refresh your recollection as when this occurred?

A. Yes.

Q. It's about two years ago?

A. Uh hum.

Q. Now, when I show you the last line of your statement, "When I asked Anthony how he would set this up, he said he was giving the cops information that they might be interested in."

A. Uh hum. Yes.

Q. Is that what you indicated to the investigator who took the statement?

A. Yes, yes.

Q. Now, you didn't actually type this statement, did you?

A. Uh uh.

Q. You did not actually choose the actual words that were typed down here; is that correct?

A. No.

Q. But is what was said here correct?

A. Everything is correct.

Q. Is there anything incorrect on this statement?

A. No, it isn't.

Q. When you went down there, ma'am, did you know that you were going to have sex with Anthony?

A. Yes, I did.

Q. How did you know that?

A. How did I know that? I was already told that, you know what I mean, me and him talked.

Q. You and Anthony?

A. Uh hum.

MR. NEWMAN: No further questions, Your Honor.

THE COURT: Cross-examination.

MS. GODFREY: Thank you,

Your Honor.

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- - - - -
CROSS-EXAMINATION
- - - - -

BY MS. GODFREY:

Q. Ms. Artis, you said in your affidavit, "I am being asked about going to the Roundhouse in Philadelphia and meeting with Anthony Singleton," right?

A. Yes.

Q. Who asked you about that? Who asked you about going to the Roundhouse in Philadelphia?

A. Anthony asked me to meet him there.

MR. NEWMAN: Your Honor,
she's not understanding the question.

I object, it's not a
clear question.

MS. GODFREY: I'll
make it clear.

BY MS. GODFREY:

Q. Who contacted you, who was the first person who contacted you about this affidavit that you signed back in 1993?

A. Oh, I forget who the first person was that contacted me.

Q. Did you talk about it with Anthony?

A. Yes, one time I did.

Q. And so, did you talk to Anthony about what you were going to say in this affidavit?

A. No.

Q. Did you know that someone was going to come and see you about what you were going to say in this affidavit?

A. Yes.

Q. Did you know because Anthony told you?

A. Yeah. Called me up and told me, asked me would I come down.

Q. To talk to somebody about this affidavit?

A. No, no.

MR. NEWMAN: She's confused. She's thinking back to 1983.

THE COURT: All right, make it plain.

BY MS. GODFREY:

Q. Do you remember when you signed your name

to this affidavit, ma'am?

A. Yes, I do.

Q. Okay.

Do you know the man who came to talk to you?

A. What's his name? He just left here. What-ever. I don't remember his name.

Q. Do you know who he was working for?

A. No, I don't.

Q. Was it one of the defendants?

A. I don't even know none of them, all I know is Anthony.

Q. Ma'am, when's the last time you talked to Anthony?

A. Maybe about a year ago now.

Q. About a year ago?

A. Uh huh.

Q. So, it's now 1987, you talked to him in 1996?

A. I believe so.

Q. So you're still in touch with Anthony?

A. Since then he's called for his son, once in a while.

Q. He calls -- I'm sorry --

MR. NEWMAN: For his

son.

BY MS. GODFREY:

Q. So you talked to him a year ago, and before that when was the last time you talked to him before that?

A. I don't know, because I catch him on the phone every once in a while to say hello.

Q. Did Anthony tell you somebody was going to come and talk to you about having sex with him in 1983?

A. He told me that a few years ago back some.

Q. So you weren't surprised, somebody didn't just show up to your house and surprise you and ask the question?

A. Yes. I was surprised when they showed up.

Q. Let me ask you again.

THE COURT: Let me ask the question.

Ma'am, the first time you heard that there was an issue about your having had sex back in 1983, who were you talking to at

that time?

THE WITNESS: I don't quite remember his name.

THE COURT: Was it a man?

THE WITNESS: Yes.

THE COURT: The man came to your house?

THE WITNESS: Uh huh.

THE COURT: Before the man came to your house and talked to you, had you spoken with Anthony about this particular issue?

THE WITNESS: He had -- I don't even -- I can't quite put the timing together, whether it was after or before.

BY MS. GODFREY:

Q. But you have spoken to Anthony recently about this issue?

A. Not recently about this issue, no.

Q. When's the last time you spoke to him about this issue?

A. Oh, that must have been about '85.

Q. But you spoke to Anthony a year ago?

A. Yeah.

Q. You didn't talk at all about this issue?

A. No. I didn't even know they was still interested, you know what I mean.

Q. You didn't tell him a man had come to see you about having sex?

A. No.

Q. Nothing?

A. No.

Q. Now, you said that Anthony Singleton was your boyfriend 15 years ago?

A. Uh huh.

Q. He's not your boyfriend today?

A. No, he isn't.

Q. He's the father of your son?

A. That's right. He's 18 now, okay.

Q. Now, Mr. Singleton, you're aware, I'm sure, has been in prison continuously since that time back in 1983, right?

A. Uh huh.

Q. And you said you went to visit him in

addition to the Roundhouse, you went to visit him in Harrisburg and Camp Hill?

A. Yes.

Q. Graterford?

A. Uh huh.

Q. And Holmesburg?

A. Right.

Q. When was the last time you visited Anthony?

A. Man, I can't even recall.

Q. Ma'am, you said you don't know any of the defendants?

A. No, I don't.

Q. Does Anthony know the defendants?

A. I really don't know.

MR. NEWMAN: Objection,
Your Honor.

THE COURT: As to the
defendants -- Petitioners?

MR. NEWMAN: As to
whether Anthony knows him, to para-
phrase the District Attorney's
objection, that's hearsay. It's
irrelevant and it's hearsay.

THE COURT: No, that's overruled.

The question was, did she know any of the three Petitioners, her answer was no.

MR. NEWMAN: Then the District Attorney asked, does Anthony know them.

THE COURT: Do you know whether Anthony knew any of those people back then?

THE WITNESS: I said I don't know.

BY MS. GODFREY:

Q. Ma'am, were you aware Anthony testified for these three defendants back in 1985 and 1986?

A. No, I wasn't --

MR. NEWMAN: Objection.

THE COURT: Overruled.

BY MS. GODFREY:

Q. Ma'am, you said you visited Mr. Singleton at the Roundhouse twice; is that correct?

A. Yeah.

MR. NEWMAN: Objection,
that wasn't her testimony, it was
two or three times.

THE COURT: Just a
minute.

The objection is to
how many times she went --

MR. NEWMAN: She said
two or three times on direct.

MS. GODFREY: That's
fine, Judge. I'll rephrase the
question.

MR. NEWMAN: Thank
you.

BY MS. GODFREY:

Q. Ma'am, you said you visited Anthony at the
Roundhouse two or three times?

A. Yes.

Q. And you're saying that on all three of those
occasions that you engaged in sexual relations
with him?

A. Yes, I did.

Q. Do you remember ever on any of those visits,

bringing him a pair of sneakers?

A. I don't think so, not up there. I usually sent things to him.

Q. Did you ever bring him dinner?

A. No. I was dinner.

Q. You don't know the name of the person who took you up to that room, do you?

A. No, I don't.

Q. And you said that, in your affidavit, that Anthony said he was giving the cops information, you said that in your affidavit?

A. Yes.

Q. Did he tell you he was giving them lies?

A. No. He didn't tell me what kind of information he was giving them.

Q. Ma'am, what is your date of birth?

A. 2-8-60.

MS. GODFREY: Could I have the Court's indulgence, please?

THE COURT: Yes.

(BRIEF PAUSE.)

BY MS. GODFREY:

Q. Ma'am, when you went to visit Anthony at the

Roundhouse, did you ever speak to a detective about what you were there for?

A. No, not really.

Q. Okay.

A. I already knew what I was there for.

Q. Ma'am, did you ever bring drugs to Anthony?

A. No.

Q. Did Anthony ever have drugs in the room when you were with him?

A. Not that I know of.

Q. Ma'am, are you on any sort of medication today?

A. No, I'm not.

MS. GODFREY: Your Honor,

I have no further questions.

MR. NEWMAN: No further

questions, Your Honor.

Thank you very much.

MR. GELB: No questions,

Your Honor.

MR. STRUTIN: No ques-

tions, Your Honor.

THE COURT: Just one

minute, ma'am.

How did you know to go down to the jail the first time and that you were going to have sex?

THE WITNESS: Anthony called me.

THE COURT: He called you?

THE WITNESS: Yes, and we talked on the phone about it.

THE COURT: He told you that was why you were coming down there?

THE WITNESS: Uh huh.

THE COURT: Did anyone ever go with you?

THE WITNESS: For what? No. I didn't need anybody to go with me.

THE COURT: I'm just asking.

All right. I don't have any other questions.

(WITNESS EXCUSED.)

- - - - -
THE COURT: We'll take
our lunch break now.

THE TIPSTAFF: What time?

THE COURT: 2:30.

THE TIPSTAFF: This Court
stands in recess until 2:30.

*

AFTERNOON SESSION

- - - - -
THE COURT: Let's resume
with the next witness, please.

MR. NEWMAN: Very well,
Your Honor.

They're just bringing our
clients in and the next witness out.

THE COURT: All right.

- - - - -
DOUGLAS ATWELL, having
been duly sworn, was examined and tes-
tified as follows:

- - - - -
THE COURT: You may

proceed.

MR. NEWMAN: Thank you,
Your Honor.

I appreciate it. Would
Your Honor just indulge me just 30
seconds.

THE COURT: Sure.

(BRIEF PAUSE.)

- - - - -

DIRECT EXAMINATION

- - - - -

BY MR. NEWMAN:

Q. Good afternoon, Mr. Atwell.

A. Yes.

Q. Is it Douglas Atwell?

A. Yes.

Q. Mr. Atwell, are you currently incarcerated?

A. Yes, I am.

Q. Where are you a resident of?

A. State Correctional Institution at Graterford.

Q. How long have you been in?

A. I've been locked up since 1993.

Q. Do you have an uncle named Charles?

A. Yes, I do.

Q. And in 1983, do you remember where your uncle was?

A. Yes, I do.

Q. Where was he?

A. He was in Holmesburg County Prison.

Q. And did you have occasion to talk with him during the year, summer of 1983?

A. Yes, I did. He called my grandmother's house.

Q. And did you speak with him or did someone relay a message to you?

A. Well, whoever answered the phone they called me to the phone, and he told me to come to the phone.

Q. So, did you speak with him personally on the phone?

A. Yes, I did.

Q. And what did he say to you?

A. He said that he needed me to come down the Roundhouse with his girlfriend Maxie Harris.

Q. Did he give you any other instructions?

A. Yes, he did.

Q. What was that?

A. He told me that he needed me to bring some angel dust with me.

Q. And why was that?

A. He just told me to go pick the angel dust up and come down the house with Maxie.

Q. Did you have access to angel dust?

A. Well, you could pick it up around the corner.

Q. So you did have access to it?

And were you at all nervous about bringing angel dust down to the Police Administration Building?

MS. GODFREY: Objection,
Judge, leading.

MR. NEWMAN: I'll with-
draw it.

BY MR. NEWMAN:

Q. How did you go about bringing angel dust down to the Roundhouse?

A. I just acted on my uncle's command, he told me to do something I'd do it.

Q. That's the way it was with him?

A. Yeah.

Q. And so did you do that?

A. Yes. I just, you know, followed his rules, you know, that's how I was brought up.

Q. Did you go down there?

A. Yes, I did.

Q. Did you go down alone?

A. No, I didn't.

Q. Who did you go down with?

A. Maxie Harris.

Q. When you got down there, what happened?

A. When we got down 8th and Race, we met with -- went to this bubble, had like a plexiglass and we asked for Detective Gerrard.

Q. What happened then?

A. A few minutes later Detective Gerrard appeared.

Q. Do you remember what day that was?

A. No, I don't. It was like in the early part of the summer 1983.

MR. NEWMAN: May I approach the witness?

THE COURT: Yes.

Would you show that to Counsel.

MR. NEWMAN: It's what's

been previously marked P-1-Harvey,
Your Honor.

BY MR. NEWMAN:

Q. I show you what's been marked Harvey-P-1.
Do you see, looking at June 28th, 1983, and I'll
point you to it, do you see this name here?

A. Yes, I do.

Q. Whose name is it?

A. Douglas Atwell.

Q. Who is Douglas Atwell?

A. Me.

Q. And right after your name, do you see the
Unit?

A. Yes. It says HOM.

Q. Do you know what that stands for?

A. No, I don't.

Q. Okay, and what time was that?

A. 6:55.

Q. What time did you leave?

A. 8:30.

Q. Who was your escort?

A. Detective Gerrard.

Q. And whose name is right above your name?

A. Maxie Harris.

Q. Now, Mr. Atwell, after Detective Gerrard came down and met you at the front where you sign in, what then occurred?

A. We gave our names to him and he signed them in the log book; we took everything upstairs.

Q. By the way, was that your handwriting or was that Gerrard's handwriting on the log book?

A. It's not my handwriting.

Q. What happened after you took --

A. We went up to the floor my uncle was located on.

Q. Where was your uncle located?

A. He was in a room.

Q. What kind of room, can you describe it?

A. It just had like a desk and chair or two in there.

Q. Was it a big room, little room?

A. Little nice size room.

Q. Ever been in such a room at the police station?

A. No.

Q. Were there any windows in that room?

A. Not to my knowledge.

Q. How many doors?

A. I just seen one door.

Q. And who was in that room when you got to that room?

A. My Uncle Charles Atwell.

Q. Was Maxie with you or not?

A. Yes, she was.

Q. And what happened when you got to that room with Maxie and saw your uncle?

A. When I got to the room, I talked to my uncle for a few minutes, he pulled me to the side and said give the package to Detective Gerrard.

Q. Was Detective Gerrard in the room?

A. Yes, he was.

Q. So what did you do?

A. After we talked, me and Detective Gerrard left the room, went to another room, that's when I handed Detective Gerrard like about 40 vials of angel dust.

Q. When you left the room, was anyone still in the room?

A. Yes. It was Maxie Harris and Charles Atwell.

Q. Charles being your uncle?

A. Yes.

Q. And you gave these bags to Detective Gerrard, these bags contained what items?

A. Angel dust. PCP.

Q. PCP?

A. PCP.

THE COURT: Excuse me, sir. Would you push the mike away from you a little bit.

Go ahead.

BY MR. NEWMAN:

Q. Were you present when Maxie and your uncle had sex?

A. Yes, I was.

Q. You observed them?

A. Yes, I did.

Q. Were they actually involved in intercourse or was it kissing or what?

A. They was involved in sexual intercourse.

Q. Was Detective Gerrard there?

A. No, he wasn't.

Q. And how long did you remain in the room while this was occurring?

A. I didn't remain in the room, I opened the door and I seen both of them had their pants down to their ankles, so I pulled the door back closed and went and sat in a chair.

Q. It was very discreet of you.

Did you tell anybody about this?

A. No, I didn't.

Q. Did you eventually get a visit by a private detective?

A. Yes, I did.

Q. And did you speak with that private detective?

A. Yes, I did.

MR. NEWMAN: May we mark this Harvey-P-5, Your Honor?

THE COURT: Yes.

MR. NEWMAN: Thank you.

- - - - -

(WHEREUPON, AFFIDAVIT OF DOUGLAS ATWELL WAS MARKED AS HARVEY-P-5, FOR IDENTIFICATION.)

- - - - -

BY MR. NEWMAN:

Q. Do you recognize this document?

A. Yes, I do.

Q. What is that?

A. This is the signed affidavit that I wrote out in my own handwriting.

Q. That is your handwriting?

A. This is my handwriting.

Q. Have you reviewed it, did you review it at the time you wrote it out?

A. Yes, I did. I reviewed it and I went and got it notarized.

Q. To your knowledge, is everything that's stated in this affidavit true and correct?

A. Yes, it is.

MR. NEWMAN: No further questions, Your Honor.

THE COURT: Cross-examine.

- - - - -
CROSS-EXAMINATION
- - - - -

BY MS. GODFREY:

Q. Mr. Atwell, you say you're in Graterford right now?

A. Yes, I am.

Q. And what sentence are you serving?

A. Twenty to 40 month sentence.

Q. What's that for?

A. Possession of narcotics.

Q. How much longer do you have on your sentence?

A. Eight days.

Q. Sir, do you know Andre Harvey?

A. Yes, I do.

Q. He's in Graterford with you; isn't he?

A. Yes, he is.

Q. Do you know Howard White?

A. Yes, I do.

Q. Is he in Graterford with you also?

A. Yes, he is.

Q. Are they are on the cellblock as you are?

A. No, they're not.

Q. How often do you see Mr. Harvey?

A. I don't see him that often; I don't hardly see him at all.

Q. How often you see Mr. White?

A. Not that much.

Q. Do you see them at meals?

A. No, I don't.

Q. In the yard?

A. Maybe once in a while, if they come outside.

Q. When's the last time you spoke to Mr. Harvey?

A. About a year ago.

Q. Haven't spoken with him for a whole year?

A. I haven't spoken to him for over a year.

Q. Nothing, not even anything in passing, hi?

A. Maybe speak, that's about it, you don't hold
no conversation.

Q. When you spoke to Mr. Harvey a year ago, could
you tell me what that conversation was about?

A. Well, I read him a newspaper article about
what happened at 8th and Race.

Q. So you talked about the case then?

A. No, we didn't. I came to Mr. Harvey after
I read the article and I told him, I said, "Man,
I don't know if this can help you or not, but I
got some information." He stopped me and said,
"If you got anything to say to me, tell it to
my private investigator." He wrote down a name
and address and gave it to me.

Q. What did you do next?

A. I went back to my cellblock, to my cell.

Q. Someone contacted you after that?

A. Well, I sat and wrote the affidavit.

Q. You wrote the affidavit in your cellblock?

A. Yes, I did. In my cell I wrote the affidavit I sent to Mr. Parish.

Q. You sent it to who?

A. The private investigator.

Q. When's the last time you spoke with Howard White, sir?

A. I haven't spoken to Howard White for about a year.

Q. Did you have the same conversation with him as you did with Mr. Harvey?

A. He asked me, I speak, I go ahead about my business.

Q. Did you show him the article that you saw?

A. No, I didn't.

Q. So you didn't talk about the case with him?

A. No, I didn't.

Q. Sir, you're Charles Atwell's nephew; is that right?

A. Yes, sir, I am.

- Q. How old were you in 1983, sir?
- A. Sixteen.
- Q. Okay.
- Are you in touch with your uncle now?
- A. No.
- Q. When's the last time that you spoke with your uncle?
- A. Two years ago.
- Q. Did you ever talk about the shooting of Fred Rainey with your uncle?
- A. No, I didn't.
- Q. No conversation at all?
- A. No.
- Q. Okay.
- Sir, when you wrote this affidavit, you were alone?
- A. Yes, I was.
- Q. In your cell?
- A. Yes, I was.
- Q. And in this affidavit you are referring to one date when you went to visit your uncle at the Roundhouse; is that right?
- A. Yes. Just one day, that's all.

Q. One time?

A. Yes, ma'am.

Q. And you were there that one time, that's June 28, 1983, Counsel just showed you that, right?

A. Yes, ma'am.

Q. And you were there from 6:55 to 8:30?

A. Yes, ma'am.

Q. About an hour and a half?

A. Yes, ma'am.

Q. Now, how did you get there, sir?

A. I caught public transportation.

Q. Did you go to get Maxie Harris first?

A. No, I didn't.

Q. Did you go there with her?

A. Yes, I did.

Q. Was she on the bus with you?

A. Yes, she was.

Q. Did she come to your house?

A. She stays at my grandmother's home,
occasionally.

Q. You were staying in the same house that night?

A. Yes.

Q. You both went to the bus together?

A. Yes, ma'am.

Q. You both went down to the Roundhouse?

A. Yes, ma'am.

Q. Once you got there, you say that you then called for Detective Gerrard?

A. We asked for -- we walked up to the window and asked for Detective Gerrard.

Q. Then you met him, he came down to meet you?

A. Yes, he did.

Q. Okay, sir, now you rode up the elevator and went to a small room?

A. Yes, ma'am.

Q. And at one point there were four of you in the room?

A. Yes, there was.

Q. There was you, Detective Gerrard and Maxie Harris?

A. And Charles Atwell.

Q. And sir, you say that your uncle pulled you aside in the room and told you to give the angel dust to the detective?

A. Yes, he did.

Q. Why didn't you just give it to your uncle, sir?

A. Because he didn't want his girlfriend to know what he was getting from me.

Q. He didn't want his girlfriend to know?

A. No.

Q. Why not?

A. Because she don't do drugs at all.

Q. So he wanted you to sneak them to the detective so she wouldn't find out; is that right?

A. Yes.

Q. You said you had 40 packets?

A. Yes.

Q. How big are these packets?

A. Like little small wax bags like this, about this big.

THE COURT: How many inches by how many inches?

THE WITNESS: About a half an inch, if that.

THE COURT: Half inch by half inch?

THE WITNESS: About this big and about that wide (indicating).

THE COURT: So one and

a half inch by one and a half inch.

THE WITNESS: Half inch
by half inch. The bag looks like
half inch, about that wide (indicating).

MR. NEWMAN: I'll agree
for the record it's one and a half by
one and a half, he's not very good at
measuring distance.

THE COURT: Thank you.

MR. NEWMAN: You're quite
welcome.

BY MS. GODFREY:

Q. What did you have the packages in?

A. Aluminum foil.

Q. They were all together in one big aluminum foil?

A. Yes.

Q. How big is that?

A. No bigger than like that, comes up like this
(indicating).

Q. What's that, about five, six inches?

A. Maybe like two or three inches, if that big.

Q. You're talking about height?

A. This big (indicating). It's like, the way it was

packed there like in three stacks.

Q. And you're saying, sir, you gave them to the detective?

A. Yes, I did.

Q. Where were you when you gave them to the detective?

A. We went into another room down the hall.

Q. So the four of you were in the room?

A. Yes.

Q. It's a small room?

A. It's a nice size room.

Q. About how big?

A. I'm not good measuring rooms.

THE COURT: Use this room as a measurement point. Was it half the size of this room, quarter of the size of this room?

THE WITNESS: Maybe from these four chairs to the wall.

THE COURT: Ten feet by ten feet?

THE WITNESS: This

way to here that's the length,
length to where the computer,
right here behind the Stenographer
to the wall that's the width.
This is the length.

THE COURT: Fifteen
by 10?

MR. NEWMAN: Fine.

BY MS. GODFREY:

Q. Sir, so you're in a 15 by 10 room?

A. Yes.

Q. Your uncle pulls you aside?

A. Yes.

Q. You had a private conversation?

A. Yes.

Q. That nobody else can hear?

THE COURT: Wait. It's
too much noise in here. If you have
to talk you have to leave.

I didn't hear the ques-
tion and answer.

BY MS. GODFREY:

Q. Sir, you're in a 10 by 15 room?

A. Yes.

Q. The four of you?

A. Yes.

Q. Your uncle pulled you aside?

A. Yes.

Q. You have a private conversation what, in the corner?

A. He was standing right there by the table.

Q. What's Maxie Harris and Detective Gerrard doing?

A. Just standing there.

Q. Are they looking at you, what you're talking about?

A. She doesn't know what's going on. He called me to the side of the room and said, "Listen, give that package to Detective Gerrard," and that was it.

Q. Okay.

At that point you and Detective Gerrard left the room?

A. Left the room and walked down the hall to another room.

Q. Why did you leave the room? How did you know it was time to go?

A. I was taken to another room to give Detective

Gerrard the drugs.

Q. Who said we should leave the room?

A. My uncle told me to leave the room with Detective Gerrard.

Q. Your Uncle Charles Atwell said could you and the Detective please leave now?

A. Yes.

Q. You and Detective left?

A. Yes, we did.

Q. You left Maxie and Charles Atwell in the room?

A. Yes, we did.

Q. Where did you and the Detective go to?

A. We went down the hall to another room.

Q. Same kind of room?

A. Something similar. I'm not sure.

Q. And how long were you in the room?

A. I sat in there maybe like, I was in there for a couple of minutes with Detective Gerrard, then I stayed in there myself for like another 25, 30 minutes.

Q. When you were in there alone with Detective Gerrard, what happened?

A. I was in there alone with Detective Gerrard,

I reached in my pocket, I pulled out the package, gave it to him. He stuffed it in his pants pocket.

Q. Did you tell him what you were giving him?

A. I'm sure he already knew.

Q. How are you sure he already knew, just guessing?

A. Because my uncle told me to bring something down there, then he tells me in my ear to give it to him. I'm quite sure he knew what I was giving him.

Q. You say you gave Detective Gerrard an aluminum foil package and he put it in his pocket?

A. Yes.

Q. He left the room?

A. Yes.

Q. You sat in there alone?

A. Yes.

Q. Then what?

A. I became impatient.

Q. You are in there for what, 25 minutes?

A. Twenty-five minutes to a half an hour, something like that.

Q. So say it's about 7:30 now, if you got there

7?

A. Yes.

Q. So you left and went to go and see what your uncle was doing?

A. Yes.

Q. And you say you went and you peeked in and you saw your uncle and his girlfriend having sex; is that right?

A. Yes.

Q. So you closed the door right up and you went back to your room?

A. Closed the door and walked down, sat in the chairs that was in the hallway.

Q. Was Detective Gerrard in there with them?

A. No, he wasn't. They was in there alone.

Q. Where was he at that point?

A. I don't know.

Q. And then you went and sat at the end of the hall about another hour?

A. Didn't see the clock, time went by so fast.

Q. Okay.

So you're sitting down there and what's the next thing that happened?

A. I guess an hour went past, Maxie came up

and said let's go.

Q. And you left?

A. We left.

Q. And you took the bus home?

A. Yes.

Q. Did you ever talk to anybody about this after that happened?

A. No, I didn't.

Q. Nobody ever told anybody what happened?

A. No.

Q. Ever talk to Maxie about it?

A. No.

Q. Ever talk to your uncle about it?

A. He called me again and I asked him did he want me to take care of that again? He said no, that Jerry Fields' people would take care of that.

Q. So you never went back down there again?

A. No.

Q. Okay, sir, this happened in, again, as we said, June 18, 1983, right?

A. Yes, ma'am.

Q. When was the next time you had any chance or when is the next time you spoke to anybody about this

particular night of June 28, 1983? When's the next conversation you had about it?

A. February of '96, after I read the article in the paper.

Q. Okay, that was with Andre; is that right?

A. That's when I brought it to his attention I might have some information that may can help him.

Q. Okay.

And then that's when Mr. Harvey asked you to write out the affidavit; is that right?

A. Mr. Harvey told me if I had anything concerning his case to give it to his private investigator.

Q. So he gave you his investigator's address and name?

A. Yes. Yes, he did.

Q. And after that conversation with Mr. Harvey, are you saying you didn't have any more conversation with him about this case?

A. No, I haven't.

Q. None up until today?

A. No.

MS. GODFREY: I have no further questions, Your Honor.

THE COURT: Redirect?

MR. NEWMAN: Thank you,

Your Honor. If I may.

- - - - -
REDIRECT EXAMINATION
- - - - -

BY MR. NEWMAN:

Q. Mr. Atwell, you mentioned that you read a news-
paper article?

A. Yes, I did.

MR. NEWMAN: May we have
this marked Harvey-P-6, please,
collectively, the two. It's the same
one.

THE COURT: Yes.

- - - - -
(WHEREUPON, NEWSPAPER
ARTICLES MARKED AS HARVEY-P-6 FOR
IDENTIFICATION.)
- - - - -

MR. NEWMAN: May I, Your
Honor, approach the witness?

THE COURT: Yes.

BY MR. NEWMAN:

Q. Mr. Atwell, do you recognize what has been marked collectively as Harvey-P-6?

A. Yes, I do.

Q. What is that, sir?

A. That's the article I read in the Philadelphia Daily News.

Q. Did you know anything about this situation, other than your own involvement going down that one day, June 28th, I believe it was, 1983, other than that did you have any other information on what is contained in this article?

A. No, I don't.

Q. And you indicated you read the article first and then talked to Mr. Harvey?

A. Yes, I did.

Q. Have you ever talked to me before today?

A. No, I haven't.

Q. Have you ever had conversation other than my conversation with you in the Courtroom?

A. No, we have not.

MR. NEWMAN: Nothing

further, Your Honor.

MS. GODFREY: Nothing further.

MR. NEWMAN: I'm sorry, I do have a few other questions.

THE COURT: Just one minute.

MR. NEWMAN: Your Honor, I'm sorry, I apologize.

THE COURT: Go ahead.

MR. NEWMAN: I have some questions, but go ahead, it would be premature, by no means, Your Honor.

THE COURT: How did you know who to ask for when you got to the Roundhouse?

THE WITNESS: That's the name my uncle gave me over the telephone.

THE COURT: Now, from your testimony you didn't get a ride down to the Roundhouse, you are saying you took the bus?

THE WITNESS: The bus,
yes, ma'am.

THE COURT: So, what
happened, you took the phone call,
you went around the corner and got
the angel dust?

THE WITNESS: Yes, ma'am.

THE COURT: Then you
came back and got Maxie and went down
on the bus?

THE WITNESS: Yes, ma'am.

THE COURT: How long did
it take you to do that?

THE WITNESS: Around the
corner, it's like this is my block
which is Newkirk Street, Thompson
Street is right here, right there,
they be right there standing on the
corner. It's not even about five
minutes.

THE COURT: Anyone give
you any promises for your testimony
today?

THE WITNESS: No, ma'am.

THE COURT: Was Maxie living in the same house as you at that time?

THE WITNESS: Yes, she was.

THE COURT: How long had she been living with you at the time when you went down to jail?

THE WITNESS: She stayed there from time to time. Sometimes she stayed with my grandmother or stayed with her grandmother, which is only down the street.

THE COURT: Did her son live with you at that time, too?

THE WITNESS: Yes.

THE COURT: So what you are saying is, she moved back and forth. Was she there for weeks, a month or months at a time?

THE WITNESS: She stays there from time to time.

THE COURT: At your house?

THE WITNESS: Yes. That was my grandmother's house.

THE COURT: But you said she also stayed at her grandmother's house?

THE WITNESS: Yes.

THE COURT: So she was back and forth between the two places or three places?

THE WITNESS: Two.

THE COURT: Two places.

Who else lived there at that time?

THE WITNESS: Me, my grandmother, my uncle and my grandfather.

THE COURT: When you say your uncle, who are you referring to?

THE WITNESS: Charles Atwell.

THE COURT: Are you aware of any other times that Maxie might have gone to the jail?

THE WITNESS: No, I'm not.

THE COURT: And you were 16 at the time?

THE WITNESS: Yes, ma'am.

THE COURT: I don't have any other questions.

Anyone have questions to follow up to mine?

MS. GODFREY: No.

MR. NEWMAN: Just one.

- - - - -

BY MR. NEWMAN:

Q. You're not saying Maxie didn't go to the Roundhouse, you're just saying you're not aware?

A. I'm not aware of it. I'm not saying she did or she didn't, I'm just not aware of it.

MR. NEWMAN: Very well.

That's all the questions I have, Your Honor.

MR. GELB: No questions, Your Honor.

MR. STRUTIN: No questions, Your Honor.

MR. NEWMAN: If Your Honor would indulge me a moment?

THE COURT: Yes.

(BRIEF PAUSE.)

MR. NEWMAN: If I may.

There's a stipulation by and between Counsel on behalf of all parties, Your Honor, all the Petitioners and the Commonwealth, that if called to testify the Records Custodian at the Police Administration Building would testify that these are photocopies of the visitor log at the Police Administration Building, from May 31, 1983 until December 31, 1983. This is a true and correct copy of the official logs that are kept.

The visitor logs are kept on the parking lot side of the

Police Administration Building. And, of course, that they're made in the ordinary course of business and are kept as a business record.

That document is labeled Harvey-P-1; and, Your Honor, we would move P-1 through P-6 into evidence.

There is one other document we have not been able to authenticate. I would ask that the record not be closed at this time, although I have no objection to the Commonwealth calling its witnesses.

However, we are trying to get it authenticated what is purported to be the out-cards for the prison for Mr. Atwell, for Charles Atwell. It would be his card which would reflect him being taken down to the Police Administration Building, and the proffer is that they would be the same.

THE COURT: What?

MR. NEWMAN: Same dates on which Maxie Harris signed in, plus the one date that Douglas Atwell signed in.

THE COURT: That's the logs from the prison?

MR. NEWMAN: These are out-cards from the prison. It's a photocopy. I have not yet been able to authenticate them. If need be, we would subpoena the Record Custodian for that purpose, but the dates on it will coincide with the dates in the PAB log.

With that, Your Honor, keeping the records for that one purpose, we move these into evidence to present at this point in time.

Thank you very much.

MR. GELB: I'm sorry, may I just add one thing, Your Honor, just to be clear on the record?

I N D E X

<u>RESPONDENT'S EVIDENCE</u>	<u>DR</u>	<u>CR</u>	<u>RED</u>	<u>RED</u>
Charles Atwell	27	36, 74, 84	---	---
Agent Lawrence Gerrard	104	114, 143, 150	163	186

EXHIBITS

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- - - - -
RESPONDENT'S EVIDENCE
- - - - -

MR. DIVINY: Your Honor,
the Commonwealth would call Charles
Atwell.

MR. NEWMAN: I'd ask for
an offer of proof.

MR. DIVINY: Charles
Atwell is an individual who's been
much testified about. In fact, this
claim goes to his motivation for
testifying and whatnot.

Mr. Atwell was present
yesterday, based on a Defense sub-
poena. We had tried to find him but
we were unable to do so.

I spoke to Mr. Atwell,
based on what he told me yesterday
in the hallway, we took a statement
from Mr. Atwell and we are proffering
his testimony today. Counsel has
been provided with copies of it.

MR. NEWMAN: If he's just going to limit his testimony to denial of what other witnesses said, I have no objection to that. If he plans to go beyond that, I would like to hear more of an offer of proof.

THE COURT: What's contained in the affidavit?

MR. DIVINY: Judge, there's a denial of, first off, there was any sex involved in this case, he was offered sex. He would say he never had sex at the Police Administration Building, that's what he says in his statement; that's what he testified to at the trial was truthful.

He would further testify as to the effort of these defendants, on their behalf, to contact him and have him change his testimony.

- - - - -
DIRECT EXAMINATION
- - - - -

BY MR. DIVINY:

Q. Mr. Atwell, I'm going to ask you some questions, try to keep your voice up nice and loud and speak into the microphone so everybody can hear you, okay?

A. Right.

Q. Mr. Atwell, do you recall testifying against the three defendants in this matter, Mr. Harvey, Mr. White, Mr. Williams?

A. Yes.

Q. Was that in 1984?

A. Yes.

Q. Do you remember the substance of your testimony, what you said or not?

A. I don't.

Q. Okay, since 1984, sir, have you sustained an injury to your head?

A. Yes, a gunshot wound.

Q. When was that?

A. Three years ago.

Q. Sir, other than -- strike that.

I know you don't remember the substance of what your testimony was at the trial in 1984, but was your testimony truthful or untruthful?

MR. NEWMAN: Objection.

If he doesn't remember, how can he say?

THE COURT: Sustained.

Rephrase your question.

BY MR. DIVINY:

Q. Sir, whatever it was you said, did you testify to the best of your ability truthfully?

MR. NEWMAN: Objection, Your Honor, he doesn't remember.

MR. DIVINY: He might not remember the substance.

THE COURT: Just clarify what his memory is at this point.

BY MR. DIVINY:

Q. Sir, do you remember any of the testimony that you gave, the substance of it?

A. Yes.

Q. Okay.

What portion of it do you remember, do you understand my question?

A. These three gentlemen killed Fred Rainey.

Q. Killed Fred Rainey?

A. Yes.

Q. When you testified to that was that the truth?

A. Yes.

MR. NEWMAN: Your Honor, I object. This is irrelevant.

MR. DIVINY: It's totally relevant.

THE COURT: Overruled.

Go ahead.

BY MR. DIVINY:

Q. Sir, did you testify to that based on any detective allowing you to have sex in the PAB?

A. No, no.

Q. Did you ever have sex in the PAB? Do you understand what I mean by PAB, Police Administration Building?

A. Yes.

Q. Did you have sex in that building?

A. No.

Q. Did the detective give you any drugs in order to ask you to testify to that?

A. No.

Q. Do you know a woman by the name of Maxie Lee Harris?

A. Yes.

Q. Who is she to you or who was she to you, could you explain that to the Judge?

A. Well, she was my girlfriend back then.

Q. Now, back at the time of this trial, did you go down to the Police Administration Building occasionally to talk to detectives?

A. Yes.

Q. Now, do you recall seeing Maxie Lee Harris?

A. No.

Q. Okay.

She came after, after I got there they brought her down because I requested to see my children.

Q. And you were able to see her and your children?

A. Yes.

Q. Since your testimony in 1984, have you received any threats or offers regarding your testimony in this case?

A. Yes.

MR. NEWMAN: Objection.

THE COURT: Overruled.

BY MR. DIVINY:

Q. To the best of your ability, can you describe for Judge Brinkley when that happened and how those things happened, and tell her how many times you're talking about?

A. Andre Harvey contacted me by phone.

THE COURT: Directly?

THE WITNESS: No --

yes, I spoke to him by phone.

THE COURT: When was that?

THE WITNESS: I can't -- I know it did happen, I can't remember what time or what day or what date, but I know it did happen.

BY MR. DIVINY:

Q. What did he say to you, Andre Harvey?

A. He offered me \$5,000 to recant my statement.

Q. You are telling me you don't know what year that was, is that right? Do you know what year it was?

A. I think it was in '73 -- '83.

Q. Was it before the trial or after the trial?

A. Before the trial.

MR. NEWMAN: Your Honor, I object to all of this and ask it be stricken.

THE COURT: And what is your basis for the objection?

MR. NEWMAN: It's totally irrelevant to this proceeding, Your Honor. He's saying now it's prior to trial. I mean, it has nothing to do with the issue that's before Your Honor about whether or not he had sex with Maxie Harris at the PAB in exchange for testifying in this case.

THE COURT: Okay,

your objection is overruled.

BY MR. DIVINY:

Q. Sir, now you've told us about that incident with Mr. Harvey, were there any other incidents where you were either threatened or offered anything with regards to your testimony in this case, that you remember?

A. I can't recall.

MR. DIVINY: May I have a moment, Your Honor?

THE COURT: Yes.

(PAUSE.)

BY MR. DIVINY:

Q. Do you remember giving a statement in 1984 to a Detective Starr regarding threats?

MR. NEWMAN: May I have a copy, please?

(WHEREUPON, COPY SHOWN TO DEFENSE COUNSEL.)

BY MR. DIVINY:

Q. Do you remember talking to any detective?

THE COURT: Wait a minute. You only have one copy,

let's give them, the three of
them time to read it.

MR. GELB: Thank
you, Your Honor.

THE COURT: Are
you intending to have that marked
as an exhibit?

MR. DIVINY: Not at
the present, Judge.

(SHORT PAUSE.)

- - - - -
THE COURT: Okay, you
may proceed.

BY MR. DIVINY:

Q. Mr. Atwell, do you remember in 1984 speaking
to a Detective Starr regarding threats made against
you based on your testimony in this case, do you
remember that at all?

A. No.

MR. DIVINY: Your
Honor, I would ask that this be
marked, I believe it will be --

THE COURT: C-2.

- - - - -
(WHEREUPON, STATEMENT
OF CHARLES DAVID ATWELL WAS MARKED
AS COMMONWEALTH'S EXHIBIT C-2
FOR IDENTIFICATION.)
- - - - -

MR. DIVINY: Judge,
I'd ask that it be shown to the
witness for the limited purpose
of his signature.

MR. GELB: Can we be
shown the signature then if that's
the case?

(WHEREUPON, C-2 WAS
SHOWN TO ALL COUNSEL.)

BY MR. DIVINY:

Q. Sir, I want you to take a look at the document
in front of you, is that your signature at the
bottom of each page?

A. Yes.

Q. Is it your testimony that you don't remember
telling the detective, "They wanted me to sign an
affidavit saying I lied in Court, that Detective

Gerrard and Gilbert made me lie," you don't remember that?

A. No, I don't.

MR. DIVINY: Judge,
I'd ask for a moment, I apologize.

THE COURT: Sure.

(BRIEF PAUSE.)

MR. DIVINY: I have
no further questions of Mr. Atwell.

THE COURT: Cross-
examination.

MR. NEWMAN: Thank
you, Your Honor.

MR. GELB: Can we
have just one minute?

THE COURT: Oh sure.

(BRIEF PAUSE.)

- - - - -
CROSS-EXAMINATION
- - - - -

BY MR. NEWMAN:

Q. Mr. Atwell, you testified at trial, right, you testified at the trial of these three gentlemen

sitting behind me?

A. Yes.

Q. You never testified about any threats, did you?

A. (No response.)

Q. Let me focus the question more specifically.
You never testified that Andre Harvey offered
you \$5,000 not to testify?

MR. DIVINY: Judge,

I'm going to object to the form
of the question only, based on
the witness' prior testimony
that he doesn't have recollection
of specific testimony. I don't
know if this is based on recollec-
tion.

THE COURT: Wait a
minute. He testified on direct
examination that Andre Harvey
offered him \$5,000 prior to
trial, is that what you are
referring to?

MR. DIVINY: This
question goes to what happened

at trial where he says he doesn't have a firm recollection of anything.

THE COURT: Overruled.

Sir, pull the mike down closer to you.

MR. NEWMAN: May I, Your Honor?

THE COURT: Yes.

BY MR. NEWMAN:

Q. Mr. Atwell, you never said a word about Andre Harvey offering you \$5,000 when you testified at trial, did you?

A. (No response.)

Q. You don't remember?

A. I don't remember. I don't remember whether he offered me \$5,000 around '93.

THE COURT: '93?

THE WITNESS: Yes.

MR. NEWMAN: I thought we were pretrial?

THE COURT: I thought you said before the trial?

Sir, do you remember whether he offered you the money?

MR. NEWMAN: I renew my objection to strike his testimony. This witness is not competent, he has no ability to remember anything, he has no ability to --

THE COURT: No, no, you can't do that, your motion is denied. You had that young lady on yesterday who didn't remember anything either.

MR. NEWMAN: She had a better recollection.

THE COURT: Well, you're getting there. We're trying to find out what he remembers, what he doesn't remember. At first, he said he doesn't recall the substance of the testimony and then he says he recalls certain things.

So just like yesterday we had to see what she recalls, we have to see what he recalls. It just takes a little more time, that's all.

BY MR. NEWMAN:

Q. Mr. Atwell, you never told any detective that Andre Harvey offered you \$5,000, have you? Never, have you?

MR. DIVINY: I'd ask he be allowed to answer the question, Judge.

THE WITNESS: Do I got to answer?

THE COURT: Yes. If you remember. You have to answer the question to the best of your recollection, if you remember.

BY MR. NEWMAN:

Q. Do you understand the question, Mr. Atwell?

A. No, I didn't tell anybody until today.

THE COURT: Until today?

MR. DIVINY: Your Honor, I'd ask the comments from the audience be kept at a minimum.

THE COURT: We have to have the audience remain quiet or leave the room.

BY MR. NEWMAN:

Q. Mr. Atwell, you didn't consider this very important, the fact that you claim that Mr. Harvey offered you \$5,000, you didn't consider it important at all?

A. Oh, yes, I considered it being important because, you know, I did not take the money because I didn't know what's next, what would be next, you know. He probably would have had me killed because he brought --

MR. NEWMAN: Move to strike, Your Honor.

THE COURT: Okay, okay.

Sir, what we want to know and the only question that

was put to you was your recollection about what was told to anyone about the \$5,000.

MR. NEWMAN: Whether or not he told any detective prior to today?

THE WITNESS: No.

THE COURT: Okay.

MR. NEWMAN: Thank you, Your Honor.

BY MR. NEWMAN:

Q. And you did not consider it important enough to tell any detective prior to coming into Court and giving this new account, you didn't think it important enough to tell any detective that Andre Harvey offered you \$5,000?

MR. DIVINY: That's objected to, I believe it was asked already.

THE COURT: He said he did consider it important but he didn't know what was going to come next, that's what he said.

MR. WRIGHT: No
disrespect --

THE COURT: Sir, you
have to remain quiet or you leave
the room.

Next question,
please.

MR. NEWMAN: Thank
you, Your Honor.

BY MR. NEWMAN:

Q. You never told any detective prior to coming
to the witness stand today that Andre Harvey
supposedly called you up, did you?

A. I told the District Attorney yesterday.

Q. Sir, my question was, you never told any
detective prior to coming in and testifying on the
stand today --

A. No.

Q. -- that Andre Harvey supposedly called you up,
did you? Yes or no, sir?

A. No.

MR. DIVINY: I believe
he said no.

THE COURT: No.

BY MR. NEWMAN:

Q. Now, Mr. Atwell, just to get the record straight, you were convicted of Robbery on August 11th of 1996, Aggravated Robbery?

MR. DIVINY: I would move to strike as beyond the ten-year limit of Randall, as to his testimony today, Judge.

MR. NEWMAN: There's no limit in Randall, it's absolutely crimen falsi, and I think always relevant.

THE COURT: Objection overruled.

Go ahead.

BY MR. NEWMAN:

Q. And at the time that you were cooperating with the police you had an open, you had an open Aggravated Assault case, didn't you, where you allegedly shot two men; isn't that true?

A. No.

Q. You had the open case, didn't you?

A. No.

Q. You didn't have, ever have an open case for shooting two gentlemen?

A. Yeah; I was incarcerated for it.

Q. That's what you were in jail for, right?

A. But they proved it to be the wrong person.

Q. No, no, they didn't prove it was the wrong person --

MR. DIVINY: Objec-
tion to Counsel testifying about
what happened --

THE COURT: Wait a
minute. He can answer the ques-
tion and explain his answer if
he wishes. He's doing it to the
best of his recollection at this
point, since he's gone back to
the '70's.

BY MR. NEWMAN:

Q. The case was discharged because the witnesses failed to appear, isn't that correct, the shooting case you were charged with?

MR. DIVINY: I'm going

to object, the reason is because this was fully developed at the prior hearing regarding the allegations that something was offered to Mr. Atwell in exchange for his case, it was fully explored.

THE COURT: That issue was dealt with at the prior evidentiary hearing, so the objection is sustained as to that.

MR. NEWMAN: I just thought you might want it for the purposes or credibility.

THE COURT: You raised the issue about the robbery, so...

BY MR. NEWMAN:

Q. Well, at the time you were helping these detectives out, you had open Aggravated Assault cases against you, didn't you? Isn't that a fact you had these open cases against you at

the time you were talking to these detectives?

MR. DIVINY: Your Honor, I believe that's been asked and answered, I believe that's the case he was already talking about.

THE WITNESS: Yes.

THE COURT: I sustained that objection.

MR. NEWMAN: It goes to bias.

BY MR. NEWMAN:

Q. And you were also on parole on State parole at the time that you were talking to these detectives while you had this open case; isn't that true? Isn't that true?

A. No.

Q. Weren't you on parole for Judge Kubacki, you were convicted of Rape and you were on Judge Kubacki's -- you had back time that you owed to the State as result of a sentence given you by Judge Kubacki for Rape?

MR. DIVINY: Could

we have the dates, Judge?

MR. NEWMAN: I'm
sorry, 1978, July 10, 1978 he
was sentenced on a Rape case.

BY MR. NEWMAN:

Q. You owed the State back time on that case,
didn't you?

A. No.

Q. And then you were convicted on the open
Aggravated Assault cases, you would have not only
got a sentence on the Aggravated Assault cases, you
would have gotten a sentence for the Rape case,
right, you would have gotten all your back time,
right?

A. No.

Q. Sir, are you the --

MR. DIVINY: Judge,
I'd ask to see Counsel's records
regarding the Rape case.

THE COURT: Can you
show him the printout?

THE WITNESS: That
was in '75.

THE COURT: Just one

minute.

BY MR. NEWMAN:

Q. I had the year wrong, but you had the Rape case --

MR. DIVINY: I'd ask the question stop while I take a look at the record, Judge.

(BRIEF PAUSE.)

BY MR. NEWMAN:

Q. Sir, you are the Charles Atwell who was born on May 2nd of 1953; isn't that correct?

A. Yes.

Q. And you're the Charles Atwell who at least at one point in time who was living at 1343 North Newkirk Street; isn't that correct?

A. Yes.

Q. And you were, in fact, arrested on December 13th, 1977 and charged with Rape; isn't that true?

A. No.

Q. And you pled guilty before Judge Kubacki on that very same charge and was sentenced to at least seven years in jail. The record reflects four to

seven years in jail, and you were given a suspended sentence on the Involuntary Deviate Sexual Intercourse, and the Conspiracy charges; do you remember that, sir?

A Okay, that was in 1975 when I got found guilty on the Rape and I wanted out of jail so bad, and they gave me a new trial and pled guilty, I pled guilty.

Q. My only question, sir, is that at the time you were talking to Detective Gerrard and Gilbert you were, in fact, on State parole for the Rape case?

A. No, no.

Q. Now, you're aware, Mr. Atwell, that Maxie Lee Harris has testified that she came down to the Roundhouse on the call of the two detectives and was allowed to be alone in a small room at the PAB, the Police Administration Building, numerous times during 1983. You are aware that she testified to that, aren't you?

A. Yes, I'm aware.

Q. And that's true, isn't it?

A. No, it ain't.

Q. She was not allowed to be alone with you in a little room?

A. No, no.

Q. And how many times did she come down, Mr. Atwell?

A. I think around four times, when he was interviewing me.

Q. I'm talking about from June 1983 through November 1983 you're saying four times?

A. Well, four or five times.

Q. And where did you see her, Mr. Atwell?

A. Pardon me?

Q. Where would you see her?

A. Oh, she be bringing my little children down and I would see her before I get to take the interview, they take the interview.

Q. Before who would take the interview?

A. Gerrard.

Q. How many times did they interview you?

A. I have no recollection of that.

Q. Did they interview you each time they came down there?

A. Pardon me?

Q. Did they interview you each time you came down there?

A. Yes, and they gave me a polygraph test.

Q. And did they write down stuff each time you came down there to be interviewed?

A. Yes.

Q. And did they have you look over what you said to them each time you came down there to be interviewed?

A. Yes.

Q. And you signed it each time you came down there to be interviewed, you signed what you read, didn't you, what you told them and what you read you signed it to show that it was true, didn't you?

A. Yes.

Q. That was each time you were brought down there, correct?

A. No.

Q. How many of these statements did you give?

A. (Pause.)

Quite a few of them.

Q. And the times -- now you say you were not interviewed each time you came down or you were interviewed each time?

A. Yes.

Q. You were interviewed each time you came down?

A. Yes.

Q. And how long would you be down at the Roundhouse these times that you were brought down there? Was it five minutes, was it an hour, was it four hours, was it a whole day like 12 hours, how long were you down there?

A. Maybe an hour and a half, I think.

Q. Never more than an hour and a half?

A. No.

Q. Part of the time that you were down there for that hour and a half you would be interviewed by the detective, wouldn't you; you would be talking to them, right?

A. Yes.

Q. Sometimes it was less than a hour and a half?

A. No.

Q. It was always just an hour and a half?

A. No. Sometimes it was -- I can't recall. I can't recall.

Q. Was it ever four hours that you were down there?

MR. DIVINY: Judge,

I'm going to object.

THE WITNESS: No.

MR. NEWMAN: Well, he's helping me clarify it.

BY MR. NEWMAN:

Q. You were never down there two hours, were you?

MR. DIVINY: Asked and answered, Judge.

THE COURT: No, he's right, if he doesn't recall how many he can say was it one, was it two, was it three, was it four.

Go ahead.

MR. DIVINY: I thought he already asked him if it was more than one and a half, he said no.

THE COURT: He said was it four, he said no. Now, we're up to one and a half.

BY MR. NEWMAN:

Q. Were you ever down there two hours or was that too much?

A. What are you trying to get at though?

Q. You answered my question.

MR. DIVINY: Judge,
I'd ask if Counsel want to direct
the witness, I'd ask he do it
through the Court, Judge.

THE COURT: Okay.

Sir, what are you
trying to find out, to the best
of your recollection is, those
times you were at the PAB --

THE WITNESS: Yes.

THE COURT: --

can you recall?

THE WITNESS: No.

THE COURT: How

long were you there?

THE WITNESS: No,

no, no.

BY MR. NEWMAN:

Q. Now, part of the time you were down there, Mr.
Atwell, you were talking to the police, right, each
time you were down there, right, because you gave
a statement each time?

MR. DIVINY: Judge,

that's objected to.

THE COURT: Yes, that's what he said. I wrote, "I was down there, I took a statement each time to be interviewed."

BY MR. NEWMAN:

Q. So how long would be the most you'd see Maxie for, half an hour, 20 minutes, 15 minutes, how long would you see Maxie?

A. I would see her out in this large space with all the homicide detectives around.

Do you understand my question, Mr. Atwell? How long would you see her, how long would they let you talk to her, ten minutes, 15 minutes, what was it?

A. I don't remember.

Q. Would they let you talk to her for four hours?

MR. DIVINY: Objection,
Your Honor.

THE COURT: Let me ask you something, sir?

What we are trying to determine is that of those times

that you were at the PAB, part of the time you spent talking to the detective and some part of the time you spent talking to Maxie, is that the way it was?

THE WITNESS: Yes.

THE COURT: Can you separate the time, the amount of time that you talked to the detective and the amount of time you talked to Maxie?

THE WITNESS: I was talking to my son, too.

THE COURT: Okay.

THE WITNESS: She would bring my son down and I was talking to him.

THE COURT: Okay.

Did you talk to the detective before or after you spoke to Maxie?

THE WITNESS: Well, I don't recall.

THE COURT: Well, let me ask you this: Each time you went down to the PAB, did you speak to the detectives and Maxie or one or the other?

THE WITNESS: I spoke to Maxie and then I spoke to the detective.

THE COURT: Each time?

THE WITNESS: No, no.

THE COURT: Not each time?

THE WITNESS: No, no. Sometimes Mr. Gerrard or Gilbert would go and get her and my son.

THE COURT: When you say go and get her, what do you mean?

THE WITNESS: You know

THE COURT: Do you mean go out to another room?

THE WITNESS: No, no,

no, go and get her at the house.

THE COURT: Go to the house and get her and bring her down?

THE WITNESS: Okay.

THE COURT: Okay.

So sometimes they would go to the house and get them and bring them down?

THE WITNESS: Yes.

THE COURT: And when they would bring them down where would you see them?

THE WITNESS: In a wide open space, you know, on the bench.

THE COURT: About how big was this space?

THE WITNESS: It was

--

THE COURT: Using different spaces in this room, can you use this room to point to

different spaces?

MR. DIVINY: Judge,

I just ask to be specific.

BY MR. NEWMAN:

Q. What space, we are talking about just the bench or side of the room?

THE COURT: He said wide open room.

THE WITNESS: No, I said wide open space.

THE COURT: Wide open space, okay.

THE WITNESS: Okay, and I would sit on the bench.

THE COURT: And how big was this space?

THE WITNESS: Around this long (indicating).

THE COURT: From the closet door?

THE WITNESS: Yes.

THE COURT: To right here?

THE WITNESS: Yes.

THE COURT: Okay, so
that's about eleven feet?

MR. DIVINY: Yes.

THE COURT: About
eleven feet, so it was this wide
and how big was it going the other
way?

THE WITNESS: It was
as you were coming in, as you be
coming in down the Homicide, you
know, it wasn't no room, it wasn't
no room, God bear me witness it
wasn't no room.

THE COURT: Okay, it
was just an open space you say?

THE WITNESS: Yes.

MR. NEWMAN: May I,
Your Honor?

THE COURT: Yes.

MR. NEWMAN: Thank
you.

BY MR. NEWMAN:

Q. Mr. Atwell, so what you are saying, I'm real familiar with the setup there --

MR. DIVINY: Objection to Counsel's familiarity. For the record I move to strike that.

THE COURT: Strike that.

Go on with your next question.

BY MR. NEWMAN:

Q. Mr. Atwell, you're describing the squad room on the second floor of the PAB in Homicide, aren't you, that big wide open room with all the desks for all the detectives, is that what you are describing?

A. No.

Q. Is that where you met with her?

A. No.

Q. Would you meet with her in the place right when you walk in first into the double doors where there are the two benches there, is that what you are talking about? Kind of like the anteroom, the open room, is that where you met with her?

A. It was no room.

Q. Yes, I know what it was, you're talking about there's a bench on one side, bench on the other side

as you walk in and then it branches out on two sides to where the desks are. Is that the area you would be meeting with her in right by the front door of Homicide; is that what you are saying?

THE COURT: Did you understand what he just said?

THE WITNESS: No, I don't.

THE COURT: Say it again, Counselor.

BY MR. NEWMAN:

Q. Mr. Atwell, are you saying you met with her right at the front area right inside of Homicide when you first come in the double doors in Homicide; is that what you are now saying today? Is that what you are saying?

A. Describe it.

Q. I just did.

THE COURT: Describe it again.

BY MR. NEWMAN:

Q. You come in the double doors, there's some low partitions about three, four feet high, there are two benches there, there's an office straight ahead

and then there's corridors go each way but there's no division, there's no partitions. There's a bunch of desks to the left. Do you remember that, you've been down there a lot of times, do you remember that setup?

A. It's confusing the way he's describing it.

THE COURT: Okay, why don't you try to describe again the room. We tried to get the size of the room but you said it's just a big, open room?

THE WITNESS: Yes.

THE COURT: Was the room as big as this Courtroom?

THE WITNESS: No.

THE COURT: Not this big?

THE WITNESS: No.

THE COURT: Was it half the size of this Courtroom?

THE WITNESS: Yes.

THE COURT: Was it square like this Courtroom, was it

a square room?

THE WITNESS: No.

THE COURT: How did
the room look to you?

THE WITNESS: As you
first come in, as you first come
in there was two benches.

THE COURT: Okay, go
on.

THE WITNESS: And me
and my children would sit, my child
would sit on the bench and Maxie
would sit on the bench.

THE COURT: What else
was -- was there anything else in
the room besides the benches?

THE WITNESS: Out
there.

THE COURT: This open
room where you are sitting on
benches, was there anything else
in the room?

THE WITNESS: It was

a desk.

THE COURT: One desk
or more than one desk?

THE WITNESS: No,
desks.

THE COURT: More than
one desk?

THE WITNESS: Yes.

THE COURT: Were people
sitting at those desks while you
were there?

THE WITNESS: Yes.

THE COURT: There were
people sitting at the desks?

THE WITNESS: Yes.

THE COURT: Do you
remember how many desks there were;
were there two, three, four, five?

THE WITNESS: No, I
can't remember.

THE COURT: You can't
remember that?

THE WITNESS: I know

it was a whole lot of desks.

THE COURT: Okay, you
have some questions?

MR. NEWMAN: I'm sorry?

THE COURT: You may
proceed.

MR. NEWMAN: Thank you,
Your Honor.

BY MR. NEWMAN:

Q. So you're saying all your meetings with Maxie
with Maxie Harris took place out in this big, open
area with all these desks?

A. Yes.

Q. That's what you're saying today?

A. Yes.

Q. You never met with her in a little room?

A. No.

Q. You never went into one of those rooms where
they just have a metal desk and metal chair?

A. No, I don't.

Q. And if she ever testified that you went into
that room alone and you spent a lot of time in there,
she'd be lying?

A. Yes.

Q. And if she testified that you went in there and that you had sex with her on a number of occasions, three, four, perhaps five occasions, she's lying?

A. Yes.

Q. And you have no idea how much time you'd spent with her?

MR. DIVINY: I'm going to object, it's covered, Your Honor, as to that.

MR. NEWMAN: I don't think so.

THE COURT: Rephrase your question, sir.

BY MR. NEWMAN:

Q. You didn't spend four hours with her, did you?

A. No.

Q. You didn't spend three hours with her, did you?

A. No.

Q. You didn't spend two hours with her, did you?

A. No.

Q. Did you spend an hour with her?

A. Well, she would -- I can't remember.

THE COURT: You can't

remember.

BY MR. NEWMAN:

Q. Were you handcuffed when she was talking to you?

A. Yes.

Q. So you'd sit there and you'd just talk to her handcuffed to these benches?

A. Yes.

Q. And would Detective Gerrard sit there with you?

A. Yes.

Q. And Detective Gilbert would sit there with you too?

A. He would let her know what's going on.

Q. I mean, after he let him know what was going on, would they sit there with you while you were talking with her?

A. Yes.

Q. The whole time?

A. Yes.

THE COURT: Let me clarify that.

When you were sitting talking with Maxie, a detective was there the whole time?

THE WITNESS: No, not the whole time.

THE COURT: Part of the time?

THE WITNESS: Yes.

BY MR. NEWMAN:

Q. So some of the time it would just be you and her, right, sitting there?

A. No, it was me and her and my child.

Q. And it was always your child, your child always came with her to the Roundhouse?

A. Yes. His name is Little Charles and I gave him my name, you know.

Q. And you are saying they let her bring your child, how old is your child?

A. He's 14 now.

Q. So he was a baby back then, right?

A. Yes.

Q. You're saying that they let her bring this baby up to Homicide to see you?

A. Yes.

Q. Now, did she ever come with anyone else besides the baby?

A. I don't remember. No, I don't think so.

Q. Did your nephew ever come to visit you while you were down at the Roundhouse?

A. Definitely, no.

Q. So you never saw him when you were down there; is that correct?

A. Pardon me?

Q. You never saw him when you were down there?

A. No.

What nephew?

MR. NEWMAN: Would Your Honor indulge us a moment?

THE COURT: Yes.

(BRIEF PAUSE.)

BY MR. NEWMAN:

Q. Your nephew, I'm speaking just to make it real clear, Mr. Atwell, I'm talking about Douglas Atwell?

A. Oh no.

Q. He never came down to see you?

A. No.

Q. And he never came with Maxie Harris to see you?

A. He's lying for them.

Q. And he certainly never came down to see you on June 28 of 1983?

A. He's lying for them.

Q. Pardon?

A. He's lying for them.

Q. So he never came down to see you on June 28th of 1983, did he, or do you want to change that?

A. No, I can't remember. I can't remember.

Q. Oh, he might have come down to see you, right?

MR. DIVINY: Judge,

I object to the tone of Counsel.

MR. NEWMAN: I don't

think the tone shows up on the record, Judge.

MR. DIVINY: It's the reason why it's objectionable, even if it shows up on the record or not, Judge, it's inappropriate.

MR. NEWMAN: Judge,

we are not in front of a jury.

I don't think the issue of my tone

of voice is important unless I'm shouting.

THE COURT: Just ask the question.

BY MR. NEWMAN:

Q. Did you see your nephew Douglas Atwell on June 28th, 1983? Do you want to change that answer now?

MR. DIVINY: Objection, asked and answered. He said he doesn't recall.

MR. NEWMAN: I didn't hear him, I thought he started to change his answer.

Okay, sir, what was your answer?

THE WITNESS: I don't recall.

THE COURT: That's his answer.

BY MR. NEWMAN:

Q. So your answer is you don't recall if Douglas -- before you were certain you never saw him and he was lying for them, but now you're not certain if

he came down on June 28th of 1983; is that correct?

A. (No response.)

THE COURT: What's
your answer?

THE WITNESS: I don't
recall.

THE COURT: That's his
answer.

MR. NEWMAN: If Your
Honor would indulge me just one
minute.

(BRIEF PAUSE.)

MR. NEWMAN: If I may,
I have no further questions at this
time.

THE COURT: Mr. Gelb?

CROSS-EXAMINATION

BY MR. GELB:

Q. Mr. Atwell, your testimony on direct examination
when Mr. Diviny was asking you some questions, was
that you did not have sex with Maxie Harris at the

Roundhouse; is that correct?

A. Yes.

Q. Do you stand by that testimony now, sir?

A. Yes.

Q. And am I also correct, sir, that you are testifying here today under oath, that you were never alone with Maxie Harris at the Roundhouse while you were in custody, at any time in 1983?

MR. DIVINY: That's objected to, Your Honor.

I don't believe that's consistent with his prior testimony.

THE COURT: Yes, it is.

MR. GELB: Thank you.

THE COURT: He said he was never alone.

MR. DIVINY: He said part of the time.

THE COURT: No, he said the child was always there, his testimony was that the child

was always there with Maxie Harris,
so he couldn't have been alone.

MR. NEWMAN: And
further --

THE COURT: Just let
me -- okay, what was your question?

MR. GELB: I just
wanted to be -- let me rephrase the
whole thing, if I may.

BY MR. GELB:

Q. If I understand your testimony correctly, it's
your testimony here today that you were never alone
with Maxie Harris in 1983 while you were in custody
at the Roundhouse; is that correct?

A. Yes.

Q. And the times that you were with Maxie Harris
at the Roundhouse, you were always in a large room
in the presence of other persons including Homicide
detectives; isn't that correct?

A. Yes.

Q. And your testimony is, correct me if I'm wrong,
each time you saw Maxie Harris at the Roundhouse
in 1983, she was accompanied by your child, Charles,

Jr., correct?

A. Yes.

Q. So there were no times when she came down by herself or someone other than Charles, Jr. to see you; is that correct?

A. Yes.

Q. Now, you testified on direct examination that at the time, going back again to 1983, that Maxie was your girlfriend, I think those were your words, is that correct, sir?

A. Yes.

Q. She was your girlfriend, right?

A. Yes.

Q. She was also the mother of your child?

A. Yes.

Q. Isn't that correct?

A. Yes.

Q. And again, correct me if I'm wrong, but did she not bear another of your children after 1983?

A. (No response).

Q. Do you understand my question, sir?

THE COURT: Mr. Atwell,
did you understand his question?

THE WITNESS: No.

THE COURT: Did you
have another child with Maxie after
1983?

THE WITNESS: Yes.

THE COURT: Okay,
what's your next question?

BY MR. GELB:

Q. And so, this woman Maxie Harris was not some
girlfriend that you went out with just for a couple
of months, she was somebody who was an important part
of your life in 1983; isn't that right, sir?

A. I was going with her and Darlene.

THE COURT: Darlene's
another woman?

THE WITNESS: Yes.

THE COURT: So you were
going with two women in 1983?

THE WITNESS: Yes.

BY MR. GELB:

Q. Now, you said, I believe in response to Mr.
Newman's questions, that you were aware that Maxie
Harris testified that she saw you alone on

approximately eight occasions in the Roundhouse
in 1983 --

A. I --

Q. Just wait until I finish my question, okay, if
I may.

Here's my question: Are you aware of the fact
that Maxie Harris testified in these proceedings
that she saw you alone on approximately eight
occasions at the Roundhouse in 1983?

A. That's a lie.

THE COURT: The ques-
tion was are you aware that that
was her testimony?

THE WITNESS: It is
now.

THE COURT: You're now
aware?

THE WITNESS: Yes.

BY MR. GELB:

Q. When did you first become aware, sir, is my
question?

A. When you told me.

Q. And you said that's a lie, she was never alone

with you in the Roundhouse in a small room, correct?

A. Yes.

Q. And you were not on parole at the time that you gave police information with respect to this homicide investigation; is that correct?

MR. DIVINY: Objection,
asked and answered.

THE COURT: Sustained.

BY MR. GELB:

Q. When you would come down to the Roundhouse in 1983, were you then incarcerated at Holmesburg Prison?

A. Yes.

Q. How would you be transported from Holmesburg Prison to the Roundhouse?

A. I think the Homicide detective used to come and get me.

Q. And would that be Detective Gerrard or Detective Gilbert?

A. Yes.

Q. When you came down to the Roundhouse, did you always speak with either Detective Gerrard or Detective Gilbert?

A. Yes, and they gave me a polygraph test.

Q. Okay, you may have given the answer to this, I'm sorry, I don't recall, but what is your best estimate of the number of times that you were transported from Holmesburg to the Roundhouse in 1983?

MR. DIVINY: Objection,
Your Honor, it was asked and answered
four to five times.

THE COURT: He said four
to five times.

BY MR. GELB:

Q. How were you returned to Holmesburg after you left the Police Administration Building?

MR. DIVINY: I object
on relevance grounds, Your Honor.

THE COURT: Overruled.

Go on.

How did you get back?

THE WITNESS: Around
that time Gilbert and Gerrard took
me back.

MR. GELB: I'm sorry?

THE COURT: He said
Gerrard took him back.

BY MR. GELB:

Q. Gerrard took you back in the car, correct?

A. Yes, handcuffed.

THE COURT: Sir, let me ask you a question.

Did they come for you in a car or a van?

THE WITNESS: A car.

THE COURT: Was it one of those standard police vehicles with the gate between the front and the back seat?

THE WITNESS: I don't recall.

THE COURT: You don't recall.

Mr. Gelb, you have any other questions?

MR. GELB: Just one other question.

BY MR. GELB:

Q. You said in your testimony that there were occasions when you would be in this large room that

you described and you would be sitting there and Detective Gerrard would be there and your child would be there and Maxie would be there, and that Detective Gerrard would let her know what's going on.

Did Detective Gerrard discuss with Maxie the details of what you were telling the police officers?

A. No. He was stating I'm not in no trouble, you know, I'm just helping, you know, him.

Q. So Detective Gerrard would say you were there providing information to him, he would explain that to her, right?

A. No, that I witnessed a homicide.

Q. Detective Gerrard explained to Maxie you witnessed a homicide?

A. Yes.

Q. Did he do that on each occasion that she came down to see you?

A. He didn't have to because she knew already.

Q. And in 1983 on the occasions that you came down to the Roundhouse, it was this homicide that you were giving them information about; isn't that

right?

A. Yes.

Q. The homicide, the shooting of Fred Rainey,
right?

A. Yes.

MR. GELB: Thank you.

Nothing further

THE COURT: Mr. Strutin?

MR. STRUTIN: Just

briefly.

- - - - -
CROSS-EXAMINATION
- - - - -

BY MR. STRUTIN:

Q. Mr. Atwell, since your testimony at trial in
1984, did Mr. Howard White ever contact you?

A. I don't recall.

Q. Do you have a specific recollection about Andre
Harvey?

A. What year was that?

Q. Since your testimony at trial in this case, do
you recollect whether Howard White ever contacted you?

A. No, no.

Q. Did you ever tell, inform the prison officials on your visitor, authorized visitor card that Maxie Harris was actually your wife?

A. I don't recall.

Q. You don't recall?

A. No.

MR. STRUTIN: Judge, if I may request that this be marked as an exhibit. This is an authorization visitor sign-in card from the Philadelphia Prison System, which, of course, has not been authenticated but will be, I believe, along with the other prison documents that we offered yesterday.

THE COURT: He's going to use it for impeachment, so I'll let it in. We can mark it White-P-1.

- - - - -

(WHEREUPON, AUTHORIZED VISITOR SIGN-IN CARD WAS MARKED

MR. STRUTIN: Can we have a stipulation that it has wife on there?

MR. DIVINY: Yes, I'll stipulate to what the record states.

MR. STRUTIN: It also indicates that Darlene Parker is designated as girlfriend and that Maxie Harris is designated as wife, gives the same address as the Newkirk Street address.

THE WITNESS: Excuse me, Your Honor.

MR. DIVINY: Judge, I'll stipulate to the contents of the record, whatever it says, for the purpose of this hearing.

THE COURT: Sir, you don't have to look at the paper now.

THE WITNESS: If it do say that there, but I'm legally

married.

THE COURT: At that time you were legally married?

THE WITNESS: Yes.

THE COURT: To somebody, a third woman?

THE WITNESS: Joanne Atwell. So if it do say that it was just saying, you know, 'cause

--

THE COURT: Because she had two children with you?

THE WITNESS: Yes.

THE COURT: Get the paper back and give it to Mr. Strutin.

Let me ask you this, Mr. Atwell. How long had you been married to Joanne Atwell before you --

THE WITNESS: Around

--

THE COURT: --Became,

I guess, involved with Maxie Harris?

THE WITNESS: Well,
I came home in '80 and I married,
and I met Joanne -- I mean, Maxie,
in '81.

THE COURT: When were
you married to Joanne?

THE WITNESS: Oh,
1973.

THE COURT: You just
never got a divorce?

THE WITNESS: No; we
were separated.

THE COURT: Anything
else, Mr. Strutín?

MR. STRUTIN: There's
just a few more questions.

THE COURT: Go ahead.

BY MR. STRUTIN:

Q. Mr. Atwell, do you know an individual by the
name of Jerry Fields?

A. He's deceased.

Q. Okay, in 1983, what, if any, relationship did

you have with Mr. Fields?

MR. DIVINY: I'm going to object and ask for an offer of proof; beyond the scope.

THE COURT: Yes, can you give us an offer of proof as where this question is going with regards to Mr. Field?

MR. STRUTIN: If we could see you at sidebar.

THE COURT: Yes.
Over here.

(WHEREUPON, THERE WAS
AN OFF THE RECORD DISCUSSION.)

- - - - -

(BACK ON THE RECORD.)

BY MR. STRUTIN:

Q. Mr. Atwell, in 1983 did you know Jerry Fields?

A. Yes.

Q. How would you characterize your relationship with Mr. Fields?

A. He was what you would say to be by corner boy.

Q. Your corner boy?

A. Yes.

Q. Just for the record, what does that mean?

A. A gang member.

Q. Okay, did Mr. Fields ever visit you at the Police Administration Building while you were there?

MR. DIVINY: Judge,
I'm going to object to that characterization. My understanding from the proffer is not that it was visits from one, they were all brought together.

THE COURT: No, overruled.

The question was, did Mr. Fields ever come to visit you while you were at the Roundhouse?

THE WITNESS: No.

MR. STRUTIN: I have nothing further.

THE COURT: Any redirect?

MR. DIVINY: No.

THE COURT: Let me

able to finish.

THE COURT: I'm just asking because we need to do that. So we only have one witness or two witnesses?

MR. DIVINY: At this time we would just go with the one witness. We will call Detective Lawrence Gerrard. I should say former Detective Lawrence Gerrard.

- - - - -
AGENT LAWRENCE GERRARD,
having first been duly sworn, was
examined and testified as follows:

- - - - -
THE COURT: You may
proceed.

- - - - -
DIRECT EXAMINATION
- - - - -

BY MS. GODFREY:

Q. Good afternoon, Detective Gerrard.

A. Good afternoon.

Q. Detective, where are you currently employed?

A. I'm Special Agent in charge of criminal investigators for Pennsylvania Attorney General's Office.

Q. And sir, when did you retire from the Philadelphia Police Department?

A. I retired in March of 1988.

Q. And prior to that how long were you employed by the Philadelphia Police Department?

A. Approximately, 25 years.

Q. How many years were you a detective, sir?

A. About 16 or 17 years.

Q. And for how many years were you a detective in the Homicide Division?

A. Fourteen years.

Q. Okay.

Detective, did you work as a detective in the trial against the three defendants sitting here today?

A. Yes.

Q. And what was your role in that case or how did you get involved?

A. I was part of the Special Investigations' Unit

and we worked on unsolved murders, and as a result we received information about the murder of Fred Rainey, and myself and my partner Detective Gilbert and I believe Detective Kane, at that time obtained warrants for them three defendants, for the three defendants.

Q. Now, sir, I know we're talking about 1983 here when you were investigating the Fred Rainey homicide, do you remember specific details of the case and of your investigation, sir?

A. No.

Q. Is there anything that would refresh your recollection?

A. I reviewed my Notes of Testimony from 1986.

Q. Did you also review the homicide binder?

A. I looked at some of the interviews, sir.

Q. If I gave you the homicide binder now, would that help refresh your recollection about specific details?

A. It could a little bit, I guess.

MS. GODFREY: May I,
Your Honor?

THE COURT: Yes.

(WHEREUPON, HOMICIDE

BINDER GIVEN TO DETECTIVE GERRARD.)

BY MS. GODFREY:

Q. Detective, do you remember the identity of the first person that gave you a statement implicating these three defendants in the murder of Fred Rainey?

A. No, I don't.

Q. Would reviewing the binder help you to do that?

A. Sure, yes.

Q. Okay.

Specifically, I would like you to review the statement of one Edward Williams.

MR. NEWMAN: Your Honor, I'm going to object at this time, only because we are focusing again on one particular issue, and I don't think we need to revisit the entire case, so I would object for that reason. It's way beyond the scope.

THE COURT: I'm sure you're doing this for a limited reason, getting him to focus on this case.

MS. GODFREY: That's correct. That's the only question I would ask in that regard, just for background, Your Honor.

THE COURT: Okay, overruled.

BY MS. GODFREY:

Q. Sir, when did Mr. Williams give you this statement?

A. January 26th, 1983.

Q. When did Charles Atwell come forward and give his statement in this case, sir?

A. June 1983, I believe.

Q. And how many statements did Mr. Atwell give?

A. There's another one June 13, 1983.

Q. By the way, Detective --

A. And he was interviewed numerous times as to threats prior to trial and up to and including the trial.

Q. And did you take notes when you interviewed him during that time?

A. I guess I did, I don't remember.

Q. But you didn't take a formal statement?

A. No.

Q. You testified at the trial, did you not?

A. Yes.

Q. And you also testified on post verdict motions' hearings in this case held in 1986?

A. Yes.

Q. Do you recall Charles Atwell's girlfriend Maxie Harris?

A. I remember, I thought it was his wife; the woman had two children, I believe they were Atwell's children.

Q. And did she come down to visit Mr. Atwell at the PAB during the times that he was brought down?

A. She was down there several times with the kids, when, I couldn't exactly tell you.

Q. Was she always down there coming to visit Charles Atwell?

A. It's 14 years, I mean, she was down to see him but she was also down there all the time. Supposedly, she was shot at, she was being threatened that if Atwell testified she was going to be killed and the kids were going to be killed as best as I can remember.

Q. Detective, did you ever pick up Ms. Harris and bring her down to the PAB?

A. No.

Q. And did you ever pick up Charles Atwell from Holmesburg and bring him to the PAB or anywhere else for that matter?

A. Yes. In situations like this and similar, we couldn't let the sheriffs transport him on the bus with the people he was going to testify against or put him in a cell block upstairs, because they probably would have killed him. So we did transport him, yes.

Q. On any of the occasions when was Mr. Atwell was brought into the PAB to talk about this case, was he permitted to have sexual relations with Maxie Lee Harris?

A. No.

Q. Was he ever left alone in the room with Maxie Harris?

A. No.

Q. I mean alone, sitting in a room with her alone?

A. Yes, but alone within the Homicide, I don't understand what you mean.

Q. Well, when Maxie Lee Harris and Charles would meet, where would they meet, is it always the same place?

A. It would be in the Homicide Unit, yes.

Q. Would they ever be in the interview room inside, within Homicide?

A. It's possible. I don't really remember. I mean, either they were sitting out in the main room at a desk or in an interview room, yes.

Q. If they were in the interview room, would they have been allowed in there alone with the door closed?

A. No. He would have been cuffed to the chair and the door would have been open.

Q. During all of their meetings were you present?

A. Yes.

Q. And where exactly?

A. Well, I'm saying yes, I'm not, I'm sure I probably was, absolutely was I there every time she was down, I don't know.

Q. Detective, did you ever procure drugs for Charles Atwell at any time?

A. No.

Q. Did you ever call Maxie Lee Harris on the phone to tell her to come to the PAB to meet with Charles Atwell?

A. No.

Q. Okay, sir, do you recall a time when Charles Atwell's nephew Douglas Atwell, came to visit Charles at the PAB?

A. No.

Q. Do you recall a time when a Douglas Atwell, that would have been a 16-year old boy at the time, handed you some kind of package wrapped in aluminum foil, to give to Charles Atwell?

A. That never happened.

Q. Did you ever have any discussions at all with Charles Atwell regarding sexual favors or drugs?

A. No.

Q. Does the name Anthony or Kenneth Singleton ring a bell with you, Detective?

A. Yes. I locked him up for murder.

Q. And around the time you worked on this case, did you have dealings with Mr. Singleton also?

A. Time frame, I don't know. There was a whole group from the neighborhood up there who were all

telling on each other about the murders. There was about, I don't know, maybe eight or ten unsolved murders that we cleared at that time.

Q. Singleton was one of that group giving you information?

A. Yes.

Q. Sir, did you ever make an offer to Mr. Singleton regarding any sexual favors?

A. No.

Q. Was Mr. Singleton ever left alone in an interview room with a woman?

A. No.

In fact, I saw my Notes of Testimony from '86, Singleton's wife brought a pair of sneakers down to him and was in the room giving him sneakers with us standing there watching and left.

Q. Okay, sir, is the name Jerry Fields at all familiar to you?

A. Yeah. He -- I'm not sure whether we arrested him, but he gave us information on some murders. In fact, I believe he came down with Atwell, we brought him down from Holmesburg to Homicide once or twice with Atwell.

Q. Sir, in your dealings with Charles Atwell, did Mr. Atwell relate to you at any time why he was willing to come forward to you with information?

A. Atwell was a friend of Fred Rainey. I knew that to be true because I had worked at 17th and Montgomery as a detective and this same crew they were trying to kill Atwell; I think he's been shot about eleven different times since this trial.

MS. GODFREY: Thank
you, Detective.

Nothing further,
Your Honor.

MR. NEWMAN: Would
Your Honor indulge us?

THE COURT: Yes.

(SHORT PAUSE.)

- - - - -

CROSS-EXAMINATION

- - - - -

BY MR. NEWMAN:

Q. Mr. Gerrard, good afternoon.

A. Good afternoon.

Q. Now, it's true that recently you've reviewed --

have you gone through that binder?

A. No, not the binder, I only got here 12:30, 1 o'clock.

Q. And have you recently reviewed the Notes of Testimony of your testimony?

A. Testimony from 1986 is what I reviewed today.

Q. You read that what, today?

A. Yes.

Q. And prior to today you didn't look at anything, you had no recollection of this case, correct?

A. I haven't thought of this case since 1986.

Q. You had no recollection, is that true?

A. No. That's correct.

Q. And did you testify regarding Mr. Fields in 1986?

A. I have no idea.

Q. So you have no recollection of this case but you remember Mr. Field?

A. Yes.

Q. Now, how many times -- do you have any idea how many times Maxie Harris came to visit Charles Atwell at the Police Administration Building, while he was in police custody?

A. Maybe six. I don't know.

Q. Could you be more specific?

A. I don't think -- if it was, it wouldn't be many more. I know there was a couple of times she was threatened and she comes down, there was a couple of times she brought the kids down.

Q. How many interviews did you take from her regarding threats, just one interview?

A. I don't remember.

Q. You said something about her, somebody shot at her?

A. Shot at the house.

Q. Did you get it from her interview, from the 12-20-84 interview, is that what you looked at?

A. I don't know. I haven't seen that interview since 12-20-84.

MR. NEWMAN: May I,
Your Honor, may I approach?

THE COURT: Yes.

MS. GODFREY: May I
see that, please?

MR. NEWMAN: Yes.

(WHEREUPON, DOCUMENT

SHOWN TO THE ASSISTANT DISTRICT
ATTORNEY.)

BY MR. NEWMAN:

Q. Did you do an interview of her regarding someone shooting at the house?

A. I don't know whether I did or not, or I might have had notes with names on it, I have no idea.

Q. I ask you to look at what purports to be a copy of C-1, that was done by Detective Lagera?

A. No.

Q. Okay, you're not relying on that interview?

A. I never saw this interview, I don't ever remember seeing this interview.

Q. Okay, thank you.

Now, when she went, Maxie Harris would come down to the Roundhouse to see him, she'd go up onto the second floor of the Police Administration Building to the Homicide Unit?

A. Yes.

Q. And she was, of course, not a prisoner, was she?

A. No.

Q. She was a civilian, correct?

A. That's correct.

Q. And you knew that letting her see him up in Homicide was against Department policy, didn't you?

MR. DIVINY: Objection,
Your Honor.

MR. NEWMAN: I think
that's relevant.

MR. DIVINY: Its been no
claim regarding policy in this case.
The claim is, not only they saw each
other, but there was specific activity
which induced testimony.

MR. NEWMAN: If it's
against policy, that's relevant.

THE COURT: Okay,
I'll allow some questions on
this.

MR. NEWMAN: Thank
you, Your Honor.

BY MR. NEWMAN:

Q. You knew it was against policy, didn't you?

A. No, I didn't.

Q. You know that the Police Department has a
policy that the police manual says, "Adult prisoners

are not permitted any visitors at any time except their attorneys while in police facilities." You're aware that manual says that?

MR. DIVINY: That seems to be phrased with regard to defendants. Counsel's drawing a legal conclusion.

MR. NEWMAN: He was an adult prisoner handcuffed.

THE COURT: Okay, I'll let the question come in.

BY MR. NEWMAN:

Q. You are aware that the police manual says, "Adult prisoners are not permitted any visitors at any time except their attorney while in police facilities."

You're aware of that?

A. No, I wasn't.

Q. Did you read the article that was published March 2nd of 1990 --

MS. GODFREY: Objection,
Your Honor.

MR. NEWMAN: May I

finish the question, please?

MS. GODFREY: I object to any question regarding newspaper articles.

THE COURT: Are you referring to newspaper articles?

MR. NEWMAN: Yes.

THE COURT: Objection sustained.

MR. NEWMAN: Whether he had knowledge of it.

BY MR. NEWMAN:

Q. If I may ask this subject to the possible objection of the District Attorney here, are you aware that the Police Department's spokesman, Sergeant Terry Young, was quoted as --

MR. DIVINY: Objection, clearly hearsay --

MR. NEWMAN: May I finish the question?

MR. DIVINY: Because it's --

BY MR. NEWMAN:

Q. From a newspaper article, "Statement by Police Officials --

THE COURT: That's strictly hearsay.

MR. NEWMAN: It's also the function of what his response was today, Your Honor.

THE COURT: He said he was not aware of policy, he personally was not aware of policy. That's his answer so the objection is sustained.

BY MR. NEWMAN:

Q. Now, how long -- you said Maxie was permitted to visit with him either in the Squad Room at a desk or in one of the interview rooms; is that correct?

A. As best I can remember, you're talking 13 years ago.

Q. So you are saying it was not at all unusual to have girlfriends come up and visit prisoners while they were in the Homicide Division?

A. No, I didn't word it that way.

Q. It was not unheard of?

A. It was not unheard of for mothers to be there when defendants gave statements; it was not unheard of for people to be in the Homicide Unit.

Q. Well, he was over 18 and he wasn't giving a statement against his interest, isn't that correct?

MR. DIVINY: I'm going
to object.

THE COURT: Sustained.

He's not a lawyer.

BY MR. NEWMAN:

Q. Now, when she would visit with him you would leave them alone, you would leave the two of them alone to talk?

A. Within a reasonable distance, yes.

Q. And how long would you let them visit together?

A. I have no idea.

Q. Would it be 20 minutes, would it be six hours?

A. I don't know. I mean, she was there to straighten out her being threatened. We were talking to her, we were getting names from what had happened. I just don't know.

Q. Could you look through that binder and show me

some other statements that were made by Maxie Lee Harris, other than this interview by Bob Lagera, which in this case said she was threatened?

A. I don't know if they're statements in the Homicide binder from Maxie Lee Harris.

(Pause.)

No, she didn't see the murder, Charles Atwell did, so the statement wouldn't be in there.

Q. No, Mr. Gerrard, we are talking about the alleged threats that you claim were made against Maxie that she says you claim she says were made against her. Is there any documentation of those alleged statements?

MS. GODFREY: That's objected to. He's explained why it wouldn't be in there, what the binder represents.

BY MR. NEWMAN:

Q. Where would they be?

THE COURT: This is the Homicide binder for Fred Rainey?

THE WITNESS: For the murder of Fred Rainey.

THE COURT: Objection

is sustained.

BY MR. NEWMAN:

Q. There were never any arrests made as a result of any of alleged threats against Maxie Lee Harris; isn't that correct?

A. Not by me. I don't know for sure if it was.

Q. This was your case, wasn't it?

A. No.

Q. It was your Squad's case, wasn't it?

A. The initial assigned detective was Robert Harmon.

Q. Now, you're aware the allegation in this case is that -- and you're aware that Maxie Lee Harris has testified that she came down to visit Charles Atwell on eight occasions, and that on four or five of those occasions she was permitted by you and by then Detective Gilbert to have sex with Mr. Atwell in the interview rooms with the doors closed. You're aware of that claim, aren't you?

A. Since you're telling me.

Q. You weren't aware of it before today?

A. I knew she made allegations to that.

Q. Well, did you ever read any news articles of

which those allegations were made?

A. No.

Q. You didn't read the Daily News articles that was published in December of 1995, the staff writer was Kurt --

MS. GODFREY: Objection,
Your Honor.

MR. NEWMAN: It goes to
his state of mind, Your Honor.

THE COURT: He said he
didn't read newspaper articles, he
answered the question already.

MR. NEWMAN: This has
been marked as an exhibit, hasn't
it?

THE COURT: He said he
knew she made the allegation, but
he said he did not read the news-
paper articles. Maybe you can ask
him where he heard it from.

BY MR. NEWMAN:

Q. Did you hear from anyone that there had been
published reports, for example, that you were involved

in permitting sex for cooperating witnesses at the PAB?

MS. GODFREY: I'm going to object to that question, Judge. It's different than the question Your Honor suggested, in that he's asking whether he heard about newspaper articles, that's not the issue here.

MR. NEWMAN: Goes to state of mind.

BY MR. NEWMAN:

Q. Where did you hear about allegations --

THE COURT: Yes, he said he didn't read the newspapers, but he did say he heard there were allegations made.

BY MR. NEWMAN:

Q. Did anybody tell you that there had been published reports?

A. No, I don't know about published reports, but the District Attorney called me a couple of days ago and told me to come in here about this.

Q. That's the first you heard about this?

MR. DIVINY: Judge,
my understanding, I'm not sure -- see
we are getting into this article,
I'm not sure his name was mentioned.
I don't know anything about this article.

THE COURT: He said
he never read the article period.

MR. DIVINY: There's
implications here, if it was
articles about me, George Newman,
something like that --

MR. NEWMAN: Your
Honor, may I go on?

THE COURT: Yes.

BY MR. NEWMAN:

Q. You were questioned by the reporter, by Mr.
Heine?

MR. DIVINY: Objection,
Your Honor.

MR. NEWMAN: He has
knowledge, Your Honor. He was inter-
viewed.

MR. DIVINY: Bring in

the reporter then, Judge.

THE COURT: He can only testify of his own personal knowledge.

You can ask that question, overruled.

BY MR. NEWMAN:

Q. You were interviewed by the reporter, weren't you, for this December 1995 Daily News' article?

A. A reporter called me, I never read the article, what more you want me to say?

Q. Finish your answer. Are you done?

A. What more you want me to say?

Q. Mr. Heine called you up, didn't he? Do you remember a reporter calling you up?

A. Yes.

Q. And you said today you had no knowledge about any of these allegations until a few days ago?

A. No, I said I didn't read the article.

Q. Well, you had knowledge of the allegations back in December of 1995, didn't you?

A. Specifically -- no, no, I don't know, I believe I did.

Q. Well, you denied the allegations, didn't you?

MR. DIVINY: Judge,

I'm going to object to the use of a newspaper article as impeachment.

MR. NEWMAN: It's a prior statement.

THE COURT: He can't use it for impeachment. He can only use it as far as what he remembers saying to the reporter. He says he remembers getting a phone call, you can ask him what else he remembers about it.

BY MR. NEWMAN:

Q. Remember the reporter asking if --

THE COURT: Wait, wait, who's beeper? Turn the beeper off. I don't want to hear any more beepers in this room. Turn them off or leave.

Okay, go on, sir.

BY MR. NEWMAN:

Q. You remember the reporter asking you back in December of 1993, whether or not the sexual allegations were true and you saying, "Absolutely

not true at all"?

A. I would have said that because they're not true. Do I remember saying that, no.

Q. So you don't remember, now you are saying you don't remember a reporter calling you up in December of 1995 and asking you if you had been involved in providing sex to cooperating informants while they were in custody at the Roundhouse?

MS. GODFREY: Objection.

THE COURT: That's not what he's saying. Listen to his answer, okay. He said that the reporter called up, he remembers the reporter asking the question, but he said I don't remember giving the answer. It sounds like an answer I would have given, but I don't remember giving the answer. That's what he said.

MR. NEWMAN: Let me start over then.

BY MR. NEWMAN:

Q. Detective, former Detective Gerrard, you recall

the reporter calling you?

A. Right.

Q. And you recall the reporter telling you that there were allegations that you had permitted sex down at the Roundhouse for cooperating witnesses?

A. Yes.

Q. You do remember that, it's pretty unusual?

A. I don't remember the call or what all was said, but I remember the guy called me, yes.

Q. And then you denied it. You denied the truth of the allegations and you now remember that, correct?

A. Do I remember? I would have said no, that it was untrue because it didn't happen, but I don't remember the phone call or the conversation.

Q. And your testimony a few minutes ago when I cross-examined you, that you first became aware of these allegations a few days ago is not true; isn't that correct?

MS. GODFREY: Objected
to, Your Honor.

THE WITNESS: No.

THE COURT: Sustained.

You have to remember

what question you asked him at the time.

MR. NEWMAN: I asked him several.

THE COURT: Well, you have to be specific then as to which one you're referring to now.

BY MR. NEWMAN:

Q. My question about whether you had any knowledge -- you were aware of these allegations, you remember responding to me you only became aware of these allegations a few days ago?

THE COURT: That's not the question you asked then.

MR. NEWMAN: I did.

THE COURT: No, the question you asked, was Maxie Harris, you used Maxie Harris' name in the question that you asked previously. So if you are going to go back to the previous question, you have to go back to the exact wording, your exact wording of the question.

BY MR. NEWMAN:

Q. Do you remember how long you talked to Mr. Heine?

A. I don't even know who I talked to. I don't know Mr. Heine.

Q. Do you remember how long you talked to the reporter?

A. No.

Q. Was it a five-minute conversation, an hour long conversation?

A. I have no idea.

Q. Now, do you recall that there was at least one occasion where Maxie Harris was allowed to stay down at the Roundhouse for nearly four hours?

A. Is it possible? Sure.

Q. No, I asked you, do you remember that occasion?

A. No.

Q. Do you remember an occasion when she came down with Charles Atwell's nephew, Douglas, and they stayed for at least an hour and a half?

A. I saw the name, but I don't remember him. I remember her being down there with kids and whether he was one of the kids, I have no idea.

Q. Where did you see the name?

A. From the copies of the logs that were reviewed.

Q. Oh, you reviewed the logs. I see. When did you review the logs?

A. Today. Well, times, dates and times which are consistent with his statement.

Q. And so, you are aware now that Mr. Atwell had eight visits by Maxie Harris, correct, looking at the logs?

MS. GODFREY: I'm going to object to the conclusion from the logs. While those logs may show Ms. Harris being there --

THE COURT: You used the number eight, why don't you ask him if he counted them first.

BY MR. NEWMAN:

Q. Did you count them, sir?

THE WITNESS: No.

BY MR. NEWMAN:

Q. Did you get a rough guess in your head as you looked through these logs and saw the name?

MS. GODFREY: Objection

to rough guess.

THE COURT: Okay, let's cut through some of this.

Sir, you looked at the logs, right?

THE WITNESS: Yes.

THE COURT: You saw that there had been several visits, right, but you didn't count how many?

THE WITNESS: Approximately, six.

THE COURT: Go ahead, Counsel, with your next question.

MR. NEWMAN: Thank you, Your Honor.

BY MR. NEWMAN:

Q. What's the purpose of having a visitor's log, do you know? Is it to record who visits so you have a record of who comes up to Homicide, is that the purpose of the visitor's log, or who came up to the PAB?

A. To keep track of who comes up the PAB. I

mean, that's a very dangerous piece of paper floating around the building, because you could get someone killed.

Q. And everybody who comes and visits gets logged in, right, District Attorneys and everybody, right?

A. Yeah.

Q. Everybody who's not a police official?

A. Correct.

Q. And you said when she came down there were two kids?

A. Two or three.

Q. Two or three kids.

If you look at the logs, of course, there's no record of any kids?

A. You wouldn't sign the children in, the adults would sign in.

Q. You wouldn't note when you would be letting the civilian kids in, that her plus two or three children, you wouldn't note that in there either, would you?

A. No.

Q. Now, you remember the Lester case, don't you?

MR. DIVINY: Objection,

Your Honor.

THE COURT: Overruled.

BY MR. NEWMAN:

Q. You remember the Lester case, don't you?

A. Yes.

Q. And that's a case in which you were accused of doing the same thing as in here, permitting a police prisoner to engage in sex with, in that case, three different women. You're aware of that?

MR. DIVINY: Objection,

not the same allegations that involves the defendants, it involves different issues. It involved the suppressibility of the statement.

THE COURT: Overruled.

BY MR. NEWMAN:

Q. You're aware of those allegations, aren't you?

A. Yes, I was.

Q. In that case, you again made a denial, didn't you?

A. Absolutely.

Q. You're aware that the Superior Court decided

that that kind of conduct did occur -- and there's a reason for that question, Judge.

MR. DIVINY: Objection.

THE COURT: Tell me what it is, not in front of the witness. We already talked about that sidebar.

MR. NEWMAN: I'll be brief.

If you deem it not relevant, of course, the Court can strike it from your mind. It's a bench hearing, so --

MS. GODFREY: I object, Your Honor.

THE COURT: The objection is sustained.

BY MR. NEWMAN:

Q. Now, in the Lester case you testified that it was common police practice to permit family members to visit with prisoners?

MS. GODFREY: I'm going to object, Your Honor.

THE COURT: You are saying that's testimony he gave in the Lester case?

MR. NEWMAN: Yes, Your Honor.

THE COURT: Okay, overruled.

Was that your testimony, sir?

THE WITNESS: I guess it could have been, I have no idea.

THE COURT: You have the transcript, if you want to refresh his recollection.

MR. NEWMAN: I'm quoting from the Superior Court opinion.

THE COURT: If you need to do that, you need to have the transcript here to impeach him on that, and we don't have it here, do we?

MR. NEWMAN: We

don't have that here, no, Your Honor. But it is a published opinion.

THE COURT: Well, he gave an answer.

MR. NEWMAN: I'll just be a moment.

THE COURT: That's all right.

Go ahead. Take your time.

(BRIEF PAUSE.)

BY MR. NEWMAN:

Q. There were some occasions, Detective, when you brought Charles Atwell and Jerry Fields down together; isn't that true?

A. I believe so, yes.

Q. Did you leave them in a room to discuss their -- discuss anything?

A. Like what?

Q. I don't know.

A. They just come down together.

Q. I'm just looking, they were brought down the

exact time and exact same date, so were they brought down to confer with anybody --

MR. DIVINY: To confer with what?

MR. NEWMAN: To each other.

MR. DIVINY: It's absurd, Your Honor.

THE COURT: Were they brought down to talk to each other?

THE WITNESS: No.

THE COURT: Okay, what's your next question?

BY MR. NEWMAN:

Q. You didn't writ these guys down to the PAB, or get a subpoena, you just went up and got them and brought them down?

A. No, you have to have a bring-down to bring anybody out of prison.

MR. NEWMAN: No further questions, Your Honor.

THE COURT: Cross-

examine.

- - - - -
CROSS-EXAMINATION
- - - - -

BY MR. STRUTIN:

Q. Sir, what was your understanding concerning the policies that existed in 1983 concerning, allowing prisoners -- did you have a visitor's policy at the Police Administration Building?

MS. GODFREY: Objec-
tion, Your Honor, it's been asked
and answered.

THE COURT: No, it
hasn't, not that question.

Go ahead.

THE WITNESS: I didn't
know there was a policy that said
you couldn't.

BY MR. STRUTIN:

Q. When you first graduated from the Academy, of course, many years ago, were you given --

A. You're trying to say I'm old?

Q. Well, you're probably no older than I am,

actually. But do you, were you given a police manual concerning the policies that govern the conduct of police officers as well as the policies of the Police Administration Building?

A. I'm sure I probably was.

Q. And would it be safe to assume on my part, that you conducted yourself over two decades of being a police --

THE COURT: Somebody is talking, you have to stop or leave. I can always hear, the acoustics in this room are very good.

You may think I can't hear rumblings and kids, I hear kids talking, I just didn't say anything about it, but you can't do it. It's interrupting my thinking. I have to think and write and listen at the same time.

Sir, could you repeat your question, please?

MR. STRUTIN: Yes.

BY MR. STRUTIN:

Q. Is it a safe assumption, sir, that you conducted yourself in accordance with the policies and regulations as set forth in the police manual throughout your 25 years of being a police officer?

A. I was never disciplined in 25 years, so I guess I did.

Q. And if there was a specific policy concerning that that precluded you, Detective, or your partner from allowing prisoners at the Police Administration Building from having visitors, you would not have violated that particular police throughout your 25 years of being a police officer?

MR. DIVINY: Judge,
I'm going to object to the question.

THE WITNESS: I don't understand the question.

MR. DIVINY: He already said these visits took place, I'm not quite sure I understand the question.

were a policy.

THE WITNESS: If there was a sign that said you were not allowed to bring visitors in here to see defendants and positively you're not allowed to do that, then I wouldn't have done it. But I was never aware something like that existed.

THE COURT: Either posted or notice or in your manual?

THE WITNESS: No.

BY MR. STRUTIN:

Q. What was your understanding concerning policies that existed because they were bringing young children in the Police Administration Building to visit adult prisoners?

A. I saw it done hundreds of times.

Q. Was there a specific policy that either allowed it or prohibited it?

A. If there was I didn't know about it. I never saw anything saying anything like that.

Q. Now, at the time you interviewed Charles Atwell, that was approximately eight months after the homicide committed in this case?

A. Rainey was killed October 27th of '82, we interviewed Atwell in June, so I guess about eight months.

Q. Was it your understanding that at the time you interviewed Mr. Atwell that he had been arrested at least for shooting two individuals?

A. I knew he was arrested; I believe his brother contacted me and told me that he had information on Fred Rainey's murder.

Q. Did you ever question Mr. Atwell concerning the particular charges, that is, his being accused of shooting two individuals?

A. No, I wasn't involved in that.

Q. Did you ever question him or question Mr. Atwell at all concerning those allegations?

MR. DIVINY: I believe he answered the question no, Your Honor.

THE COURT: Okay, repeat your question.

BY MR. STRUTIN:

- - - - -
CROSS-EXAMINATION
- - - - -

BY MR. GELB:

Q. Would it be a fair statement, sir, to say that you don't have an independent recollection as to -- well, number one, the number of times that Maxie Lee Harris visited with Mr. Atwell? Is that a fair statement?

A. Sure.

Q. In fact, your testimony was that you reviewed the logs here today, presumably to try to refresh your memory, correct?

A. Correct.

Q. Would it also be fair to say, sir, that on -- let's base this on your independent recollection for the moment. Is your recollection that on those occasions when Ms. Harris visited with Mr. Atwell at the Roundhouse, that she had two or three children with her; is that correct?

A. I remember the kids being there. See, you're talking about the logs where she signed in. I'm not sure he was there every time that she signed in.

Q. Well, okay, let's go into that.

Do you have a specific recollection of talking to Maxie Lee Harris on occasions when Mr. Atwell was not in the Roundhouse?

A. I don't know, that's what I'm saying, I don't remember.

Q. I'm only asking you for your best recollection?

A. I don't remember.

Q. Sir, I'm not sure, I just want to revisit, my other question I'm not sure you answered it.

On the occasion when Maxie Lee Harris did visit, again, based upon your best recollection, your recollection is that she was there with two or three children. Correct or not?

A. Yes.

Q. Now, I understand that you're not sure, as you sit here today, that every time Maxie Lee Harris signed in to the PAB that Mr. Atwell was upstairs. I'm sure it was upstairs that you're talking about, the Room 104 in the PAB; is that correct?

A. That's where I worked.

Q. That's on the second floor?

A. Yes.

Q. But we can assume, based on our recollection, that there were occasions when Mr. Atwell was on the second floor when Maxie Lee Harris came to visit him at the Roundhouse, correct?

A. Yes.

Q. You've testified, sir, that on those occasions Ms. Harris and the children would visit Mr. Atwell, am I correct, that this would be on the second floor?

A. Yes.

Q. And did I understand your testimony earlier, that it may have been in an interview room or it may have been in a larger squad room?

A. Yes.

Q. Let's talk about other occasions when family members came to visit people who were in custody at the PAB.

Would your operating procedure be basically the same, that is, mother, girlfriend, wife would come up with the children and visit with the prisoner on the second floor of the PAB? I assume there were such occasions?

A. Yes, I guess.

Q. You mentioned a couple of occasions, for example, when Mr. Fields and Mr. Atwell were brought down together, correct?

A. Do I remember specifically? No. But I think they were brought down together, yeah.

Q. We are only going with your best recollection. I would represent to you as an officer of the Court, that the logs indicate that there were occasions indicating that Mr. Atwell and Mr. Fields were present together at the PAB.

A. Okay. Fine.

Q. Which I think comports with your recollection. Do you have a recollection of Mr. Fields' family coming to visit with Mr. Fields in the PAB?

A. I don't remember.

Q. Did you know Mr. Fields' family back in 1983?

A. I'm trying to remember which one was Fields.

Q. This may refresh your recollection. He had an aka of Mousy.

A. I don't know. I have no idea.

Q. Could've happened, may not have happened?

A. Could have, may not have. I don't know.

Q. If a family member came to visit a prisoner at

the PAB and the sign-in log indicated that person was present in the PAB for a period of three or sometimes more hours, where would they physically be during those three hours?

MR. DIVINY: That's objected to, Your Honor.

I'll withdraw the objection.

THE WITNESS: Sitting on a chair in Homicide.

BY MR. GELB:

Q. In other words, they would do their visiting right in the staff room or in the interview room; is that what you are saying?

A. Yeah.

Q. And prisoners would be handcuffed during this period of time?

A. Handcuffed to the chair.

Now, the delay you're talking about of three or four hours, lots of times we're trying to get a wagon to send people back up to the Detention Center.

Q. I understand. But on those occasions the visit would continue until he left, right?

A. Right.

Q. They would wait until somebody said you have to go home, or --

A. Somebody came for them, I have no idea.

Q. Were there not occasions, sir, when you had a prisoner in the PAB in the squad room, who was not handcuffed and was permitted to visit with his family?

A. That I left a prisoner unhandcuffed?

Q. Yes.

A. I don't think so.

Q. Mr. Atwell wasn't cuffed when he was permitted to visit with Maxie Lee Harris, was he?

MR. DIVINY: Objection.

THE COURT: Overruled.

He can answer.

THE WITNESS: No, I

believe he was handcuffed.

BY MR. GELB:

Q. On each and every occasion that he saw Ms. Harris you believe he was handcuffed?

A. I believe he was, yes.

Q. You mentioned, I believe, in your direct

examination that the first person you spoke with was a Mr. Williams about the homicide of Mr. Rainey; is that correct?

A. By interview, yes.

Q. Did I understand that correctly?

A. Yes.

Q. Mr. Williams --

A. Well, repeat the question.

Q. Sure.

Did I understand correctly that the first person you interviewed in connection with the Fred Rainey homicide investigation was a Mr. Williams?

A. I would say that's probably accurate.

Did I talk to people between October and when we interviewed Williams in January about Fred Rainey's murder, sure, I did.

Q. Williams purported to be an eyewitness, correct?

A. Yes.

Q. Sir, you had contact with a number of people, I believe you indicated from this area of the city in 1983; isn't that correct?

A. What do you mean contact? I worked up in that area of the city for 25 years.

Q. I think what you said on direct examination was that everybody was telling on one another. Did I understand you correctly?

A. Yeah. There was a group from the area where this murder occurred that came down and were telling on each other involving unsolved murders, yes.

Q. From the Strawberry Mansion area?

A. Yes, that's an accurate description.

Q. And one of those people was Mr. Singleton; is that right? Do you remember him?

A. Yeah.

Q. Anthony Singleton?

A. Singleton gave information on some murders and one of the guys came in and told on a murder that he did.

Q. You interviewed Singleton, did you not, at the Police Administration Building?

A. Yes.

Q. You interviewed Jerry Fields at the Police Administration, also?

A. Jerry Fields gave us information on several murders.

Q. You interviewed a guy named Archie Scott?

A. Archie Scott was an eyewitness to him killing Frank Green.

Q. He was never called, right, at the trial?

MR. DIVINY: Judge, I would object to that. The record speaks for itself.

THE COURT: Sustained.

MR. GELB: Well, I would object to his saying he was an eyewitness.

MR. DIVINY: He's been asked about what he was told in the statement, that's what he was told.

THE COURT: All right, go on.

What's the next question?

BY MR. GELB:

Q. Franklin Lee also?

A. I remember the name.

Q. And Aaron Helms also, do you remember having contact with him?

A. It was a group of them trying to frame Helms. They tried to put a murder on him that he didn't do, we subsequently discovered this.

Q. Did you ever talk to him?

A. Yes.

Q. At the PAB?

A. Well --

MR. DIVINY: Judge, I'm going to object at this point as to relevance.

THE COURT: Overruled.

THE WITNESS: I don't know whether I talked to him in the District Attorney's Office, in Homicide or in the Sheriff's cell-room.

MR. GELB: Nothing further.

THE COURT: Any other Petitioners' Counsel have any questions?

MR. NEWMAN: No, Your Honor.

MR. STRUTIN: No questions.

THE COURT: Any redirect?

MR. DIVINY: Just a couple, if I may.

- - - - -
REDIRECT EXAMINATION
- - - - -

BY MR. DIVINY:

Q. Sir, when you were asked questions regarding where Mr. Atwell and Maxie Lee Harris would be inside the Homicide Division, you used some terminology when you were asked if they were left alone, you said, "Alone, I guess, within a reasonable distance."

Let me ask you this, sir. Were they ever, when I say were they ever, cut off from the vision of either yourself as a detective or other Homicide detectives?

A. I don't believe so. I mean, no.

Q. Could there have been a door shut for a minute or two like that?

A. I can't absolutely say that never happened,