

I have been working on a book about the no body murder case I tried in 2006, *United States v. Harold Austin*. The book will also cover no body murder cases generally. Please let me know what you think of the first chapter!

## Missing, Presumed Dead

### Chapter One: In the Box

“I better not deal with this without an attorney,” said the prisoner.

“Damn,” I thought as I sat in a room adjacent to the interrogation room, watching this scene unfold on a closed circuit television screen. Those were the last words I needed from Harold Austin. For 18 months we had been chasing him. Trying to determine if he murdered his girlfriend, Marion Fye. And now, on June 7, 2005, after months of investigation, hours of prying information from witnesses and waiting for forensic results, Austin sat in an 8 by 8 foot interrogation room at the Metropolitan Police Department’s Homicide Branch in Washington, D.C. ripe for us to get a confession out of him—the confession that would enable us to arrest him and close the case. With those magical words, however, Austin had just thrown a massive monkey wrench into our plans. Because Harold Austin had just invoked his goddamn rights, and we had to stop questioning him.

Sitting in the interrogation room with Austin was veteran homicide detective Chris Kauffman. The room, much like the prison cell we hoped would become Austin’s permanent home, was spare. It had a narrow ledge attached to one wall that served as a desk, two creaky office chairs, and a pair of handcuffs bolted to the floor that served as a prisoner’s leg iron like something out of a medieval torture chamber. A closed-circuit camera, silently recording the proceedings, was mounted on the wall and covered by a hard plastic dome. Beige acoustical tiles lined the walls and kept the room soundproof.

Kauffman also knew the import of what Austin had just said and how bad this was for our investigation. Short, squat, and built like a fire hydrant, Kauffman was nicknamed Rhino, and anyone who ever met him never questioned why. Other than the lack of a horn coming out of his forehead, he looked just like a rhinoceros. And like a rhinoceros, Detective Kauffman was always charging forward. Not one given to introspection or self-analysis, he had doggedly led the investigation into the disappearance of Marion Fye and treated it as a homicide when no one else did. But like a charging rhino felled by a hunter's gun, Kauffman was stopped dead in his tracks by what Austin had just said.

I was seated only a few feet away from the interrogation room but hidden. I watched what had just unfolded on a closed circuit television fed from the camera mounted on the wall. As the lead prosecutor assigned to the Fye case, I knew how bad this was. In the law today there are few magical phrases. Unfortunately for us in this situation, any combination of "I want a lawyer" is one of them. In the not so distant past, certain words had unique legal powers. Decades ago, the failure to "give, devise and bequeath" something in a will meant that whatever assets a decedent was trying to pass on to someone else did not get passed on. Leaving out one word in a legal complaint could mean your case got bounced out of court before it even got started. But today, the need to parrot certain phrases rarely exists in the law. For example, most states allow so-called "notice pleading" for lawsuits which simply means you need to say enough to alert the other side as to what your claim is. Leaving out one crucial phrase no longer gets your claim tossed. In most states, you can scratch out a will on a scrap of paper and it is valid, no quill-penned scrivener crafting dusty terms of art is required.

In criminal law though, some of the magical phrases survive. The well-known Miranda rights ("You have the right to remain silent, anything you say can and will be held against you,"

etc.) are one example. If a cop leaves out part of these rights when reading them to a suspect, for example, the right to an attorney, a suspect's confession may not be admissible at trial.

Conversely, having been read his rights, a suspect who asserts them, what police and prosecutors call "invoking his rights," affords himself some important Constitutional protections. One of those protections is that when he says he wants a lawyer, all questioning of a suspect by the police must cease. Immediately. And that's where we were now. Harold Austin had just told us, in Kauffman's words, "to piss up a fucking rope" and our best chance either to figure out where Marion Fye was or what happened to her had just disappeared into his closed mouth.

I watched Austin and Kauffman and silently fumed. I considered what to do next. In my ten years with the United States Attorney's Office for the District of Columbia, I had tried nearly 20 homicide cases. I knew what it took to convict someone of murder in front of a generally skeptical D.C. jury. Without his confession I worried that our chances to convict Austin had just gone out the interrogation room's nonexistent window. Because not only did we not have a confession from Austin, we also did not have the single most important piece of evidence in a murder case: the victim's body.

Since the day after Thanksgiving in 2003, no one had seen or spoken to Marion Fye. Not any of her five children, ranging in age from 7 to 18, nor any of her seven siblings. Fye had vanished, leaving behind her car, her keys, her wallet, her pocketbook, her Social Security card, her birth certificate, and her jewelry. Since late November of 2003 she had never accessed her bank account nor cashed any of her son's Social Security checks. Marion Fye, 39 years old, was gone, vanished like a ghost, and we believed Austin was responsible for her disappearance. Now it looked like Austin was going to get away with it.

The interrogation room was in the police department's Violent Crime Branch (or VCB as it was known) on Pennsylvania Avenue in Southeast D.C. This was not the Pennsylvania Avenue of the Capitol and White House fame. VCB was inside the Penn Branch Shopping Mall, a beyond-tired strip mall that also hosted such establishments as Beltway Beauty and Barber Supply, a Coast Guard recruiting station, and Creative Touch by Paula. The neighborhood, also called Penn Branch because it sat at the intersections of Pennsylvania and Branch Avenues, was far from D.C.'s worst, but no one went out of their way to shop at the Penn Branch Shopping Mall. At the back of the brick three-story mall and barely marked from the outside, VCB housed the police department's 50 homicide detectives. At one time D.C.'s homicide section was considered not only the top unit within the department but one of the best in the nation. By 2005, though, the unit's overall closure rate (the percentage of cases the unit closed out by arrest or other means such as the death of the main suspect) plunged from 75% to around 60 percent, and the unit was clearly no longer among the nation's elite.

A few hours earlier that morning I had been buzzed into VCB through a single unmarked door facing the mall parking lot. A narrow hall opened onto a large undistinguished room with a chaotic warren of cubicles and desks for the Homicide Unit. The main room, where the detectives sat, had no windows and the fluorescent lights made it seem like one large, hot interrogation room itself. Cops tend not to be the neatest people in the world, and VCB was no exception. Every desk displayed the personality of the detective it belonged to. While some were neat with nary a piece of paper in sight, most were covered with old reports, case files, mug shots, and cans of Red Bull, the official drink of the overworked and sleep-deprived homicide detective.

Because the detectives rotated shifts every other week, most of them were walking zombies 90 percent of the time because, no matter what their shifts were, they needed to be at our offices working cases with us from 9 to 5. Assistant U.S. Attorneys did not rotate shifts or work at night. This was a sore point for most police officers who considered AUSAs, as we were known, to be candy-ass meddlers who existed solely to remind cops how incompetent they were. While the relationship between the homicide detectives and the homicide AUSAs was slightly better, many homicide detectives did not like investigating their cases with an AUSA unless there was an arrest in the case. They considered the cases to be “theirs” until there was an arrest, at which point they became “ours.” Moreover, the police department’s archaic payment system paid detectives only for court overtime on cases where there was already an arrest. Getting a detective to meet with a prosecutor to talk about a pre-arrest case, known as a grand jury original, could be difficult, if not impossible, because the detective was not going to be paid. Fortunately for me, Rhino did not share this view and worked a case whether there was an arrest or not.

Located next to the main office at VCB were four interrogation rooms. Each was equipped with a single camera, which if you were lucky, worked about 50 percent of the time. Under a then new DC law, all interrogations of suspects in DC had to be videotaped. A nonworking camera could be a major roadblock in an investigation. We called the interrogation room “The Box,” just like on television. This was one of the many aspects of my job that truly felt like “Law & Order” on some days. I used to kid that being a prosecutor was just like “Law & Order” but it was hard to work sometimes because of that damn theme music they kept playing.

As I stared at Kauffman and Austin sitting in the cramped room I thought about what to do. The detectives on Law & Order always got confessions, but this wasn't TV. Kauffman and I had seen Austin before. Clad in the telltale blue jumpsuit of a prisoner, Austin had a certain thuggish charm. Nearly 6'4" and over 250 pounds, he had a broad, infectious smile, and I could see how he so readily attracted women ([more on that later](#)). Despite his suspected murderer's status his charm was no surprise to me. At that point in my career I had been prosecuting criminals for ten years. I had learned that truly evil defendants were few and far between. Most of the defendants I had prosecuted over those ten years were what I called "aimless dopes." For the most part, they were African-American men of no particular brain power or maliciousness. Typically raised by single mothers, they sold drugs, stole cars, and held up folks because it was more lucrative than working, more fun than school, or cooler than going to the Boys and Girls Club. They gave hardly any thought to consequences and, with few exceptions, were either indifferent or remorseless about their offenses afterwards.

Murderers, however, seemed different to me. More charismatic. Most ordinary defendants lacked the balls to shoot someone, stab someone, or choke them. I did not exactly admire the murderous defendants I encountered, but I was slightly in awe of someone who could commit the ultimate act against another human being and act so normally afterwards. Too many times to count, I found myself sitting in an interview room, prison, or even my own office across from a murderer thinking, "Wow, this dude *killed* someone." In a twisted way I felt a little bit like an enthralled fan of a movie's super villain, as if I was seated on a plane next to Jack Nicholson or Christopher Walken.

One of my favorite murder defendants, Jerome Lucas, was, like Austin, big and charming. Lucas had coldly murdered a rival by running up and shooting him after his co-

defendant had shot the man off a bicycle. Lucas was doing this because he believed the victim had shot at him earlier, permanently injuring Lucas's leg. Lucas stood over the prone man and fired into him several times, issuing the coup de grace. Despite the violence of his act, Big Rome, as he was known, was soft spoken and thoughtful. He honestly felt bad about what he had done. Lucas eventually plead guilty to second degree murder to save himself 30 years in prison and testified against his co-defendant. I came to spend quality time with him in connection with the testimony against his co-defendant. Uneducated but bright, Lucas was an avid reader and asked us to bring him books to read in jail. My fellow prosecutor on the case gave him a copy of "To Kill a Mockingbird" to read. (An interesting choice, I thought, because the defendant in that novel was innocent and Big Rome was anything but.) I spent hours with him, preparing him to testify at trial, and, for reasons I can't fully articulate, grew to like him. Lucas was forever patient with my endless questions, listened to my directions about how to testify, and was unfailingly polite and remorseful about what he had done. Ironically, at trial his co-defendant was convicted of only minor gun charges not murder, and the co-defendant was sentenced to a mere 2 years in prison. Lucas, however, was ultimately sentenced to 12 years for his role in the murder but would have received fewer years if he had not lied to us regarding a key piece of evidence. When I told him that because he had lied we had to ask the judge for a 12-year sentence instead of a shorter one, he said he understood, shook my hand, and thanked me for everything I had done. Despite his lie, which may have cost us a conviction, and the murder, I liked Big Rome and often contemplated writing him in prison or sending him canteen money. Occasionally I would run his name through the Bureau of Prisons website to see where he was and when he was due to be released.

But right now I did not have the same warm feelings toward Austin. I had a murder case to investigate, and we had no body and no confession. What now? Having researched other no body murders I knew what a tight spot we were in. Nationally no body cases were rare, and rarer still were successful prosecutions with no confession from the defendant or damaging admission made to someone else. I also knew that in the District of Columbia only one bodiless murder case had ever gone to trial, the murder of Patsy Gaisior.

What happened to Patsy Gaisior is probably every woman's worst nightmare and is rare in no body murder cases, a complete stranger on stranger crime. On December 3, 1980, Gaisior was working at Bell Telephone in Harrisburg, Pennsylvania, as a service representative. Around 1:30 p.m., as was her habit, she left work and walked to her apartment at the City Towers Apartments. Her plan was to have lunch, watch some television, and then return to work. The night before, she had gone shopping and left her car parked close to her apartment to make it easier to unload her groceries. Because she had not yet moved her car into its assigned space, she decided to move it that afternoon to free up her neighbor's parking spot.

Lurking outside her apartment building were two men, Robert Ruff and Frank Johnson. Both Ruff, from Philadelphia, and Johnson, from D.C., had been sent to Harrisburg in connection with juvenile charges. Although their supervision had ended, the two 18-year-olds had remained in Harrisburg, and on this day were hoping to steal a car.

According to Johnson's later confession, the men saw Gaisior in her car and ran up to the car. Ordering Gaisior to "move over," Ruff slid into the driver's seat while Johnson, armed with a handgun, climbed in the back. The two men drove Gaisior to three bank drive-throughs before successfully withdrawing money at the Commonwealth National Bank in Harrisburg. One of the tellers later identified Johnson, but did not identify Ruff.

The two men, with Gaisior in the car, then drove 120 miles to Washington, D.C., and ended up at the Diplomat Motel, at 1850 New York Avenue, Northeast. The Diplomat was a fleabag joint whose only claim to fame was how often it appeared in the city's crime blotter. According to Johnson, Ruff checked in under his true name and brutally raped Gaisior. Both men then took her to the Sousa Bridge on Pennsylvania Avenue, the bridge I had driven over to get to VCB. Taking Gaisior out of her car, Ruff shot her in the head,\* and the men tossed her body into the cold waters of the Anacostia River swirling beneath them. Although dead bodies tossed into rivers almost invariably surface, Gaisior's body never did. Perhaps it remained submersed in the freezing waters or got caught on one of the many abutments supporting the Sousa Bridge or other bridges near it.

Both men admitted their crimes to various people, including family members. Ruff was arrested six days later for an armed robbery of a gas station in Philadelphia. When arrested, he had Gaisior's auto registration and keys along with the gun he had taken from Johnson. Johnson, meanwhile, was arrested for trying to pass Gaisior's checks. Both men were charged in Pennsylvania with kidnapping and other federal offenses but not murder. Tried in federal court in Pennsylvania in May of 1982, they were both convicted and sentenced to life in prison on the kidnapping charge.

After their convictions in Pennsylvania, D.C. homicide detectives brought Johnson back to D.C. where he confessed to what the two men had done and agreed to cooperate and testify against Ruff. Johnson ultimately pled guilty to second-degree murder and testified at Ruff's murder trial in D.C. in November of 1984. Based almost solely on the testimony of Johnson, Ruff was convicted and given the maximum sentence by Judge Frederick Ugast who went on to become the Chief Judge of the District of Columbia's Superior Court.

Gaisior's body has never been found, and Ruff's conviction was the first no body conviction in the city's long history. Despite its status as a case of first impression, D.C.'s highest appellate court, the District of Columbia Court of Appeals, issued a two-page summary opinion affirming the conviction with no mention that this was D.C.'s first no body case. (They did note, however, that the evidence against Ruff was "overwhelming.") So as I sat in the VCB in June of 2005, I knew there was no appellate guidance on what evidence a prosecutor needed to win a conviction on a no body case in the District of Columbia.

Unlike the Gaisior case, however, I knew we were not going to be able to rely on the testimony of a co-defendant. We believed Austin had acted alone in murdering Fye. From my study of no body cases I also knew there were typically three methods by which these cases were solved: forensic evidence; a fellow defendant, jailhouse informant, or friend of the defendant snitches; or the defendant confesses. Although we had some forensic evidence in this case, we did not have any evidence that Austin had told anyone of his exact crime. Now it appeared we would not get his confession either.

I was not alone in the viewing room. Darryl Richmond, a veteran homicide detective like Rhino, was sitting next to me. Richmond had played a major role in the investigation. Richmond was about my age, early 40s, but had a smooth baby face that made him look younger and an even smoother manner with witnesses and suspects alike. Together we had watched what had unfolded in the box.

Austin had been brought to VCB by officers from the D.C. Jail. He was being held there because he had a pending armed robbery case, an offense he had committed after the murder of Marion Fye. The officers transferred custody of Austin to Rhino and then returned to the jail. Once in the box with him, Rhino sought to put Austin at ease.

“Harold, what we’re doing is I’ve been working on the Marion Fye missing person case.”

Looking surprised, Austin replied, “Missing person case?”

“Yeah, missing person case. She’s still missing. Have you talked to her?”

“No,” said Austin, nervously rubbing his face and beard as he would do throughout the twenty-minute interview. Rhino then explained that although Austin was in custody because of his pending charges, he was not under arrest for the Fye case. Rhino carefully explained to Austin that because he was in jail, the interview was what is known as a “custodial interview” and that Austin did not have to speak with him if he did not want to. Already playing to the suspect’s considerable ego, Rhino acknowledged that Austin was a “pretty savvy dude” and probably already knew this. “If you don’t want to talk to me you can just tell me to piss up a fucking rope.” Rhino then produced a small card from his shirt pocket. “I have to read you your rights just like on TV. You’re familiar with that, right?”

Austin said, “The Miranda rights?”

Rhino replied, “yeah” and, reading from the card, called a PD-47, began reciting the Miranda rights to him.

Within MPD, a so-called PD-47, short for Police Department Form 47, was an essential form. A PD-47 is a small white card, not much larger than a business card, with the Miranda rights printed on one side and four questions to be answered by the suspect on the other. The four questions are: (1) Have you read or had read to you the warnings as to your rights? (2) Do you understand these rights? (3) Do you wish to answer any questions? (4) Are you willing to answer questions without an attorney present?

A detective or officer, questioning a suspect, would read the side of the card with the suspect’s rights and then ask the suspect, if he could read, to read and answer the questions on

the flip side of the card. The goal was getting four “yes” answers. Four yeses meant the suspect had waived his Miranda rights and was willing to talk without a lawyer being present—the goal of any interrogation. The card itself became important evidence that the suspect had waived his rights because it was filled out and signed by him.

Getting a suspect to answer yes to all four questions required an elaborate kabuki-like ritual with a suspect. A detective had to read the rights, which, if listened to carefully, virtually begged a suspect to shut up and ask for an attorney. Having read the suspect his rights, a detective then had to get him to agree in writing to waive those rights. Skilled detectives such as Rhino prided themselves on their ability to get suspects to do what was almost never in their best interest: talk to the police. Luckily the prevalence of these rights on television and elsewhere made getting a suspect to waive his rights easier because a bored recitation of these rights made them appear to be some sort of bureaucratic formality akin to “Terms of Service” on a new computer software package. Just hit “Accept Service” and move on, please. A good detective knew that it was essential to make the rights sound as boring as possible— not critical Constitutional rights that only a fool would ignore. Whenever I heard a detective recite someone’s rights, I always imagined the bored recitation of roll call given by Ben Stein as the teacher in the movie Ferris Bueller’s Day Off. (“Bueller...Bueller.”)

Rhino read through the rights quickly and noted that, “this is the same old stuff just like you’ve heard when you were arrested in your other case.” After speed reading the card, Rhino slid it across the narrow ledge to Austin, “No offense, but can you read and write? Because a lot of dudes in here can’t.”

Austin said he could and began reading the questions aloud. He readily answered the first two questions, “yes.” He wrote the word yes in the spaces next to those questions. When

confronted with the third question, “Do you wish to answer any questions?” however, Austin paused. “This is crazy,” he said.

“What’s crazy?” replied Rhino.

“I was just coming in thinking it was a little something and now I find out it’s something else. A year later and you’re still coming in here to ask me about this girl?”

Austin was referring to the fact that he had been pulled from his jail cell and brought to VCB without being told why. Realizing a confession might be in jeopardy, Rhino quickly tried to put Austin at ease. “As you know, when you tell me something I’m gonna’ check it out. And I’ve done that, and I want to talk to you about what I checked out. When that girl went missing, you came down here freely before and talked and I checked it out. I didn’t even anticipate that there’d be a problem with you talking to me today.” Rhino was not going to tell Austin he believed Fye was dead, not missing.

Austin, clearly nervous, begins to equivocate, “Man, to be honest with you, I’m really wondering what now? It’s like warning signs are going off. I thought you were going to tell me she was trying to press charges on me for child custody or something.”

Rhino lets out a knowing laugh and replies, “No, it ain’t that. We’re just trying to find out what happened to that lady, and you were romantically involved with her.” Rhino was intentionally de-personalizing the victim, referring to her as “girl” and “that lady.”

Austin then says, “I have to answer questions though?”

“No, you don’t have to answer questions, it’s completely up to you, it’s your decision. I just thought you might be able to help me out” replied Rhino, again trying to play to Austin’s ego.

Austin sighed and continued to rub his face and beard. "I better be easy, I don't think I better deal with this too much, especially without an attorney, because it's warning signs, it's like I'm thinking this girl came back and it's over."

"But she hasn't come back."

"I know and that scares me. It may not scare you but it scares me."

Rhino tries again. "It's all about you, it's not about me." Tapping the thick case file on the desk next to him, Rhino says, "This is a year and half, almost two years, of work I've put into this. I'd like to get some closure for the family, and I think you can assist me with that."

But Austin was not going to be shaken from his position and again repeated, "I bet I could but I'd rather have my attorney present. I'm in some deep shit now [referring to his pending armed robbery case] and I don't need to get any deeper."

Rhino tries one more time, "The choice is up to you. I didn't anticipate it being a problem."

Austin wasn't buying, "My problem is not with you. I don't know what's going on with this. I've got enemies on the street."

"Well, you want to hold off on this now then?"

"Yeah, I get an attorney and I have no problem sitting down with you."

Right, thought Rhino, knowing that no attorney who cared about his bar license would let Austin talk to the police about a murder. "All right, we'll go ahead and stop this then." Rhino scooped up the uncompleted PD-47, grabbed his casefile and notebook and got up to leave the room.

"Hey, I got no problem with you," Austin offered to Rhino's back.

Coolly acting to hide his anger, Rhino replied, “Hey, no problem, man, everything’s cool, there’s no beef here,” and walked out of the room. At this point we knew we were done. The entire interview had lasted less than twenty minutes and had produced nothing.

Rhino came out of the box and met us in the viewing room. He rolled his eyes, turned to me and said, “Brother, it ain’t gonna’ happen today, I guess.” He was frustrated and like me, at a loss about what to do now. Rhino left to call the officers from the D.C. Jail to have them pick up Austin.

As I sat in the viewing room with Detective Richmond, I suddenly remembered that he had also met Austin before but in circumstances very different from the ones Austin faced now. Maybe we had one last trick up our sleeves. Rhino returned to the viewing room with a look of disgust on his face. He was having trouble getting a hold of the officers from the jail and said it might be a while. I turned to Richmond and said, “We’ve got to try one more thing.” I quickly explained to him what I needed him to do, barely pausing to consult with Rhino, to consider whether it was even legal or what effect it might have on the case. As Richmond stood up and walked toward the interrogation room, I thought to myself, “Sometimes you’ve got to roll the dice.” If we were going to close D.C.’s second no body case, we were going to need some luck.