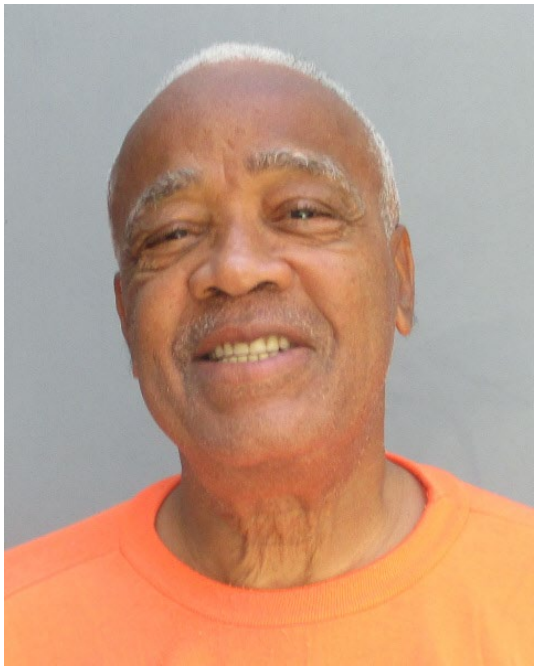
TO THE HONORABLE MEMBERS OF THE ARIZONA BOARD OF EXECUTIVE CLEMENCY AND THE HONORABLE ARIZONA GOVERNOR DOUGLAS DUCEY



MURRAY HOOPER

APPLICATION FOR EXECUTIVE CLEMENCY

October 27, 2022

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I. Introduction

Murray Hooper faces an execution date of November 16, 2022. He appears before this Honorable Board requesting that you recommend commuting his death sentence to life without the possibility of parole.

Mr. Hooper does not appear before this Honorable Board expressing remorse for the tragic deaths of Pat Redmond and Helen Phelps, or the serious injury to Marilyn Redmond. Not because these aren't tragic and horrific events that sadden us all, including Mr. Hooper, but because he cannot express remorse for a crime he did not commit.

As Mr. Hooper demonstrates within his Clemency Petition, his case presents gross systemic failures that render his convictions and death sentence unworthy of this Honorable Board's highest confidence. While this Honorable Board has no power to address Mr. Hooper's underlying convictions, it can act to spare Mr. Hooper's life in light of the evidence and information presented herein. Mr. Hooper respectfully requests that this Honorable Board exercise its power to grant mercy.

II. The Crime

On December 31, 1980, William "Pat" Redmond and his mother-in-law, Helen Phelps, were shot and killed by three home invaders. *State v. Bracy*, 145 Ariz. 520, 525 (1985). Redmond's wife, Marilyn, was shot in the head but survived. *Id*.

A. The eyewitness identification of Mr. Hooper is unreliable

On the night of the attack Mrs. Redmond gave statements to at least six people. She told Verna Kelly, Floyd Kelly, Officer Martinez[1], Detective Varela[2], and Officer J.C. Perez[3] that the attackers were 3 black males. During the interviews with Detective Varela and Officer J.C. Perez, Mrs. Redmond spontaneously changed the description to two black males and one white male. In fact, according to Officer Perez's report, Mrs. Redmond fell asleep in the middle of the interview. She then woke up 16 minutes later and Officer Perez asked her "Can you give me any more information on the white male?" It is unclear where Officer Perez got this information about a white male from because by his account "No more questions were asked at this time because victim went to sleep like a coma." By the time Mrs. Redmond talked to Detective Quaife, she told him that the attackers were two black males and one white male[4]. Mrs. Redmond told Detective Varela that two or all men wore masks. She then told Detective Quaife that only one black male wore a mask. Mrs. Redmond also told Detective Quaife she would not be able to recognize the attackers because she was too afraid to look at them.

[1] *See* Exhibit 1.
[2] *See* Exhibit 2.
[3] *See* Exhibit 3.
[4] *See* Exhibit 4.

On January 1, 1981, the Phoenix Police Department received an anonymous call that said Edward McCall, Billy Brice, and Hooper (unknown first name) were the ones responsible for the murders.[5] Also on January 1, 1981, although Mrs. Redmond said she was too afraid to look at the attackers and some or all were wearing masks, she was shown two composite drawings (one black male and one white male) that were created by the Long's Drug Store clerk who supposedly saw one white male and two black males buying tape and gloves on the day of the murders. Mrs. Redmond said that neither composite drawing looked like the attackers.

On January 3, 1981, Mrs. Redmond was unable to pick McCall out of a photo lineup.[6]

By January 7, 1981, the police department had zeroed in on McCall, Bracy, and Hooper. On that date, Mrs. Redmond miraculously provided detailed descriptions of each attacker and was no longer referencing masks. (*See* Exhibit 5.) Per Detective Martinsen's January 7th report that he failed to memorialize until July 7th (months after the arrest and unreliable identification of Mr. Hooper), Mrs. Redmond then described the attackers as follows[7]:

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[5] This caller was later identified as Valinda Lee Harper. *See* Section V.B. for further discussion.

[6] Mrs. Redmond was also unable to pick McCall out of a video lineup on January 15th.

[7] On this same day, detectives had spoken with the anonymous caller who gave descriptions of the three alleged suspects and specifically mentioned the black males being 6'0"-6'4", medium build, and clean shaven.

- **Black male 35-40 years old, 6'0"-6'1", medium build, short black hair, not too kinky, clean shaven, no glasses, wearing brown leather or leather simulated sport coat, dark slacks, and shirt, possibly navy or black. Armed with a gun, skinny barrel, approximately 4 inches.**

- **Black male 35-40, thinner and taller than the first Black male, wearing black sports coat, plain shirt, and trousers.**

- **White male 35-40 years old, medium build, light brown hair parted on the left side, conservative cut, no facial hair or glasses, wearing beige or tan suit, unknown if wearing vest, neat appearance, unknown if tie worn, no noticeable accent, carrying briefcase.**[8]

III. The Lineup

Nearly two months after the crime, Mr. Hooper was arrested by Chicago police in relation to an Illinois charge and the Arizona murders. The next day, despite the fact that Mrs. Redmond had changed her description of the attackers several times and said that she could not identify them, she was flown to Chicago where she participated in a lineup. This lineup was conducted by Chicago police detectives in a department known to physically and mentally torture people into offering false confessions or testimonies against other suspects and to engage in inappropriately coercive or suggestive witness handling techniques.

[8] By January 2, 1981, detectives had been handed a tan carrying case that the anonymous caller said the white male carried with him everywhere. And it would appear that the more details the detectives gathered from this anonymous source, the more details Mrs. Redmond happened to remember. She progressed from being "too afraid to look" at the men who were wearing masks to identifying specifics about them, what they wore, and what items they carried.

Beyond the standard unreliability of lineups, the Chicago Police got involved to make sure that Mrs. Redmond identified Mr. Hooper. Isaiah Southward signed a declaration in which he described his involvement as a participant in the lineup. (Exhibit 6.) Southward was familiar with the officers who were present at the lineup and knew that two of them "were involved in beating arrestees on the south side." (Exhibit 6 at 1.) Southward recalled that he was made to stand in six different lineups that day, including with Mr. Hooper. (Exhibit 6 at 1.) Southward recounted that the two officers with whom he was familiar were "mad" at Mr. Hooper and "kept coming into the line-up room and yelling at him." (Exhibit 6 at 1.) Southward noted that the detectives only did this to Mr. Hooper. Southward could see the outline of a woman on the other side of the mirror, and he said that the woman "never identified anybody during the course of all the line-ups." (Exhibit 6 at 1.) Southward recalled that he could hear the two officers "talking to her during the break between the line-ups." (Exhibit 6 at 1.) Southward said that it was "obvious" that the officers wanted Mr. Hooper to be identified and said that the two officers repeatedly entered the lineup room and went directly to Mr. Hooper, sometimes to tell him "I got your ass." (Exhibit 6 at 1.) Southward denied that they were ever made to speak or say a phrase but did say that they were directed to move very close to the two-way mirror. (Exhibit 6 at 2.) At this point in time, Southward could hear the woman on the other side say, "that's not him." (Exhibit 6 at 2.) Detective Ronald Quaife of the Phoenix Police Department told an

investigator with the Federal Public Defender's Office that Detective O'Callaghan walked up to Mr. Hooper and placed his hand on his shoulder in the middle of the lineup procedures. (Exhibit 7.)

Although the testimony at Mr. Hooper's trial seemed unclear about the number of lineups, Mr. Southward recalls there being at least 6 lineups that day. Maricopa County Attorney's Office investigator Dan Ryan similarly recalled 5 lineups. As discussed further in sections below, before Mr. Hooper participated in the lineup, the Chicago police beat Mr. Hooper, denied him an attorney, forced him to make a false statement, and then made it their personal mission to get him identified and convicted. (Exhibit 8.)

Chicago Police have repeatedly updated their General Orders to address the unreliability of lineup procedures. The procedure used today differs completely from the one in 1981 that caused Mrs. Redmond misidentify Mr. Hooper. In fact, in 2015, Illinois passed 725 ILCS 5/107A-2, a new law governing lineup procedures conducted in the state. (Exhibit 9.) Had that law been in effect in 1981, Detective O'Callaghan would not have placed his hand on Mr. Hooper's shoulder during the live lineup. The lineup would have been recorded (like every other identification in Mr. Hooper's case). The private conversations between the detective and Mrs. Redmond between Mr. Hooper's lineups would have been recorded. And no one present would have known which of the six participants was the suspected perpetrator. A lineup that

followed 725 ILCS 5/107A-2 likely would have prevented the unreliable identification of Mr. Hooper by Mrs. Redmond, "who was too scared to look" at the perpetrators "who were wearing masks."

A. Eyewitness Testimony is Notoriously Unreliable

Mr. Hooper has maintained his innocence for over 40 years. Dr. Geoffrey Loftus[9] explains in detail why Mrs. Redmond's identification is unreliable (*see* Exhibit 10). Through no fault of her own, Mrs. Redmond was steered towards identifying Mr. Hooper as one of the men who attacked her and her family.

At the clemency hearing, Dr. Loftus will provide detailed information about the general theories of perception and memory, circumstances under which memory fails and the consequences of memory failures for eyewitness testimony, as well as a host of other factors impacting the reliability of an eyewitness identification. Eyewitness testimony is crucial in many cases and nearly three decades of memory research has shown that unreliable eyewitness testimony can be extremely powerful to the jury, jurors are unaware of the limitations of eyewitness testimony, and jurors place great weight on the confidence of an eyewitness in court. (Exhibit 10 at 2, 10.) The same can be said for the vividness of a witness's memory, which "does not necessarily imply memory accuracy." (Exhibit 10 at 6.)

[9] "Dr. Loftus" is used to describe Dr. Geoffrey Loftus. Not to be confused with Dr. Elizabeth Loftus, the expert that testified at Mr. Hooper's original trial.

Dr. Loftus explains in his report that based on this science, "a witness like Mrs. Redmond testifying inaccurately about some critical fact … is not necessarily lying; rather, decades of scientific research have indicated that a witness may be testifying honestly about the contents of a memory that seems very real but that is false[.]" (Exhibit 10 at 10.) After gathering an understanding of perception and memory and how it can fail, Dr. Loftus illustrates that "Mrs. Redmond likely began with fragmented and incomplete initial memories of "S2", the intruder alleged to have been Mr. Hooper—and yet identified Mr. Hooper at trial based on reconstructed and plausibly false memory that included a strong representation of him as S2." (Exhibit 10 at 4.)

During the home invasion Mrs. Redmond's attention would have been divided between many things with her primary focus likely being on her family's safety and the weapons being wielded by the perpetrators. (Exhibit 10 at 5.) Had Mrs. Redmond's focus been on the perpetrators, her attention would have been divided between them. (Exhibit 10 at 6.) Her stress level necessarily would have been high and there are known challenges to cross-racial identification. (Exhibit 10 at 6.) Moreover, as Dr. Loftus explains the actual duration of the encounter is less significant when the perpetrator's appearance is relevant than is "functional duration," which occurs only when several factors are happening simultaneously (the perpetrator is in her field of view, she is paying attention to the perpetrator's appearance, stress is not

so significant that it prevents adequate cognitive functioning, the perpetrator is close enough to discern features, among other conditions). (Exhibit 10 at 7.) Finding indicators that weighed against Mrs. Redmond accurately forming a memory, "her attention was likely not on S2's appearance, all indications were that she was under high stress, it was a cross-racial situation, and she had little functional duration available to adequately perceive and memorize S2's appearance (particularly if S2 was indeed wearing a mask)." (Exhibit 10 at 7.) Mrs. Redmond's multiple descriptions of the perpetrators indicated her poor memory of their appearance. (Exhibit 10 at 9 and n.12.)

Dr. Loftus notes numerous problems with Mr. Hooper's lineup (Exhibit 10 at 7–8), many of which were addressed when the Illinois legislature implemented changes to the lineup procedures used in its state. As discussed above, the officers who conducted the lineup all knew Mr. Hooper was the suspect, so these officers cued Mrs. Redmond to pick Mr. Hooper.

Mrs. Redmond offered the powerful evidence that linked Mr. Hooper to the crime. The prosecutor told the jury in closing that Mrs. Redmond had exceptional skills at identification, and "She looked at them, she studied them, she heard them, she identified them. She was as positive of that as when she came in here and testified in front of you several weeks ago."[10] This significance is why it is important to fully

[10] At trial Dr. Elizabeth Loftus was limited to only testifying about cross-racial

understand and dissect the reliability of this testimony. We know now that had Dr. Elizabeth Loftus been allowed to testify in more depth or if Dr. Geoffrey Loftus been permitted to testify then or in a new trial, their opinions would have severely undercut the identification and demonstrated that Mrs. Redmond's confidence in her identification offered little to suggest its reliability. (Exhibit 10 at 3 *et seq.*) Indeed, Mrs. Redmond's identification has survived court review and bolstered a weak case based on assumptions that are is flatly inconsistent with the science as described by Dr. Loftus, including Mrs. Redmond's level of certainty, incorrect perceptions about her opportunity to view the perpetrators, and her attention. *See State v. Bracy*, 145 Ariz. 520, 531, 703 P.2d 464, 475 (1985).[11]

Decades of research now shows that even when the eyewitness expresses strong confidence, they may well be incorrect in their identification. (Exhibit 10 at 3.) Perception and memory are often fragmented in its initial stages and through post-event information they become more complete. However, the witness is not generally aware of which information in their eventual memory is based on the sensory data acquired during the event versus what is potentially false post-event information

identification. She was prevented by the judge from speaking about all the other areas of memory and perception that Dr. Geoffrey Loftus discusses in his report.

[11] Mr. Hooper and Bracy raised many of the same issues in their direct appeals. The Supreme Court "disposed of these issues in Bracy's case" and did not discuss or reconsider them in Mr. Hooper's appeal. *State v. Hooper*, 145 Ariz. 538, 543, 703 P.2d 482, 487 (1985).

acquired subsequently. (Exhibit 10 at 4.) This causes a memory where the eyewitness is confident, yet wrong—the situation present in Mr. Hooper's case. So, while the Arizona Supreme Court and Ninth Circuit opined that Mrs. Redmond's identification "was particularly strong because she had ample opportunity to view all three men[,]" *Hooper v. Shinn*, 985 F.3d 594, 617 (9th Cir. 2021), Dr. Loftus explains this is patently false. Had he testified at trial, this information would have been corrected. (Exhibit 10 at 5–6, n.8.)

Beyond the inherent unreliability of Mrs. Redmond's identification of Mr. Hooper—noting that her account of the evening changed substantially over time, including her description of the race of the assailants and whether she even looked at them or whether they were wearing masks—the method through which Chicago detectives handled witnesses and suspects at that time renders her identification of Mr. Hooper deeply flawed, through no fault of her own.

IV. Arizona's Underwhelming Case

Mr. Hooper has often heard said that the evidence of his guilt is "overwhelming." The jury sat with this evidence for three days, strongly suggesting the jurors did not view the evidence as "overwhelming." A closer look at the case reveals that while it may be a mile wide, the evidence is only an inch deep.

A. The State's Witnesses to Nothing

The State offered numerous witnesses who did not and could not identify Mr. Hooper as a participant in these offenses. Rather, these witnesses referenced unidentified Black men, or unidentified Black men from Chicago. They offered details that, if Arnie Merrill, George Campagnoni, and Nine Marie Louie's testimony is believed, corroborated that well-financed testimony:

Someone Said There Were Black Men in Phoenix

Mary Jo Babasina

Mary Jo Babasina worked at Long's Drug Store. She testified that she sold 3 pairs of surgical gloves and J&J adhesive tape to a white male on December 31, 1980. She also stated that a Black male brought the tape to the counter to be purchased. At no point during her testimony did Babasina identify Mr. Hooper as the Black man who entered the store.

The Incorrect Assumption That Because Mr. Hooper Was in Phoenix in Early December, He Must Have Also Been Here in Late December

Mr. Hooper denies any involvement in these crimes. He was present in Phoenix in early December for a drug deal, but he was not in Phoenix in late December.

Pat Birtch

Pat Birtch worked at the Holiday Inn in Scottsdale. Birtch indicated that a room was registered in Dean Bauer's name and checked into on December 3, 1980

at 9:00 p.m. Between December 3rd and 4th, Birtch observed two Black men and one woman in the room. Phone calls from the room were made to Chicago. The room was checked out of on December 5th at 2:30 p.m. Birtch did not identify Mr. Hooper. Mr. Hooper does not deny being in Phoenix in early December. But, being present in early December does not prove he was here in late December.

William Tompkins

William Tompkins is the lone corroborator who actually saw Mr. Hooper and Mr. Bracy. However, this was in early December when Mr. Hooper admits that he was in Phoenix, which is supported by Mr. Tompkins' testimony. Tompkins testified that Robert Cruz wanted him to rent a private plane to fly out two Black men coming to Phoenix "to do a thing" for Cruz around December 5th to the 7th. Defense counsel stipulated that it was Mr. Hooper and Mr. Bracy that Tompkins saw in early December at the Sun View Development office. Around December 28th, Cruz contacted Tompkins to see if he could secure a private plane for two guys coming from Chicago. These men would leave late and did not want to go through the commercial airlines. The following day, Cruz called to say to forget it; the men had decided to fly commercial. There is nothing in the testimony that would confirm who these men were and whether they even flew to Phoenix. None of this information places Mr. Hooper in Phoenix in late December.

Tompkins also testified that they stopped at Ray Kleinfeld's gun shop on December 31st and there were two Black men sitting in front of it. Neither man was identified as Mr. Hooper. Tompkins was familiar with and had identified Mr. Hooper as being present in Phoenix in early December but denied that Mr. Hooper was in Phoenix in late December. Regardless of the reason for their trip in early December, this does not place Mr. Hooper in Phoenix in late December.

Someone Flew From Phoenix to Chicago

Dean Bauer

Bauer testified that he prepaid for two American Airlines tickets for December 3, 1980, from Chicago to Phoenix at Robert Cruz's direction. Bauer also testified that he purchased two tickets on American Airlines one way to Chicago on December 31st, again at Cruz's direction. A representative of American Airlines, Richard Zip, identified tickets, but could not link them to Mr. Hooper. Neither ticket was in Mr. Hooper or Mr. Bracy's name. Bauer was very clear that he never saw Mr. Hooper or Mr. Bracy in Phoenix. Again, none of this places Mr. Hooper in Phoenix in late December.

Cruz Was Interested in Graphic Dimensions, Which Has Absolutely Nothing To Do With Mr. Hooper

The State also presented a series of witnesses who testified that Cruz was interested in purchasing all or part of Graphic Dimensions and that there was big money to be made in Las Vegas from the printing business. But Cruz was losing that

money because Pat Redmond was standing in his way by turning down the Las Vegas revenue. This testimony arguably went to Cruz and Joyce Lukezic's motive to kill Pat Redmond. None of it, however, directly linked Mr. Hooper to the killing or to being in Phoenix in late December. Moreover, both Cruz and Lukezic, the purported masterminds behind Pat Redmond's murder, were ultimately acquitted of all charges. Without the State's story that Cruz and Lukezic contracted with Mr. Hooper, Bracy, and McCall to kill Pat Redmond, there is no motive or explanation for why these men would travel across the country to kill an innocent family.

Someone Made Some Phone Calls to Chicago

Mr. Hooper admits being in Phoenix in early December, but denies being there later in the month, including on December 31, 1980. One might ask then, why is there a call from Merrill's home to Ms. Harris' phone in Chicago? Well, there is more than one answer to that question. For example, Arnie Merrill could have called Mr. Hooper. Cruz could have used Merrill's phone to call Mr. Hooper. Campagnoni could have used Merrill's phone to call Mr. Hooper. It is a fact that we can never get to the bottom of because the late disclosure of this evidence by the State hampered counsel's ability to defend or develop evidence. That phone call, absent Merrill, Campagnoni, and Louie's testimony placing Mr. Hooper in Phoenix, fails to prove Mr. Hooper was in Phoenix at the time or involved in these offenses. There is no way to know who made that call because the only people who claimed that Mr.

Hooper made that call were the State's paid liars who had every reason to point the finger away from themselves and at Mr. Hooper.

This corroborating evidence has no value without the testimony of Merrill, Campagnoni, and Louie placing Mr. Hooper in Phoenix and in the midst of this conspiracy to kill Pat Redmond.

B. The Other Witnesses: The State's Paid Liars

Valinda Lee Harper

Harper (aka Bindi) was the key that broke open the State's case. She made the initial "anonymous" call on January 1, 1981, to report she knew the people who committed the murders. She lived with State's witness Nina Marie Louie and dated State's witness George Campagnoni. She was also a drug addict who received most of her drugs from State's witness Arnie Merrill. Because both Campagnoni and Merrill fled the state right after the murders, it would seem that Harper was told by her boyfriend and drug dealer to point the finger at someone else to give them time to get out of the State.

By the time of the Linden trial (related to a series of Phoenix robberies/burglaries committed by McCall, Campagnoni, Merrill, Linden, Gill, and others), the State had to obtain a bench warrant to secure Harper's testimony. She was unavailable for subsequent trials. Defense attorney Rempe's investigator found Harper who indicated she did not want to testify for the State.

Nina Marie Louie

Louie was a prostitute and sold drugs, though she declined to sell drugs for Arnie Merrill when he asked her to do so. She was Harper's roommate and well-acquainted with the other informants.

Louie testified she had been made no promises and had not received a plea agreement, but she received cash (around $900). She admitted she was deemed a co-conspirator, which carried a 25-year sentence, but she faced no charges. She testified that she had signed an agreement she would testify, an agreement that was not disclosed to the defense before she took the witness stand (though what she had actually signed became less clear as she testified). Louie said she saw Mr. Hooper and Bracy at her apartment in Phoenix on New Year's Eve and provided a variety of hearsay statements allegedly made by McCall implicating Mr. Hooper and Bracy in these crimes. In addition to compensating witnesses, investigator Ryan kept many in fear; he told Louie that her name had been given up so Mr. Hooper would be looking for her.

George Campagnoni

Campagnoni testified he was with Mr. Hooper and Bracy at Merrill's house on New Year's Eve, but he offered this testimony in exchange for an incredible deal. Although Campagnoni possessed property stolen from the Redmond's—evidence of a more active participation then he let on—he was given immunity.

Campagnoni met Merrill in July 1980 and they became close friends, like father and son, and Campagnoni stayed at Merrill's home in November and December. Campagnoni also dated Valinda Lee Harper.

Campagnoni formed a burglary ring with Merrill, McCall, and others and committed a spree of home invasions in October 1980. These offenses were markedly similar to the Redmond/Phelps offense, right down to the surgical gloves and gagging the victim and taping their hands behind the back.

Campagnoni claimed that Mr. Hooper and Bracy checked a suitcase he loaned them when they departed on December 31st. He mentioned this despite the trial court having suppressed any evidence related to the suitcase.

Together, Campagnoni's crimes had the potential to leave him with consecutive sentences totaling around 150 years, and possibly life in prison. Instead, the State had Campagnoni plead to one burglary and one theft and he was placed on probation. Before his sentencing, investigator Dan Ryan gave false information to the probation officer completing Campagnoni's presentence report.

Campagnoni's deal was so good he decided to help out investigator Ryan. Campagnoni offered to get Mike Gill to testify for the State. To facilitate this request, Ryan brought Gill out of jail, purchased beer, and allowed the two men to drink and talk privately.

Campagnoni fled Phoenix days after the offense after noticing a police surveillance van. He came back a week later but remained for only an hour before he left again. Campagnoni was arrested over 3 weeks after the offense while hiding out in California. Mr. Hooper was arrested in his home in Chicago because he fled nowhere and had no reason to hide.

Arnold Merrill

This leaves us with the State's key co-conspirator, Merrill, a Valium-dependent drug dealer, fence for stolen goods, and mastermind of burglaries/home invasions.

Merrill was arrested in New York, where he fled to after the offense, while Mr. Hooper was found at home in Chicago, hiding from no one. Investigator Dan Ryan interviewed Merrill in New York, turning the tape off some 22 times during that interview. When Mr. Hooper was interviewed by Chicago police, he was beaten and tortured, and nobody taped his interview.

Merrill agreed to testify only after being incentivized with a State-sponsored offer he could not refuse. In exchange for testimony, Merrill only had to plead to one of his many burglaries and thefts, and was guaranteed immunity for all other crimes, including arson, armed robbery, burglaries, and ultimately the Redmond home invasion and murder.

In addition, Merrill received extraordinary perks for his testimony, some of which (but not all) were disclosed by the State. Dan Ryan sweetened the deal, but hid many of his actions from defense counsel, the court, and ultimately the jury. Ryan made car payments for Merrill's wife, Kathy; he delivered drugs to Merrill while he was in custody; and then altered Merrill's and Campagnoni's presentence reports. It was not until the State retried purported co-defendant Joyce Lukezic in 1982 that Ryan finally admitted that he made Kathy Merrill's car payments, but categorically denied using his own money by claiming Kathy Merrill would send him money he would use to make the payments. Deputy County Attorney Brownlee asserted: "there is absolutely no indication other than bald innuendo by various defense counsel in trying to smear the state that anyone's money was used other than Cathy (sic) Merrill's." This was false, as payment records made to Kathy Merrill's auto loan account came from Ryan and the city. Ryan was confronted with bank records showing he made a GMAC payment from his personal funds. Even more evidence was discovered about Ryan's payments to GMAC, which financed Kathy Merrill's car and other payments to her. Kathy Merrill received more than $3,000.

The corruption and lies did not stop there: Ryan took Merrill out of jail to visit his wife and other people for several hours at a time on his own accord without a court order. To facilitate visits between the Merrills, Ryan dropped Merrill off at various locations for hours, including hotels, to eat, talk, and have sex. On at least

one occasion, Merrill was not handcuffed after being picked up at the jail by Ryan. When Ryan testified the county paid for Kathy Merrill to stay at hotels where Merrill would visit her, the court was shocked to discover this information. It was also discovered that the county paid for Merrill to make at least 22 long distance phone calls to his wife All the crimes Merrill committed had the potential to leave Merrill in prison for life. But instead, his crimes were forgiven, and he mooched off the county for months and soaked in all the perks of being a paid liar.

Merrill testified that he knew about the plan to kill Pat Redmond, drove the killers to Redmond's house and business, and helped them procure weapons. Despite admitted extensive involvement in the events resulting in the homicides, the State absolved Merrill of any responsibility for the deaths. At the very least he was guilty of felony murder. Merrill's mostly uncorroborated account was the only source for much of the evidence the State relied on to convict Mr. Hooper.[12]

C. The Imaginary Contract

The State's theory of the case was that Robert Cruz and Joyce Lukezic hired McCall, Bracy, and Mr. Hooper to kill Pat Redmond. The two masterminds of this

[12] As an interesting post-script to who Merrill was and the role he may have played in this offense, Merrill changed his name after the trial. Interestingly, Merrill selected Anthony Montana. In the movie Scarface, Tony Montana, played by Al Pacino, "arrives penniless in Miami" and "becomes a powerful and extremely homicidal drug lord." https://en.wikipedia.org/wiki/Scarface_(1983_film)#:~:text=Loosely%20based%20on%20the%201929,and%20extremely%20homicidal%20drug%20lord (visited Oct. 9, 2022). Given the iconic status of the film, Merrill's name selection speaks volumes.

supposed contract killing were both acquitted of any involvement in these offenses. If no masterminds hired Mr. Hooper, why would he have flown across the country to kill an innocent family?

Even before Cruz and Lukezic's acquittals, the suggestion that this was a contract hit on Mr. Redmond was weak, at best. For example, there were a multitude of amounts of money involved in this imaginary contract, suggesting that the witnesses were less than truthful about its existence and flat out lying about the circumstances surrounding it. Merrill testified that Cruz offered him and Mike Gill $10,000 to kill Pat Redmond. When Merrill refused, Cruz offered him $5,000 to drive the car—he again refused. In a police interview Merrill says McCall was supposed to be paid $10,000, which he did not receive. (Exhibit 11.) Nina Marie Louie testified that Bracy said he was being paid $50,000 for "a job to do" on New Year's Eve.

Finally, the State never tied up payment of this contract. Pretrial, the State proffered that attorney Michael Green paid Mr. Hooper $10,000 transferred to Green by Robert Cruz in order to allow extensive hearsay testimony from Nina Marie Louie following the December 31st murders. However, Green testified at Lukezic's trial that he had represented Mr. Hooper in earlier matters, and that Mr. Hooper was not the man who picked up $1,000 from his office in early January 1981—Green was never called to testify in Mr. Hooper's trial. Not only does Green thwart evidence of

a contract, but his testimony was the basis for the State's improper presentation of extensive and prejudicial evidence presented by Louie.

V. There Were Other Suspects the State Dismissed

On December 31, 1980, police pulled over and arrested Michael Bradford, Ronald Bradford, and Novel Ward in a white 1974 Cadillac for unrelated charges at or around 1000-1100 E. Washington at 9:00 p.m. (Exhibit 13.) That same night, Phoenix police received an anonymous call at 10:05 p.m. advising that one of the people responsible for the Redmond murders was an African

American male with a slim build and a wart on his nose. The caller also informed the police this person was at 13th Street and Washington (just two blocks away from where the Bradfords and Ward were arrested, and one block away from where their vehicle was initially spotted by police). The caller told the police this person would be in a white 1976 Cadillac. Ronald Bradford had a noticeable wart on his face. Moreover, Ronald Bradford was wearing a chain similar to the one described by Marilyn Redmond. Ronald Bradford was in the right place at the right time and matched the caller's description. It should also be noted that a copper casing from a .38 bullet was removed from Mrs. Redmond at the hospital. That same caliber gun was found in Ronald Bradford's possession. The gun retrieved from Ronald Bradford was described as a .38 caliber blu steel revolver with a 4-inch barrel. On January 7, 1981, Mrs. Redmond described the gun used in her attack as having a 4-inch barrel.

Yet Ronald Bradford's gun was never tested or compared to the bullets found at the scene of the crime. This information about alternate suspects was further bolstered when an informant, who was a friend of Merrill, came forward and told Detective Quaife that Merrill had said that the murders were committed by two local Black males. (Exhibit 14.)

This information was right in front of the police all along. However, the Phoenix Police Department never followed up. They did not take the name or number of the caller. They did not attempt to trace from where the call came. They did not go to the location where the caller saw Ronald Bradford. They never compared the gun found with the suspects to the bullets retrieved from the scene, and never tested the Bradfords or Ward for gunshot residue. In the end, not only were these legitimate suspects sloppily discounted, but they were also not charged with the offenses stemming from their stop and arrest. To make matters worse, much of this information was not disclosed to Mr. Hooper's defense team until November 10, 1982. This was 24 days after jury voir dire began and 8 days after opening statements, while the State was in the midst of presenting its case to the jury. Unfortunately, this failure to disclose was not an uncommon theme in Mr. Hooper's trial.

VI. Investigator Ryan Irreparably Tainted the State's Case

Investigator Ryan used a combination of inducements and incentives, lies, and threats, to secure witness testimony. His tactics were so suspect that he faced

contempt charges for conduct discovered during the Lukezic trial, along with the two prosecutors in this case, Brownlee and Jones—a fact kept from Mr. Hooper's jury. As discussed above, Ryan made car payments for Merrill's wife, Kathy (unknown to Mr. Hooper's jury); he delivered drugs to Merrill while he was in custody (also unknown to Mr. Hooper's jury); and the fabricated portions of Merrill's and Campagnoni's presentence reports.

But he did not just use enticements to secure cooperation, he also used threats and intimidation. He told one witness that if he did not give a statement, he "would break both of his legs and make sure that his children were placed in a foster home where he would never see them again." Ryan instructed another witness, Wally Roberts, not to cooperate with the defense. Ryan allowed Roberts to review his statements to police but told Roberts to lie about this. Ryan "loaned" Roberts $850, but Ryan claimed he did not pay other witnesses in this case (a claim that was proved false as discussed above). Ryan and Brownlee facilitated a meeting between Roberts and another potential witness, and Ryan gave Roberts a loaded gun to carry at that meeting. When a dead bird was found in Roberts' home, Ryan's response was meant to fuel Roberts' fear; he told him that "they" must have found him. Roberts became so fearful of Ryan that before testifying at Lukezic's trial, he demanded protection from Ryan.

Ryan's tactics—money, sex, drugs, threats, intimidation—taint Mr. Hooper's convictions and death sentence. But these proceedings were tainted well-before, beginning the moment the Chicago Police took Mr. Hooper in custody, brutalizing him, Bracy, and Morris Nellum to secure a conviction at all costs. While this evidence may sustain a conviction and sentence in a court of law, the task before this Honorable Board is a different one—to consider and bestow mercy where it is appropriate. The State of Arizona should not put Mr. Hooper to death in the face of this bankrupt process where witnesses were bought and paid for and corruption seeped into the deepest corners.

The case against Mr. Hooper was tainted not just by Dan Ryan and self-interested lowlifes who lied about Mr. Hooper's involvement in this case, but by the Chicago Police Department.

VII. Mr. Hooper's Arrest and Torture by Chicago Police

Before Mr. Hooper walked into that Chicago police station lineup, events were put in motion that set the stage for his Arizona convictions and death sentence. The violent and corrupt practices of the Chicago Police Department, unknown (or perhaps simply ignored at the time) not only tainted Mrs. Redmond's identification, but also set in motion a capital trial that impacted Mr. Hooper's Arizona case. Later that case failed to satisfy judicial scrutiny and ultimately was not pursued in Illinois.

Nearly two months after the attack at the Redmond's home, Chicago Police Sergeant Michael Hoke received word from Phoenix Police Sergeant Michael Midkiff that the Phoenix Police considered Mr. Hooper and Bracy suspects in the Redmond case. (Exhibit 15 at 12–13; Exhibit 16.) Hoke and Midkiff had attended the FBI Academy together and Hoke was a contemporary of the notorious Jon Burge who would later become the face of the Chicago Police Department's torture and false confession scandal. *See Hobley v. Chicago Police Commander Burge*, 225 F.R.D. 221, 222 (N.D. Ill. 2004) (granting protective order in §1983 case to keep depositions of Hoke and others accused of torturing plaintiff confidential)[13]; (Exhibit 15 at 12.) Like Burge, Hoke was enmeshed in the Chicago Police Department's culture of torture and abuse. For example, the Illinois Torture Inquiry and Relief Commission[14] found that there was "sufficient evidence of torture" in an arrest and interrogation conducted by Hoke and other officers in 1984.[15] (Exhibit 17.) Hoke

[13] Plaintiff Madison Hobley later settled his suit for $7.5 million. *See* Madison Hobley, The Nat'l Registry of Exonerations, available at: https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2977. Hobley had been beaten and suffocated into making a false confession to arson and murder, and spent 13 years on death row in Illinois. *Id*.

[14] In 2009, the Illinois legislature created and funded the Illinois Torture and Relief Commission to review and assess the overwhelming (and ever growing) number of claims of torture, and provide recommendations to the courts as to which claims merited relief. *See* Torture Inquiry and Relief Commission, Illinois.gov, https://tirc.aem-int.illinois.gov/; *also* 775 ILCS 40/ (Illinois Torture Inquiry and Relief Commission Act), available at https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3120&ChapterID=64.

[15] Wade alleged that during the course of his interrogation, he was "punched in the eye and in the stomach; kneed in the groin; repeatedly struck with a 'baton-like stock' on his chest after an open phone book had been placed over it; and struck on

later received an immunity deal in exchange for his participation in the State's investigation into the abuse and torture, and he thereafter routinely cited his Fifth Amendment rights to avoid testifying in any civil cases related to these issues. *Id.* at 222–23; *see also* 2006 Report of the Special State's Attorney (Exhibit 18 at 15).

A. The Chicago Police's False Version of Events

According to Detective O'Callaghan's report, Mr. Hooper was arrested and transported to the Area 1 precinct by Hoke and Oravetz, who read Mr. Hooper his Miranda rights in the car. (Exhibit 16.) After stating that he understood his rights, Mr. Hooper allegedly said, "You got me now and I'm going to tell you everything." (Exhibit 16.) Mr. Hooper then purportedly gave an inculpatory statement implicating himself, Bracy, Roger Collins, and Morris Nellum in three Chicago killings.

Hooper provided his statement to an Assistant State's Attorney ("ASA") named Lawrence Hyman. Hyman was later credibly accused of being aware and complicit in the use of torture against suspects by Chicago Police, specifically in the case of Andrew and Jackie Wilson. (*See* Exhibit 18 at 46–48 (detailing allegations about Hyman's involvement in the Wilson torture), 53–54 (detailing Hyman's refusal to participate in Egan's investigation), 54 ("In our judgment Hyman did not tell the truth when he denied that he had been told by Andrew Wilson that he had

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his nose with a sharp object." (Case Disposition Vincent Wade.1.0.pdf at pdf 1). As a result, Wade signed a confession to home invasion and murder. (*Id.*)

been tortured[.]"); (John Conroy, *House of Screams*, Chicago Reader (Jan. 26, 1990) (first reporting the allegation that Hyman was aware of the Wilson torture), available at: https://chicagoreader.com/news-politics/house-of-screams/). In 2018, an Illinois Circuit Court Judge issued a 119-page opinion finding that, among other things, Hyman lied when he claimed not to be aware of the torture of Andrew and Jackie Wilson prior to his receiving their statements. *See People v. Jackie Wilson*, 82-C-001211-02 at 104-105 (Circ. Ct. Cook County, Ill., 2018). Hyman has repeatedly invoked his Fifth Amendment rights to avoid testifying about his knowledge of the use of torture against suspects and witnesses. (*Id*.; *see also* John Conroy, *Doe in the Headlights*, Chicago Reader (July 20, 2006) (detailing Hyman's attempts to keep his name out of the news and refusal to testify as to his own knowledge of the torture) available at: https://chicagoreader.com/news-politics/doe-in-the-headlights/)).

B. What Actually Happened

All of the accounts from the Chicago Police Department differ dramatically from Mr. Hooper's version of events.[16]

Mr. Hooper was placed in an unmarked car, and Hoke, O'Callaghan, and a third officer got into the same car with him. (Exhibit 19 at 900.) Although Mr.

[16] They also differ from each other. Sgt. Hoke told a substantially different version of events than Detective O'Callaghan, in which Mr. Hooper is allowed to go in to speak with Morris Nellum to encourage him to confess. Neither O'Callaghan nor Nellum ever corroborated this fantastical tale.

Hooper did not know the name of the third officer, the report completed by O'Callaghan indicates it was Detective David Oravetz, and Mr. Hooper later recalled Hoke and O'Callaghan referring to him as "Dave." (Exhibit 16; Exhibit 19 at 905.) Mr. Hooper testified that O'Callaghan sat in the back seat with him, and that as soon as they closed the door, Hoke turned around and "hit [Hooper] with a backhand in the face." (Exhibit 19 at 900.) O'Callaghan then joined in and hit Mr. Hooper in the head and the body. (Exhibit 19 at 901.) Mr. Hooper testified that they then drove him to a viaduct south of downtown Chicago, but he was not sure where exactly they were. (Exhibit 19 at 901.) Once there, O'Callaghan ordered Mr. Hooper out of the car, and after he stepped out of the car, O'Callaghan struck Mr. Hooper in the back of the head, knocking him to the ground. (Exhibit 19 at 902.) Mr. Hooper testified that Oravetz then put a shotgun up to his head and asked Hooper how he would like it "if it slipped[.]" (Exhibit 19 at 902.)

Mr. Hooper testified that the officers then questioned him there at the viaduct, asking if he knew Roger Collins and Frederick Lacey. (Exhibit 19 at 902.) Mr. Hooper said that he did know both of those men. (Exhibit 19 at 902.) Mr. Hooper testified that at one point while he was lying face down on the ground, "someone grabbed my leg and began twisting it and then after then I felt a sharp pain in my leg." (Exhibit 19 at 903.) The officers then told Mr. Hooper to get up and get back in the car, which he did. (Exhibit 19 at 903.) Mr. Hooper says that he told them they

"messed my leg up" and that he needed to go to the hospital, but they instead went to a gas station. (Exhibit 19 at 903.) According to Mr. Hooper, Hoke told him that "the bottom line" was Roger Collins, and that they wanted information about Collins. (Exhibit 19 at 904.) Oravetz then told Mr. Hooper that he "would be their star witness and … tell them exactly what they wanted to hear." (Exhibit 19 at 904.) Oravetz further told Mr. Hooper that if he "cared about [himself] or [his] family [he] better had cooperate with them." (8-21-81 at pdf 41).

The officers then took Mr. Hooper to a parking lot "behind 2240" where O'Callaghan got out of the car for about ten minutes. (Exhibit 19 at 906.) The group then got back into the car and went to the Area 1 precinct. (Exhibit 19 at 906.) During that drive, Hoke told Mr. Hooper that "if [he] cared anything about [himself] and [his] family, that [he] would cooperate with them because they would protect their own." (Exhibit 19 at 908.) Mr. Hooper testified that the officers generally continued to threaten him until they got to the Area 1 precinct. (Exhibit 19 at 908.)

Once at the police station, Mr. Hooper was placed in a room for a long time on his own. (Exhibit 19 at 908.) After a long while, O'Callaghan came into the room and continued to question Mr. Hooper and ask whether he was going to cooperate. (Exhibit 19 at 908.) Mr. Hooper told O'Callaghan he wanted an attorney and that he wanted to go to the hospital, because his leg was injured. (Exhibit 19 at 908.) O'Callaghan responded that a lawyer would only tell Mr. Hooper not to say

anything, and that he "was not going to the hospital until [O'Callaghan] was through with (him)." (Exhibit 19 at 909.) Mr. Hooper testified on cross examination he asked "quite a few times" to see a lawyer, beginning when he was first arrested. (Exhibit 19 at 935.) Mr. Hooper testified that O'Callaghan provided him a story to tell the State's Attorney. (Exhibit 19 at 909.) Later in the day, Mr. Hooper was interviewed by an ASA in the presence of a court reporter and O'Callaghan. (Exhibit 19 at 909.) Hooper testified that he simply said what O'Callaghan told him to say. (Exhibit 19 at 909–10.)

In his Illinois trial, Mr. Hooper testified on cross examination that he not only told the Physician's Assistant at the jail that his leg was injured, but he told him that the injury was caused by the police. (Exhibit 19 at 914–15.) Mr. Hooper further testified that everything he recounted to the ASA about his involvement or knowledge of the triple murder was fed to him by the detectives. He testified instead that the story he told was "what the detectives told [him] that [he] would have to say if [he] wanted to be all right and the safety of [his] family would be assured." (Exhibit 19 at 927.) Mr. Hooper further testified that O'Callaghan specifically directed him to say that Collins gave him $300 after the shooting. (Exhibit 19 at 933.) Despite the State's best effort to portray Mr. Hooper as a savvy criminal who would know better than to cooperate with the police, Mr. Hooper maintained that he felt he had no choice, because "they beat me…and threatened me." (Exhibit 19 at

935.) On re-direct examination, Mr. Hooper stood up and showed the jury the scar on his leg. (Exhibit 19 at 946.)

It is worth noting as well that Mr. Hooper was tried in Chicago before Judge Thomas Maloney. Maloney was on the bench from 1977 until 1990. *United States v. Maloney*, 71 F.3d 645, 650 (7th Cir. 1995). During his tenure, Judge Maloney accepted bribes to fix cases, including murder cases. *Id*. The Seventh Circuit Court of Appeals described his case as "yet another in an unfortunately long line of public corruption cases which have left a blot on the escutcheon of Chicago justice." *Id*. at 649. Judge Maloney was "one of many dishonest judges exposed and convicted through 'Operation Greylord,' a labyrinthine federal investigation of judicial corruption in Chicago." *Bracy v. Gramley*, 520 U.S. 899, 901 (1997) (citing *United States v. Maloney*, 71 F.3d 645 (7th Cir. 1995)), cert. denied, 519 U.S. 927 (1996); J. Tuohy & R. Warden, *Greylord: Justice, Chicago Style* (G. P. Putnam's Sons, New York, 1989). One of Mr. Hooper's co-accused in the Illinois case, William Bracy (also his co-defendant in this case), later successfully argued that Judge Maloney had practiced "compensatory bias" in sentencing him to death. "Compensatory bias" here means that Judge Maloney "habitually came down harder on defendants who had not bribed him than he would have done had he not been on the take[, …] to deflect suspicion that he was soft on crime, a suspicion that might arise in cases where he unexpectedly acquitted or went easy on convicted defendants." *Bracy v.*

Schomig, 286 F.3d 406, 409 (7th Cir. 2002). The United States Supreme Court said in a related case that "there is no question" that such bias "would violate the Due Process Clause of the Fourteenth Amendment." *Bracy v. Gramley*, 520 U.S. 899, 905 (1997).

As noted by the State, after providing his statement at Area 1, Mr. Hooper was never called to testify in trial at any of the Chicago cases other than his own. (Exhibit 19 at 943–45.) The State introduced this during its rebuttal, seemingly to cast doubt on Mr. Hooper's steadfast assertion that O'Callaghan and Oravetz had told him he would be their "star witness" or else he and his family may face consequences. (Exhibit 19 at 904–05.) But this sounds in Mr. Hooper's favor, given his testimony about the physical and psychological torture he endured. His statement was enough for the State to use at the other trials, and it did not risk the possibility of Mr. Hooper telling the truth on the stand about the beatings.

VIII. Nobody Believed the Torture Existed

To understand the depth of systemic corruption which infected every aspect of Mr. Hooper's case, some context is necessary. Specifically, some context about the deep and troubling racism which pervaded Chicago in the twentieth century.

A. Racism in Chicago: A Necessary Historical Context

From about 1916 to 1970, approximately 7 million African Americans left the southern states to look for opportunity—and freedom from violence—in the North.

(Great Migration, http://www.encyclopedia.chicagohistory.org/pages/545.html#:~:text=The%20Great%20Migration%2C%20a%20long,the%20South%20during%20these%20decades) Of those 7 million, more than 500,000 ended up in Chicago. (*Id*. great migration) This was enough to change Chicago's population dramatically, from 2 percent Black to 33 percent. (*Id*.) From just 1916 to 1919, the city's Black population increased 148 percent. (1919: The Race Riot, https://homicide.northwestern.edu/crimes/raceriot/.)

These new neighbors were not welcomed with open arms. In 1919, a white man stood on the shore of Lake Michigan and threw stones at a Black teenager swimming, preventing him from coming to shore, and ultimately causing his drowning death. ("Eugene Williams," Homicide in Chicago, Case Number: 5559, https://homicide.northwestern.edu/database/5420/). Despite multiple eyewitnesses, the police department refused to arrest the white man. (*Id*.) This lit the powder keg of a city in painful transition. The city erupted in race riots for five days, leaving nearly 40 dead, and over 500 injured, more than half of whom were Black. (Jacqueline Serrato, Charmaine Runes, Pat Sier, "Mapping Chicago's Racial Segregation," (Feb. 24, 2022), available at: https://southsideweekly.com/mapping-chicagos-racial-segregation/.) There was one police officer killed in the riots: John Simpson, an African American man. (*Id*.)

The riots hardly improved relations between Chicago's white and Black residents. Meanwhile, the Supreme Court in 1926 opted not to get involved in a challenge to a racially-restrictive housing covenant (saying that Court cannot get involved in a private contract), essentially ruling that racially-restrictive covenants were legally-binding and could *legally* prevent the sale of a house to a Black family. *Corrigan v. Buckley*, 271 U.S. 323 (1926). Such covenants became popular and were even standard advertising fodder, enticing white residents to new development as with the promise of racial homogeneity. ("Restrictive Covenants" http://www.encyclopedia.chicagohistory.org/pages/1067.html ("Two decades later, in the 85 square miles reserved for residential use in Chicago south of North Avenue, fewer than 10 were occupied by Blacks, while 38, mainly in middle-class areas surrounding the Black Belt, were encumbered by these paper barriers.")).

In 1934, an economist named Homer Hoyt wrote a dissertation titled "One Hundred Years of Land Values in Chicago: The Relationship of the Growth of Chicago to the Rise of Its Land Values, 1830-1933." (Jamelle Bouie, "A Tax on Blackness," Slate.com (May 13, 2015) https://slate.com/news-and-politics/2015/05/racism-in-real-estate-landlords-redlining-housing-values-and-discrimination.html.) Hoyt ranked various races and nationalities according to a created order of "desirability." (*Id.*) The top of the desirability list included various Anglo-Saxons and Northern Europeans (English, German, Scandinavian, Irish, etc.),

followed by other Europeans (Czechoslovakians, Polish, Greens) and "Russian Jews of the lower class." (*Id.*) The bottom of the desirability list included, predictably, "Negroes and Mexicans." (*Id*.) That same year, Congress passed the National Housing Act of 1934, creating the Federal Housing Administration (FHA). (Racial Restriction and Housing Discrimination in the Chicagoland area, Redlining, Digital Chicago, Lake Forest College, https://digitalchicagohistory.org/exhibits/show/restricted-chicago/other/redlining)). Homer Hoyt became the FHA's chief economist. (Jamelle Bouie, "A Tax on Blackness," Slate.com (May 13, 2015) https://slate.com/news-and-politics/2015/05/racism-in-real-estate-landlords-redlining-housing-values-and-discrimination.html.).

An affiliate agency of the FHA, called the Home Owners' Loan Corporation (HOLC), sought to standardize the mortgage process and help lenders avoid risky mortgages. (Racial Restriction and Housing Discrimination in the Chicagoland area, Redlining, Digital Chicago, Lake Forest College, https://digitalchicagohistory.org/exhibits/show/restricted-chicago/other /redlining)). The HOLC used Hoyt's racial hierarchies to create maps of American cities, assigning risk levels to neighborhoods. (*Id*.) Predominantly white areas were ranked the most desirable and the lowest risk for mortgage lending, whereas heavily African American and Mexican neighborhoods were marked "red" on the map,[17] indicating

[17] A 'green' neighborhood was white, affluent, Anglo-Saxon, and appropriately

highest risk for lending. (*Id*.) This process was known as "redlining." (*Id*.) Although neighborhoods were already generally segregated, this practice ensured that things did not change. African Americans and Mexican-Americans were denied access to mortgage loans, or could obtain loans only with onerous interest rates and other handicaps. (Jamelle Bouie, "A Tax on Blackness," Slate.com (May 13, 2015) https://slate.com/news-and-politics/2015/05/racism-in-real-estate-landlords-redlining-housing-values-and-discrimination.html.) What's more, these classifications prevented movement in either direction: Black people could not access financing to purchase homes in white areas, and white people would scoff at the terms of a loan in a redlined area—if they would even consider making such a move. This also meant that homes in redlined areas were only generally sold to people from other redlined areas, creating a tiny housing market with no real room or incentive for growth. Whereas home ownership has long been the cornerstone of white Americans' financial plans, the same is simply not true for Black Americans who were prevented by these measures from realizing meaningful investment gains on their properties.

Protestant. A 'blue' one had slightly less desirable whites—Jews, Irish, and Italians—but was stable and upwardly mobile. A 'yellow' one had undesirable, often working-class whites, and a 'red' one was predominantly black or Mexican, regardless of wealth or class." (Jamelle Bouie, "A Tax on Blackness," Slate.com (May 13, 2015) https://slate.com/news-and-politics/2015/05/racism-in-real-estate-landlords-redlining-housing-values-and-discrimination.html.) Notably, this system provided for "less desirable" whites to improve their station through economic ascension. Such improvement was not available to Black or Mexican residents.

In November 1945, Murray Hooper was born. In 1948, the Supreme Court finally ruled that racially restrictive covenants were legally unenforceable. *Shelley v. Kraemer*, 334 U.S. 1 (1948). The following year, Chicago began construction on the Eisenhower Expressway, a superhighway through the heart of Chicago. (Robert Loerzel, Displaced, WBEZ.org, available at: https://interactive.wbez.org/curiousci ty/eisenhower/). Construction of the Eisenhower displaced about 13,000 people and forced over 400 businesses to move or shutter. (*Id*.) Many of these areas were predominantly African American or Mexican American neighborhoods. The Eisenhower and other freeways that came later—most notably the Dan Ryan Freeway, built directly on the border between white and Black neighborhoods in the south side—"were built to provide primarily White residents from newly built suburbs with fast and easy auto access to the Loop and back(,)" and "reinforced existing boundaries between communities." ("The Structures that Divide Us," WTTW.com, available at: https://interactive.wttw.com/firsthand/segregation/the-structures-that-divide-us-a-photo-essay.)

Even when racist policies were no longer technically legal, clever institutions found ways to enforce segregation, and Hoyt's racist hierarchies continued to be incorporated into appraisal manuals until the 1960s. (Jamelle Bouie, "A Tax on Blackness," Slate.com (May 13, 2015) https://slate.com/news-and-politics/2015/05/racism-in-real-estate-landlords-redlining-housing-values-and-

discrimination.html.) According to the Urban Institute, America's separate and unequal neighborhoods did not evolve naturally or result from unfettered market forces. (Margery Austin Turner, Solomon Greene, "Structural Racism Explainer Collection," Urban Institute, available at: https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-neighborhoods). Rather, they resulted from plans, policies, and practices of racial exclusion and disinvestment that primarily targeted Black people and laid the foundation for the segregation of other people of color. These policies and practices systematically denied Black people access to well-resourced and opportunity-rich neighborhoods while denying the neighborhoods where they and other people of color live access to resources and investments, leaving them with failing schools, inadequate services, physical and environmental blight, and high levels of crime and violence. (Margery Austin Turner, Solomon Greene, "Structural Racism Explainer Collection," Urban Institute, available at: https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-neighborhoods).

Into the 60s, Chicago was still experiencing substantial strife relating to race and housing. The Reverend Dr. Martin Luther King, Jr. visited Chicago on July 10, 1966, to protest the housing conditions in black communities in Chicago. (Olivia B. Waxman, Time Magazine, (Jan. 12, 2018, updated Jan. 16, 2020), *The Surprising*

Story Behind This Shocking Photo of Martin Luther King Jr. Under Attack, https://time.com/5096937/martin-luther-king-jr-picture-chicago/.) Dr. King said, "We are tired of being lynched physically in Mississippi, and we are tired of being lynched spiritually and economically in the North." (*Id*.) Returning again in August of 1966, Dr. King planned to lead a march to a realtor's office to demand that properties be sold without regard to race, but he was swarmed by a huge crowd of white protestors. (*Id*.) The crowd threw bricks and stones and bottles at Dr. King. One of the stones made contact and forced Dr. King to his knees. Afterwards, Dr. King remarked, "I've been in many demonstrations all across the South, but I can say that I have never seen, even in Mississippi and Alabama, mobs as hostile and as hate-filled as I'm seeing in Chicago." (*Id*.) Murray Hooper would have been about 20 years old when Dr. King was attacked by racists in Chicago.

Two years later, the Fair Housing Act of 1968 (42 U.S.C. § 3601 *et seq*.) prohibited racial discrimination in real estate transactions, but many ostensibly "race neutral" policies came into existence. For example, zoning policies requiring large lot sizes or square footage prevented low- and middle-income families from affording to move into better-resourced communities. (Margery Austin Turner, Solomon Greene, "Structural Racism Explainer Collection," Urban Institute, available at: https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-

neighborhoods.)

By the time the 1970s rolled around, Mr. Hooper had long been subjected to the intentional and vicious racism of his city. It was not enough that Mr. Hooper's parents worked hard and tried to provide for Murray best as they could. They were not enough to stem the tide of decades of planful segregation, disinvestment, and over-policing in the Black communities of Chicago. Not surprisingly, Mr. Hooper, like so many Black men who grew up in the permanent Depression economics of the South Side of Chicago, found himself involved in the criminal justice system.

B. The Chicago Police Torture Scandal

In 1970, a man named Jon Burge joined the Chicago Police Department. (Timeline, Chicago Police Torture Archive ("CPTA"), available at: https://chicagopolicetorturearchive.com/timeline). Burge was popular in the department and rewarded with promotions and commendations. (John Conroy, *House of Screams*, Chicago Reader (Jan. 26, 1990) available at: https://chicagoreader.com/news-politics/house-of-screams/). By 1977, Burge was promoted to Sergeant, and by 1981 he was a Lieutenant, and named the supervisor of a new Violent Crimes Unit based out of Area 2. Burge was popular because of a seemingly uncanny ability to close out cases, especially murder and drug cases involving Black men. Although the public at large would not know it for decades to come, the Chicago Police Department knew exactly how Burge was closing his

cases: he was viciously torturing suspects and witnesses into giving false confessions or fabricated statements. He was not acting alone, either.

In January 1990, an investigative reporter named John Conroy published an article in the Chicago Reader that revealed the Chicago Police Department had been using beatings and torture against witnesses and suspects for years. (John Conroy, *House of Screams*, Chicago Reader (Jan. 26, 1990) available at: https://chicagoreader.com/news-politics/house-of-screams/). The article focused on the now-acknowledged torture of the Wilson brothers during an investigation following the murder of two police officers, but it includes several allegations of torture, suggesting that the practice was not confined to that one emotionally-charged instance. Notably, the article detailed allegations that officers would go beyond merely roughing a suspect up, and would actually go so far as to chain people to hot radiators and electrocute them using a small box with a crank. (*Id*.)

Shortly after the publication of *House of Screams*, the Office of Professional Standards (OPS) within the Chicago Police Department opened an investigation into the use of torture by the police. (*See* CPTA timeline). By September of that year, the OPS recommended that Jon Burge and two other detectives be outright fired, and by December, Amnesty International was calling for an investigation of the Illinois Attorney General's Office. (CPTA timeline). Jon Burge was not fired yet, though. In 1991, Jon Burge—now working at Area 3—was involved in the beating and

electrocution torture of a 13-year-old boy named Marcus Wiggins as part of the investigation of a murder. (CPTA timeline). In total, eleven juveniles and one adult, Jesse Clemon, were brought in during this investigation, and they all allege that they were beaten or electrocuted, or both. (CPTA timeline).

By October 1991, the OPS issued a report finding that the problem was "systemic" and "methodical" abuse and "planned torture" at Area 2 precinct, but the Superintendent of Police refused to make that report public. (CPTA timeline). It was not until February 1992 that a Chicago law firm successfully sued for the release of that report. (CPTA timeline). That same month, the Police Board considered whether to fire Burge and two other officers—all three denied the allegations of abuse. (CPTA timeline). One half of the OPS report, completed by Investigator Michael Goldston, examined the allegations of misconduct by officers at Area 2, and concluded that "the preponderance of the evidence is that abuse did occur and that it was systematic." (Exhibit 20 at 000006.) Goldston concluded that the "time span covers more than ten years[,]" and that the "type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned(,)" as well "methodical abuse." (*Id.*) Goldston further concluded that the sheer number of incidents involved "can lead to only one conclusion[:] Particular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end." (*Id.*)

The Illinois Supreme Court later observed that Jon Burge was identified in only 51% of the cases in which specific officers were identified. *People v. Patterson*, 192 Ill. 2d 93, 141, 735 N.E.2d 616, 643 (2000). The Goldston Report also listed Hoke—the Sergeant in charge of Hooper's arrest and beating—as involved in at least three other cases of alleged torture. (Exhibit 220 at 000010, 19, 20.) In all three instances, Hoke is mentioned along with Jon Burge as the accused abusers. (*Id*.) Hoke is listed as allegedly participating in Lawrence Poree's allegations and also appeared in the John Conroy article, *House of Screams*, in which Poree detailed being electrocuted "in the arm, armpits, and testicles[.]" (*House of Screams* article).

In February 1993, the Police Board finally fired Burge and suspended the two other officers for more than a year. (CPTA timeline). In February 1994, Jesse Clemon, the sole adult charged in the 1991 investigation which included the electrocution of Marcus Wiggins, was set free after an Illinois Appeals court affirmed the trial court's suppression of Clemon's statement as a product of coercion. *See People v. Clemon*, 259 Ill. App.3d 5 (App. Ct. Ill. Feb. 22, 1994) (affirming trial court's ruling that statement was given under "horribly oppressive" conditions, and finding Clemon's description of the practice of beating and torturing suspects compelling.).

Over the next several years, people continued to allege similar treatment and torture by the Chicago Police Department, even though Burge had been fired. John

Conroy published several more stories with new information and allegations, asking why if the "courts know about it, the media know about it, (and people in Chicago) know about it[,] why aren't we doing anything about it?" (John Conroy, *Town Without Pity*, Chicago Reader, available at: https://chicagoreader.com/news-politics/town-without-pity/). In 1997, Andrew Wilson—while on death row for the murder of two police officers—won a civil suit for $1.1 million based on the "electric shock, burning, and beating that even the city's lawyers now acknowledge were administered to Wilson by former police commander Jon Burge and detectives from Area Two." (John Conroy, *The Shocking Truth*, Chicago Reader (Jan. 9, 1997), available at: https://chicagoreader.com/news-politics/the-shocking-truth-2/).

In 1999, the U.S. District Court found that it "is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *U.S. ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999). That court said, "[b]oth internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis." *Id*.

In 2002, Special State's Attorney, Edward Egan[18], was appointed by the circuit court of Cook County to investigate the "allegations of torture, perjury, obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and Area 3 police headquarters beginning in 1973." *People v. Wrice*, 2012 IL 111860, ¶ 41, 962 N.E.2d 934, 944 (Ill. 2012). In 2003, Illinois Governor George Ryan issued a broad commutation of all death sentences in the state and an outright pardon of four men on death row, based on the torture scandal's obvious effect on the reliability of any evidence produced. (Robert Pierre, *Ill. Governor to Pardon Four*, Washington Post (Jan. 10, 2003) available at: https://www.washingtonpost.com/archive/politics/2003/01/10/ill-governor-to-pardon-four/41dd85cb-46c3-406f-979f-75d7a1f0a85a/).

Over the next many years, courts dealt with the increasingly obvious realization that the use of torture to coerce statements out of witnesses and suspects alike was systemic and broader than just those cases involving Burge, and that the Chicago Police Department had a pervasive problem of corruption. *See United States v. Burge*, 711 F.3d 803, 812 (7th Cir. 2013) (citing *Hinton v. Uchtman,* 395 F.3d 810, 821–22 (7th Cir.2005) (Wood, J., concurring) (detailing the "mountain of

[18] Egan and special State's Attorney Robert Boyle issued their report in 2006, finding that Burge acted with "impunity" and that it "necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they." (Exhibit 18 at 16.)

evidence indicat[ing] that torture was an ordinary occurrence at [ ] Area Two")). For example, in 2022 seven murder convictions were thrown out after allegations of torture and abuse by Detective Reynaldo Guevara became public. (Dana Kozlov, Marissa Parra, *7 murder convictions linked to disgraced CPD Det. Reynaldo Guevara thrown out*, CBS News Chicago (Aug. 9, 2022) available at: https://www.cbsnews.com/chicago/news/eight-murder-convictions-vacated-chicago-police-detective-reynaldo-guevara-cook-county-states-attorney-kim-foxx/). The convictions obtained by Detective Guevara happened over multiple decades, from the 1980s to the 2000s. (*Id*.) Over 200 convictions have been thrown out after the corruption of Chicago Police Sergeant Ronald Watts and his team was revealed. (Watts Team Scandal, The Exoneration Project, available at: https://www.exonerationproject.org/stories/watts-team-scandal/). Watts and other officers ran a drug operation at a Chicago housing project for years, and would plant drugs on any residents who attempted to resist them. (*Id*.) Although Watts and one of his teammates were arrested and convicted in the scandal, "the remaining officers on Watts' team continued with their work with CPD, and most remain on the force today." (Phil Rogers, *Newly Obtained COPA Report Details Allegations Against Watts Officers*, NBC Chicago (May 18, 2022), available at: https://www.nbcchicago.com/investigations/newly-obtained-copa-report-details-allegations-against-watts-officers/2835277/).

Watts' behavior was not a secret. Two good Chicago police officers, named Shannon Spalding and Daniel Echeverria, say they blew the whistle on Watts' criminality, but were told to "disregard" the issue by superior officers, and then were threatened and terrorized by other officers for speaking out. (Tracy Swartz, *Former Chicago cop who blew the whistle on Sgt. Ronald Watts shares story on CBS series: 'Someone was trying to kill me,'* Chicago Tribune (May 23, 2019), available at: https://www.chicagotribune.com/entertainment/tv/ct-ent-whistleblower-chicago-police-shannon-spalding-ronald-watts-20190523-story.html). Officer Spalding eventually left the police department and moved out of Chicago. (*Id*.)

The City of Chicago has now paid over $130 million in lawsuit settlements and judgments *just* related to Jon Burge. (Heather Cherone, "Cost of Burge-Era Torture Grows as Chicago City Council Agrees to Pay 2 Wrongfully Convicted Men $14M," WTTW News, available at: https://news.wttw.com/2022/01/26/cost-burge-era-torture-grows-chicago-city-council-agrees-pay-2-wrongfully-convicted-men#:~:text=Chicago%20taxpayers%20have%20now%20paid,by%20the%20Chicago%20City%20Council.). The Washington Post estimates that the City of Chicago has now made a total of approximately $528 million in payments on claims related to police misconduct. (Keith Alexander, Steven Rich, Hannah Thacker, "The hidden billion-dollar cost of repeated police misconduct," The Washington Post (Mar. 9, 2022), available at: https://www.washingtonpost.com/investigations/interactive/20

22/police-misconduct-repeated-settlements/.)

IX. Mr. Hooper's Defense – He Was In Chicago

Mr. Hooper has always maintained that he is innocent and was in Chicago at the time of the Phoenix murders. He presented several alibi witnesses to confirm his whereabouts.

Mr. Hooper has never disputed that he took the trip to Phoenix in early December, although he disputes that it had anything to do with the Redmonds. Mr. Hooper entirely denies taking the later December trip. At trial, the State did not put forth any actual evidence that Mr. Hooper ever flew to Phoenix or back to Chicago. Although the State presented evidence that tickets had been purchased, their witness could not opine on who used the tickets, or even who picked the tickets up. The State alleged at Mr. Hooper's trial that he returned to Chicago on Flight 246 in the early morning hours of January 1, 1981. Years after the trial, investigators located a woman who had actually been on that flight, named Betty Faull. (Exhibit 21.) Ms. Faull specifically recalled being on that flight because she was flying urgently to Chicago to help her mother-in-law who had fallen and needed assistance from family. (Exhibit 21 at 1.) Ms. Faull discussed in her statement to the investigator that she had taken that early morning flight (instead of one the night before) to avoid the New Year's festivities and ensure a safer trip for herself. (Exhibit 21 at 1.) Ms. Faull admits in her statement she was raised around people "who tend to be very cautious and fearful of

Black people[,]" and says that she is the same way. (Exhibit 21 at 1.) She even says that she admits "to having been a person who would express dismay and judgment in having persons of the Black race in the same public locations as I was." (Exhibit 21 at 1.) About her flight, Ms. Faull says,

> My seat assignment for the American Airlines Flight 246 was towards the rear of the airplane. I would have noticed two large Black men seated a few rows behind me had there been two Black men seated there. I would have been afraid to go to the restroom on that airplane had I seen two black men which I would have had to pass to go to the restroom.
>
> I was by myself on this trip; this was the first time I had ever gone to Chicago by myself and I was afraid that someone would notice I was by myself so I was being defensive and somewhat paranoid because I knew I would be renting a car and driving for three hours to Kewanee, Illinois. I am absolutely positive had there been two Black men sitting in the rear of the plane I would notice them.

(Exhibit 21 at 1.)

Ms. Faull's declaration is a piece of evidence generally supportive of Mr. Hooper's alibi, which has him hanging out in Chicago with friends for a New Year's Eve get together at a bar called the F&P Lounge. A man named Michael Wilson testified at the Phoenix trial he had known Murray Hooper for 20-25 years. Michael Wilson and his wife, Mary Wilson, testified that they then ran in to Mr. Hooper at a large street market in Chicago on December 31, 1980. The Wilsons specifically remembered this day, because Michael's brother was planning to get married right at 12:01 a.m. on New Year's day, and they were at the street market to look for a last minute gift. Michael Wilson testified that he and Mr. Hooper then went to a nearby

tavern together to have a drink.

Nelson Booker also testified at the Phoenix trial that he saw Murray Hooper during the period of time when Mr. Hooper was alleged to be in Phoenix. Booker testified that he had known Mr. Hooper for about five or six years. Booker was the doorman as a place called the F&P Lounge, a "disco" in Chicago. He testified that on December 31, 1980, he saw Mr. Hooper around 6:30 or 7:00 p.m. at the F&P Lounge. Booker says that he had not seen Mr. Hooper for a while and was happy to see him, so he sat with him to have a few drinks and talk. Booker estimated that he spent an hour to an hour and a half with Hooper that night.

X. What The Jury and Judge Never Heard

Mr. Hooper was tried and convicted over 40 years ago. During the past several decades, many pieces of evidence have come to light that the original jury and judge were not able consider. Due to the constraints in the law and the piece-meal litigation that occurs because of statutes of limitations, no one body has ever considered all the new evidence together and looked at as a whole. A list of all evidence not considered by the original jury/judge includes:

- **Expert testimony from Dr. Geoffrey Loftus to explain the unreliability of Mrs. Redmond's testimony.**
- **The alternate suspects were never fully investigated and because discovery was turned over in the middle of trial, the defense's investigation was hampered.**

- **Detective Martinsen's notes were never disclosed and were then destroyed, which hampered defense's efforts to properly cross-examine the Detective and Mrs. Redmond about the lineup procedure.**

- **The declaration of Betty Faull provided information that Mr. Hooper was not on a flight from Phoenix to Chicago on the night in question. This information was not uncovered until years after the trial ended.**

- **The declaration of John Castro provided information about Detective Quaife who said Mr. Hooper was singled out in the lineup by a Chicago Detective.**

- **The declaration of Isaiah Southward provided corroboration that Mr. Hooper was singled out in the many lineups that they participated in together that day.**

- **The benefits to the informants that the jury never heard: payments to Kathy Merrill's car, Kathy Merrill receiving close to $3,000, Merrill getting taken from jail to visit hotel rooms, go back home, and go to the deli, Merrill having drugs delivered to him in jail by Ryan, the State paying for Merrill to make 22 long distance calls to his wife from outside of jail.**

- **Mr. Hooper's Illinois conviction involving Detective Hoke and O'Callaghan was overturned and he was not retried after the torture scandal became publicly known and recognized.**

- **There are only two remaining aggravators that would have been considered in a retrial.**

- **DNA and more accurate fingerprint testing were not available at the time, but are now readily available and could point to the real suspects who committed this crime. Efforts to obtain this testing were recently denied.**

When considering this new evidence with what was presented at trial, the confidence in Mr. Hooper's conviction cannot be trusted.

XI. What the Sentencing Equation Looks Like Today

Grant Woods, who would become a well-respected Phoenix attorney and state attorney general, represented Mr. Hooper during his 1982 trial. Unlike the capital trials of today, Woods represented Mr. Hooper without co-counsel. And, he was straight out of law school with only a year of practice under his belt. Today, Woods would not have been appointed to represent Mr. Hooper in his capital trial; he does not meet even the most minimum of requirements for the role as lead counsel in a capital case.

Woods' inexperience showed through most significantly in the post-verdict proceedings. He was afforded wide berth to present mitigating evidence, but offered none, save his own argument based on religion and forged in the ideal that the trial court was ordering a murder if it chose to sentence Mr. Hooper to death.

Against Woods' religious/moral plea, the trial court found five aggravating circumstances, most of which no longer exist. As noted earlier, Mr. Hooper's prior murder convictions in Illinois were reversed by the Seventh Circuit Court of Appeals. Mr. Hooper was not retried for these offenses because the State's two principal witnesses were embroiled in the Chicago Police Department's corruption and abuse scandal—one as a victim, the other as a perpetrator. Morris Nellum

recanted his testimony and described the abuse and threats he was subjected to in order to secure his false testimony against Mr. Hooper. The State's other principal witness, Chicago Police Officer Michael Hoke, should be a familiar name as he was discussed earlier in this packet for his involvement in torture and abuse in Chicago, his plea deal for cooperation, and his subsequent and regular use of the Fifth Amendment to avoid discussing his involvement in such matters. Without Nellum or Hoke available to testify, there was no evidence to pursue the Illinois case against Mr. Hooper.

By the time Mr. Hooper's case reached the Ninth Circuit Court of Appeals, only two aggravators remained: (F)(5), that the offense was committed for pecuniary gain; and (F)(6), that the offense was committed in an especially heinous, cruel and depraved manner. *Hooper v. Shinn*, 985 F.3d 594, 630 (9th Cir. 2021). Evidence of the pecuniary gain aggravator, which the Ninth Circuit noted held "great weight," disappeared upon the acquittals of Lukezic and Cruz because the two people who supposedly hired and paid Mr. Hooper to commit this crime were found to have not done so. If the State was unable to establish that either Lukezic or Cruz hired Mr. Hooper to kill Mr. Redmond, it defies logic to argue that Mr. Hooper *was* hired to kill Mr. Redmond, as the State continues to insist.

What remains then is the (F)(6) aggravating factor. Mr. Hooper was denied the opportunity recently to conduct DNA and advanced forensic testing that could

have further minimized this aggravator, or potentially pointed to an alternate suspect, further supporting Mr. Hooper's claims of innocence.

What in 1982 may have appeared as extensive aggravation, looks very different today. Faced with the evidence offered in this Petition, as well as other available mitigation, the death penalty would not be a foregone conclusion.

XII. Clemency: A Failsafe Against Wrongful Convictions and Executing the Innocent

The United States Supreme Court has described clemency as "deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, 506 U.S. 390, 411–12 (1993). "Executive clemency has provided the 'fail safe' in our criminal justice system. . . . It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible." *Id*. at 415. "But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence." *Id*.

Here, the record is replete with evidence that Murray Hooper is innocent of these crimes and that a multitude of now well-understood systemic failures led to Mr. Hooper's wrongful conviction. "Recent authority confirms that over the past century clemency has been exercised frequently in capital cases in which demonstrations of 'actual innocence' have been made." *Herrera*, 506 U.S. at 415 (citing M. Radelet, H. Bedau, & C. Putnam, *In Spite of Innocence* 282–356 (1992)).

It is precisely because the system sometimes gets it wrong that clemency exists as a bedrock failsafe—to prevent more innocent lives from being lost, to correct manifest injustices beyond the judicial system's reach, and to extend mercy even to those who our flawed system has decided are beyond redemption.

Mr. Hooper has demonstrated over his lengthy incarceration that he poses no threat to staff or other prisoners. He is a 76-year-old man, who can and will be safely confined, should this Honorable Board find mercy appropriate in this matter.

We humbly ask this Honorable Board to intercede to prevent another tragedy scheduled to occur on November 16, 2022, if Mr. Hooper is executed, by commuting his death sentences to life with the possibility of parole.