

1987

# Virgil Lee Topp v. N.D. "Pete" Hayward : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Elizabeth Bowman; Salt Lake Legal Defender Association; Attorney for Appellant.

David L. Wilkinson; Attorney General; Earl F. Dorius; Assistant Attorney General; Attorneys for Respondent.

---

## Recommended Citation

Brief of Respondent, *Virgil Lee Topp v. N.D. "Pete" Hayward*, No. 870110.00 (Utah Supreme Court, 1987).  
[https://digitalcommons.law.byu.edu/byu\\_sc1/1633](https://digitalcommons.law.byu.edu/byu_sc1/1633)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

DOCUMENT  
KFU  
45.9  
.80

IN THE UTAH SUPREME COURT

870110/870133

---

VIRGIL LEE TOPP, :  
Petitioner-Appellant, : Case No. 870110/870133  
vs. :  
N.D. "PETE" HAYWARD, : Category No. 2  
Respondent. :

---

BRIEF OF RESPONDENT

APPEAL FROM JUDGMENT AND ORDER DENYING  
PETITION FOR WRIT OF HABEAS CORPUS IN THE  
THIRD JUDICIAL DISTRICT COURT, IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH, THE  
HONORABLE RICHARD H. MOFFAT PRESIDING.

DAVID L. WILKINSON  
Attorney General  
EARL F. DORIUS  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorneys for Respondent

ELIZABETH BOWMAN  
Salt Lake Legal Defender Assoc.  
333 South Second East  
Salt Lake City, Utah 84111

Attorney for Appellant

**FILED**  
SEP 14 1987

IN THE UTAH SUPREME COURT

---

VIRGIL LEE TOPP,	:	
Petitioner-Appellant,	:	Case No. 870110/870133
vs.	:	
N.D. "PETE" HAYWARD,	:	Category No. 2
Respondent.	:	

---

BRIEF OF RESPONDENT

APPEAL FROM JUDGMENT AND ORDER DENYING  
PETITION FOR WRIT OF HABEAS CORPUS IN THE  
THIRD JUDICIAL DISTRICT COURT, IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH, THE  
HONORABLE RICHARD H. MOFFAT PRESIDING.

DAVID L. WILKINSON  
Attorney General  
EARL F. DORIUS  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114

Attorneys for Respondent

ELIZABETH BOWMAN  
Salt Lake Legal Defender Assoc.  
333 South Second East  
Salt Lake City, Utah 84111

Attorney for Appellant

## TABLE OF CONTENTS

TABLE OF CONTENTS . . . . .	i
TABLE OF AUTHORITIES . . . . .	ii
JURISDICTION . . . . .	1
STATEMENT OF ISSUES . . . . .	1
STATEMENT OF THE CASE . . . . .	1
STATEMENT OF FACTS . . . . .	2
SUMMARY OF ARGUMENTS . . . . .	3
ARGUMENT . . . . .	4
I.        THE SUFFICIENCY OF RESPONDENT'S IDENTIFICATION EVIDENCE, BEYOND THAT NEEDED TO MAKE HIS PRIMA FACIE CASE, IS IRRELEVANT. . . .	4
II.       IN THE ALTERNATIVE, RESPONDENT'S ADDITIONAL IDENTIFICATION EVIDENCE SUFFICED TO IDENTIFY PETITIONER IN AN EXTRADITION CONTEXT. . . . .	6
CONCLUSION . . . . .	9
ADDENDUM . . . . .	11

## TABLE OF AUTHORITIES

### CASES

### PAGE(S)

<u>Eathorne v. Nelson</u> , 180 Colo. 288, 505 P.2d 1 (1973) . . . . .	7, 8
<u>Emig v. Hayward</u> , 703 P.2d 1043 (Utah 1985) . . . . .	5, 6
<u>Langley v. Hayward</u> , 656 P.2d 1020 (Utah 1982) . . . . .	4
<u>Michigan v. Doran</u> , 439 U.S. 282, (1978) . . . . .	5, 7
<u>State v. Perry</u> , 27 Utah 48, 492 P.2d 1349 (1972) . . . . .	6

### STATUTES

Utah Code Ann. § 77-30-10 (1982) . . . . .	1
Utah Code Ann. § 77-30-20 (1982) . . . . .	7
Utah Code Ann. § 78-2-2(3)(i) (1987) . . . . .	1

IN THE UTAH SUPREME COURT

---

VIRGIL LEE TOPP,	:	
Petitioner-Appellant,	:	Case No. 870110/870133
vs.	:	
N.D. "PETE" HAYWARD,	:	Category No. 2
Respondent.	:	

---

BRIEF OF RESPONDENT

JURISDICTION

This appeal is from judgment and order denying petition for writ of habeas corpus after a hearing in the Third Judicial District Court. This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2-2(3)(i) (1987).

STATEMENT OF ISSUES

1. Whether sufficiency of respondent's identification evidence is irrelevant, since once respondent had made his prima facie case, petitioner failed to carry his burden of going forward with affirmative evidence.
2. Whether, alternatively, respondent's identification evidence was sufficient to establish petitioner's identity in the context of an extradition habeas corpus hearing as provided for in the Uniform Criminal Extradition Act, Utah Code Ann. § 77-30-10 (1982).

STATEMENT OF THE CASE

Petitioner, Virgil Lee Topp, in custody pending extradition to Iowa to face charges of sexual abuse (seventy counts) and willful injury, filed a pro se petition for a writ of

habeas corpus on January 23, 1987 (R. 2-6). Counsel was appointed (R. 8) and a hearing held March 4, 1987, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Richard H. Moffat presiding (R. 39-45) (Appendix A). Judge Moffat denied the petition (R. 27-28, 45), and two appeals--one by counsel on behalf of petitioner (R. 29) and one by petitioner himself (R. 17)--were taken. The cases were consolidated sua sponte by this Court. Following extensions of time, a brief was timely filed by counsel on behalf of petitioner, but petitioner's pro se motion for another extension of time in which to file his own brief was denied by this Court (see appellate files).

#### STATEMENT OF FACTS

The issues raised at the habeas corpus hearing were whether petitioner Virgil Topp was the same Virgil Topp wanted by Iowa and whether petitioner was in Iowa at the time of the offense. No evidence was presented by petitioner on the latter issue, nor does he raise it on appeal. On the former issue, respondent made his prima facie case by showing that the name on the Utah governor's warrant and the Iowa extradition demand were the same as the name of petitioner (R. 40). Petitioner then asserted through counsel that he was not the same Virgil Topp wanted by Iowa and that he was not in Iowa at the time of the offense (R. 41-41). Counsel stated, "And we would allow those assertions to stand and have the State rebut them at this point" (R. 41). Respondent, although pointing out that petitioner had

the burden of going forward, called Salt Lake County Deputy Sheriff Ronald Cowdell, who testified that he had mailed certified copies of photographs of petitioner Topp to the authorities in Iowa and that they had been returned with affidavits (R. 41-42). Deputy Cowdell further testified on cross-examination that the affidavits asserted that the affiants had picked Mr. Topp out of a photo spread but that he had no idea what the other photographs included with petitioner Topp's looked like (R. 43). The court concluded that "petitioner is the person charged in the State of Iowa and was present when the crimes charged were committed" (R. 26).

#### SUMMARY OF ARGUMENTS

Since petitioner did not satisfy his burden of going forward with affirmative evidence once respondent had made his prima facie case on the issue of identity, respondent was not required to present any further evidence. Therefore, the sufficiency of that further evidence is irrelevant.

In the alternative, the photographs and affidavits presented by respondent were sufficient to establish petitioner's identity for the purposes of extradition. Petitioner's argument is based on the erroneous assumption that the same standards apply to identification evidence in a habeas corpus hearing prior to extradition as apply at trial, where guilt or innocence is at issue. The law is clear that the same standards do not apply and that so long as evidence shows that petitioner is the same



person sought by the demanding state, it has fulfilled its purpose.

#### ARGUMENT

NOTE: Since petitioner failed to brief the issues raised in his pro se docketing statement, respondent will discuss only the identity issue raised and briefed by petitioner's counsel. Respondent is ready, however, to provide such further briefing as this Court may require.

I. THE SUFFICIENCY OF RESPONDENT'S IDENTIFICATION EVIDENCE, BEYOND THAT NEEDED TO MAKE HIS PRIMA FACIE CASE, IS IRRELEVANT.

Langley v. Hayward, 656 P.2d 1020 (Utah 1982) outlined the shifting burden of proof on the identity issue in a pre-extradition habeas corpus hearing:

The state has the burden of proving that the person arrested is the person named in the extradition papers. The state makes a prima facie case on that issue by showing that the arrested person has (or is known by) the same name as that appearing on the extradition papers.

When the state has made its prima facie case, the petitioner has the burden of going forward with affirmative evidence that he is not the person named in the extradition papers. Where the petitioner does this by sworn testimony or by a verified pleading and where the state provides no evidence in addition to its bare prima facie case (as defined above) to corroborate the petitioner's identity with the person named in the extradition papers, the petitioner is entitled to release.

Where the state provides corroborating evidence, the court must weigh the evidence and make a finding on the issue of identity.

Id. at 1022 (citations omitted). Petitioner acknowledges this standard but fails to show that once respondent had made his

prima facie case, petitioner then came forward with any affirmative evidence. In fact, the record reveals that he did not. Petitioner simply asserted through counsel that he was not the same Virgil Topp named in the extradition papers and thought that sufficient to require respondent to provide further evidence corroborating his prima facie case.

On the contrary, this Court held in Emig v. Hayward, 703 P.2d 1043 (Utah 1985) that

[t]o meet his burden on the fugitivity issue, [petitioner] had to prove by clear and convincing evidence that he was not a fugitive from justice. [Petitioner] was not able to produce witnesses to testify on the issue of his fugitive status and he put on no other evidence. Thus, nothing rebutting his fugitive status was before the court. Under the circumstances, [petitioner] simply did not make out his case, and we must defer to the judgment of the trial court.

Id. at 1051. While the issue in Emig was fugitivity, the Emig rationale applies equally to petitioner's burden of proof on the issue of identity.<sup>1</sup> Petitioner failed to prove by any evidence

---

<sup>1</sup>In Michigan v. Doran, 439 U.S. 282, 289 (1978) the United States Supreme Court identified "whether the petitioner is the person named in the request for extradition" and "whether the petitioner is a fugitive" as separate issues. In Emig, this Court instead took the view that both presence in the demanding state on the date of the crime and identity go to the issue of fugitivity. This Court stated that

under the Utah Uniform Criminal Extradition Act and our case law, an accused has the right to challenge his extradition by showing that he is not a fugitive from justice. For example, if the person sought to be extradited was not in the demanding state on the date of the crime, or if he is not the person named in the extradition warrant, he cannot be a "fugitive from justice" within

at all, let alone clear and convincing evidence, that he was not the person sought by Iowa. Therefore, respondent had no obligation to corroborate his prima facie case, and the sufficiency of any evidence he presented to do so is irrelevant.

II. IN THE ALTERNATIVE, RESPONDENT'S ADDITIONAL IDENTIFICATION EVIDENCE SUFFICED TO IDENTIFY PETITIONER IN AN EXTRADITION CONTEXT.

Petitioner criticizes respondent's failure to introduce the entire photographic line-up viewed by the affiants into evidence. Without exception, however, the cases cited by petitioner in support of this criticism deal with the use and effect of a photographic identification in a trial setting. For instance, this Court held in State v. Perry, 27 Utah 48, 492 P.2d 1349 (1972) that "the circumstances of the individual case should be scrutinized carefully by the trial court to see whether . . . the identification . . . was something so distorted or tainted that in fairness and justice the guilt or innocence of an accused should not be allowed to be tested thereby." 27 Utah 2d at 51, 492 P.2d at 1352 (emphasis added). Petitioner's application of such cases to extradition proceedings entirely misses the point.

---

the meaning of the extradition statute.

Id. at 1046 (citations omitted). This Court also held that issuance of a governor's extradition warrant "carr[ies] with it a presumption of validity" and establishes a prima facie case of fugitivity. Id. at 1047. Thus, issuance of a governor's warrant makes a prima facie case of both identity and presence in the demanding state on the date of the crime, which must be refuted by clear and convincing evidence. Since petitioner in this case presented no evidence at all on either identity or presence in the demanding state on the date of the crime, he has failed to carry his burden on either sub-issue.

The inquiry in a pre-extradition habeas corpus hearing is not whether the petitioner actually committed the crime(s) for which the demanding state desires to extradite him; rather it is only whether the petitioner is the same person the demanding state has charged with those crimes. See Utah Code Ann. § 77-30-20 (1982); Doran at 289. If the demanding state has charged the wrong person, that is for its courts to determine in legal proceedings during which the defendant will be accorded his full rights. Therefore, corroborative identification evidence need only be sufficiently unique to petitioner that it makes his evidence that he is not the same person sought by the demanding state less than clear and convincing.

In Eathorne v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973) (en banc), a petitioner attacked the testimony of an identification witness in an extradition proceeding "by claiming that [the witness'] in-court identification was tainted because the police showed the witness pictures of the appellant before he testified." 180 Colo. at 291, 505 P.2d at 3. The court noted that "Maryland's highest court held, in reaching the issue which is before us, that identification testimony at an extradition hearing should not be tested by the same standards which are applied to identification testimony at the time trial is held on the merits." 180 Colo. at 292, 505 P.2d at 3 (citing Solomon v. Warden, 256 Md. 297, 260 A.2d 68 (1969)). The court held that

[s]ince the extradition hearing is not designed or intended to accomplish a determination of guilt or innocence, and is only summary in nature, a detailed inquiry

into the background of the identification of the accused is not appropriate. The courts of the demanding state must determine the admissibility of the witness's identification testimony, not a court in the asylum state. The responsibility for a full and fair trial on the merits rests on the demanding state. The scrutiny required before an in-court identification is allowed at the time of trial has no place at the extradition hearing."

Id. (citations omitted).

In this case, respondent submitted photographs of petitioner with affidavits of the victim, his mother, and the police officer who conducted the photographic identification procedure (Exhibit 2-D) (Appendix B). The court found "from the evidence that the persons submitting the affidavits were persons who knew the petitioner and that the photograph identified was that [of] the petitioner" (R. 25). For the purposes of extradition, a single photograph, unaccompanied by affidavits, would have sufficed to corroborate respondent's prima facie case. The only arguable question would have been how closely the photograph resembled petitioner. It follows that respondent's failure to introduce into evidence all photographs used in the line-up does not provide petitioner ground for relief.

CONCLUSION

Based upon the foregoing arguments, respondent respectfully requests this Court to affirm denial of petitioner's petition for a writ of habeas corpus and to order his extradition to Iowa forthwith.

DATED this 14<sup>th</sup> day of September, 1987.

DAVID L. WILKINSON  
Attorney General

*Earl F. Dorius*  
EARL F. DORIUS  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Respondent were mailed, postage prepaid, to Elizabeth Bowman, attorney for appellant, Salt Lake Legal Defender Association, 333 South Second East, Salt Lake City, Utah 84111, this 14<sup>th</sup> day of September, 1987.

Earl F. Brown

## ADDENDUM



## APPENDIX A

WHEREUPON the following proceedings were had:

1 THE COURT: This is the matter of Virgil Lee Topp  
2 versus N.D. "Pete" Hayward.

3 MS. BOWMAN: Betsey Bowman on behalf of Virgil  
4 Topp, present in custody.

5 MR. SHEPHERD: Rich Shepherd appearing on behalf  
6 of the Sherriff, N.D. "Pete" Hayward.

7 THE COURT: This is a Petition for a Writ?

8 MR. SHEPHERD: That is correct, Your Honor.

9 THE COURT: Very well. You may proceed.

10 MR. SHEPHERD: May I ask Your Honor, has the  
11 Court received a copy of the Answer filed by the Sherriff in  
12 this matter. I don't know if it's found it's way to the file  
13 or not yet.

14 THE COURT: No.

15 MR. SHEPHERD: I provided a copy to counsel. I  
16 have another copy here I would provide the Court at this time.

17 THE COURT: Thank you.

18 MR. SHEPHERD: This is a matter involving habeas  
19 corpus on an extradition matter; and as is usually the case it  
20 is the burden, but that is not the case and the State would  
21 make a proffer of documents upon which the extradition is  
22 based. I have provided copies of these documents---

23 MS. BOWMAN: Correct.

24 MR. SHEPHERD: ----to the Petitioner and ask to have  
25 this marked in evidence and we would submit it to the Court.  
Now, this is an extradition to Iowa.

MS. BOWMAN: Yes, it is.

1 THE COURT: Ok. I take it the Governor of Utah  
2 has agreed, subject to this Court's approval?

3 MS. BOWMAN: Yes.

4 MR. SHEPHERD: Submit to the Court certified  
5 copies of the documents that are on file with the Lieutenant  
6 Governor's office; and in addition to that, I have with me that  
7 I will offer at this time, but subject to withdrawal, the  
8 Governor's Warrant signed by the Governor of the State of  
9 Utah and the Governor's Warrant signed by the Governor of the  
10 State of Iowa. We'll not have those marked since they are the  
11 original documents and need to be returned to the Sherriff's  
12 Office.

13 THE COURT: Very well. Thank you.

14 MR. SHEPHERD: At this time I believe that  
15 establishes a prima facie case in as much as the name contained  
16 on the warrants is the same as the name of the Petitioner.

17 THE COURT: Double check the warrants. Yes, I  
18 believe that a prima facie case has been established.

19 MS. BOWMAN: Your Honor, Mr. Topp has filed his  
20 own writ with the Court and you should have a copy. You  
21 probably have the original copy.

22 THE COURT: I do.

23 MS. BOWMAN: I have gone over it with him in  
24 great detail. It appears that he alleges they are mistaken  
25 identity and that is asserted on page two in the top paragraph  
that the same Virgil Topp being held in the jail is not the  
same Virgil Topp that Iowa is petitioning to Utah; and secondly

1 he's asserted that he was not in Iowa at the time of the  
2 offense. And we would allow those assertions to stand and  
3 have the State rebut them at this point.

4 MR. SHEPHERD: Ok. I would indicate to the Court  
5 and state it for the record too, this matter becomes an issue  
6 on appeal under the law of the State of Utah, as I understand  
7 it, we have in fact established a prima facie case and at this  
8 point it's the burden of the Defendant to go forward; however,  
9 since the Defendant is appearing Pro Se, I understand that  
10 we have obtained additional evidence and I would ask Deputy  
11 Cowdell to be called as a witness to testify very briefly and  
12 then I'll submit further documents.

13 THE COURT: Would the deputy come forward, please?  
14 Take the stand, Sir.

15 WHEREUPON THE WITNESS BEING DULY SWORN TO TELL THE  
16 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,  
WAS EXAMINED AS FOLLOWS:

17 DIRECT--EXAMINATION BY MR. SHEPHERD:

18 Q. Will you state your name for the record, please?

19 A. Ronald Cowdell.

20 Q. And what is your occupation?

21 A. Deputy Sheriff of Salt Lake County.

22 Q. And what is your specific assignment?

23 A. I work the fugitive warrants division.

24 Q. Are you familiar with the case that's presently  
25 before the Court; that is the matter of extradition of Virgil  
Lee Topp?

A. Yes, I am.

1 Q. And at my request did you prepare photographs  
2 for submission to the authorities in Iowa in connection with  
3 this case?

4 A. Yes, I did.

5 Q. Would you tell the Court what you did?

6 A. I obtained certified copies of photos that we  
7 had of Virgil Topp, and these were mailed to the authorities  
8 in Iowa for identification purposes.

9 Q. And did they subsequently return those photos  
10 to you in connection with affidavits?

11 A. Yes.

12 Q. And I'll show you now what has been marked as  
13 Defendant's proposed Exhibit Two-D and ask first of all are  
14 the photographs attached thereto the photographs that you sent  
15 to the State of Iowa?

16 A. Yes.

17 Q. And the affidavits attached thereto, are they  
18 the affidavits that you received back from the authorities in  
19 the State of Iowa?

20 A. Yes.

21 MR. SHEPHERD: No further questions.

22 THE COURT: You may cross examine.

23 CROSS-EXAMINATION BY MS. BOWMAN:

24 Q. Mr. Cowdell, do you have copies of the other  
25 photographs that were mailed as well?

A. No. I never. I only mailed a copy of Virgil  
Topp.

1 Q. Ok. And these affidavits assert that Mr. Topp  
2 was picked out of a photo spread, do they not?

3 A. Yes.

4 Q. And that photo-spread included five other white  
5 males, correct?

6 A. To my knowledge, yes.

7 Q. You do not have copies of those five other  
8 people's----

9 A. No, Ma'am.

10 Q. ----pictures and you have no idea if they looked  
11 closely at all or resembled in anyway, Virgil Topp?

12 A. I have no idea what they were.

13 Q. Not even sure if they were Caucasian?

14 A. No, Ma'am.

15 Q. It could conceivably have been photographs of  
16 five black individuals, with Mr. Topps' thrown in there?

17 A. It could.

18 MS. BOWMAN: For that reason, Your Honor, I would  
19 ask that these not be assumed as adequate evidence of Mr.  
20 Topps' identity without knowing the five other individuals in  
21 the photospread; if they're asserting they picked out Virgil  
22 Topp it's important to know who the other individuals were or  
23 at least see pictures of the other individuals. We don't have  
24 that.

25 THE COURT: May I see those?

MR. SHEPHERD: Yes, Your Honor. May I respond  
briefly, Your Honor?

1 THE COURT: You may.

2 MR. SHEPHERD: With respect to that, Your Honor:  
3 First of all, this is not a criminal proceeding ~~per se~~. This  
4 is a civil proceeding, habeas corpus.

5 THE COURT: I understand.

6 MR. SHEPHERD: The affidavits speak for themselves  
7 and the sole issue here is to identify the Defendant for  
8 purposes of this hearing; and I think it 's established by  
9 those affidavits on the face of the affidavits. And I think  
10 the issue of whether or not he's the person who committed the  
11 crimes in the State of Iowa can be determined there in the  
12 course of a regular criminal proceeding. And at that time,  
13 the rules of criminal procedure would apply.

14 THE COURT: Well, there is another factor here.  
15 The extradition papers contain an allegation of the incident  
16 and the parties involved are the boy's mother, Pamela Houston  
17 and Larry, the victim. It seems to me that under those  
18 circumstances, in this type of proceeding, that identification  
19 is sufficient.

20 MR. SHEPHERD: Thank you, Your Honor. We would  
21 have no further questions of this witness.

22 THE COURT: Any further questions?

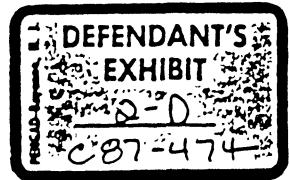
23 MS. BOWMAN: Unless there is something that he  
24 would be stating whether or not it's going to the second  
25 issue that Mr. Topp has raised, that Mr. Topp asserts he was  
not in Iowa at the time of the offence.

1           MR. SHEPHERD:       We have no evidence to submit on  
2 that.  
3           THE COURT:        You may step down. Anything further?  
4           MR. SHEPHERD:       I have nothing further, Your Honor.  
5           MS. BOWMAN:        I have nothing further to say. Like  
6 the record to reflect also that Mr. Topp indicates he has  
7 nothing further to address the Court.  
8           THE COURT:        The Court is of the opinion that the  
9 Petitioner's petition for a Writ of Habeas Corpus is not well  
10 taken and should be denied, and therefore it is. And that the  
11 documentation before us, together with the testimony of the  
12 officer provides identification sufficient for the extradition.  
13           MR. SHEPHERD:       Thank you, Your Honor. I'll  
14 prepare a written order and finding of facts.  
15           THE COURT:        Allright.  
16           MR. SHEPHERD:       Withdraw the Governor's warrant.  
17           THE COURT:        Here are the warrants. I think it's  
18 the Exhibit One-D you want left?  
19           MR. SHEPHERD:       Yes, and we'll leave the affidavits  
20 also.  
21           MS. BOWMAN:        No objection.  
22           THE COURT:        Very well. Anything further to come  
23 before the Court on this matter?  
24           MS. BOWMAN:        Nothing further.  
25           THE COURT:        We'll be in recess until 11:00 here.  
          MS. BOWMAN:        Thank you.

(WHEREUPON this hearing was concluded.)



## APPENDIX B



SWORN STATEMENT  
AND AFFADAVIT

I Pamela Hudson, hereby state that I was shown a set of  
x photographs of male individuals for the purpose of identification  
the individual known to me and by me as VIRGIL TOPP. I hereby state  
at picture number 3 is the subject VIRGIL TOPP.

Pamela Hudson

Subscribed and sworn to me by the said Pamela Hudson  
is 12 - day of February 1987.

Jack L. Strawn

SWORN STATEMENT  
AND AFFADAVIT

I Larry Huston, hereby state that I was shown a set of  
photographs of male individuals for the purpose of identification  
the individual known to me and by me as VIRGIL TOPP. I hereby state  
t picture number 3 is the subject VIRGIL TOPP.

Larry Huston

Subscribed and sworn to me by the said Larry Huston  
s 10 day of February 1987.

Jack L. Hester

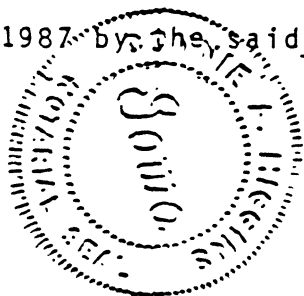
SWORN STATEMENT  
AND AFFADAVIT

I, Jack L. Straw hereby state that I did produce and show to Larry Huston and Pamela Huston an array of six photographs and that both individuals while separated from each other did identify the person in photograph number 3 as VIRGIL TOPP. I further state the subject in photograph number 3 is the subject being held in the State of Utah, ~~County of Salt Lake~~ — I further swear and state that photograph number 3 is the same photograph received from the Salt Lake County Sheriff.

Let it be known the subject has been identified as VIRGIL TOPP by the victim of the crime stated in the warrant directed to the Salt Lake County Sheriff.

Capt. J. L. Straw

Subscribed and sworn to me this 17<sup>th</sup> day of February  
1987 by the said Capt. J. L. Straw



Connie A. Higgins

