

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No.
)	
MURRAY HOOPER)	Inmate No. A-70571
)	
)	
)	

SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY**

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: Walter Hehner
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Assistant State's Attorneys

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I

HISTORY OF THE CASE

Petitioner, Roger Collins, and William Bracey were indicted for first degree murder, armed robbery and aggravated kidnapping arising from the execution – style murders of Fred Lacey, R.C. Pettigrew, and Richard Holliman that occurred on November 13, 1980 in the vicinity of a viaduct at Clark and Roosevelt Road in Chicago, Illinois. In 1981, petitioner was found guilty of all charges and sentenced to death by the same jury that found him guilty. The petitioner’s jury trial and initial sentencing hearing was presided over by Judge Thomas Maloney. While petitioner’s direct appeal was pending, the United States Supreme Court decided Batson v. Kentucky, 476 U.S. 79, 106 S.ct. 1712(1986), and the instant case was remanded by the Illinois Supreme Court for a Batson hearing People v. Hooper, 118 Ill 2d 244, 506 N.E.2d 1305 (1987).

Judge Maloney conducted the Batson hearing and determined petitioner did not establish a prima facie case of purposeful discrimination during jury selection. On direct appeal, the Illinois Supreme Court affirmed all of petitioner’s convictions, but reduced the sentence of sixty years imprisonment to fifteen years imprisonment for aggravated kidnapping. 552 N.E.2d at 695 The

Illinois Supreme Court affirmed the trial judge's Batson ruling since the record demonstrated he had an excellent recall of the facts from jury selection. 552 N.E.2d at 703. The cause was remanded for a new death-penalty sentencing hearing due to improper closing arguments during the sentencing hearing. 552 N.E.2d at 697

On remand, petitioner's second sentencing hearing was presided over by Judge John Mannion. The second jury found him eligible for the death penalty and subsequently on June 18, 1993, sentenced petitioner to the death penalty. His death sentence was affirmed by the Illinois Supreme Court. People v. Hooper, 133 Ill.2d 469, 552 N.E.2d 684 (1989)

II

FACTS OF THE CASE

The evidence presented at trial is set forth in the Illinois Supreme Court's opinion affirming petitioner's convictions. People v. Hooper, Ill.2d 133 552 N.E.2d 469, 684, 0989 On the morning of November 13, 1980, the three murder victims, Fred Lacey, R.C. Pettigrew, and Richard Holliman were found shot to death execution-style under a viaduct near Clark and Roosevelt Road in Chicago, Illinois. Fred Lacey was found on the ground near a red car with a gunshot to the back of the head. R.C. Pettigrew was found under the first bumper of the car with his wrists tied together with rope and cloth. He had been shot in the face, chest, and leg, and there were four shotgun wounds in his back. Richard Holliman was found in the back seat. His wrists were also bound. He had been shot three times in the chest and once in the back of the neck.

Morris Nellum was arrested and subsequently confessed to participation in these crimes. He testified pursuant to an agreement that he would not be charged but would serve a three year sentence of protection custody, and his family would be relocated. At 9:30 A.M., Roger Collins picked him up and they drove to an apartment. After he entered, he saw defendant, Roger Collins, William Bracey, and the three victims. Holliman and Pettigrew had their hands tied behind their backs and were lying on a bed. Lacey was standing next to the bed. Mr. Nellum drove his brown Cadillac to Roosevelt and Clark. He saw Roger Collins and William Bracey put the three victims into the rear of a red car driven by Roger Collins. William Bracey drove alone in another car. At the viaduct at Roosevelt and Clark, Mr. Nellum saw the other cars and heard gunshots. He saw William Bracey put a shotgun back into the car, then he saw William Bracey and defendant drive away. Roger Collins got into Mr. Nellum's car and gave him \$125.00. Mr. Nellum drove Roger

Collins to Lake Michigan where Roger Collins threw a .38 caliber pistol and .357 magnum into the lake. The .38 caliber pistol was the pistol William Bracey gave defendant earlier in the day. When Mr. Nellum was at the police station, he heard defendant in the next room ask to talk to him. The police took him into the same room. Defendant told him "Bracey had told them everything." and that "he [Hooper] was already buried." and that Nellum should "save" himself. Morris Nellum then decided to help the police.

Daretha Redmond testified that during the evening of November 12, 1980, she saw a group of men from her apartment window. Two of the men had their hands tied behind their back. About one month later, she made a tentative identification of defendant out of 40 photos as one of the men in the group. She also made a tentative photo verification of Roger Collins as being in the same group. She had also seen defendant and Roger Collins in her neighborhood on other occasions.

William Bracey was arrested and implicated defendant in this murder. When defendant was arrested in his apartment, he told police "you got me now, be cool." The police told him to get dressed and defendant told them his clothes were in the back but that there were some guns back there. The police recovered a shotgun and a .32 caliber pistol.

Defendant was advised of his constitutional rights and indicated he understood them. He stated "You got me now. I am going to tell you everything." Defendant asked the police who else had been arrested, and the police told him William Bracey was in custody. Defendant got mad and stated, "He told you where I was at." When police asked him if he was referring to the murders at the viaduct, defendant stated "I know what you are talking about." Defendant told police where to find Mr. Nellum. Police went to that address and arrested Morris Nellum.

Defendant waived his constitutional rights again and told police he would tell them everything. Defendant stated he went to the apartment and saw Roger Collins, William Bracey, Morris Nellum, and three other men. He knew there was going to be a “rip-off”, and he wanted to get a “piece of the action.” Roger Collins told defendant the three men came to buy drugs but the plan was to rob them. He and Morris Nellum drove the brown car to the viaduct while William Bracey and Roger Collins drove the red car with the three victims to the same location. Morris Nellum and Roger Collins each had .38 caliber revolvers, and William Bracey had a shotgun. Defendant stated he saw the three men shoot the three victims. He subsequently stated that he was the one who shot the man “by the right front wheel.” with a .32 caliber pistol. Defendant told the police he wanted to speak to Morris Nellum. Defendant told Mr. Nellum “I’m buried, save yourself. You tell them everything.” When defendant was told there was no evidence that a .32 caliber pistol was used, defendant stated Roger Collins gave him a .38 caliber pistol and that he shot into the back seat of the car at the guy.

Assistant State’s Attorney Larry Hyman then interviewed defendant. The statement was similar to the previous statement but defendant stated he and William Bracey drove the brown car to the viaduct while Roger Collins and Morris Nellum drove the victim’s in the red car. William Bracey fired the shotgun, and defendant was given a weapon by Roger Collins and defendant shot the man in the back seat.

Firearms expert Burt Neilson all of the bullets and bullet fragments recovered from the victims shared one class characteristic of the .38 caliber pistol and .357 pistol recovered from Lake Michigan. Due to the rusty condition of the pistols he could not say with certainty that the bullets recovered from the victims were fired from the two pistols.

Defendant testified he was arrested in an apartment, and weapons were recovered. He did not know where he was the night of the murders. He claimed he was beaten in a police car. He was driven to a viaduct and questioned about the murders while a police officer pointed a shotgun at him. He hurt his leg. The police threatened defendant's family and wanted to know where Roger Collins lived. Defendant knew Roger Collins for twenty years and met William Bracy in prison a year earlier. The statement he made to the Assistant State's Attorney was what the police told him to say. He acknowledged that a photograph taken of him immediately after his arrest showed no injuries to his face.

Dr. Shorter testified she treated an infected cut on defendant's leg three days after he was arrested and that defendant could have sustained the leg injury anywhere two to three days to a week before she treated him. In rebuttal, Harry Robertson was the physician's assistant in the jail. On February 23, 1981. Defendant told him his leg wound occurred a week earlier. He testified had defendant told him the injury was caused by the police that he would have included that in his report. The jury found petitioner guilty of all charges and sentenced him to death after a capital sentencing hearing. His convictions were affirmed, but the Illinois Supreme Court remanded the cause due to improper closing argument. People v Hooper, 133 Ill.2d 469, 552 N.E.2d 684 (1989)

Eligibility Phase of the Sentencing Hearing on Remand

Following opening statements by both sides, evidence was presented to establish that defendant was 18 at the time the crimes were committed and that he had the intent to kill two or more people. The jury had not heard the evidence from the first trial and therefore there were no stipulations presented.

Initially, former Assistant State's Attorney Michael Goggin prosecuted defendant's original trial in August 1981. (R. B18) The jury found defendant guilty of the murders, armed robberies, and aggravated batteries of Richard Holliman, R.C. Pettigrew, and Frederick Lacey. (R. B18-21)

Specifically, on November 13, 1980 three bodies were found shot by the underpass at Roosevelt and Clark Street. (R. B26-27) One of the victims was inside the 1979 Maroon Oldsmobile while the other two victims were outside the car. (R. B27) One of the victims, Frederick Lacey, was found outside the driver's side of the car. (R. B28) Mr. Lacey was wrapped in a shoulder harness. He was found by Detective David O'Callaghan to have several bullet wounds including a shotgun blast to the back of the head. (R. B28)

Another victim, R.C. Pettigrew was found with his head underneath the front area of the car. (R. B28) He suffered from multiple gunshot wounds to his body. The third victim, Richard Holliman, was found in the back seat suffering from multiple gunshot wounds. (R. B28) Both Pettigrew and Holliman were bound. Pettigrew was bound with rope and a torn gray t-shirt. (R. B28) Holliman was bound with a blue and white cloth. (R. B28)

Several photographs depicting the crime scene and how the victims were found were identified and described by Detective O'Callaghan. (R. B29-33) Detective O'Callaghan explained that from November, 1980 until February 20, 1981 he continued his police investigation of the triple homicide. (R. B34) In December, 1980, the detective's investigation focused on a building located at 2240 South State. (R. B34) He spoke to several individuals in that building. (R. B34) Specifically, he spoke to Laverne Lyles and Dorothy Edmonds. After speaking to those individuals, the detective

began to search for defendant, Roger Collins and Morris Nellum.

On December 30, 1980 detective O'Callaghan along with other detectives went to apartment 206 in 2240 South State. (R. B35) The detectives found pieces of rope in that apartment that matched the rope on Mr. Pettigrew's arms. (R. B35)

The investigation continued and on February 21, 1981 William Bracey was in custody. (R. B37) Detective O'Callaghan received a phone number which was obtained by Sergeant Hulk while they were searching for defendant. The phone number registered to Patricia Young at 1848 Winnebago on the first floor. (R. B38) Detective O'Callaghan went to 1848 Winnebago with other detectives. The officers took their positions around the apartment building. (R. B38) Detective O'Callaghan went to a garage to call the apartment of the phone number they had. (R. B38) Defendant Hooper answered the phone and identified himself. (R. B39) The other detectives stationed at the apartment stated that they could hear the phone ring. At that time the detectives had an arrest warrant for defendant Hooper.

Thereafter, the detective knocked on the front door of the apartment that he had just called. (R. B39) Defendant Hooper came to the door and identified himself. (R. B40) Detective O'Callaghan identified himself as the police and defendant answered the door. (R. B40)

Defendant opened the door and was only wearing undershorts. (R. B40) The iron gates between the door were still separating the defendant from the detectives. (R. B40) Defendant said "Be cool, be cool, you got me now, be cool." Defendant stated that he was going to get the key to open the gate. (R. B40) After defendant opened the gate, the detectives placed defendant under arrest. (R. B41)

The detectives asked defendant where his clothes were. Defendant stated, "look it, I don't want any trouble you got me, there's a couple of guns in the back bedroom." (R. B41) They all walked to the back bedroom. Defendant pointed to a booth where a .32 caliber revolver was recovered. (R. B41) Defendant also pointed to a piece of luggage which had a yellow baggage claim

for flight 246 from Phoenix to Chicago on it. Inside the luggage a sawed-off shot gun was recovered. (R. B41) Also recovered were some loose shotgun shells and some other live rounds. (R. B41) Defendant then got dressed. (R. B41)

Defendant was transported to the police station with the detectives. Detective O'Callaghan read defendant his Miranda rights. (R. B42) Defendant indicated that he wished to talk. (R. B44) Defendant first stated that he was going to tell them everything. (R. B44) The detective indicated that he had a specific case that he wanted to talk about. Defendant stated that he knew which case they were talking about. (R. B44) They talked about the men found under the viaduct.

Defendant asked who they already had in custody. (R. B44) He was told that Bracey was in custody. At that point, defendant became angry. (R. B44) Defendant stated, "I know how you got me, Bracey told on me," "He freaked on me." (R. B45) The detective indicated that he did not say that Bracey implicated defendant. (R. B45) Defendant however indicated that he knows Bracey told and that he was going to tell everybody. (R. B45)

Defendant indicated that he was "not going down for all this stuff by myself, take the street." (R. B45) Defendant directed the detectives to 22nd and State where they could find Morris Nellum. (R. B45) Defendant identified a vehicle and indicated that Morris would be upstairs because that was his car. (R. B46)

Before the detectives went to get Nellum, Detective O'Callaghan asked defendant if they would have problems with shooting, whether Nellum was armed or had the guns from the killings. (R. B46) Defendant said that Nellum would not have any guns because Cochief threw the guns in Lake Michigan. (R. B46) Detective O'Callaghan knew that Cochief referred to Roger Collins who was the head of the Royal Family. (R. B46) Thereafter, Morris Nellum was placed under arrest. Defendant and Nellum were separately transported back to the police station. (R. B46, 47)

Later that same morning at 7:30 a.m. on February 21, 1981 the detective had another conversation with defendant. (R. B47) During that conversation defendant was advised of his Miranda rights again and then he spoke about the facts of the triple homicide. (R. B47) Defendant specifically stated that on the night of the killings he had gone to apartment 206 at 22nd and State. (R. B48) When he entered the apartment he saw Roger Collins (Cochief), Morris Nellum, and William Bracey. (R. B48) He also saw two men on the couch who were bound and Fred Lacey who was not bound. (R. B48) Roger Collins told them to go so they all left the apartment. There was going to be a drug "rip off" and defendant was going along to get a piece of the action. (R. B48)

The three victims were placed in the back seat of the Maroon Oldsmobile. (R. B48) Roger Collins drove the car and Bracey sat in the front seat. (R. B48) Defendant rode as a passenger with Morris Nellum in a 1973 Cadillac which belonged to Bracey. They drove to under the overpass by Roosevelt and Clark. (R. B48)

Defendant first stated that as he sat in the car he did not have a gun but that Nellum had a .38, Roger Collins had a .38 and Bracey was armed with a sawed-off pump shotgun. (R. B49) Initially, defendant stated that he did not fire any guns. (R. B49) The detective stated that he did not believe defendant. Defendant then said that he had a .32 caliber gun and that he shot it twice. (R. B49) Defendant indicated that he shot the "dead guy" who was outside of the front of the car once. (R. B50) Defendant identified R.C. Pettigrew as the man he shot. (R. B50)

Detective O'Callaghan also spoke to Morris Nellum. (R. B50) After speaking to Nellum the Detective spoke to defendant again. (R. B50) Defendant indicated that he wanted to speak with Morris Nellum. (R. B50) Nellum was brought into the interview room which defendant was in. (R. B50) The detective let them talk alone for a short time. (R. B51) As the detective came back into

the room he heard defendant tell Nellum, "I'm going down anyway, save yourself, just tell them everything tell the whole truth." (R. B51)

Thereafter, Morris Nellum was brought back to his interview room. (R. B51) The detective had another conversation with Nellum. After the conversation with Nellum he took down Nellum's statement. (R. B52) Detective O'Callaghan then had another conversation with defendant. (R. B52) The detective first took another oral statement and then he tape recorded defendant's statement. (R. B52)

During that conversation defendant stated that Cochief had given him a .38 caliber gun. (R. B53) Defendant repeated that he shot R.C. Pettigrew. (R. B54)

After the conversation, the detective contacted the State's Attorney's Office. Assistant State's Attorney Larry Highman responded. (R. B54) After the Assistant State's Attorney advised defendant of his Miranda rights defendant then stated that instead of shooting Pettigrew he shot Holliman who was sitting in the back seat of the car. (R. B54) Defendant also stated that he received \$300 from the proceeds of the robbery-murder. (R. B55)

Defendant had given November 22, 1945 as his date of birth. (R. B56) Detective O'Callaghan had learned that the victims were engaged in drug trafficking. (R. B64-69) The detective also knew that Pettigrew had \$5,000 on his person on the day of the shooting. (R. B69)

With regard to the victims' cause of death and the intention to murder Assistant Medical Examiner, Dr. Nancy Jones testified that she reviewed the reports and slides of the post-mortem examination done by Doctor Lee Beamer on November 14, 1980. (R. B106) The first report indicated that Frederick Lacey had two gunshot wounds on his body. (R. B107) One was to the back of his head and one was by his upper arm by his back. (R. B108, 109) The gunshot to the back of his

head was a contact wound which meant that the muzzle of the gun was held directly in contact with the victim's body. (R. B108) The cause of death was deemed to be multiple gunshot wounds. (R. B114)

The post-mortem examination of R.C. Pettigrew indicated that there were ligatures about the wrist where rope was found around one wrist and a green shirt around the other. (R. B115) R.C. Pettigrew suffered from eight firearm injuries. (R. B115) Several of those gunshot wounds were close range. (R. B115-121) It was the opinion of Dr. Jones that the cause of death for R.C. Pettigrew was multiple gunshot wounds. (R. B127)

The final examination report was of Richard Holliman. (R. B128) He suffered from four gunshot wounds. (R. B128) Richard Holliman also had ligatures around his wrists. (R. B128) The cause of death for Richard Holliman was multiple gunshot wounds. (R. B132)

Larry Martinsen, a former Phoenix Police Department detective, testified regarding the facts of the shooting murders which occurred in Phoenix, Arizona New Years Eve 1980. On New Years Eve 1980, Larry Martinsen proceeded to 320 West El Camino in Phoenix, Arizona to the four bedroom ranch home where multiple shootings occurred. (R. B144, 145) This was the residence of Pat and Marilyn Redmond. (R. B147)

Upon entering the bedroom, he saw the body of an elderly woman, Helen Genevieve Phelps, laying face up. (R. B147) Helen was Marilyn Redmond's mother. (R. B148) Mrs. Phelps' clothing were bloodstained and there was a gunshot wound to her left cheek which exited at her right cheek. (R. B148) Mrs. Phelps was found dead. (R. B149)

The body of William Patrick Redmond, Mrs. Phelps' son in-law, was found by the foot of the bed. (R. B149) Mr. Redmond's body was first found by Floyd Kelly kneeling at the right side of the

bed face down in a large pool of blood. (R. B149) Mr. Kelly had moved Mr. Redmond off the bed and laid him beside the bed. (R. B149) Mr. Redmond's face was bloodstained, his glasses were obscured, and he had a bloodstained sock in his mouth. (R. B150) Mr. Redmond's throat was slit from ear to ear. Mr. Redmond also had a gun shot wound at the back of his head. (R. B150) The pockets on his clothing were torn and his hands were bound behind him with white adhesive tape. (R. B150) Mr. Redmond was dead. (R. B150)

By the time Investigator Martinsen arrived at the Redmond home, Marilyn Redmond had been sent to Good Samaritan Hospital to be treated for her wounds. (R. B151) Mrs. Redmond was in critical condition. (R. B151)

Recovered from the master bedroom were several items. There was an empty spool of adhesive tape, a clean white sock, a wallet and papers in the name of William Patrick Redmond. (R. B151) There was also two socks at the head of the bed. The one found in the center of the bed he believed had been in Helen Phelps' mouth. There was also another sock which was bloodstained with a lead projectile clinging to it which had been in Mrs. Redmond's mouth. (R. B151, 152) Beside the bed on the left side was a lady's purse which had been dumped out onto the floor. The contents from the purse belonged to Mrs. Redmond. (R. B152) Also by the foot of the bed was 70 cents. Between the foot of the bed and the double doors was a large 14 inch butcher knife with a black handle and silver blade which was bloodstained. (R. B152) There was also a hair pick found. (R. B152)

In the family room, there was adhesive tape found which had been used to bind Mrs. Redmond's hands. There were no signs of forced entry to the home. (R. B155) The rest of the house did not appear to be ransacked. (R. B155)

The next day, Investigator Martinsen went to the Medical Examiners Office to view the post-mortem examinations of Mr. Redmond and Mrs. Phelps. (R. B169) Mr. Redmond's body was still bound and gagged. (R. B169) Mr. Redmond had a wound at the back of his head and his throat was slashed. (R. B170) Two large caliber projectiles were recovered from his skull. (R. B170)

Investigator Martinsen was also present for the post mortem examination of Helen Phelps. (R. B171) Miss Phelps was still bound. She had a close range gunshot wound which had entered her left cheek and exited her right cheek. (R. B172) There was another gunshot wound at the rear base of her skull. (R. B172)

The medical examiner's report and protocol for the autopsies were certified and sealed by medical examiners seal. (R. B177, 178) The medical examiner who conducted the autopsy determined that the cause of death of William Redmond was gunshot wounds to his head. (R. B178) The cause of death of Mrs. Phelps was gunshot wounds to her head and neck. (R. B179)

Investigator Martinsen continued investigating the homicide after January, 1981. (R. B180) He received information from a person in the silent witness program with the Phoenix Police Department regarding people responsible for the murders. That information lead to the arrest of Edwin McCall. (R. B180) He was looking for Billy Bonty and Billy Bruce or Hooper. (R. B181)

Pursuant to the investigation an individual named George Campagioni was arrested on an unrelated matter in California. (R. B181) After his arrest, a statement was taken regarding his knowledge of the crimes which occurred in the Redmond home. (R. B181) Thereafter, the investigator contacted the Illinois Department of Corrections and found out that Billy Bracey and defendant were in prison. After obtaining their photos and showing it to two different people, arrest warrants were obtained. (R. B182)

February 21, 1981 a phone call was received from detectives in Chicago. (R. B183) After receiving this call, Martinsen, a prosecutor, and an investigator went to Chicago. (R. B183) On February 22, 1981 Mrs. Redmond came to Chicago. (R. B184)

When Mrs. Redmond came to Chicago she viewed a few line-ups. Martinsen was present for the line-up where Mrs. Redmond identified defendant as one of the men involved in the shootings. After the line-up, formal charges were brought against defendant and William Bracey for the murders in Arizona. (R. B184-191)

Martinsen viewed a suitcase which had been recovered from the home of Murray Hooper. (R. B191) On the handle of the suitcase was a baggage claim tag for American Airlines flight 246. At the conclusion of his testimony Martinsen identified certified copies of conviction of defendant for conspiracy to commit murder, the murders of Mr. Redmond and Mrs. Phelps, attempt murder of Mrs. Redmond, and two counts of kidnapping, and armed robbery and one count of burglary. (R. B197-198)

On cross-examination Martinsen testified that he had the crime scene photographed and dusted for fingerprints. (R. B204) Defendant's prints were not found on the scene. He also stated that Mr. Redmond had been in the printing business. His partner in business was Ron Likaziak. (R. B206)

The People rested in their case in chief for the eligibility phase. Defendant did not present any evidence, but asked that the trial testimony from the original trial from August, 1981, specifically the testimony of defendant and Anita Shorter, the treating physician, be published to the jury. (R. C19) The People's objection was sustained and the defense rested. (R. C20) After closing argument, the jury deliberated and found defendant eligible for the death penalty. (R. C61)

Second Phase-Aggravation

In aggravation the People presented several witnesses. Larry Hopkins, Correctional Manager for Menard Correctional Center testified that on October 28, 1981 he was working as a correctional counselor in the receiving unit. (R. C72) On that day he interviewed defendant in which they

discussed his feelings about being in custody. (R. C73, C74) Defendant was not concerned about doing time in custody because it was an occupational hazard. Defendant was concerned about the programs which were available to him. Larry Hopkins stated generally that defendant was not too concerned about the death penalty.

Although defendant objected to the general question about the death penalty, defendant elicited that the discussion about the death penalty was not exactly philosophical. (R. C77) Defendant was placed in a maximum security prison in which he was confined to his single cell except for showers, recreation, a few visitors and legal access. (R. C77, 88) Defendant had inquired about educational programs but there were none available in his particular unit. A supplemental programming consideration report done in 1985 indicated that he was friendly and cooperative with his counselor and there was no indication of any disciplinary problem. (R. C81)

Next, George Campagioni testified regarding the murders in Arizona. Mr. Campagioni admitted that he had been convicted of burglary and theft in Arizona in which he received probation and time considered served. (R. C86, 87) He was also granted immunity in Arizona on the Redmond and Phelps homicide as long as he gave truthful testimony. (R. C87)

Mr. Campagioni moved to Phoenix, Arizona in 1979 when he met Arnie Merrill and Edward McCall. (R. C88) Campagioni and Merrill got involved in doing burglaries and armed robberies together.

Specifically, on December 8, 1980 Campagioni received a phone call from Arnie Merrill. After the phone call, Campagioni went to Merrill's house and then they both went to Linda Lee Harper's house to deliver a gun to defendant, Billy Bracey and Ed McCall. (R. C88, 89) They dropped off a .22 caliber pistol which was going to be used for a "drug rip off and to kill a man named Big Packer." (R. C90) Arnie Merrill handed the gun to Billy Bracey. (R. C90)

Merrill and Campagioni went back to Merrill's house and Campagioni spent the night. (R. C91) At about 4:00 a.m. Ed McCall and Billy Bracey came over to Merrill's house. McCall told

Arnie that he wanted to switch sides to go with the big boys, defendant and Bracey, in order to make some "big money." (R. C91)

Later that day Campagioni dropped off Merrill's car at Linda Harper's house for Bracey. He then went back to Merrill's house. Later, defendant and Bracey came over. (R. C92, 93) That was the first time Campagioni met defendant. Defendant had been sick so he went directly to the bedroom. (R. C93)

Campagioni then went with Bracey to Sunview Development so that Bracey could pick up some American Airline tickets from Bobby Cruz's office. (R. C94) At midnight Campagioni dropped off defendant and Hooper at the American Airlines curb at the airport. (R. C95)

On December 30, 1980 Campagioni and Arnie, after receiving a phone call from Bobby Cruz, went to 320 West El Camino Drive in order to write down directions to that residence. (R. C97, 98) After the house on El Camino, they took down directions to the place of business, Graphic Dimensions, which was located at 800 South 17th Avenue. (R. C99) Campagioni knew that he was obtaining those addresses because defendant and Bracey were coming back in town. (R. C98)

At about midnight on December 31, 1980 Campagioni was at Merrill's house when defendant and Bracey arrived. (R. C99, 100) Arnie had handed the piece of paper with the addresses and directions to Bracey and told him that they would need the paper. (R. C100) Bracey indicated that they were tired and they went to the back bedroom. (R. C100) Campagioni stayed at Merrill's house that night because Merrill wanted him there for his protection. (R. C101)

The next morning they all got up. Defendant had a towel with a chef's knife with a 3 inch blade which curved down. (R. C101, 102) Defendant was feeling the knife and stated how sharp it was and how you could do some good cutting with the knife. (R. C102) Defendant stated that he

was familiar with knives from being in jail and that you are a big person when you have a knife in jail. (R. C102) Bracey was sitting with a .357 magnum and he stated that he liked that type of weapon because when he would shoot somebody with it they would not shoot back. (R. C102)

At approximately 10:00 a.m. Ed McCall came over carrying his valise. (R. C103) Inside the valise was his .9 millimeter gun which he called Abernathy. (R. C103) Then defendant, McCall and Bracey left Merrill's house. Defendant had the knife, Bracey had the .357 magnum and McCall had his valise with the .9 millimeter. (R. C104) They were going to go to a gun shop called the Gun Trader to pick up a package. (R. C106)

Campagioni stayed at Merrill's house. During that afternoon Bobby Cruz called many times. (R. C107) That afternoon, Dean Bower came over to Merrill's house to drop off two American Airline tickets for the red eye flight on January 1st. The tickets were under the names Tony Jones and Sam Johnson. (R. C108) Merrill told Campagioni that he would be driving defendant and Bracey to the airport.

At approximately 7:00 p.m. that same evening, on New Year Eve, defendant, Bracey and Ed McCall came back to the house. (R. C108, 109) Campagioni noticed that defendant and McCall were cool but that Bracey was perspiring, ruffled and out of character. (R. C109) The three men went to the bedroom and closed the door but Campagioni could hear defendant arguing with Ed McCall. (R. C110)

Bobby Cruz had called for Bracey so Bracey went to answer the call in the master bedroom. (R. C111) Merrill had mouthed something to Campagioni who thought he had said that a person was shot three times. (R. C112) The three men came out and they had some jewelry which they passed around. (R. C112) Defendant had a man's gold watch which he said he wanted. Campagioni saw a man's watch and ring and a lady's watch which appeared to be custom made. (R. C112, 113) They were gold with black color inside. (R. C113) There was also a diamond ring. (R. C113) The

jewelry was placed in an envelope and it was discussed that Bobby Cruz would set up a fence in Chicago for the jewelry. (R. C113)

It was also discussed that they needed a suitcase to check at the airport. Because Merrill did not have one, Campagioni went home to get his suitcase. (R. C113, 114)

After midnight, McCall left and Bracey wanted to leave for the airport to catch the flight which was at 1:50 a.m. (R. C115) Bracey had the airline tickets and said that he would be Tony Jones and that defendant should be Sam Johnson. (R. C115) They said that they would be coming back in town because they were going to take over the drug business in South Phoenix. (R. C115)

Campagioni took defendant and Bracey to the airport. He saw them give his suitcase to the sky cap. (R. C115, 116) After dropping them off at the airport, Campagioni went back to Merrill's house. (R. C116)

The next day Campagioni was still at Merrill's house. Merrill was very upset because on the front page of the newspaper was the fact that 2 people had been killed and that a third was almost killed. (R. C117)

In the bedroom where defendant had stayed, a brown holster for a gun and a black Casio or Seiko watch was left behind. (R. C117) Because they knew where those items had come from, Campagioni took the items to a dry canal and threw them away. (R. C117) In another canal he threw away the silencer and the "reloads" which fit into a .22 caliber weapon. (R. C119)

In January 23, 1981 Campagioni was arrested in California on an unrelated case. (R. C118) A short time later he spoke to the police about the Redmond and Phelps murders. (R. C118) He took the police to the dry canal where they found the holster. (R. C118)

Campagioni admitted that he dealt drugs for Arnie Merrill and that he used drugs. (R. C122, 123) He also admitted that in 1978 he was treated for being a manic depressive but after 1978 he was never treated again. (R. C124) Campagioni further admitted that he had broken into other people's homes many times while the people were home. (R. C125-132) However, he never was involved in

killing anybody. (R. C132)

Several witnesses testified concerning defendant's prior criminal background. Alan Brunell testified that in February 1977 he was an attorney working in the Cook County State's Attorney's Office, where he prosecuted a case in which defendant entered a plea of guilty on the charge of attempt murder. (R. C157, 158) The charge of attempt murder involved a shooting that took place on October 21, 1974 in which defendant shot an individual inside a bar. (R. C158) Defendant was sentenced to four years in the Illinois Department of Corrections. (R. C159)

Chicago Police Officer Cronin testified that on April 26, 1978 he arrested defendant for unlawful use of a weapon. (R. C165, 166) On February 28, 1978 defendant was sentenced to 2□ years in the Illinois Department of Corrections. (R. C166) Officer Cronin testified that he remembered defendant because he seemed to be a very dangerous person. (R. C168, 169)

Gene Callahan testified that in 1969 he worked in the State's Attorney's Office. (R. C172, 173) He prosecuted defendant on a charge where he had shot his girlfriend after they had an argument. (R. C173) Defendant fired five shots and three of those five hit his girlfriend causing her to die. (R. C173) Defendant was charged with murder but pled guilty to a reduced charge of voluntary manslaughter. (R. C173) He was sentenced to 5-15 years in the Illinois Department of Corrections. (R. C173)

The People also published a certified copy of conviction showing that defendant was charged with attempt armed robbery. (R. D2) On October 6, 1964 he pled guilty to those charges and was sentenced to three years probation with the first nine months to be spent in custody. (R. D2)

Investigator Larry Martinsen testified again regarding the Redmond and Phelps homicide which occurred in Phoenix Arizona. (R. D3) Investigator Martinsen made inquiries concerning American Airlines flight 246. (R. D3) He learned that flight 246 left Phoenix Sky Harbor Airport at 1:50 a.m. on January 1, 1989. (R. D4) It's final destination was O'Hare Airport. (R. D4) He learned that persons named Tony Jones and Sam Johnson were on the roster and that tickets under those

names were in fact used. (R. D5)

There were five bullets recovered from the bodies of the victims. Two bullets were recovered from Mr. Redmond, 2 bullets recovered from Mrs. Phelps and one bullet was recovered at the hospital from Mrs. Redmond. (R. D6) After the crime lab examined the firearms evidence it was determined that all 5 bullets were of .38 caliber and were fired by the same weapon. (R. D6, 7)

Investigator Martinsen also explained that a woman named Lorna Avery gave the police some information after she had heard the news broadcast of the Redmond-Phelps homicide. (R. C7, 9, 10) She told the police that on December 31, 1980 she was in Long's Drug store in Mesa, Arizona when she saw a white male and two black males in the store. (R. D10) She observed the white male purchase some surgical gloves and one of the black males, the taller man, purchase white adhesive tape. (R. D10) She specifically remembered that six gloves were purchased for 57 cents and that the tape was purchased separately.

On January 4, 1981 a search warrant was executed of Edward McCall's residence and vehicle. (R. D12) During the search, two receipts from Long's Drug store dated December 31, 1980 were recovered from the car. One receipt was for 57 cents and the other one was for \$1.35. (R. D12)

Investigator Martinsen obtained copies of cash register receipts from the register which handled transactions which Mrs. Avery had witnessed. (R. D12) He specifically obtained receipts for \$1.35 and 57 cent purchases. (R. D12) The receipts from the register and those found in the car were examined and found to be from the same cash register. (R. D13) Additionally, McCall's fingerprint was found to be on one of the receipts. (R. D14) He also learned that Long's Drug Store does in fact sell surgical gloves for 9 cents apiece. Hence, 6 gloves plus tax would cost 57 cents. (R. D14) The drug store also sells surgical tape for \$1.29 plus 6 cents tax. (R. D15) In fact, the tape found at the Redmond home had a price sticker on it which was marked \$1.29. (R. D15)

Shortly after the murders, Investigator Martinsen interviewed Valinda Harper. (R. D15) Thereafter Harper was placed in the silent witness program. (R. D16)

Harper spoke of a conversation she had with Ed McCall on January 1, 1980. (R. D16) She learned that people came to Phoenix to do a "hit" on the Redmonds. (R. D17) She gave the names of 3 individuals. (R. D17) Their names were Billy Bonte-Billy Price, Hoop or Hooper, and Edward Lon-McCall. (R. D17) She said that they committed the crimes on December 31, 1980. (R. D17) Harper indicated that the weapons used were a .22, McCall had a .9 millimeter and that Bracey had a .357. (R. D18) Martinsen also thought that she said that defendant had a .45. (R. D19)

McCall had told Harper that they took care of Mr. Big Shot. (R. D19) Billy Bracey told Harper that they were in town to do a job and that he was being paid \$50,000 and that it was not going to be pretty. (R. D19, 20)

Harper had a roommate Tina Marie Luie who also overheard the conversation Harper had with Bracey. (R. D20, 21) After the investigator spoke to Harper and Luie, they both made an identification of defendant Hooper. (R. D21)

On cross-examination, Investigator Martinsen testified that Lorna Avery had viewed a line-up but she did not identify Bracey or defendant as being the men in the drug store. (R. D24, 31) Harper was not charged or given immunity. Martinsen also stated that Harper and Luie had been involved in prostitution and drug trafficking. (R. D25, 28)

Martinsen testified that there are different police reports which indicate that Mrs. Redmond gave varying descriptions of the perpetrators. (R. D35-38) However, most of those descriptions were done at the scene after she was shot or in the emergency room. (R. D41, 42)

Mr. Redmond's business partner was Ron Lukasik. (R. D39) Mr. Lukasik and Mr. Redmond had life insurance on each other. (R. D39, 41) This insurance was to be used to buy out Mr. Redmond's share in the business. (R. D40) It was also discussed that Ron Lukasik's wife, Joyce Lukasik, had a brother Artie Ross who was an associate of Arnie Merrill. (R. D39, 40)

Defendant was not the only person convicted of the crimes which occurred at the Redmond home in Arizona. (R. D43) William Bracey, Edward McCall, and Bobby Cruz were also convicted.

(R. D43, 44) Ron Lukasik was not charged with the murders but his wife Joyce and Arnie Merrill were charged. (R. D45)

(Mrs. Marilyn Redmond) testified regarding the shootings which killed her husband and mother on New Years Eve 1980 in Phoenix, Arizona. (R. D46) Mrs. Redmond testified that in 1980 she was married to William Patrick Redmond and they lived at 320 West El Camino in Phoenix. (R. D46) They owned a printing company called Graphic Dimensions. (R. D46, 47) Her husband's partner was Ron Lukasik. (R. D47) Their business started very small but then grew every year until it was the fifth largest printing company in the State. (R. D47) There had been conversation between Mr. Redmond and his partner to get business in Las Vegas by printing for casinos. At first, Mr. Redmond agreed but then later he decided not to get involved. (R. D48)

On New Years Eve 1980 they were getting ready for three couples to come over for dinner and to play cards. (R. D50) Mrs. Redmond's mother, Mrs. Phelps was in town visiting from Iowa. (R. D51)

The company was supposed to arrive at 7:00 p.m. but they were late. (R. D51) At 7:00 p.m. Mrs. Redmond was in the kitchen making dinner while Mr. Redmond was in the family room playing with their dog. (R. D52) She heard a knock on the door which led to the car port. Mrs. Redmond had gone to her bedroom in order to get cigarettes and her change purse. (R. D52) Mr. Redmond had called her to come to the laundry room. (R. D53) When she went toward the laundry room she saw a black man standing with a gun pointed at Mr. Redmond. She had never seen the man before but now she knows him to be Bracey. (R. D54) Bracey took her hand and pushed her toward the family room. (R. D54) She was asked who else was there and when she stated that her mother was she was told to get her mother. (R. D54) When Bracey saw that the drapes were open in the dining room he had her close the drapes. (R. D54) After coming back into the family room, she noticed that another black man came into the house whom she identified as defendant and a white man whom she now knows was Edward McCall. (R. D56)

The men asked where their money and jewelry was located. (R. D56) The jewelry was in the bedroom in the vanity drawer. Her mother was brought back to the bedroom. (R. D56) McCall said that he would stay in the family room with Mr. Big Shot. (R. D57) Hooper was in the bedroom with her mother who was laying face down on the bed. Bracey took Mrs. Redmond back to the bedroom. (R. D57) Once in the bedroom, they went over to the vanity and Mrs. Redmond opened it. (R. D58) Hooper said that it was all junk. (R. D58) Defendant told her to take off her gold chain around her neck and her wedding ring. (R. D59) Bracey took the jewelry she took off and put it in his pocket. (R. D59)

The wedding ring which had a solitaire diamond matched her husband's. The rings had oxidized glass which was very identifiable. (R. D59) Her husband had on his wedding ring and a diamond gold watch which had black oxidation on it. (R. D59)

Defendants then asked where the Redmonds kept their guns. There was a gun in the night stand by the bed, and the rest where in the closet. (R. D60) While she was taken to the hall closet, Mrs. Redmond could see her husband sitting in the family room while McCall pointed a brief case at him. (R. D60)

Defendant took Mrs. Redmond back to the master bedroom. (R. D61) McCall brought Mr. Redmond into the master bedroom and told him to lay down on the bed by Mrs. Phelps. (R. D61) They asked about money. (R. D62) Mrs. Redmond had some money in her purse and Mr. Redmond had some money in his wallet. (R. D62)

Mrs. Redmond was told to lay face down on the bed. (R. D63) All their hands were tied behind their backs. (R. D63, 64) Their mouths were gagged. (R. D64) Mrs. Redmond heard someone say "we don't need the two anymore." (R. D64) She then heard two gunshots. (R. D64) At the time the shots were fired, Bracey was by the triple dresser close to Mrs. Redmond going through her purse and defendant was at the foot of the bed on the east corner. (R. D65) She stated that the shots came from the east, behind her. (R. D65) At that time Bracey did not have a gun in his hand.

(R. D65)

After the two shots, Mrs. Redmond remembered coming to and not being able to lift up her head. (R. D66) The front of her was wet and red. (R. D66) The clock radio next to her said 7:20 or 7:30 p.m. (R. D66) Mrs. Redmond had to get up to open the door so that her friends could come into the house when they arrived and get help. (R. D66) Mrs. Redmond who was still bound flipped over and landed on the floor. (R. D67) She made it as far as the middle of the family room floor when she passed out. (R. D67)

Thereafter, her friends Vera Kelly and her husband came into the house. Mrs. Redmond was continuously coming to and passing out. She heard Vera's husband say get a knife to cut her hands and some towels and ice. (R. D68) Vera cut Mrs. Redmond's hands loose and put ice on her hands. (R. D68) Vera's husband went to the bedroom and told Vera not to go back there because they were both dead. (R. D68) Mrs. Redmond told them that they had been robbed and that some were blacks. Vera called the police. (R. D68)

Mrs. Redmond remembered having people around her cutting her sweater off. (R. D69) She passed out again and she next remembered being placed in the ambulance. (R. D69) Mrs. Redmond was taken to Good Samaritan Hospital where they did surgery. Mrs. Redmond had a bullet which went through her head and fractured her left jaw. (R. D69)

Mrs. Redmond remained in the hospital for approximately 14 days. (R. D70) She had her jaw wired shut but it did not set correctly. (R. D70) Mrs. Redmond is still numb and her glands are gone. (R. D70, 71)

On February 2, 1981 Mrs. Redmond flew to Chicago in order to view a line-up. (R. D71) Mrs. Redmond viewed two separate line-ups. In the first line-up she recognized William Bracey and

in the second line-up she recognized defendant. (R. D72)

Mrs. Redmond stated on cross-examination that although she did not know whether her husband's partner Ron Lukasik had life insurance on Mr. Redmond, she did know that they had a stock redemption agreement. (R. D75) This agreement enabled the partners to buy each other out if something happened to one of them. (R. D75) The agreement was financed with \$250,000. (R. D76) In fact, she had sold their interest in the business to Mr. Lukasik on May 15. (R. D76)

Back in November or December of 1980 there had been some conversation about buying the business. (R. 76) Mr. Redmond did not want to sell the business. The business which was to be obtained in Las Vegas was through Mr. Lukasik's brother-in-law, Artie Ross. (R. D77) However, Mr. Redmond was not interested in pursuing that business. (R. D77)

Mrs. Redmond had never seen those men in her house before. (R. D78) Mrs. Redmond stated that the two black men had guns but she did not see any gloves on their hands. (R. D77, 78) However, when Mrs. Redmond testified in Arizona in 1982 she stated that she did not recall defendant having a gun. (R. D80)

Mrs. Redmond explained that she has testified maybe 14-16 times regarding this incident. She has testified in Arizona and Chicago. (R. D87) She also explained that the reason why she believed that defendant had a gun was because the shots came from the foot of the bed where defendant was and Bracey was standing right beside her. (R. D88) The white man was on the opposite side of the bed from her. (R. D89)

Simon D. Hopson, a correctional clerk for the Joliet Correctional Center, testified regarding defendant's prison records while at Joliet Correctional Center. (R. D90) Each inmate has a file which contains pertinent documents, such as, legal commitment orders, warrants and incident or interview

reports. The reports are done by people with personal knowledge, and are done at the time of or shortly after an incident. (R. 91) The records are kept in the regular course of business of the Illinois Department of Corrections. (D. 41)

Over defendant's objection, Hopson testified, after a foundation was laid under the business records exception, regarding defendant's master file which was compiled while defendant was in Joliet Correctional Center. (R. D92-95) The documents which Mr. Hopson referred to as defendant's master file were certified by Carol Krantz, the Supervisor in the microfilm center and by the judge and clerk of the Circuit Court. (R. D96)

Mr. Hopson testified to what was in defendant's master file. In the file was a fact sheet, which included the facts of the crime including the date, name of the victims, the charges, the sentence, and the judge. (R. D95) There was also a commitment order, certification of the order, a copy of defendant's prints and his picture, the parole agreement, and parole violation report. There was a set of each of these documents for each crime. (R. D95)

In order to assist in his testimony, Mr. Hopson used a chart which coincided with a document in defendant's file which listed the crimes and sentences each time defendant was in and out of the penitentiary. (R. D97) Mr. Hopson stated that the chart was accurate. (R. D98)

Mr. Hopson explained that defendant first came into the penitentiary in 1964 when he received 3 years probation and 9 months in Cook County Jail. In November, 1965 defendant violated his probation by committing an attempt armed robbery and was resentenced to 1-3 years in the Illinois Department of Corrections. (R. D99) Defendant was paroled from Joliet Penitentiary on May 23, 1968. (R. D99) Defendant was incarcerated again on December 17, 1969 when he was sentenced to 5-15 years for voluntary manslaughter. (R. D99) He was paroled from Statesville on that charge

on September 27, 1974. (R. D100) February 18, 1977, defendant was incarcerated again when he plead guilty to attempted murder and was sentenced to 4 years plus 4 years and one day. (R. D100) Defendant was paroled again on February 1, 1978. (R. D100) Once again defendant was incarcerated when he plead guilty to unlawful use of a weapon on April 28, 1978. Defendant was sentenced on that charge to two and half years in the Illinois Department of Corrections. (R. D100) Defendant was paroled from Stateville on September 12, 1980. (R. D101)

Mr. Hopson also explained the disciplinary procedure within the Illinois Department of Corrections. (R. D101) The disciplinary documents are kept in an inmate's master file in the regular course of business. (R. D101)

Mr. Hopson testified that defendant's file showed that defendant had ten disciplinary infractions between 1983 and September of 1990. (R. D102) Mr. Hopson explained that defendant had varying degrees of disciplinary infractions which resulted in various degrees of loss of privileges. (R. D103-109) For example, defendant was cited for marijuana, dangerous disturbance, intimidation or threats and assault. (R. D103-109)

Although Mr. Hopson had no personal knowledge of defendant, the documents which he testified to were records kept in defendant's file and were kept in the regular course of business. (R. D109, 110) Other reports indicted that defendant was friendly and cooperative to his counselor. (R. D113, 114)

After the People presented their evidence in aggravation the People made a motion in limine to preclude the defense from presenting the testimony of Morris Nellum. (R. D123) Nellum had been arrested just after defendant. Nellum had testified at defendant's first trial but had since then recanted part of his testimony. (R. D124) Defendant wanted to put Nellum on the witness stand but

after argument from both sides the trial court held that Nellum's testimony would not constitute mitigation but would be improper residual doubt. (R. D124-132)

Thereafter the People admitted their exhibits into evidence and rested their case in aggravation. (R. D133)

Second Phase-Mitigation

Defendant presented the testimony of several witnesses. Two employees from Cook County Jail, Larry Alexander and Nadine Noonan, testified that they knew defendant from being assigned to division 1 and tier where defendant was housed. (R. D135, 144) Defendant was assigned to the maximum security area where there were 19 inmates who live one person to a cell. (R. D136) Neither Alexander or Noonan had seen defendant in a fight or causing problems. (R. D136, 145) The officers stated that he was positive and respectful. (R. D137, 144) Defendant was one of the inmates allowed to work on the tier. Defendant swept, mopped and waxed the cat walk and dayroom. (R. D137, 145) When defendant's cell had been searched, no contraband or weapons had been found. (R. D139)

Jerry Johnson testified that he knew defendant through defendant's sister. (R. D152) He stated that defendant helped him with his drug abuse and alcohol problem by getting him to go to a program. (R. D153, 154)

Dwayne Brown testified that he had known defendant since 1974. He knew defendant to be a happy, nice person. (R. D155) Brown claimed that he did not know defendant to be mean or aggressive. (R. D157)

Evangelist Richard Bishop testified that he knew defendant because defendant and his mother were good friends. (R. D160) Defendant would play ball with him and he would talk to him to encourage him to stay out of trouble. (R. D161)

Linda Bishop testified that she had known defendant for 25 years. (R. D165) When her mother was sick defendant would walk her to and from the doctor. (R. 166) Defendant would help

her with her homework. (R. D167)

Shirley Mayweather testified that defendant is her brother. (R. D169) There were five children in the family. (R. D173) Both their parents worked but their father was not around a lot. (R. D12) Her mother was not abusive but she was under a lot of stress. (R. D173) Where they live there was a lot of murders, drugs, and prostitution. (R. D173) Although there was no physical violence in their home, Shirley stated that there was a lot of verbal arguing. (R. D174) She remembered that her father had drawn a gun on them at least twice. (R. D174) She had a good relationship with her brother. (R. D175) They were only 11 months apart. (R. D175) She felt that he was more sensitive and internalized a lot of things. (R. D175) She felt that he probably needed help. (R. D175) She has visited her brother and has talked to him on the phone. (R. D178) She felt that he had matured and mellowed. (R. D178) Shirley admitted that her brother never obtained help for his problems. But she felt that he did not realize he needed help. She said that she put aside things in her past and bettered herself. (R. D179)

Several other Cook County Correctional officers testified about defendant. Sergeant Gerald Smith, Officers Wayne White and John Brown, Lieutenant Sanders and Officers Alphonzo Davis and Henry James testified that they knew defendant who was housed in Division 1 of the Cook County Jail. (R. E, 5, 11, 16, 21, 27, 60) Defendant was house in ABO because of defendant's sentence not because of his behavior while in Custody. (R. E6) Defendant was found to be cooperative and had not been known to cause any problem or fights. (R. E8, 12, 16, 22, 61) Defendant had not been written up for any violations. (R. E12, 17, 24, 29, 61) Defendant was also allowed to work. (R. E27, 61)

When defendant concluded calling his witnesses in mitigation, he asked to publish defendant's and Laverne Lisle's transcripts from the original trial. This request was denied. The trial court explained that he already ruled that no transcripts were being admitted into evidence but that defendant could take the stand and testify. (R. E31, 33)

Thereafter, defendant rested in mitigation. The People presented no rebuttal. (R. E63) Following closing arguments from both sides the jury was instructed and then began to deliberate. (R. E63-143) After deliberation, the jury unanimously found that there were no mitigating factors sufficient to preclude the imposition of the death sentence. (R. E147) On July 16, 1993 defendant's motion for new sentencing hearing was denied. (R. F3, 4) Accordingly, the trial court sentenced defendant to death. (R. F4, 5) On appeal, the Illinois Supreme Court affirmed defendant's death sentence. People v Hooper, 172 Ill. 2d 64, 665 N.E.2d 1190 (1996)

I

**PETITIONER WAS FOUND GUILTY BY A JURY OF A TRIPLE
MURDER AND ARMED ROBBERY AND WAS SENTENCED TO DEATH
BY TWO SEPARATE SENTENCING JURIES, SO CLEMENCY IS
UNWARRANTED MERELY BECAUSE JUDGE THOMAS MALONEY
WAS THE JUDGE THAT PRESIDED OVER PETITIONER'S
JURY TRIAL AND DEATH PENALTY JURY WHILE A DIFFERENT
TRIAL JUDGE PRESIDED OVER PETITIONER'S SECOND DEATH
PENALTY SENTENCING HEARING**

Petitioner has not raised a claim of "actual innocence" or claimed he is wrongfully

accused. A jury found petitioner guilty of the first degree murders, armed robberies, and aggravated kidnappings of Fred Lacey, R.C. Pettigrew, and Richard Holliman which was the result of a planned scheme with co-defendants Roger Collins and William Bracey, to rob the victims on November 12, 1980. At sentencing, the jury also was presented evidence of petitioner's participation with William Bracey in a brutal home invasion double murder which occurred December 31, 1980 in Arizona in which elderly Helen Phelps was shot in the chest and killed. Her son-in-law, William Redmond, whose hands were tied behind his back, was shot once in the back of the head and his throat was slit from ear to ear. Marilyn Redmond, William's wife, had her hands tied behind her back and was shot one time in the back of her head. She miraculously survived to testify at petitioner's death penalty sentencing hearing. After the Illinois Supreme Court affirmed petitioner's convictions and remanded the case for a new sentencing hearing, a second death penalty hearing, presided over by Judge John Mannion, took place, and the second death penalty jury sentenced defendant to death. Petitioner's death sentence was affirmed without a dissenting opinion, and Justice Harrison wrote the opinion affirming the sentencing jury's verdicts. People v Hooper, 172 Ill.2d 64, 665 N.E.2d 1190 (1996)

Even though he was found guilty by a jury and sentenced to death by two separate juries, petitioner seeks clemency simply because Judge Thomas Maloney presided over his jury trial and first sentencing hearing. Clemency is demanded by petitioner based upon his unsubstantiated claim, unsupported by any evidence, that his trial was automatically tainted and his rights somehow compromised by Judge Thomas Maloney's presence. He spends four pages castigating Judge Maloney but spends little time discussing the evidence introduced at trial and the two sentencing hearings. Petitioner does not even dispute the evidence of his vicious criminality that mandated his death sentence. He never claims he is innocent or wrongfully accused. He cannot credibly challenge

the strength of the evidence calling for his execution since, even Justice Harrison writing for the majority, the Illinois Supreme Court recognized the following in affirming the death sentence:

Here the jury at the sentencing hearing upon remand heard evidence in aggravation concerning five convictions of first degree murder, offenses committed by the defendant during a span of less than two months in November and December of 1980. The evidence defendant adduced in mitigation, consisting principally of the good behavior and positive attitude he has exhibited while incarcerated for the instant offenses, counterbalances but little the enormous weight of such evidence in aggravation. Furthermore, about this defendant, who was born November 22, 1945, the jury heard still more evidence in aggravation including evidence of his convictions for attempted armed robbery committed in 1964, voluntary manslaughter committed in 1969, attempted murder committed in 1974, unlawful use of a weapon committed in 1978, and attempted murder committed in 1981. In light of the ample evidence in the record supporting the jury's decision that there are no mitigating factors sufficient to preclude the imposition of a sentence of death, we will not disturb it. 645 N.E.2d at 1195

It is important to recognize that it was not Judge Maloney who found petitioner guilty at trial, but twelve citizens sitting as a jury. It was not Judge Maloney that found petitioner eligible for the death penalty and determined he should be executed but, rather, the same jury that found him guilty. After the case was remanded for a second sentencing hearing, Judge John Mannion, presided, not Judge Maloney. The second jury comprised of twelve citizens, found petitioner eligible for the death penalty and rendered the unanimous verdict that petitioner be executed. Petitioner's claim for clemency is without legitimacy because his eligibility for the death penalty had to be established beyond a reasonable doubt before the second jury could proceed to the aggravation-mitigation phase of the sentencing hearing. Without Judge Maloney being involved, the second jury determined

beyond a reasonable doubt that petitioner was guilty of murdering the three victims and possessed the intent to kill more than one person. In effect, petitioner was found guilty and sentenced to death by the second jury in the absence of Judge Maloney.

Petitioner urges clemency is required since Judge Maloney allegedly was biased and was disrespectful to the Appellate Court during the Batson hearing. These claims were rejected by the Illinois Supreme Court when petitioner lost the Batson hearing and appealed. People v Hooper, 133 Ill.2d 469, 552 N.E.2d 684, 702 (1990) Judge Maloney was not biased during the Batson hearing, as the Illinois Supreme Court noted in affirming Judge Maloney's rulings, that "looking to the entire record, it is simply clear that the trial judge had excellent recall as to the facts and circumstances of the voir dire. 552 N.E. 2d at 703

Petitioner boldly claims the Federal Courts have stated that Judge Maloney was biased against him and his two co-defendants, Roger Collins and William Bracey, during their capital sentencing hearings. This is incorrect. Petitioner's case has not even progressed to federal court. Petitioner is not even mentioned by the federal court in co-defendant's appeal in Bracey v Schomig, 286 F3d 406 (7th Cir. 2002) Petitioner again ignores the fact that Judge Maloney never presided over his remanded death penalty sentencing hearing. A different judge, John Mannion, was the presiding judge on petitioner's second capital sentencing hearing which now forms the basis of petitioner's death sentence and request for clemency.

Petitioner is not on Death Row because of Judge Maloney, a lack of due process, an injustice, or any other lame excuse. Petitioner is on Death Row because he has earned his spot by being a vicious, violent, murdering, callous career killing-machine. He has been provided more constitutional rights and protections than he could obtain anywhere on this planet. He gave none of

his five murder victims due process, and our system of criminal justice has spent decades grappling over whether petitioner should live or die, while petitioner gave no thought whether his murder victim's lived or died. Clemency would be an obscene injustice in this case.

II

PETITIONER'S JURY SELECTION AT TRIAL WAS ERROR FREE AND CLEMENCY IS NOT WARRANTED

After petitioner was found guilty and sentenced to death by the jury, the United States Supreme Court decided Batson v Kentucky, 476 U.S. 79, 106 s.ct., 1712 (1986). The Illinois Supreme Court remanded the case for the limited purpose of conducting a Batson hearing to determine whether the prosecutors engaged in racial discrimination during jury selection at petitioner's trial.

The allegation of racial discrimination during jury selection was presented to and rejected by the Illinois Supreme Court during petitioner's direct appeal. People v Hooper, 133 Ill.2d 469, 552 N.E. 2d 684, 700 (1990) The Illinois Supreme Court determined Judge Maloney was correct in ruling that petitioner had not proved a prima facie case of racial discrimination during jury selection. The prosecutors exercised 11 peremptory challenges to remove 11 prospective jurors. Only five of those challenges removed African-American prospective jurors. As the Illinois Supreme Court noted,

this “was not disproportionate since the state actually excused more whites than blacks from the venire”, 552 N.E.2d at 700. The Illinois Supreme Court also noted that at the time of petitioner’s jury selection for trial, the prosecutors offered their reasons for challenging practically all of the African-American jurors although the law in effect at that time did not require them to do so. 552 N.E.2d at 700. The Illinois Supreme Court ruled that Judge Maloney had an excellent recall of the events surrounding the selection of the jury for petitioner’s trial, and the Illinois Supreme Court deferred to Judge Maloney’s finding of fact that petitioner failed to establish a prima facie case of racial discrimination.

Petitioner’s claims are nothing more than conjecture based upon nothing more than speculation. His claims have been rejected by the Illinois Supreme Court after application of correct legal standards. His claims do not now automatically become meritorious simply because there is a sense of enlightenment by some regarding capital punishment. His claims are still meritless and do not warrant clemency.

III

PETITIONER IS NOT ENTITLED TO CLEMENCY SIMPLY BECAUSE HIS INTERROGATION AND CONFESSION WERE NOT VIDEOTAPED

At trials and the sentencing hearings, petitioner's multiple statements implicating himself were admitted into evidence. Even one of petitioner's statements was tape recorded.

(B.52) He now claims he is entitled to clemency because the Governor's proposal to videotape

interrogations will not benefit him.

Petitioner seeks clemency because his statements were admitted into evidence even though they were not videotaped, and points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the petitioner's statements were ruled to be admissible by the trial judge before trial, there was a judicial ruling regarding the legal voluntariness of the statements. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Petitioner fails to recognize that the proposal by the Governor's commission is just that – a mere proposal, a suggestion which is not the law. His request for clemency is that he did not receive a protection in 1980 which is still not required by law today. Petitioner's claim is illogical. No one could rationally explain to the families of petitioner's murder victims that his death sentence was commuted because his interrogation was not videotaped in 1980 when the law does not require such in 2002.

IV

PETITIONER IS NOT ENTITLED TO CLEMENCY BECAUSE AN ACCOMPLICE TESTIFIED AGAINST PETITIONER AT HIS TRIAL

Petitioner claims he should be given clemency because Maurice Nellum testified against petitioner at trial after agreeing with the authorities that he would not be charged with murder or sentenced to prison, but would serve three years in protective custody and his family would be relocated. The jury at trial was fully aware of Maurice Nellum's participation in these offenses.

The jury knew Mr. Nellum had been given leniency in exchange for his testimony regarding these brutal murders. The petitioner's statements to the police, in fact, corroborated Maurice Nellum's participation in the crimes. Clemency is demanded because Maurice Nellum's post-arrest interviews were not electronically recorded as suggested by the Governor's Commission proposal.

This Governor's Commission's Recommendations are not the law in the State of Illinois. Once again, petitioner demands clemency based upon not receiving what he perceives as a protection that has never been required by law. Petitioner flaunts the Governor's Commission's proposals as though it is the law in Illinois. It is not the law.

The jury knew of Maurice Nellum's role in these murders. The jurors were made aware of the agreement for him to testify. He was subjected to thorough cross examination on all these issues petitioner now asserts. The jury was made aware of the inherent dangers of accomplice testimony through the I.P.I. jury instructions. The jury clearly had enough guidance to help evaluate the credibility of Maurice Nellum.

Petitioner's claim that the new Supreme Court Rules allowing for discovery depositions were not in effect and could have assisted him in preparing for trial. Once again, petitioner ignores reality that the Illinois Supreme Court has held that the amendments to its Rules do not have retroactive application. People v Hickey, _____ Ill.2d _____, 2001 Ill. Lexis 1080 at 57 (No.87286, decided September 27, 2001)

It should be noted, again, that Maurice Nellum was not called as a witness when the petitioner's eligibility for the death penalty had to be established beyond a reasonable doubt before the second sentencing jury on remand. Mr. Nellum played no part in the petitioner's second jury's determination beyond a reasonable doubt, that petitioner was guilty of the three murders and

possessed the intent to kill more than one person. As such, petitioner's claim for clemency due to Mr. Nelligan's testimony must be rejected since it is based upon a factor that played no part in his being found eligible for, and subsequently being sentenced to, the death penalty.

V

**PETITIONER'S CONVICTIONS AND DEATH SENTENCE IS
CONSTITUTIONAL BECAUSE HE RECEIVED A FAIR TRIAL
AND CAPITAL SENTENCING HEARING PURSUANT TO THE
ILLINOIS DEATH PENALTY STATUTE WHICH HAS
BEEN HELD CONSTITUTIONAL**

In issues E, F, and G, petitioner claims he should receive clemency because the recent amendments to the Supreme Court Rules governing capital cases and the Governor's Commission's recommendations were not applicable to his case, in 1980. He complains that because his identification by eyewitnesses for the Illinois triple murder and the Arizona double

murder was not videotaped, that he was not allowed to make an unsworn statement not subject to cross examination, that his attorneys were not members of the Capital Litigation Trial Bar, and that he was not able to use funds from the Capital Litigation Trial Fund, clemency is appropriate.

The recommendations by the Governor's Commission are not the law. They are mere suggestion by some on what they believe the law should be. Petitioner demands relief because he has not received a benefit of a suggestion that is not the law. In Illinois, a capital defendant has never been granted the right to make an unsworn statement not subject to cross examination; such a defendant has the right to testify as any other witness. People v Gaines, 88 Ill.2d 342, 430 N.E.2d 1046 (1981) Petitioner was additionally represented at trial and both sentencing hearings by experienced trial attorneys. Also, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois has ever been deprived of the necessary funds to investigate or retain appropriate experts. Courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies to the funds under the Capital Litigation Trial Fund.

The Illinois Supreme Court has already determined that the amendments to the Supreme Court Rules governing capital cases do not have retroactive application. People v Hickey, _____ Ill.2d _____, 2001 Lexis 1080 at 57 (No. 87286, September 27, 2001). Simply because there is a movement to improve the process of capital litigation does not mean that an injustice has resulted merely because the recent changes have not been applied to cases previously prosecuted before the improvements were effective.

Petitioner requests clemency because he feels that some of the jury instructions that have been used for decades in capital sentencing hearings are vague. It is very interesting to note that he

has ignored the Illinois Supreme Court decisions that have held these exact jury instructions are in fact constitutional. People v Mitchell, 152 Ill.2d 274, 604 N.E.2d 877 (1992), People v Gacho, 122 Ill.2d 221, 522 N.E.2d 1146 (1988)

Petitioner has been protected by the constitutions of the United States and Illinois since the time he was arrested. Juries have determined his guilt and the necessity of his execution. He demands further protections from recommendation that are not required by law or from amendments held by the Illinois Supreme Court not to apply retroactive to his case. No injustice has been done to petitioner. The demands petitioner makes are to unjustly benefit because of a misguided narcissistic governor who contemplates commuting death sentences for his personal and professional gain while he ignores the victims and victim's families of all death row murders. To grant petitioner clemency would be obscene.

CONCLUSION

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For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to Murray Hooper.

Respectfully submitted,

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Walter Hehner
Sari London