

BEFORE THE GOVERNOR  
OF THE STATE OF MISSOURI  
THE HONORABLE BOB HOLDEN

In the Matter of: )  
)  
CHRISTOPHER LEE SIMMONS, ) Execution Scheduled For  
) May 1, 2002  
)  
Petitioner. )  
)

PETITION FOR A COMMUTATION OF, OR REPRIEVE OF,  
A SENTENCE OF DEATH

**INTRODUCTION**

Christopher Lee Simmons is a 25 year old man who is incarcerated at the Potosi Correctional Center in Mineral Point, Missouri awaiting execution. He is scheduled to be executed at 12:01 a.m. on May 1, 2002. All legal appeals previously filed have been denied, or are pending uncertain review.

Christopher Lee Simmons, by and through undersigned counsel, and with the earnest support of numerous groups and individuals, and for the meritorious reasons stated below, respectfully requests that Governor Holden, pursuant to the powers granted him by Article IV, §7 of the Missouri Constitution, grant him executive clemency and commute his sentence from death to life imprisonment without the possibility of parole. Alternatively, Christopher requests that Governor Holden grant a reprieve, staying his execution, and convene a board of inquiry pursuant to § 552.070 RSMo (2000), to gather information bearing upon whether his sentence of death should be commuted.

**BASES FOR COMMUTATION OF SENTENCE**

Based on all of the foregoing reasons, Christopher Simmons, together with all of his supporters, respectfully requests that Governor Holden grant him executive clemency.

I. Christopher Was a Juvenile at the Time He Committed the Crime

A. Psychosocial Background

**HOW DID WE GET HERE?**

The jury that sentenced Christopher Simmons was never adequately informed of his childhood, mental condition, or drug dependence and their effects on his behavior. Although a number of witnesses were willing to testify in mitigation for Christopher -- including friends, neighbors, and a psychologist who had evaluated him, his attorneys did not call them as witnesses. The

testimony presented simply portrayed Christopher as a good brother, a loving son who had a good relationship with his mother, and a compassionate person who provided support for his friends and family. Defense attorneys failed to elicit critical information from the few witnesses that they did call to testify. The defense failed to investigate and present Christopher's drug abuse history, his mental functioning, his mental illness, and the effects of his childhood abuse on his development and behavior.

The evidence presented was so minimal that at least one member of the jury was left wondering how it was possible that Christopher Simmons, a loving brother and good neighbor, could have participated in such a crime as the murder. That juror, James V. Biundo, a professor at Southeast Missouri State University, later wrote an article entitled *Motiveless Malignity*, in which he questions the process as well as the motive behind Christopher Simmons' actions that day.<sup>1</sup> Perhaps, had the jury heard the true story of Christopher Simmons' life, no one would have wondered how it was that he came to be involved in the offense. But, as it was, the defense failed to explain who Christopher Simmons was, and how his life experiences had affected him.

### WHAT SHOULD HAVE HAPPENED

Eventually, people working on Chris' case arrived at an answer to James Biundo's question. After Christopher Simmons was sentenced with the death penalty, a thorough biopsychosocial developmental life history investigation was undertaken. Numerous witnesses who were readily able to talk about the multifaceted layers of turmoil, abuse, and neglect Christopher experienced were identified. Other witnesses provided a detailed explanation of Chris' unhealthy coping mechanisms. And, as part of that investigation, Dr. Robert Smith, a clinical psychologist, evaluated Christopher Simmons and diagnosed him with a Schizotypal Personality Disorder and Alcohol Dependence and Cannabis Dependence. Had a thorough investigation of Christopher Simmons' background been undertaken prior to his trial, the jury would have heard about a very different adolescent the day of the sentencing hearing.

Turmoil was a fact of life before Christopher Simmons, now twenty-five years old, was even born. His natural father, Dennis Simmons, recalls the separation from his first wife, Cheryl Hayes, which ultimately led to divorce: "The trouble in our relationship came when...[I] went on strike...[and went] to Montana, so that...[I] could work, earn money, and continue to support...[my family]. I sent money back to Cheryl. I was gone three or four months. When I came back, Cheryl was gone. The money I had sent her was gone. The bills were unpaid. I did not know where she was. I hired a private detective around the time Christopher was born, which was shortly after I returned...At that point, I learned Cheryl was living with Bob Hayes, the man to whom she is now married."<sup>2</sup> Dennis Simmons has also reported that Cheryl Hayes had "cleaned out all the bank accounts and filed for divorce"<sup>3</sup> and that he subsequently learned that she was pregnant with Christopher, and that "they could not dissolve their marriage until

<sup>1</sup> Biundo, James V. *Motiveless Malignity: A case study of capital murder*. Undated.

<sup>2</sup> Simmons, Dennis. *Affidavit*. October 30, 1998., p. 1.

<sup>3</sup> Clark, Marie., M.A., *Report*. Undated. p. 2.

after his birth."<sup>4</sup> Interestingly, Cheryl Hayes became pregnant with Christopher while taking Clomid, a fertility drug.<sup>5</sup> It is unlikely that his conception came as a surprise. To this day, however, Dennis is bitter: "I paid alimony for six months. She remarried the day after she received her last alimony check."<sup>6</sup> Cheryl claimed that Dennis frequently got behind on child support payments, by as much as a year, and then used his income tax refund check to make the back payments he owed.<sup>7</sup> Dennis Simmons' mother, Marcelline Simmons, recalls learning later that Cheryl believed Dennis was cheating on her: "Cheryl [told] the pastor that Dennis was cheating on her."<sup>8</sup>

Chris' maternal aunt, Maria Osburn, remembers that as a very difficult time, but, for different reasons: "[t]he couple separated when Cheryl was pregnant with Christopher...Dennis actually kicked Cheryl out of the house, leaving her with no place to live...[h]e showed no interest in their baby."<sup>9</sup>

Visitation became the issue after Dennis Simmons and Cheryl Hayes divorced. Each claims that the other handled visits inappropriately. Chris' maternal aunt recalls, "there were times when he [Dennis] did [not] even go to get Christopher -- he sent his parents instead."<sup>10</sup> Chris' parents often exchanged weekends. Dennis Simmons recently learned that Chris "sat there on those weekends...and waited for me. I never arrived because Cheryl and I had exchanged weekends. His mother would say, 'I guess he forgot.' I never forgot."<sup>11</sup> Christie Brooks, one of Chris' friends, remembers "his disappointment with his father's failure to pick him up for visits."<sup>12</sup> Dennis Simmons also learned that Cheryl often cancelled visitations so that Chris could baby-sit for his step-brothers<sup>13</sup> and that, on other occasions, he would go to pick Chris up and discover that he was not at home.<sup>14</sup> Chris' paternal grandparents report that they would have liked more frequent visits with Chris, but, "[t]here was always some excuse. He was always grounded or something."<sup>15</sup>

When Chris did visit his father, Dennis Simmons, the visits were filled with tension and criticism. Christopher "denies that his mother precluded his visits with his father...he did not enjoy visiting his father because of Dennis' continual negative criticism of his mother...and...smart remarks about the child support."<sup>16</sup> "The conflict between his two natural parents was hard for him."<sup>17</sup> "It was obvious to Christopher that his mother and father had

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<sup>4</sup> *Ibid.*

<sup>5</sup> Sopuch, John., M.D., & Beaty, William, M.D. *Prenatal Record*. North-West OB-GYN, Ltd., May 14, 1976.

<sup>6</sup> *Ibid.*, p. 3.

<sup>7</sup> Clark, Marie., M.A., *Report*. Undated. p. 3.

<sup>8</sup> Simmons, Marcelline. *Summary of Interview with Caryn Platt Tatelli*. January 15, 1999., p. 2.

<sup>9</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 2.

<sup>10</sup> *Ibid.* October 19, 1998., p. 2.

<sup>11</sup> Simmons, Dennis. *Affidavit*. October 30, 1998., pp. 1-2.

<sup>12</sup> Clark, Marie., M.A. *Report*. Undated., p. 14.

<sup>13</sup> *Ibid.*, p. 2.

<sup>14</sup> *Ibid.*, p. 6.

<sup>15</sup> *Ibid.* p. 4.

<sup>16</sup> Clark, Marie., M.A., *Report*. Undated. p. 5.

<sup>17</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 4.

different ideas about rearing children.”<sup>18</sup> Additionally, the socio-economic differences between Chris’ parents were obvious: “[t]hey [the Simmons’] had a nicer house, nicer cars, and everything.”<sup>19</sup> There were, and are, striking differences between the Hayes’ house and the Simmons’ house. Dennis Simmons reported, “I’ve always expressed interest in Christopher’s coming to live with me because of the conditions in the house.”<sup>20</sup> It is unclear what, exactly, caused the Hayes family to live as they did, but, perhaps some of the reason was financial. As a teenager, Chris sometimes contributed some of his earnings to “provide financial assistance to his parents.”<sup>21</sup>

Dennis Simmons highlighted the socio-economic differences. He recalls buying clothing for Chris to wear when he visited. “When we went to get him, he did not have any clean clothing...his things would be just thrown into a bag, dirty or wrinkled or not presentable in some other way...We did not want to take him places in rags.”<sup>22</sup> Eventually, the Simmons family realized that they never saw the clothing again, and began saving the clothing for Chris’ exclusive use while he was visiting them.<sup>23</sup> “We wanted Christopher to have nice clothing so that he could go the kinds of places we wanted to take him.”<sup>24</sup> Dennis Simmons’ second wife, Beth Simmons, recalls a related problem: “[w]hen we picked Christopher up for the weekends, he often looked like a ragamuffin...he...was not clean. Slowly, we came to understand that we would not be able to do anything after we picked Christopher up but come home and give him a bath.”<sup>25</sup>

As the years passed, Dennis Simmons and Cheryl Hayes continued to disagree bitterly about money. When Bob and Cheryl Hayes filed for additional child support, Dennis Simmons fought their claim; they denied him visits with Christopher from March until September.<sup>26</sup> Dennis Simmons also claims that he continued paying Cheryl child support for Chris after his arrest, even though he was also paying all of Chris’ attorneys’ fees. “[S]he would not let the child support go until I took her back to court.”<sup>27</sup>

Dr. Robert Smith, a clinical psychologist who evaluated Christopher Simmons after the sentence of death was recommended, asserted that exposure to the kind of passive aggressive behavior, manipulation, and open aggression that Chris witnessed between his two families taught those very behaviors to him.<sup>28</sup>

The physical disarray in the Hayes house visually represented the emotional chaos in which Christopher lived. Parenting was not a priority for Cheryl and Bob Hayes: they “both worked,

<sup>18</sup> Clark, Marie., M.A., *Report*. Undated. p. 5.

<sup>19</sup> *Ibid.*, p. 6.

<sup>20</sup> Clark, Marie., M.A., *Report*. Undated. p. 3.

<sup>21</sup> *Ibid.*, p. 16.

<sup>22</sup> Simmons, Dennis. *Affidavit*. October 30, 1998., p. 2.

<sup>23</sup> *Ibid.*

<sup>24</sup> Simmons, Beth. *Affidavit*. October 28, 1998., pp. 1-2.

<sup>25</sup> *Ibid.* p. 1.

<sup>26</sup> Simmons, Dennis. *Affidavit*. October 30, 1998., p. 2.

<sup>27</sup> *Ibid.*

<sup>28</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p., 152.

had parties, and went out.”<sup>29</sup> Chris expressed the pain caused by the turmoil in his life well before he could verbalize his feelings, with somatic complaints of chronic stomach aches, which the doctor determined were emotionally based.<sup>30</sup>

After interviewing Cheryl Hayes, Dr. Robert Smith, a clinical psychologist, concluded, “Cheryl Hayes...was a passive and dependent woman. Her first husband, Dennis Simmons, was involved in numerous extramarital affairs throughout their five years of marriage. He was also a compulsive gambler, incurring significant debt. Ms. Hayes attempted to deny these problems and became pregnant in a desperate attempt to hold on to her husband.”<sup>31</sup> The relationship deteriorated, and Cheryl Hayes “formed a relationship with her current husband, Robert Hayes, prior to the divorce. She was frightened of being alone and wanted to be ‘taken care of by a man.’”<sup>32</sup> Despite concerns about his use of alcohol, she married Bob Hayes after living with him for a year and one-half.<sup>33</sup> She “admitted that she displayed poor judgment, but was afraid of being alone. She also began drinking with him, often to intoxication, in order to please him.”<sup>34</sup> Testing and clinical interviews confirmed that her marriage to Bob Hayes unhealthy.<sup>35</sup>

As Christopher grew up, the problems he faced at home grew, too. His mother, with her many limitations, was unable to provide the support he needed.

Theresa Vining, who grew up two houses down from Christopher Simmons,<sup>36</sup> testified that she witnessed Bob Hayes, Christopher’s step-father, behaving in an abusive fashion on several occasions. She testified that when Christopher was “four to six”<sup>37</sup> years old, he was “about three foot tall, maybe sixty pounds”<sup>38</sup> and Bob Hayes was “anywhere from six to six two, approximately 250 to 300 pounds.”<sup>39</sup> She testified that, one day, while she was “at a neighbor’s house outside playing”<sup>40</sup> she “heard yelling coming from Bob Hayes [who was inside the house, with Chris]. I heard what sounded like a smack, a real loud smack and then I heard Christopher screaming right after that and directly afterwards, I heard Chris running out of the house, the screen door slamming. We all looked over and I saw him running down the street and Bob Hayes was screaming for him to come back.”<sup>41</sup> She added that “[i]t was a painful scream,”<sup>42</sup> and testified that Chris looked “[s]cared.”<sup>43</sup> Theresa Vining was not the only one who heard Bob Hayes yell loudly at Christopher: “I have often heard Bob screaming and yell [sic] at Chris.

<sup>29</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 2.

<sup>30</sup> Clark, Marie., M.A. *Report*. Undated., p. 18.

<sup>31</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 1.

<sup>32</sup> *Ibid.*, p. 2.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 95.

<sup>36</sup> Vining, Theresa. *Testimony*. October 6, 1995., p. 224.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 225.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 226.

<sup>42</sup> *Ibid.*, p. 242.

<sup>43</sup> *Ibid.*, p. 226.

The volume of his voice is so loud...that I have heard his yelling from my residence with [sic] is approximately three (3) houses away."<sup>44</sup> Theresa Vining's sister, Christina Koehler remembers that Chris looked "frightened"<sup>45</sup> when Bob Hayes lost his temper, and actually told her that he was afraid of his step-father.<sup>46</sup> Corey Brown, another friend from the neighborhood, recalls that Chris had a reason to fear his step-father: "I seen Bob get out of his chair one time and try to kick Chris."<sup>47</sup>

Theresa Vining also testified that her mother, Janet Vining, witnessed Bob Hayes physically abuse Chris.<sup>48</sup> On that occasion, Bob Hayes "reached over and yanked him [Christopher] by the ear across the room towards him."<sup>49</sup> In an earlier statement, Theresa Vining claimed that she witnessed Bob "dragging Chris into the house by his ear."<sup>50</sup> Another one of Janet Vining's daughters, Christina Koehler, also witnessed Bob Hayes using Chris' ear to control him. She testified that she "observed Bob Hayes pulling Christopher by his ear into the car and into the house...[h]e was real rough."<sup>51</sup> On another occasion, Bob Hayes grabbed Chris "by his ear and just yank[ed] him down the road into the house."<sup>52</sup> She testified that she observed this kind of treatment "a number of times."<sup>53</sup> Christie Brooks, another childhood friend, also observed Bob Hayes traumatizing Christopher's ears. "[o]ne time he...hit Chris in the ear and his ear started bleeding, bad enough that it was running down the side of his neck."<sup>54</sup> Chris was crying and "embarrassed because we were there. He just kept crying and holding his ear and he ran in the house."<sup>55</sup> She later learned that his "eardrum had been busted."<sup>56</sup>

Physical violence occurred in other forms, too. Christopher Simmons told Dawn Smith that "Bob had punched him in the face on occasion."<sup>57</sup> She opined that "Chris was humiliated by Bob as a small child because Bob always whipped him in the yard in plain view of his friends."<sup>58</sup> Chris suffered other visible forms of physical abuse, too. Bob Hayes admitted to "'whooping' him with a belt...at least weekly until...[Chris] was old enough to confront...[him]."<sup>59</sup> He was also "obsessed with...[Chris'] acne...[and] would scrub...[his] face and back daily and squeeze the acne until it would bleed."<sup>60</sup> When Chris cried out in pain and tried to get away, Bob Hayes physically held him to the ground and threatened him.<sup>61</sup>

<sup>44</sup> Brooks, Christie. *Affidavit*. August 3, 1995., p. 1.

<sup>45</sup> Koehler, Christina. *Testimony*. October 6, 1995., p. 250.

<sup>46</sup> *Ibid.*

<sup>47</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 311.

<sup>48</sup> Vining, Theresa. *Testimony*. October 6, 1995., p. 237.

<sup>49</sup> *Ibid.*, p. 239.

<sup>50</sup> Vining, Theresa. *Memorandum of Interview*. July 10, 1995., p. 3.

<sup>51</sup> Koehler, Christina. *Testimony*. October 6, 1995., p. 249.

<sup>52</sup> *Ibid.*, p. 256.

<sup>53</sup> *Ibid.*, p. 250.

<sup>54</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 273.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, p. 291.

<sup>57</sup> Smith, Dawn. *Affidavit*. August 14, 1995., p. 1.

<sup>58</sup> Smith, Dawn. *Memorandum of Interview*. July 10, 1995., p. 1.

<sup>59</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

The verbal abuse Christopher endured as a young child continued over the years. Not only did Bob Hayes yell at and threaten Christopher when he was angry with him -- for things like "[n]ot having his homework done, his friends, how long he took in the shower, his chores not being done, [and] hairballs on the floor,"<sup>62</sup> but, he also shouted slurs and put-downs at him regularly. He also openly criticized Christopher for his facial expressions, how long he spent in the shower, and the manner in which he ate.<sup>63</sup> While friends witnessed countless such displays when Christopher was a teenager, the earliest incident actually occurred when Christopher was about four or five years old. As he was leaving with his paternal grandparents for a visit, Chris reached out to say goodbye to Bob, but, Bob waved him off, saying 'Get him out of here.'<sup>64</sup>

Christie Brooks testified that, in later years, she heard Bob Hayes call Chris a "[s]on of a bitch."<sup>65</sup> She also heard Bob Hayes tell Chris that he "couldn't ever do anything right; that he was stupid,"<sup>66</sup> and that he was an "asshole, [and] worthless."<sup>67</sup> She could hear Bob Hayes yelling these slurs from inside her house.<sup>68</sup> Another friend, Corey Brown, reports hearing Bob Hayes call Chris an "asshole,"<sup>69</sup> and say that he was "irresponsible"<sup>70</sup> and "good for nothing."<sup>71</sup> Chris was embarrassed, and sobbed when his step-father insulted him in this way.<sup>72</sup>

Maltreatment took other forms, too. Bob Hayes treated Chris differently than he treated his own children. After Chris' half-brothers were born, Chris was "more or less 'dismissed' to live in the basement of the house, which to say the least was not fit for an animal."<sup>73</sup> There were mice in the basement.<sup>74</sup> Also, Christopher was regularly required to do the bulk of the household chores, and was also expected to maintain his family's home. "It was his [Chris'] job to do all of the working inside and outside of he home, including the yard work as well as the housework."<sup>75</sup> Compounding matters, Bob Hayes "demeaned [him]...in front of the whole family when he even was doing good. Bob would make fun of him helping with dishes."<sup>76</sup>

At the post-conviction relief hearing [PCR], Christie Brooks testified that, one summer, Christopher was responsible for painting the family's home. Bob made him paint the house while it was very hot outside -- "in the '90's."<sup>77</sup> While working on that task, Christopher stepped on a nail; "Bob treated it like it was no big deal," and yet, it is believed that Cheryl Hayes later

<sup>62</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 270.

<sup>63</sup> Brooks, Christie. *Memorandum of Interview*. July 10, 1995., p. 1.

<sup>64</sup> Simmons, Marcelline. *Summary of Interview with Caryn Platt Tatelli*. January 15, 1999., p. 3.

<sup>65</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 270.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, p. 276.

<sup>68</sup> *Ibid.*, p. 272.

<sup>69</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 311.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, p. 312.

<sup>72</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 271.

<sup>73</sup> Osburn, Maria. *Correspondence*. August 8, 1994., pp. 3-4.

<sup>74</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 5.

<sup>75</sup> Brooks, Christie. *Affidavit*. August 3, 1995., p. 2.

<sup>76</sup> Osburn, Maria. *Correspondence*. August 8, 1994., pp. 4-5.

<sup>77</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 277.

took Chris to the hospital to have his foot examined.<sup>78</sup> Two years after Chris' arrest, Dawn Smith observed, "[a] prime example is the condition of the yard at the present time. Prior to Christopher's arrest, the yard was torn up to repair a leaky basement. Since Christopher is no longer there to do the work, it has not been done. The yard has been a mess for at least the last two (2) years."<sup>79</sup> Kenny Hayes explained, "[w]hen Christopher was arrested, he was helping a guy who was repairing our foundation."<sup>80</sup> Perhaps Chris' maternal aunt, Maria Osburn, puts it most succinctly: "Christopher was used as slave labor."<sup>81</sup>

As Chris got older, Bob Hayes was often responsible for child care and supervision. He admits that he was often "intoxicated and argumentative,"<sup>82</sup> and that he manipulated Chris by "withdrawing activities and privileges."<sup>83</sup> He "often punished Chris excessively, such as ground[ing] him one week for every minute he was late getting home."<sup>84</sup> In terms of the manipulation, he admits that he strongly encouraged Chris to play baseball, but, then made him quit the team after Chris visited his biological father.<sup>85</sup> Dennis Simmons confirms that there was conflict around the issue of Chris' athletic activities: "when Chris was on a team, and had sporting events on the weekends, Cheryl told me I could not have the visit because of the game. She would not tell me where he was playing. She did not want me to go and watch."<sup>86</sup> On other occasions, Bob Hayes claimed that the problem was that Dennis failed to make sure that Chris was in town and at the games when his team was playing.<sup>87</sup>

Christina Koehler testified that she had never seen Cheryl Hayes intercede on Christopher's behalf when his step-father was behaving in an abusive fashion toward him.<sup>88</sup> Christie Brooks added, "[s]he didn't do anything. She just sat there and didn't say anything."<sup>89</sup> Now, Cheryl Hayes recognizes that she could have handled things differently, and wishes that she had challenged the ways Bob Hayes disciplined her son, Chris.<sup>90</sup> In an interview with Dr. Robert Smith, Cheryl Hayes confessed that she had "taken on a 'victim' mentality, viewing herself as helpless and unable to function independently. As a result, she was unable to defend her son...from emotional and physical abuse. This emotional abandonment led...[Chris] to question his mother's love for him and his personal value;"<sup>91</sup> "As a parent, one of her duties...[was] to protect Chris."<sup>92</sup> Cheryl Hayes' admissions were supported by psychological testing, which revealed that she is "self-absorbed and distant from others...[and] passive and immature in her

<sup>78</sup> Brooks, Christie. *Memorandum of Interview*. July 10, 1995., p. 2.

<sup>79</sup> Smith, Dawn. *Affidavit*. August 14, 1995., p. 3.

<sup>80</sup> Hayes, Kenny. *Affidavit*. October 15, 1998., p. 1.

<sup>81</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 3.

<sup>82</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>83</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>84</sup> Smith, Dawn. *Memorandum of Interview*. July 10, 1995., p. 1.

<sup>85</sup> *Ibid.*

<sup>86</sup> Simmons, Dennis. *Affidavit*. October 30, 1998., p. 3.

<sup>87</sup> Clark, Marie., M.A. *Report*. Undated., p. 13.

<sup>88</sup> Koehler, Christina. *Testimony*. October 6, 1995., p. 252.

<sup>89</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 274.

<sup>90</sup> Hayes, Cheryl. *Interview with Caryn Platt Tatelli*. July 9, 1998.

<sup>91</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>92</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 79.



relationships and is unable to assert her needs or feelings.”<sup>93</sup>

In an interview with clinical psychologist Dr. Robert Smith, Bob Hayes “acknowledged a history of chronic alcohol abuse that has negatively influenced his behavior.”<sup>94</sup> As an example, he reported taking Christopher, a toddler at the time, on a fishing trip. Too intoxicated to supervise him properly, “he would tie Mr. Simmons to a tree and leave him there unattended for hours at a time.”<sup>95</sup> He also admitted that, when Chris was about three or four, he took him to a bar on several occasions, and that, while there, he “offered him small amounts of alcohol and that he and the patrons of the bar would enjoy watching the effect of the alcohol upon Christopher and that it was amusing and funny.”<sup>96</sup>

In describing his own use of alcohol, Bob Hayes reported that he “began drinking beer at age 21, [and] eventually progressed to whiskey...until he eventually was drinking whiskey daily ‘all day long’...[totaling] a fifth of whiskey plus beer each day...Following his second marriage he attempted to restrict his consumption to 12 to 16 beers on weekends.”<sup>97</sup> Others knew that Bob Hayes’ use of alcohol was detrimental to the functioning of the family: “[a]fter he had been drinking, he became loud and obnoxious.”<sup>98</sup>

Clinical testing confirmed that Bob Hayes is “immature, self-indulgent, and manipulates others for his own needs”<sup>99</sup> and that he is likely to “have a history of poor social adjustment...[and to] experience periods of rage due to poor impulse control and low frustration tolerance.”<sup>100</sup> Testing also showed that he is “obnoxious, hostile, and rebellious toward authority figures,...has an exaggerated and grandiose idea of his abilities and worth,...[and] tends to be hedonistic, abusing alcohol and drugs.”<sup>101</sup> Testing also showed Bob Hayes to “meet the criteria for alcohol dependence, and that his use of substances impacted the family.”<sup>102</sup> Dr. Robert Smith testified that children living in alcoholic homes are “exposed to a rage that is very intimidating and very threatening, very frightening.”<sup>103</sup> In fact, Bob Hayes admitted that, when drunk, he “would go to extremes and that his verbal behavior was extremely abusive, particularly to Chris, that he would call him...very derogatory names...in front of peers, in front of the neighbors, and have no sort of awareness of the consequences that it might have on Chris and would not set any sort of limits on how far he would go.”<sup>104</sup>

The daily abuse which Chris suffered in his home eventually caused him to flee -- to gain both physical and emotional space. Corey Brown, a neighbor and friend, remembers that Chris was

<sup>93</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>94</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>95</sup> *Ibid.*

<sup>96</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 75.

<sup>97</sup> Clark, Marie., M.A. *Report*. Undated., pp. 10-11.

<sup>98</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 3.

<sup>99</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 3.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 115.

<sup>103</sup> *Ibid.*, p. 118.

<sup>104</sup> *Ibid.*

scared of his step-father, and that he would either do what Bob Hayes wanted when he was angry, or, if that were not possible, he would leave the house.<sup>105</sup> On other occasions, he had no choice: "Bob got up one time and chased him out of the house."<sup>106</sup> "Chris was scared as Hell."<sup>107</sup> Christie Brooks often observed Chris running from his house, headed to the top of a nearby hill, where he would sit and think, and give Bob Hayes time to cool off.<sup>108</sup> Chris regularly told Christie Brooks "that he was fed up with being hit and yelled at for little things."<sup>109</sup>

"Chris sneaked out at night because he was afraid of Bob."<sup>110</sup> Chris would "sneak out of his house and come over, stay over until about 6:00 in the morning and then go home before Bob woke up."<sup>111</sup> Eventually, it got to the point that Chris ran away and stayed away. Corey Brown was aware of that, as Chris stayed with him.<sup>112</sup> The first time Chris ran away was in 1994; he stayed about two weeks.<sup>113</sup> The second time he ran away, he stayed several days, as he did on the third occasion.<sup>114</sup> Chris Brown, Corey Brown's mother, remembers Chris spending the night "at least two or three times a week. He was there a lot"<sup>115</sup> over the course of about "two years, two and a half years."<sup>116</sup> Chris also sometimes stayed in a shed behind Corey Brown's home.<sup>117</sup> It was Chris Brown's impression that Christopher did not feel safe when he was at home.<sup>118</sup> Chris also went to other people's houses when he ran away, and at one point, was gone for "a couple weeks, may [sic] even been a month."<sup>119</sup> Bob and Cheryl Hayes reported that Chris stayed in a hotel frequently, although neither of them could account for the financial means required for such stays.<sup>120</sup> In time, Chris began going to stay at a trailer belong to Brian Moomey, an adult who live in a nearby trailer park.<sup>121</sup>

Corey Brown recalls that Chris' parents never attempted to find out what was going on, although his "mom called them once...and asked what was going on."<sup>122</sup> Chris Brown recalls that Chris' parents never contacted her when Christopher ran away; she contacted them to let them know he was there.<sup>123</sup> Chris was "very, very upset -- angry, crying"<sup>124</sup> when he ran away from home; she

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<sup>105</sup> Brown, Corey. *Testimony*. October 6, 1995., p 312.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*, p. 330.

<sup>108</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 277.

<sup>109</sup> Brooks, Christie. *Memorandum of Interview*. July 10, 1995., p. 2.

<sup>110</sup> Kohler, Chrissy. *Memorandum of Interview*. August 29, 1995., p. 2.

<sup>111</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 314.

<sup>112</sup> *Ibid.*, p. 312.

<sup>113</sup> *Ibid.*, p. 313.

<sup>114</sup> *Ibid.*, p. 314.

<sup>115</sup> Brown, Chris. *Testimony*. October 6, 1995., p. 343.

<sup>116</sup> *Ibid.*, p. 347.

<sup>117</sup> Clark, Marie., M.A. *Report*. Undated., p. 12.

<sup>118</sup> Brown, Chris. *Testimony*. October 6, 1995., p. 354.

<sup>119</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 315.

<sup>120</sup> Clark, Marie., M.A. *Report*. Undated., p. 12.

<sup>121</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 321.

<sup>122</sup> *Ibid.*, p. 315.

<sup>123</sup> Brown, Chris. *Testimony*. October 6, 1995., p. 344.

<sup>124</sup> *Ibid.*, pp. 344-345.

often offered to mediate, and encouraged him to go home, but, he was never willing to do so.<sup>125</sup> Eventually, Chris Brown offered Chris a permanent place in her home.<sup>126</sup> Cheryl Hayes later admitted knowing that Chris was “uncomfortable at home and many times would go out and stay with his friends to avoid being hurt.”<sup>127</sup> Eventually, Chris actually instigated arguments with Bob Hayes so that he would have an excuse to leave home.<sup>128</sup>

Things became so threatening and unstable that Chris began avoiding his home. His paternal grandmother reports learning that he had been gone for a whole month shortly before the offense: “Bob and Cheryl did not look after him as they should have. Not having known where he was for a whole month before the offense is a good example. They did not even go to his school to look for him. I think Cheryl did not want to call Dennis to tell him Christopher was missing because she did not want Dennis to stop paying child support.”<sup>129</sup>

The feeling of lacking basic parental love was a constant in Christopher’s life. And, in fact, his paternal step-grandmother, Bob Hayes’ mother, Betty Hayes, remarked that he was “shocked when Bob stood behind him after his arrest.”<sup>130</sup> In retrospect, Cheryl Hayes recognizes that Chris probably did not feel as though he belonged to either of his families.<sup>131</sup> In a letter to the judge written just prior to Chris’ sentencing hearing, Maria Osburn, his maternal aunt, wrote, “when he was around 13 he told me he felt ‘unloved’”<sup>132</sup> and complained that he “didn’t have a father”<sup>133</sup> and that his “biological dad ‘used’ him as a babysitter.”<sup>134</sup> When he was about fifteen, Chris told his aunt that “no one loved him, and that he did not have a reason to live...he was lonely, unloved, and afraid, and depressed.”<sup>135</sup>

The turmoil Chris faced in his life at home was reflected in his academic performance and conduct at school. Chris was “basically an average student until adolescence,”<sup>136</sup> at which time there was a “decline, both in his grades and his behavior...beginning at around age 13.”<sup>137</sup> The significance of this is that “this coincided with his use of alcohol and drugs.”<sup>138</sup> “At the time of his arrest, Christopher’s grade point average was .846, he had 52 absences and ranked 520 in a class of 533.”<sup>139</sup> His grade point average and attendance mirrors his conduct. He was suspended for numerous things, including smoking, truancy, skipping class, forging hall passes, using foul language, failing to take detention, and making inappropriate objects in art class.<sup>140</sup> “[S]everal of

<sup>125</sup> *Ibid.*, p. 345.

<sup>126</sup> Clark, Marie., M.A. *Report*. Undated., p. 12.

<sup>127</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 122.

<sup>128</sup> *Ibid.*, p. 132.

<sup>129</sup> Simmons, Marcelline. *Summary of Interview with Caryn Platt Tatelli*. January 15, 1999., p. 4.

<sup>130</sup> Hayes, Betty. *Interview with Caryn Platt Tatelli*. July 10, 1998.

<sup>131</sup> Hayes, Cheryl. *Interview with Caryn Platt Tatelli*. July 9, 1998.

<sup>132</sup> Osburn, Maria. *Correspondence*. August 8, 1994., p. 3.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 4.

<sup>136</sup> Smith, Robert, Dr. *Testimony*. August 18, 1995., p. 42.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> Clark, Marie., M.A. *Report*. Undated., p. 15.

<sup>140</sup> Fox Senior High School records.

his suspensions required that a parent participate in a school conference before...[he] was allowed to return to school...Bob Hayes was the primary respondent; Dennis Simmons was [n]ever contacted as a result of Christopher's behavior problems."<sup>141</sup>

While it is true that some adolescents are exceptionally mature, it is also true that these adolescents generally come from wealthy families<sup>142</sup> and receive a lot of parental support.<sup>143</sup> Some adolescents, despite poor odds, manage to overcome a destructive environment to assume a high level of responsibility and maturity; such individuals usually perform exceptionally well in school,<sup>144</sup> as schools usually test for the reasoning skills that necessarily constitute a high level of moral development.<sup>145</sup> As even the most mature adolescents usually require a high degree of familial support to remain mature,<sup>146</sup> and, similarly, to maintain high grades,<sup>147</sup> it should not be surprising that those who are abused by their parents suffer a serious risk for low grades, and, correspondingly, to all the destructive and risky behaviors common to those with a low level of moral development.<sup>148</sup>

Given the environment in which he was raised and his family's prior generational history of psychiatric illnesses and substance abuse, Christopher Simmons was predisposed to developing a psychiatric illness.<sup>149</sup> The familial history of mental illness and substance abuse is reported by Cheryl Hayes, whose mother "became argumentative and 'mean' when drinking...approximately 12 cans of beer daily...[and] has a history of depression and has overdosed on alcohol and medication approximately three times."<sup>150</sup> Maria Osburn adds: "I have a history of depression," and have been hospitalized four times.<sup>151</sup>

Dr. Robert Smith, the clinical psychologist who evaluated Chris after he was sentenced with the death penalty, determined that Christopher's lack of a loving, supportive male role model contributed to his "low self-esteem, lack of self-confidence, and distorted views about his relationships."<sup>152</sup> Chris was consistently described as "isolated and withdrawn"<sup>153</sup> and "had no

<sup>141</sup> Clark, Marie., M.A. *Report*. Undated., p. 16.

<sup>142</sup> Gordon Rouse, Kimberly A. "Resilient Students' Goals and Motivation." *Journal of Adolescence*. August 2001. v24 i4 p461(12).

<sup>143</sup> Strage, Amy A. "Family Context Variables and the Development of Self-Regulation in College Students." *Adolescence*, Spring 1998 v33 i129 p17.

<sup>144</sup> Aunola, Kaisa, Hakan Stattin, and Jari-Erik Nurmi. "Parenting Styles and Adolescents' Achievement Strategies." *Journal of Adolescence*, April 2000 v23 i2 p205(1).

<sup>145</sup> Cobb, Nancy J. *Adolescence: Continuity, Change, and Diversity*. Mountain View, CA: Mayfield Publishing, 1998. Also see Kegan, Robert. *In Over Our Heads*. Cambridge, MA: Harvard University Press, 1994.

<sup>146</sup> Snodgrass, Dawn M. "The Parent Connection." *Adolescence*, Spring 1991 v26 n101 p83(5).

<sup>147</sup> Schvaneveldt, Paul L., Brent C. Miller, E. Helen Berry, and Thomas R. Lee. "Academic Goals, Achievement and Age at First Sexual Intercourse." *Adolescence*, Winter 2001 v36 i144 p767(21).

<sup>148</sup> Straus, Murray A., and Glenda Kaufman Kantor, "Corporal Punishment of Adolescents by Parents: a Risk Factor in the Epidemiology of Depression, Suicide, Alcohol Abuse, Child Abuse, and Wife Beating." *Adolescence*, Fall 1994 v29 n115 p543(19).

<sup>149</sup> Smith, Dr. Robert. *Testimony*. October 23, 1995., p., 472.

<sup>150</sup> Clark, Marie., M.A., *Report*. Undated., p. 7.

<sup>151</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 1.

<sup>152</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 2.

<sup>153</sup> *Ibid*, p. 3.

close friends and no long-term dating relationships.”<sup>154</sup> In fact, “he didn’t affiliate with many people at all and the only ones that he did were basically people that he used alcohol and drugs with...in terms of close friendships, nurturing relationships, he didn’t have any.”<sup>155</sup> Testing indicated that he “feels insecure, depressed and inadequate, [and that] [h]e...is mistrustful of others, questioning their motives, and reject[ing] emotional ties.”<sup>156</sup> Dr. Smith concluded that Chris would be seen as “marginally fitting in...living in a sort of fringe or not having any close relationships, feeling very vulnerable and uncertain about his future.”<sup>157</sup> These findings support a diagnosis of Schizotypal Personality Disorder, a disorder distinguished by a pervasive pattern of social and interpersonal deficits marked by acute discomfort and a reduced capacity for close relationships and cognitive and perceptual distortions.<sup>158</sup> This disorder “may be first apparent in childhood and adolescence with solitariness, poor peer relationships, social anxiety, underachievement in school, hypersensitivity, peculiar thoughts and language, and bizarre fantasies.”<sup>159</sup>

Dr. Smith testified, “[t]he development of our personality comes from all of our experiences. It’s the training that we receive from our parents, the experiences we have with our peers, the education we receive at school, at church. It’s our experiences of success and failure. It’s a result of the sort of culmination of all these factors feeding into us, information about our effectiveness, who we are and whether or not we’re acceptable...personality is really based heavily upon our self-perception.”<sup>160</sup> In the case of a personality disorder, “the individual’s self-perception has been distorted or damaged so that they now have a way of seeing themselves and interacting with their environment that is not constructive.”<sup>161</sup> Chris’ “negative self-perception and difficulty with interpersonal relationships is a direct result of his dysfunctional home environment and the abuse he endured.”<sup>162</sup>

While evaluating Chris, Dr. Smith also administered the Michigan Alcoholism Screening Test and Drug Abuse Screening Test and found his alcohol and drug use to be “problematic.”<sup>163</sup> He diagnosed Chris with Alcohol Dependence and Cannabis Dependence, explaining that Chris showed signs of increased tolerance, he experienced financial difficulties as the result of his drug and alcohol usage, decreased his participation in important activities, and spent a great deal of time in activities geared toward obtaining, using, and recovering from usage.<sup>164</sup> He explained that children who are raised in a home with an alcohol abusing parent, such as Bob Hayes, are

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<sup>154</sup> *Ibid.*

<sup>155</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., pp. 145-146.

<sup>156</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 3.

<sup>157</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., pp. 190-191.

<sup>158</sup> American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders; DSM-IV*. Washington, DC. 1994., pp. 641-642.

<sup>159</sup> American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders; DSM-IV*. Washington, DC. 1994., pp. 643.

<sup>160</sup> Smith, Dr. Robert. *Testimony*. August 15, 1995., pp. 183-184.

<sup>161</sup> *Ibid.*, p. 184.

<sup>162</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 3.

<sup>163</sup> Smith, Dr. Robert. *Testimony*. August 15, 1995., p. 192.

<sup>164</sup> *Ibid.*, p. 203-204.

five times more likely to abuse alcohol themselves.<sup>165</sup> Individuals who have “difficulty dealing with stress, feel overwhelmed by their environment, have social anxiety or whatever type of environment cues that lead to them feeling uncomfortable, that they may discover that by using alcohol or another drug that they can reduce those psychological symptoms.”<sup>166</sup> Like Chris, those individuals who use drugs or alcohol in a medicinal fashion are “at great risk for abusing and becoming dependant because now they’re using the substance in a medicinal fashion.”<sup>167</sup> Children reared in abusive homes have a sixty percent [60%] chance of using drugs or alcohol as a way to cope with the abuse.<sup>168</sup> Christopher acknowledged self-medicating: “Christopher told me he found it easier to deal with Bob when he was high on pot.”<sup>169</sup> Dr. Robert Smith noted that it was not until Chris was under the influence himself that he felt comfortable “really yelling at Mr. Hayes.”<sup>170</sup> However, “[t]he problem with being intoxicated and expressing anger, it’s not really a working through or release of the anger.”<sup>171</sup>

Dr. Smith stressed the link between Chris’ personality disorder and his substance use. Individuals who have a Schizotypal Personality Disorder feel a great deal of discomfort and internal distress. “When there’s that much internal distress and discomfort, oftentimes an individual will look for a way to self-medicate or treat. Alcohol and drugs become one of the ways to do that...the drugs...Chris chose...were alcohol and marijuana, which are sedatives, they relax a person, they calm them down, they reduce a person’s anxiety.”<sup>172</sup>

#### ON THE PROCESS OF BECOMING AN ADULT

Given the many problems he faced during his formative years, when might Christopher Simmons have reached adulthood? The day he was charged as an adult for the instant offense? The day he turned twenty-one? The day his brain finished developing the parts which are responsible for impulse control and his body began producing hormones at the levels sufficient to regulate impulse control? Regardless of when it was for Christopher Simmons, research clearly supports the argument that the death penalty should be reserved for criminals with cognitive and emotional capabilities that adolescent offenders do not possess. The research can be divided into four sections: scientific documentation of the rapid physical changes during the period defined as adolescence, cognitive and emotional deficits of adolescents, the destructive and short-sighted nature of adolescent behavior, and the chemical basis for the poor impulse control and decision-making of adolescents. “Psychiatrists, psychologists and other child development experts recognize that adolescence is a transitional period between childhood and adulthood in which young people are still developing the cognitive ability, judgment and fully formed identity or character of adults.”<sup>173</sup> Since adolescent offenders are not equipped to understand just *how*

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<sup>165</sup> *Ibid.*, p. 205.

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*, p. 206.

<sup>168</sup> *Ibid.*, p. 206-207.

<sup>169</sup> Brooks, Christie. *Affidavit*. December 19, 1998., p.1.

<sup>170</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 135.

<sup>171</sup> *Ibid.*

<sup>172</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 210.

<sup>173</sup> *Brief of the American Society for Adolescent Psychiatry and The American Orthopsychiatric Association as Amici Curiae in support of petitioner*. William Wayne Thompson vs. State of Oklahoma. May 15, 1987., p. 267.

wrong murder really is, they do not constitute the most depraved of murderers and therefore deserve life in prison without parole rather than the death penalty.

-- "Because of the profound character of the changes across the early adolescent period, this time of life -- more so than other developmental transitions -- represents a period of potential risk..."<sup>174</sup>

"Puberty begins with a chemical signal from the hypothalamus, located at the base of the brain, that activates the pituitary gland, a pea-size organ appended to the hypothalamus. The pituitary then increases its production of growth hormones, which in turn stimulate the growth of all body tissue."<sup>175</sup> During adolescence, male adolescents undergo "growth of testes, growth of pubic hair, growth of penis, body growth, growth of larynx and corresponding change in voice, beginning of facial and underarm hair, and oil and sweat-producing glands which cause acne."<sup>176</sup> Male adolescents are in the process of growing around 12-13 inches, dramatically increasing muscle mass, developing larger hearts and lungs, widening shoulders, increasing systolic blood pressure, increasing the capacity of their blood to carry oxygen, and increasing their ability to dispose of the chemical by-products of exercise.<sup>177</sup> Almost every part of the adolescent body is undergoing change; even the skull bones thicken, lengthening and widening the head.<sup>178</sup>

Adolescents also undergo dramatic hormonal changes. The pituitary gland releases hormones that trigger a great increase in the manufacture of two gonadotropic ("gonad-seeking") hormones.<sup>179</sup> The release of these hormones is so powerful that it actually changes the sleep cycles of adolescents, who tend to feel tired during the morning and awake at night regardless of how much sleep they get.<sup>180</sup>

Dramatic research in neuroscience in the last five years has discovered that adolescent brains are not fully developed. "Brain researchers have wondered why the onset of puberty presages such turbulence, both for healthy kids and those affected by...psychiatric disorders."<sup>181</sup> Recent research suggests that the adolescent brain is "far less finished, and far more dynamic, than previously believed."<sup>182</sup> A neuroscientist at McMaster University in Ontario wrote, "The

<sup>174</sup> Graber, Julia A., Jeanne Brooks-Gunn, and Anne C. Petersen, eds. *Transitions through Adolescence: Interpersonal Domains and Context*. Mahwah, NJ: Lawrence Erlbaum, 1996, p. 18.

<sup>175</sup> Cole, Michael, and Sheila R. Cole. *The Development of Children*. 4th ed. Worth Publishers: New York, NY. 2001, p. 608.

<sup>176</sup> Cobb, Nancy J. *Adolescence: Continuity, Change, and Diversity*. Mountain View, CA: Mayfield Publishing, 1998, p. 94.

<sup>177</sup> *Ibid*, p. 96.

<sup>178</sup> Cole et al., *The Development of Children*. p. 609.

<sup>179</sup> *Ibid.*, p. 608.

<sup>180</sup> Carskadon, Mary, "When Worlds Collide: Adolescent Need for Sleep Versus Societal Demands", in *Adolescent Sleep Needs and School Starting Times*, editor Kyla Wahlstrom, Phi Delta Kappa Educational Foundation, 1999. Also see Dement, William C. *The Promise of Sleep*. Dell Paperback 1999, p. 85.

<sup>181</sup> Landau, Misia. "Deciphering the adolescent brain." *Focus: News from Harvard Medical, Dental & Public Health Schools*. April 21, 2000.

<sup>182</sup> *Ibid*.

teenage brain is a work in progress.'...and it's a work that develops in fits and starts."<sup>183</sup> "One of the last parts to mature is in charge of making sound judgments and calming unruly emotions."<sup>184</sup> And, the "prefrontal cortex, where judgments are formed, is practically asleep at the wheel. At the same time...the limbic system, where raw emotions such as anger are generated, is entering a stage of development in which it goes into hyperdrive."<sup>185</sup>

--"[An adolescent is] not yet an independent, mature, resolute, strong, young adult. The adolescent is really both part child and part adult..."<sup>186</sup>

Adolescents report experiencing more extreme emotions than do their parents; that is, adolescents are more likely to report that they are extremely unhappy or extremely happy at a given moment.<sup>187</sup> Adolescents also feel self-conscious and embarrassed two to three times as often as their parents do.<sup>188</sup> As a result of their increased emotional instability, adolescents report increased conflict in their relationships and decreasing closeness with their parents, and their time spent with their parents decreases from about 35% of their waking hours to about 14%.<sup>189</sup>

Normal adolescent narcissism occurs as part of the maturation process. "Adolescents tend to think that other people are as interested in what they are thinking and doing as they are themselves"<sup>190</sup>. This self-focused perception is what leads to the self-consciousness, feelings of uniqueness [you don't understand what my life is like] and need for privacy so common to adolescents<sup>191</sup>. It also leads to the self-destructive "personal fable," in which adolescents think what happens to others will not happen to them and therefore engage in sensation-seeking and risky behaviors<sup>192</sup>. As a result of such egocentrism, almost no adolescents have reached a stage of moral reasoning in which they can truly see themselves as members of a community, subjecting their own desires to its laws so that the community may function<sup>193</sup>. A teenager's "need to be independent" is often in part a selfish desire to escape feeling like part of a family, the very feeling the teenager's parents are seeking from her<sup>194</sup>.

"Most adolescents are just entering a form of thought in which they can consider events that may only exist as possibilities for them."<sup>195</sup> In one study, 40 percent of high school males and 18

<sup>183</sup> Brownlee, Shannon. "Inside the teen brain: Behavior can be baffling when young minds are taking shape." *Lewis-Clark State College*. Undated. [<http://www.lcsc.edu/ps205/inside.html>]

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> Lewis, *Child and Adolescent Psychiatry: a Comprehensive Textbook*, p. 287.

<sup>187</sup> Cobb. *Adolescence: Continuity, Change, and Diversity*, p. 106.

<sup>188</sup> *Ibid.*, p. 107.

<sup>189</sup> *Ibid.*, pp. 106, 194.

<sup>190</sup> *Ibid.*, p. 125.

<sup>191</sup> *Ibid.*, p. 172.

<sup>192</sup> *Ibid.*, p. 172.

<sup>193</sup> *Ibid.*, p. 147.

<sup>194</sup> Kegan, Robert. *In Over Our Heads*. Cambridge, MA: Harvard University Press, 1994, pp. 15-36.

<sup>195</sup> Cobb. *Adolescence: Continuity, Change, and Diversity*, p. 124, see also Kegan, *In Over Our Heads*, pp. 15-36.



percent of high school females said it was okay for a male to force sex if the girl was drunk.<sup>196</sup> Multiple surveys have found that 20 percent [20%] to 30 percent [30%] of high school students report seriously considering committing suicide.<sup>197</sup> In fact, Christopher Simmons made a suicide attempt while in the county jail, awaiting trial. On Tuesday, January 18, 1994, approximately six months after his arrest, he cut his wrists. It was determined that he did not need stitches, but, his actions were clearly classified by the jail as a suicide attempt.<sup>198</sup>

-- *"From a clinical perspective, there is widening recognition that severe psychological difficulties and psychiatric syndromes often appear in adolescence, which place young people at risk for drug use, criminality, and suicide, as well as for psychiatric disorders and impaired personal relationships throughout their lives."*<sup>199</sup>

Many adolescents engage in self-destructive behaviors without even realizing the risk they are taking. These behaviors take different forms for different youths. "One in four sexually active U.S. adolescents contract a sexually transmitted disease; this level is twice that of people in their twenties."<sup>200</sup> In 1993, researchers found that adolescents more often utilize avoidant coping strategies [e.g. listening to music, playing sports, sleeping, drinking alcohol] than approach-oriented coping strategies [e.g. trying to directly solve the problem, seeking help and guidance from someone about the problem] to deal with negative affective experiences.<sup>201</sup> Escapism, in various forms, is popular. "Suicide for adolescents between 15 and 19 years old is the third leading cause of death, closely behind motor vehicle accidents and homicide,"<sup>202</sup> and the "best annual estimate of adolescent runaways is between 1.3 and 1.4 million."<sup>203</sup> Lastly, "[d]riving under the influence of alcohol is reported by 17 percent of high school students."<sup>204</sup>

Substance use, which began when he was about thirteen or fourteen years old, was a manifestation of Christopher Simmons' self-destructive behavior and an attempt to escape an intolerable familial situation. Clinically, this early use of substances is consistent with an adolescent who is utilizing the substances as a coping mechanism, as opposed to the older adolescent, who at age sixteen or seventeen, experiments with drugs for entirely different reasons. When he was quite young, Christopher reported much earlier use of alcohol to his paternal grandmother, Marcelline Simmons: "Christopher used to tell us that Bob gave him beer all the time...even when he was very small. Once, he also told me that he used to drink from

<sup>196</sup> Schwartzberg, *The Adolescent in Turmoil*, p. 6.

<sup>197</sup> See, e.g., Schwartzberg, Allan Z., ed. *The Adolescent in Turmoil*. A monograph of the International Society for Adolescent Psychiatry. Westport, CN: Praeger, 1998, p. 8, and Cole et al., *The Development of Children*, p. 624.

<sup>198</sup> *Law Enforcement Offense Incident Report*, Jefferson County Sheriff's Department, Hillsboro, Missouri. January 18, 1994.

<sup>199</sup> Reiss, David, with Jenae M. Neiderhiser, E. Mavis Hetherington, and Robert Plomin. *The Relationship Code: Deciphering Genetic and Social Influences on Adolescent Development*. Cambridge, MA: Harvard University Press, 2000.

<sup>200</sup> Cole et al., *The Development of Children*, p. 624.

<sup>201</sup> Lewis, *Child and Adolescent Psychiatry...*, p. 287.

<sup>202</sup> Straus, Martha B. *Violence in the Lives of Adolescents*. New York, NY: Norton, 1994, p. 31.

<sup>203</sup> *Ibid.*, p. 54.

<sup>204</sup> Cole et al., *The Development of Children*, p. 624.

Bob's beer can."<sup>205</sup> Maria Osburn, Chris' maternal aunt, confirms the early exposure to alcohol: "[o]n their wedding night, they gave Chris alcohol...trying to get him drunk...He was sleepy, and could not walk. He was only about two years old."<sup>206</sup> And, later, "Bob actually bragged about Christopher's drinking...[he] had had a whole quart of whiskey...Maybe that impressed Bob."<sup>207</sup>

In terms of adolescent usage, Christie Brooks, one of Chris Simmons' childhood friends recalls that a group of young people who lived on their street saved their "allowance and lunch money...[and had]adults buy it [alcohol] for us, and if we didn't have the money to buy it, some of the kids would go to Schnuck's and steal it."<sup>208</sup> Brian Moomey was one of the people from the neighborhood who bought alcohol for the teenagers in the neighborhood.<sup>209</sup> And, at least once, he gave Chris marijuana.<sup>210</sup> Family members knew or suspected this. In a letter to the judge at the time of Chris' original sentencing hearing, Maria Osburne, his maternal aunt, expressed "concerns about the possibility that Chris was abusing alcohol and drugs that may have come from a member in the community, Brian Moomey."<sup>211 212</sup> On other occasions, Chris stole liquor from his step-father's bar in the basement.<sup>213</sup>

Beginning when Chris was thirteen or fourteen years old, this group drank together "[t]wo or three times a week"<sup>214</sup> at "night."<sup>215</sup> Christie Brooks testified that the group of teenagers who hung out together drinking was often noisy, but that the parents never checked on them. Their group hung out together for two to four hours a night...passing a bottle of liquor around; Chris was intoxicated two to three times a week.<sup>216</sup> Theresa Vining's sister, Christina Koehler, testified that she observed Christopher drinking "Jack Daniels...[and] Southern Comfort"<sup>217</sup> when she hung out with him on the weekends, and that she had observed him drunk a "number of times."<sup>218</sup> Eventually, Bob Hayes discovered Chris' underage drinking, at which point, he made "Chris dump all the liquor out from the bar"<sup>219</sup> although he did restock the bar.<sup>220</sup>

Bob Hayes' discovery did nothing to curb Chris' substance use. Theresa Vining, a peer from Christopher Simmons' neighborhood, testified that she observed Chris using marijuana "at the bus stop where kids used to be picked up to go to school"<sup>221</sup> and "at a couple friends' houses."<sup>222</sup>

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<sup>205</sup> Simmons, Marcelline. *Summary of Interview with Caryn Platt Tatelli*. January 15, 1999., p. 3.

<sup>206</sup> Osburn, Maria. *Affidavit*. October 19, 1998., p. 3.

<sup>207</sup> *Ibid.*

<sup>208</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 265.

<sup>209</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 316.

<sup>210</sup> *Ibid.*, p. 322.

<sup>211</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 46.

<sup>212</sup> Osburn, Maria. *Correspondence*. August 8, 1994., p. 2.

<sup>213</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 267.

<sup>214</sup> *Ibid.*, p. 262.

<sup>215</sup> *Ibid.*, p. 265.

<sup>216</sup> *Ibid.*

<sup>217</sup> Koehler, Christina. *Testimony*. October 6, 1995., p. 247.

<sup>218</sup> *Ibid.*, p. 248.

<sup>219</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 274.

<sup>220</sup> *Ibid.*, p. 309.

<sup>221</sup> Vining, Theresa. *Testimony*. October 6, 1995., p. 229.

<sup>222</sup> *Ibid.*

Christie Brooks, who often rode to school with Chris, confirmed that he used marijuana on the way to school. She observed him smoking marijuana four to five times a week while driving to school. He also drank on the way to school "a few times."<sup>223</sup> She testified that she knew he got drunk on those occasions because "when we'd get out of the car, he'd be stumbling. His speech was slurred. His eyes were bloodshot a lot of times."<sup>224</sup> She added that they skipped school to drink one to three times a week.<sup>225</sup> Corey Brown also skipped school with Chris: "we skipped for a week straight and just partied at my house."<sup>226</sup>

Corey Brown understands Chris' pattern of drug use well: "he'd smoke a joint and when it wore off, he'd smoke another joint...he...always had it and when his buzz would wear off, he'd smoke another joint."<sup>227</sup> Experimentation was another part of Chris' pattern of drug use. He used cocaine, LSD, and mushrooms: "we tripped acid a couple times...[a]nd we climbed towers when we was tripping acid, too."<sup>228</sup> Christopher Simmons was drunk about one-hundred times in a one-year period.<sup>229</sup> "By age 15, Christopher was consuming a six pack [sic] of beer every weekend. By age 17, he frequently used cocaine and drank as much as a 12 pack [sic] of beer over the weekend; usually at the home of a friend, Brian Moomey, age 37. He was also smoking as many as four or five joint [sic] or marijuana per day."<sup>230</sup>

Risk-taking accompanied Chris' substance use. They would "find a [high] tower and just climb it; sit up there...and get real hammered...drunk and stoned."<sup>231</sup> He adds, "[w]e'd get drunk and we'd just -- we'd do crazy stuff."<sup>232</sup> As another example, Christopher Simmons "consumed approximately 12 beers and an undetermined amount of marijuana on the evening of the offense."<sup>233</sup>

Dr. Robert Smith, clinical psychologist, has the best understanding of Chris' substance use. "By the age of 17, Mr. Simmons was using marijuana on a daily basis, 4 to 5 joints per day, and consuming alcohol 4 to 5 days per week, a minimum of 12 beers per occasion. He learned to mix various drugs to potentiate their effects and frequently experienced episodes of passing-out or blacking-out. He required increasing amounts of alcohol and marijuana to achieve intoxication....[and] spent a great deal of time obtaining, using, and recovering from the effects of marijuana and alcohol. He also experienced sudden mood swings (i.e., depression, anger, fear) and was unreliable at work."<sup>234</sup> His scores on the Michigan Alcoholism Screening Test and the Drug Abuse Screening Test exceeded the clinical cutoff, "indicating a significant problem

<sup>223</sup> Brooks, Christie. *Testimony*. October 6, 1995., p. 268.

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid.*, pp. 268-269.

<sup>226</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 317.

<sup>227</sup> *Ibid.*, p. 318.

<sup>228</sup> *Ibid.*, p. 319.

<sup>229</sup> *Ibid.*, p. 334.

<sup>230</sup> Clark, Marie., M.A. *Report*. Undated., p. 17.

<sup>231</sup> Brown, Corey. *Testimony*. October 6, 1995., p. 318-319.

<sup>232</sup> *Ibid.*, p. 320.

<sup>233</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 4.

<sup>234</sup> Smith, Dr. Robert. *Correspondence*. August 15, 1995., p. 3.

with both alcohol and drug abuse.”<sup>235</sup>

Violence amongst youth is common, as adolescents have not yet developed a full appreciation of risks and are unable to understand consequences. The most serious crimes, from rape to armed robbery to sexual abuse to murder, peak in late adolescence, at 16 or 17 years of age.<sup>236</sup> “During 1986, for example, youths under the age of 18 years accounted for 15.4 percent of arrests for violent crimes, and 33.5 percent of arrests for property crimes (FBI).”<sup>237</sup> Also, adolescents “are the perpetrators in 34 to 60 percent of all sexual abuse cases. Several studies indicate that 56 percent of the reported cases involving sexual abuse of male children are perpetrated by teenagers.”<sup>238</sup> In fact, aggressive behavior is such a staple of adolescence that “[o]ne-third to one-half of all referrals to child and adolescent outpatient clinics are for problems related to conduct, antisocial behaviors, and aggressiveness.”<sup>239</sup> Homicide is, of course, the worst possible outcome of violence, and in that area adolescents fare no better, committing about 20 percent of homicides.<sup>240</sup>

Of course, not all adolescents engage in substance use and/or violence. But, most of them engage in some form of delinquency. “The commission of illegal acts is more common during adolescence than during any other portion of the life course and this age-specific peak is widely distributed throughout the population. Estimates of the proportion of males who have been arrested before the age of 18 range between 25% and 45%.”<sup>241</sup> Of course, the number of offenders is much higher than the number arrested; almost all adolescents commit one or more illegal acts before turning eighteen.<sup>242</sup> This peak in criminal activity during adolescence is “quite stable across different social contexts” and present in all of the cultures studied to date.<sup>243</sup>

Of perhaps the greatest significance is the relationship Christopher Simmons formed with Brian Moomey during his adolescence. An especially vulnerable teenager seeking adult guidance, Christopher was susceptible to Brian Moomey’s influence. Neighborhood lore suggests that Brian Moomey, who lived in the nearby trailer park was an extremely negative influence on the local teenagers. The Hayes family reports hearing that “Brian Moomey allowed the young people to...hang out at his trailer...[and] the word was that Moomey had the kids go out and steal and commit illegal acts for him.”<sup>244</sup> A youth from the neighborhood described the trailer as the local “‘party house’ for teenagers.”<sup>245</sup> In fact, allegedly, “Brian Moomey would buy beer for Chris and Charlie [Benjamin, co-defendant], as well as the other kids, and in return all of the

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<sup>235</sup> *Ibid.*

<sup>236</sup> Cobb, *Adolescence: Continuity, Change, and Diversity*, p.591. Data obtained from the Federal Bureau of Investigation.

<sup>237</sup> Straus, *Violence in the Lives of Adolescents*, p. 81.

<sup>238</sup> *Ibid.*, p. 104.

<sup>239</sup> Schwartzburg, *The Adolescent in Turmoil*, p. 109.

<sup>240</sup> *Ibid.*, p. 143.

<sup>241</sup> Graber et al., *Transitions through Adolescence*, p. 158.

<sup>242</sup> *Ibid.*, p. 141, Straus, *Violence in the Lives of Adolescents*, p.80, and Schwartzburg, *The Adolescent in Turmoil*, p. 109.

<sup>243</sup> Graber et al., *Transitions through Adolescence*, p. 141, and Lewis, *Child and Adolescent Psychiatry...*, p. 340.

<sup>244</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. July 13, 1998., p. 1.

<sup>245</sup> Brown, Corey. *Memorandum of Interview*. August 3, 1995., p. 2.

young people would go out and steal for Moomey and act under his direction to do various illegal acts.”<sup>246</sup> In fact, “[a]lthough Christopher’s step-father was aware, and had personally observed Mr. Moomey purchasing alcohol for teenagers, he states he did not intervene with Christopher going to his home because he had never observed him giving alcohol to Christopher.”<sup>247</sup> Brian Moomey also “had drugs available including pot and acid.”<sup>248</sup> Christie Brooks reported that Charlie Benjamin told her that “Moomey held things over the kids’ heads and threatened to tell their parents what they were doing if the young people did not do his bidding.”<sup>249</sup> She indicated that, in return, Brian Moomey supplied the kids with alcohol and drugs.<sup>250</sup> “[D]rinking and drugs were commonplace there.”<sup>251</sup> Corey Brown reports that “he personally heard Brian discussing robberies and burglaries with some of the kids that frequented the trailer.”<sup>252</sup> Cathy Granath, the owner of a local convenience store, confirmed having heard from others that Christopher Simmons “frequently stopped at Moomey’s trailer and hung out.”<sup>253</sup>

Charlie Benjamin’s father, Jim Benjamin, doubts that Brian Moomey ever specifically directed the youths to steal from specific individuals, but, felt that he fenced stolen items.<sup>254</sup> However, Christie Brooks reports that Brian Moomey “was encouraging kids to commit crimes on his behalf.”<sup>255</sup> Cathy Granath, the owner of the local convenience store which was robbed shortly before the offense believes that Brian Moomey set up the burglary of their store, as a local teenager informed her that Charlie Benjamin and Brian Moomey burglarized the store together<sup>256</sup> and she heard “that Moomey was the one who directed the young people to go out and commit crimes.”<sup>257</sup> Corey Brown confirmed this allegation, adding that after the burglary, Charlie Benjamin gave Brian Moomey the money he needed to repair his car; before the burglary, Brian Moomey did not have any money.<sup>258</sup> Cathy Granath “was certain Brian Moomey would come into their store and buy cigarettes and beer for the young people...and claims that he even offered to sell her some marijuana in the store.”<sup>259</sup>

Another youth from the neighborhood, Theresa Vining, reported that Brian Moomey gave youths from then neighborhood tattoos with a homemade tattoo gun.<sup>260</sup> Charlie Benjamin was one of those youths; “she had seen Charlie on the day he got the tattoo and he was drunk...[he] told her Brian had given him alcohol so he wouldn’t feel the pain.”<sup>261</sup> In response, Jim Benjamin, Charlie Benjamin’s father, “asserted Moomey definitely had an influence over these young,

<sup>246</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. July 13, 1998., p. 2.

<sup>247</sup> Clark, Marie., M.A. *Report*. Undated., p. 18.

<sup>248</sup> Brown, Corey. *Memorandum of Interview*. August 3, 1995., p. 2.

<sup>249</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. July 13, 1998., p. 2.

<sup>250</sup> *Ibid.*

<sup>251</sup> Brooks, Christie. *Affidavit*. August 3, 1995., p. 3.

<sup>252</sup> Brown, Corey. *Memorandum of Interview*. August 3, 1995., p. 2.

<sup>253</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. August 5, 1998., pp. 6-7.

<sup>254</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. August 5, 1998., p. 1.

<sup>255</sup> Brooks, Christie. *Affidavit*. August 3, 1995., p. 3.

<sup>256</sup> *Ibid.*, p. 5.

<sup>257</sup> *Ibid.*, p. 6.

<sup>258</sup> Brown, Corey. *Memorandum of Interview*. August 3, 1995., p. 2.

<sup>259</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. August 5, 1998., p. 6.

<sup>260</sup> Vining, Theresa. *Memorandum of Interview*. July 10, 1995., p. 2.

<sup>261</sup> *Ibid.*

impressionable individuals, and he acknowledged they liked him because he bought them beer and let them drink at his trailer in the mobile park."<sup>262</sup> Sisters Regina Day and Dionna Ray Tessmer confirmed that youth hung out at Brian Moomey's trailer, and admitted to having gone there themselves. Furthermore, Charlie Benjamin told them that "Brian Moomey had the various male teenagers commit crimes for him during the period they were all associating at his trailer."<sup>263</sup>

Theresa Vining understood the motive behind Brian Moomey's alleged activities: "he requested that they go from trailer to trailer to rob places because he was behind on his trailer pad rent"<sup>264</sup> and reported that after Brian Moomey moved into the trailer park, "things got serious...a lot of kids in the neighborhood began drinking, doing drugs and robbing trailers."<sup>265</sup> The Day sisters opined that Brian Moomey probably knew about the offense shortly after it happened, and described him as someone who "tried to impress the kids with his shtick of being an ex-con tough guy."<sup>266</sup> A neighbor who knew the situation well believes that Chris and Charlie "were going to commit a burglary but they unfortunately encountered Mrs. Crook, and their immaturity and stupidity lead them to commit the ultimate violent act. Karl has the feeling the boys set out to burglarize the residence and come back and brag to Brian Moomey they had committed an illegal action thus putting them on the same plane as Brian Moomey."<sup>267</sup> Other members of the community believe that Brian Moomey was more involved in the offense, and think he was present when Shirley Crook was killed.<sup>268</sup>

Bob Hayes even reported hearing that "one of Moomey's former girlfriends told someone that Moomey directed the kids to kill whoever recognized them if they were ever ID'd [sic] or caught in the act of stealing from a home or business."<sup>269</sup> While it is unclear whether or not these allegations are true, an unbiased individual who had lived across the street from Brian Moomey reported that he was the "neighborhood drug supplier,"<sup>270</sup> and that he "allowed the young people to drink and smoke pot at his trailer...there were anywhere from 6-15 kids at Moomey's trailer at one time...and...he used some of them to go out and steal for him"<sup>271</sup> Also, an investigator who had access to Brian Moomey's rental record at the trailer park discovered that he was evicted on June 2, 1994, as he owed money. "[T]here was information in the file that the young people congregated at his trailer and caused problems."<sup>272</sup> In fact, one of Christopher Simmons' peers, Theresa Yates, was reported to be hiding from juvenile authorities in June of 1994, and had allegedly been staying at Brian Moomey's trailer.<sup>273</sup>

<sup>262</sup> Brooks, Christie. *Affidavit*. August 3, 1995., p. 1.

<sup>263</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. August 5, 1998., p. 3.

<sup>264</sup> Vining, Theresa. *Memorandum of Interview*. July 10, 1995., p. 2.

<sup>265</sup> *Ibid.*

<sup>266</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. August 5, 1998., p. 3.

<sup>267</sup> *Ibid.*, pp. 6-7.

<sup>268</sup> Brown, Corey. *Memorandum of Interview*. August 3, 1995., p. 2.

<sup>269</sup> St. Vrain, Michael. *Correspondence*. St. Vrain Resources. July 13, 1998., p. 3.

<sup>270</sup> *Ibid.*, p. 6.

<sup>271</sup> *Ibid.*, pp. 6-7.

<sup>272</sup> *Ibid.*, p. 5.

<sup>273</sup> *Ibid.*

If neighborhood rumor is true, Brian Moomey downplayed his relationship with Christopher Simmons when he testified at trial, admitting only that Chris had hung out at his trailer, and that he had known Chris for about two months before the offense occurred.<sup>274</sup> He admitted to knowing Charlie Benjamin and other teenagers from the neighborhood, who hung out at his trailer "[b]ecause they could get away from their parents and hang loose."<sup>275</sup> Joe Tessmer, another youth from the neighborhood, puts it more clearly: "he went to Brian's trailer [sic] primarily because he could drink beer there."<sup>276</sup> Brian Moomey explained that, in exchange for the privilege of hanging out at his trailer, the kids did things for him, such as mow his lawn and clean his house.<sup>277</sup> He also admitted to being a "heavy drinker,"<sup>278</sup> who had "a little party" for youths between the ages of fourteen and nineteen at his house every night.<sup>279</sup> He denied providing alcohol to the youths, explaining that on occasion, he had seen a couple of them with his beer, but that that angered him, as he had to go and buy more beer when the youths drank his supply.<sup>280</sup> He also admitted that the youths called him "Thunder Dad"<sup>281</sup> although he denied being a leader of any sort.<sup>282</sup> On cross-examination, he admitted that his boss, David Williams, told him "that them punks did what I told them to do."<sup>283</sup>

It may also be significant to note that numerous individuals from the neighborhood reported knowing that the families of Chris Simmons and Charlie Benjamin had been threatened by Brian Moomey. Bob Hayes "stated that it was his understanding that if something happened and Chris 'opened his mouth,' that Cheryl Hayes would be the next victim."<sup>284</sup> Cheryl Hayes was certainly afraid. "She stated that she was afraid to sit in front of the window or get in her car...every morning before she left for work, she would sit in her car for a long time before attempting to start it. When she finally gathered the courage to turn the ignition, she was relieved that the car did not explode."<sup>285</sup> On other occasions, she had Bob Hayes start the car for her. Her fears were supported by the fact that Chris' car was burned one night a couple of weeks before the instant offense.<sup>286</sup> She also feared for the lives of her two younger children. "the Hayes family was so frightened...that when Bob had to work, he telephoned Cory [sic] [Brown] and requested that...[he] wait at the bus stop when Billy and Kenny boarded the bus for school."<sup>287</sup> Brian Moomey's behavior was described as having a "stalking type manner."<sup>288</sup>

Dr. Robert Smith notes that Chris, because of his personality disorder, would have tended to

<sup>274</sup> Moomey, Brian. *Testimony*. June 15, 1994., p. 837.

<sup>275</sup> *Ibid.*, p. 838.

<sup>276</sup> Tessmer, Joe. *Memorandum of Interview*. August 17, 1995.

<sup>277</sup> Moomey, Brian. *Testimony*. June 15, 1994., p. 844.

<sup>278</sup> *Ibid.*, p. 838.

<sup>279</sup> *Ibid.*, p. 843.

<sup>280</sup> *Ibid.*, p. 844.

<sup>281</sup> *Ibid.*, p. 847.

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*, pp. 855-856.

<sup>284</sup> Hayes, Bob. *Memorandum of Interview*. August 6, 1995.

<sup>285</sup> Hayes, Cheryl. *Memorandum of Interview*. August 5, 1995., p. 1.

<sup>286</sup> Clark, Marie., M. A. *Report*. Undated., p. 19.

<sup>287</sup> Brown, Corey. *Memorandum of Interview*. August 4, 1995., p. 3.

<sup>288</sup> Clark, Marie., M. A. *Report*. Undated., p. 19.

“gravitate toward a group where there’s superficial interaction, mostly likely centered around alcohol and drug use, most likely a male situation and males who he perceives as strong or powerful, because that will give him a greater sense of his own power and of security.”<sup>289</sup>

Juvenile delinquency, while extremely common, is more often than not *grown out of* by adolescents; “Wolfgang, Figlio, and Sellin's (1972) widely cited birth cohort study showed that nearly half of those ever arrested by the age of 18 were one-time offenders.”<sup>290</sup> Of those who are career criminals, almost none initiated criminal or even antisocial behavior *after* adolescence, lending more support to the argument that adolescence is a time of self-centered destructiveness, risk-taking and impulsivity.<sup>291</sup>

-- “It's sort of unfair to expect teens to have adult levels of organizational skills or decision making before their brain is finished being built.”<sup>292</sup>

Testosterone is associated with aggression. “During puberty...boys' levels [of testosterone] increase by 10 to 20 times.”<sup>293</sup> In fact, “[s]everal laboratories have looked at hormones and their associations with adolescent aggression and problem behavior. Normal adolescent boys and delinquent boys showed a positive association between testosterone levels and aggression scores.”<sup>294</sup>

Chemicals aside, the brain has simply not finished growing. The preadolescent and adolescent neurological growth periods are bilateral, involving primarily frontal lobe connections.<sup>295</sup> Interestingly, frontal lobe abnormalities are associated with murder in adults.<sup>296</sup> The prefrontal cortex is the supervisor of the brain; it “separates man from beast,” enabling us to regulate our thoughts and to decide whether to cultivate or dismiss them.<sup>297</sup> It also plans, strategizes, and envisions consequences.<sup>298</sup> As David Amen has pointed out, when we get a violent thought in our heads, we recognize the thought as horrible and we are then able to dismiss it. Unfortunately, the part of our brain that allows us to think about our thought, to classify it as horrible and then take charge of its dismissal, is the very part of the brain, the prefrontal cortex, that undergoes more change during adolescence than any other part of the brain.<sup>299</sup> As a result,

<sup>289</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 211.

<sup>290</sup> Graber et al., *Transitions through Adolescence*, p. 158.

<sup>291</sup> *Ibid.*, p. 148.

<sup>292</sup> Giedd, Jay. Interview with Public Broadcasting Services. Can be accessed online at [www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/giedd.html](http://www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/giedd.html).

<sup>293</sup> Adams, Gerald R., Raymond Montemayor, and Thomas P. Gullota, eds. *Psychosocial Development during Adolescence*. Thousand Oaks, CA: Sage Publications, 1996, p. 286. Also see Cole et al., *The Development of Children*, p. 609.

<sup>294</sup> Adams et al., *Psychosocial Development during Adolescence*, p. 284.

<sup>295</sup> Lewis, *Child and Adolescent Psychiatry...*, p. 41.

<sup>296</sup> *Ibid.*, p. 337. Also see Nelson, Charles. Interview with Public Broadcasting Services. Can be accessed online at [www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/nelson.html](http://www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/nelson.html).

<sup>297</sup> Giedd, Jay. Interview with Public Broadcasting Services.

<sup>298</sup> Nelson, Charles. Interview with Public Broadcasting Services.

<sup>299</sup> Giedd, Jay. Overproduction of gray matter similar to that in infancy as well as pruning of excess synaptic connections characterize the changes in the prefrontal cortex during adolescence.



adolescents do not have the capacity to use the prefrontal cortex nearly as much as the amygdala, the more emotional and aggressive part of the brain.<sup>300</sup> Even the most sophisticated-appearing teenagers rely heavily on this emotional part of the brain, as MRI<sup>301</sup> scans have shown. Also, males use the amygdala much more than females, as the male prefrontal cortex develops more slowly than the female prefrontal cortex.<sup>302</sup> Quite simply, adolescents do not have the same ability as the rest of us to think about their thoughts, to judge them as right or wrong, and to stop them from guiding their behavior.

Clinically speaking, Chris was far from one of the most sophisticated-appearing individuals. In fact, teacher's notes throughout the school records include "repeated comments about him not sitting still, moving around in the classroom, doing things that were disruptive to the class...[and] act without considering the consequences."<sup>303</sup> Clinical psychologist Dr. Robert Smith noted that, even after Chris' arrest, he demonstrated the kinds of limitations one would expect to see in an adolescent, in terms of correctional adjustment. The jail records "provide documentation of Christopher's difficulty adjusting initially to incarceration, his sort of immature and impulsive behavior, his difficulty with being in a confined environment, and taking orders from people who were there."<sup>304</sup> Dr. Smith also noted that Chris would have been at a distinct disadvantage, as "[c]hildren who grow up being abused are watching their significant role models show every limited impulse control...[and] will become very impulsive and make poor decisions, acting without considering the consequences."<sup>305</sup> It is nationally recognized that "[a]dolescents who commit murder suffer from serious psychological and family disturbances which exacerbate the already existing vulnerabilities of youth."<sup>306</sup>

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<sup>300</sup> Yurgelun-Todd, Deborah. Interview with Public Broadcasting Services. Can be accessed online at [www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/nelson.html](http://www.pbs.org/wgbh/Pages/frontline/shows/teenbrain/interviews/nelson.html).

<sup>301</sup> functional magnetic resonance imaging. "The scientists looked at the brains of 18 children between the ages of 10 and 18 and compared them to 16 adults using functional magnetic resonance imaging (fMRI). Both groups were shown pictures of adult faces and asked to identify the emotion on the faces. Using fMRI, the researchers could trace what part of the brain responded as subjects were asked to identify the expression depicted in the picture".

Yurgelun-Todd, Deborah.

<sup>302</sup> Spinks, Sarah. "Adolescent Brains are a Work in Progress." Can be accessed online at [www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html](http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html)

<sup>303</sup> Smith, Dr. Robert. *Testimony*. August 18, 1995., p. 138.

<sup>304</sup> *Ibid.*, pp. 54-55.

<sup>305</sup> *Ibid.*, pp. 136-137.

<sup>306</sup> <sup>306</sup> *Brief of the American Society for Adolescent Psychiatry and The American Orthopsychiatric Association as Amici Curiae in support of petitioner*. William Wayne Thompson vs. State of Oklahoma. May 15, 1987., p. 267.

## TO PUNISH A JUVENILE AS AN ADULT?

The intent of this petition is not to excuse homicide; murder is simply wrong, and it does terrible, irreversible damage to living, breathing human beings, regardless of the developmental status of the murderer's brain. Nor is the intent of the petition to portray all adolescents as potential murderers; certainly there are many adolescents whose irresponsibility and destructiveness goes little beyond occasional emotional outbursts directed toward their parents. But when assessing how horrible the punishment should be for as horrible a crime as murder, we should ask ourselves, "Isn't there some reason why we don't let adolescents vote? Some reason why we don't let them fight in wars or gamble or marry without parental consent or even consent to their own medical treatment?" And the truth is that though in most ways most adolescents are responsible, they are not adults. Many of them struggle just to control their emotions, to plan ahead, or even to see other people as just as important as they are. Of course the adolescent should understand right and wrong well enough not to commit murder. But the adolescent does not and cannot have the brain to understand right and wrong well enough to be evil enough to qualify for the death penalty. The death penalty is for adults, for the sadistic, the brutal; it is for those who know just how wrong murder is but kill someone anyway. It does not fit the turbulent, chaotic world of the adolescent. They are just not ready.

B. The Constitution, the Law, and Evolving Standards of Decency Favor Clemency in Christopher's Case

1. Evolving standards of decency support the notion that juveniles should not be subjected to the death penalty

In *Furman v. Georgia* (1972), the Supreme Court found that then existing death penalty legislation gave the jury too much discretion, allowing the jury to use the death penalty as a "cruel and unusual punishment"<sup>307</sup>. The Supreme Court clarified its stance in *Gregg vs. Georgia* (1976)<sup>308</sup>, deciding that the death penalty could be applied only under certain conditions: when it did not violate "the evolving standards of decency that marked the progress of a maturing society"<sup>309</sup> and when it was not "so excessive or disproportionate as to be inconsistent with the basic concepts of human dignity"<sup>310</sup>. Other Supreme Court decisions directed the state to "narrow the class of offenders eligible for the death penalty so that punishment is imposed only upon the "worst" offenders"<sup>311</sup>.

Under these restrictions, the Supreme Court addressed the question of whether the death penalty

<sup>307</sup> 408 U.S. 238 (1972), in Horowitz, Mirah A. "Kids Who Kill: a Critique of how the American Legal System Deals with Juveniles who Commit Homicide." *Law and Contemporary Problems*. V63 i3 p133. Summer 2000.

<sup>308</sup> 428 U.S. 153 (1976).

<sup>309</sup> *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (plurality opinion).

<sup>310</sup> *Id.*; *Weems v. United States*, 217 U.S. 349, 367 (1910).

<sup>311</sup> Steiker, Carol S., and Jordan M. Steiker, "Judicial Developments in Capital Punishment Law," supra note 19, at 40, citing *Gregg v. Georgia*, 428 U.S. 153 (1976), *Jurek v. Texas*, 428 U.S. 262 (1976), *Proffitt v. Florida*, 428 U.S. 242 (1976) *Woodson v. North Carolina*, 428 U.S. 280 (1976) and *Roberts v. Louisiana*, 428 U.S. 325 (1976). In *America's Experiment with Capital Punishment 51* (James R. Acker et al. eds., 1998). Cited in Horowitz, "Kids Who Kill...", 2000.

violated the Eighth Amendment prohibition on “cruel and unusual punishment” in *Thompson vs. Oklahoma* (1988)<sup>312</sup> and *Stanford vs. Kentucky* (1989)<sup>313</sup>. In *Thompson vs. Oklahoma*, the Court answered “yes,” and struck down the death sentence given to a fifteen-year-old offender<sup>314</sup>. In doing so, the Court spent significant time discussing how the authors of the cruel and unusual punishment clause placed a duty upon the courts to continuously define the clause in line with the “evolving standards of decency.”<sup>315</sup>

In *Stanford vs. Kentucky*, the Court examined the death sentences of a sixteen-year-old and a seventeen-year-old. The Court affirmed the death sentences on the grounds that the defense had not proven that executing juveniles violated “evolving standards of decency,” as it had not presented the Court with evidence of “a national consensus” against executing juveniles<sup>316</sup>.

Supreme Court Justice Scalia, writing for the plurality in *Stanford vs. Kentucky*, argued that when assessing contemporary standards of decency, Supreme Court justices should primarily consider “the pattern of federal and state laws.”<sup>317</sup> Though a majority of states prohibit the execution of juveniles, the plurality decided to exclude those states that prohibited the death penalty altogether from its analysis on the grounds that “[t]he issue in the present case is not whether capital punishment is thought to be desirable but whether persons under 18 are thought to be specially exempt from it.”<sup>318</sup>

Since the Court’s decision in *Stanford* nearly 13 years ago, the “evolving standards of decency” have, indeed, “evolved.” In addition to legislative and state court movement towards abolition of the juvenile death penalty, scientific studies confirm that the majority of the American public believes that the death penalty should not apply to juveniles<sup>319</sup>. In one study, only thirty-five percent of death-qualified mock jurors were willing to sentence 17-year-old defendants with the death penalty<sup>320</sup>. More recent studies substantiate this trend. A 2001 study showed that “while 62% back the death penalty in general, just 34% favor it for those committing murder when under the age of 18.”<sup>321</sup> The same study cites a 2001 survey by the Princeton Survey Research Associates, which showed that 72% favored the death penalty for at least the most serious murders, but only 38% wanted it applied to juveniles under 18.<sup>322</sup>

When the study looked at the Midwest, it revealed an even smaller number of Midwesterners

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<sup>312</sup> 487 U.S. 815, 818-19 (1988) (Stevens, J., plurality opinion).

<sup>313</sup> 492 U.S. 361 (1989).

<sup>314</sup> 487 U.S. at 832.

<sup>315</sup> *Id.* at 821-823

<sup>316</sup> 492 U.S. at 373.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> See, e.g., Skovron, Sandra Evans, Joseph E. Scott, and Francis T. Cullen. *Crime and Delinquency*, Oct 1989 v35 n4 p546-561.

<sup>320</sup> Finkel, N. J., Hughes, K. C., Smith, S. F., & Hurabiell, M. L. (1994). “Killing kids: The juvenile death penalty and community sentiment”. *Behavioral Sciences and the Law*, 12, 5-20.

<sup>321</sup> Smith, Tom W. “Public Opinion of the Death Penalty for Youths.” National Opinion Research Center, University of Chicago, prepared for the Joyce Foundation, p. 2 (December 2001).

<sup>322</sup> *Id.*

supportive of the juvenile death penalty than the nation's population as a whole. While 59.9% of the Midwest supported the death penalty, only 31.5% came down in favor of supporting the juvenile death penalty.<sup>323</sup> Indeed, with Indiana's recent statute repealing the death penalty, Missouri is the lone Midwestern state with the juvenile death penalty on its statute books.

The "pliable" nature of the Eighth Amendment has been evident since at least *Weems v. United States* (1910), where the Court stated that "the [cruel and unusual punishment] clause of the Constitution... may be therefore progressive, and is not fastened to the obsolete but may acquire wider meaning as public opinion becomes enlightened by a humane justice."<sup>324</sup> In 1988, the *Thompson* Court relied on this principle in reaching the "unambiguous conclusion that the imposition of the death penalty on a 15-year-old offender is now generally abhorrent to the conscience of the community."<sup>325</sup> Continuing this tradition, the state of Indiana banned the death penalty for juveniles just this past March<sup>326</sup>. Within the past year, Virginia overturned the death sentence of its only juvenile on death row<sup>327</sup>, and since then Kentucky Governor Paul Patton said he would support a bill banning the execution of juveniles<sup>328</sup>. Missouri's General Assembly is currently considering a bill that would ban juvenile executions, and Florida's senate passed such a bill with a 34-0 vote this term.<sup>329</sup> In the meantime, the reversal rate for death sentences imposed on juvenile offenders is 89%<sup>330</sup>, and juvenile death sentences have dropped to only 2.7% of the total number of death sentences imposed in the United States since 1973<sup>331</sup>.

Clearly, in the last 13 years since *Stanford*, the landscape has changed dramatically in the juvenile death penalty arena. As the above statistics reflect, punishing juveniles with the death penalty has become "unusual," which is defined by "the frequency of its occurrence or the magnitude of its acceptance."<sup>332</sup> A specific look at Missouri paints the same picture. Of the 213 juveniles sentenced to death in this nation since 1973, only 4 of those sentences have occurred in Missouri.<sup>333</sup> Furthermore, Missouri has little interest in actually executing juvenile offenders, accounting for only one of the total of 18 executed nationally since 1973.<sup>334</sup> Indeed, juvenile death sentences in Missouri are infrequent, and juvenile executions -- for almost ten years now -- have been non-existent<sup>335</sup>.

<sup>323</sup> *Id.*, p. 8 (Table 3).

<sup>324</sup> *Weems v. United States*, 217 U.S. at 373.

<sup>325</sup> 487 U.S. at 832.

<sup>326</sup> Sawyer, Jon. "Ashcroft Bucks Trend in Seeking Death Penalty." *St. Louis Post-Dispatch*, Section: Newswatch, p. B6. March 31, 2002 SECTION: NEWSWATCH; Pg. B6. Chief Steve Eder Of The Post-Dispatch Washington Bureau Contributed To This Report.

<sup>327</sup> Washington Post, 9/25/01, from the Death Penalty Information Center at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).

<sup>328</sup> From the Death Penalty Information Center at [www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org).

<sup>329</sup> For specific statistical information on the evolving trend towards abolition of the juvenile death penalty nationwide, See Part 3. of this section, *infra*, at p. 33.

<sup>330</sup> Horowitz, "Kids Who Kill..." 2000.

<sup>331</sup> *Ibid.*

<sup>332</sup> *Thompson*, 487 U.S. at 823, n. 7.

<sup>333</sup> Streib, Victor L., *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 - December 31, 2001*, pp. 8-10 (Tables 3 & 4) (2002).

<sup>334</sup> *Ibid.*, pp. 4-5 (Table 1).

<sup>335</sup> *Ibid.* The last juvenile execution in Missouri occurred July 28, 1993, when the state executed Frederick Lashley.

A look at the “magnitude” of the acceptance of the juvenile death penalty also dictates the conclusion that the juvenile death penalty has become “unusual.” In striking down the death sentence for 15-year-olds in *Thompson*, the Court pointed out that its view was “consistent with the views that have been expressed by respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community.”<sup>336</sup> In his dissent in *Stanford*, Justice Brennan expanded the list of respected authorities condemning the juvenile death penalty, citing to the following organizations, among others, that filed *amicus* briefs urging an end to juvenile executions:

American Bar Association; Child Welfare League of America, National Parents and Teachers Association, National Council on Crime and Delinquency, Children's Defense Fund, National Association of Social Workers, National Black Child Development Institute, National Network of Runaway and Youth Services, National Youth Advocate Program, and American Youth Work Center; American Society for Adolescent Psychiatry and American Orthopsychiatric Association; Defense for Children International-USA; National Legal Aid and Defender Association, and National Association of Criminal Defense Lawyers; Office of Capital Collateral Representative for the State of Florida; and International Human Rights Law Group, as *Amici Curiae*. See also Briefs for American Baptist Churches, American Friends Service Committee, American Jewish Committee, American Jewish Congress, Christian Church (Disciples of Christ), Mennonite Central Committee, General Conference Mennonite Church, National Council of Churches, General Assembly of the Presbyterian Church, Southern Christian Leadership Conference, Union of American Hebrew Congregations, United Church of Christ Commission for Racial Justice, United Methodist Church General Board of Church and Society, and United States Catholic Conference; West Virginia Council of Churches; and Amnesty International as *Amici Curiae*.<sup>337</sup>

Since *Stanford*, the list of well respected organizations that oppose the juvenile death penalty has greatly expand to include, among others:

The Constitution Project, The American Psychiatric Association, The American Academy of Child and Adolescent Psychiatry, The National Mental Health Association, The National Center For Youth Law, and the Coalition for Juvenile Justice.

Because modern research shows that execution of juveniles is indeed “cruel,”<sup>338</sup> and the increasing lack of use and acceptance of such punishment renders the juvenile death penalty

<sup>336</sup> *Thompson*, 487 U.S. at 830. The Court cited the American Bar Association and the American Law Institute as examples of “respected professional organizations” and cited to the many countries that do not allow juvenile executions. It is important to note for the purposes of Christopher’s case that each of these organizations protests the execution of all juveniles, that is, anyone under 18 years of age.

<sup>337</sup> *Stanford*, 492 U.S. at 389, n. 4.

<sup>338</sup> See Petition, *supra*, pp. 1-25.

“unusual,” the practice must be stopped to bring the criminal justice system in our country, and specifically in the state of Missouri, in line with the “evolving standards of decency” present in our maturing society. The first step towards this noble goal is the commutation of Christopher Simmons’ death sentence to life imprisonment without parole.

2. Juveniles do not possess the “personal culpability” required to suffer the ultimate punishment of death

One well-grounded principle of death penalty law holds “that punishment should be directly related to the personal culpability of the criminal defendant.”<sup>339</sup> Drawing upon this principle, the *Thompson* Court recognized that “[t]here is broad agreement on the proposition that adolescents as a class are less mature and responsible than adults.”<sup>340</sup> “Thus, the Court has already endorsed the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.”<sup>341</sup>

Missouri recognizes the need for restricting the rights of the “less mature and responsible” juveniles throughout its constitution and statutory scheme. For example, Article VIII, §2, of the Missouri Constitution provides that Missourians must be 18 years old before they are granted the right to vote. Likewise, Missouri citizens must be 21 years old before they can serve on a jury<sup>342</sup>. Ironically, this means that, by law, not one member of the jury that convicted Chris and sentenced him to death could have been a “jury of his peers.” Our State’s increasing recognition of the need to protect our juveniles was most recently seen in the drivers’ licenses’ statutes. The statute originally granted the privilege to drive at the age of sixteen.<sup>343</sup> Effective January 1, 2001, a new statute was put in place, allowing children between the ages of sixteen and eighteen to obtain only an “intermediate driver’s license.”<sup>344</sup> Among other things, the “intermediate license” requires that the juvenile have a permit for 6 months before the license can be obtained, and verification of at least 20 hours of supervised driving experience under this permit.<sup>345</sup> Once the “intermediate license” is issued, the juvenile is still not allowed to drive between 1 a.m. and 5 a.m. until he turns 18 and gets his ordinary driver’s license<sup>346</sup>.

Other examples of Missouri statutes that seek to protect our children by restricting their rights are the marriage license statute, which requires parental consent to obtain a

<sup>339</sup> *California v. Brown*, 479 U.S. 538, 545 (1987) (O’Connor, J., concurring); *Enmund v. Florida*, 458 U.S. 782, 798 (1982).

<sup>340</sup> *Thompson*, 487 U.S. at 834.

<sup>341</sup> *Id.* at 835.

<sup>342</sup> Mo. Rev. Stat. §494.425(1) (1996).

<sup>343</sup> Mo. Rev. Stat. §302.060(2) (1994). The statute provides that one must be 18 years of age to transport people or property as part of employment.

<sup>344</sup> Mo. Rev. Stat. §302.178 (2002).

<sup>345</sup> Mo. Rev. Stat. §302.178.1(3) and (4) (2002).

<sup>346</sup> Mo. Rev. Stat. §302.178.2 (2002).

license for children under 18;<sup>347</sup> the pornography statute that makes it a crime to distribute pornography to minors under the age of 18;<sup>348</sup> and the state lottery statute that prohibits the sale of tickets to anyone under the age of 18.<sup>349</sup> Finally, our refusal to give children the right to consume alcohol or to purchase tobacco, are probably the clearest examples of our recognition that juveniles are not capable of acting with the same maturity and responsibility as adults. Our State's clear and continuing recognition of the need to protect our juveniles by restricting their rights, combined with the evolving standards of decency of our society as a whole, compels the conclusion that the execution of juveniles will soon become a thing of the past. Any other conclusion is inconsistent with every other aspect of Missouri law.

In cases where a juvenile is subjected to the possibility of execution, the "personal culpability" requirement necessitates that the defendant's youth be considered as a mitigating circumstance in the case.<sup>350</sup> In *Thompson*, the Court found this mitigator so universally compelling that it ruled a 15-year-old should never even be considered for the death penalty. In *Stanford*, Justice Scalia (joined by only three other Justices) reasoned that "personal culpability" is an individualized assessment to be made on a case-by-case basis rather than by the adoption of a bright line rule stating that juveniles are not capable of the level of personal culpability required by the Constitution.<sup>351</sup> In support of this conclusion, Scalia stated the "one of the individualized mitigating factors that sentencers must be permitted to consider is the defendant's age."<sup>352</sup> Specifically, Justice Scalia commented that Missouri has "codified this constitutional requirement in laws specifically designating the defendant's age as a mitigating factor in capital cases."<sup>353</sup>

Because Christopher's jury was not made to consider age as a mitigating factor, but instead was specifically told by the state that age was an aggravating factor, the Governor's grant of clemency in this case will not contradict any of the reasoning in *Stanford*. In contrast, clemency on this ground is supported by the Constitutional requirement of "personal culpability" as recognized by all of the Justices in *Stanford*.<sup>354</sup> In closing argument, the prosecutor argued, without objection, that Christopher's age was an aggravating factor, not mitigating:

Let's look at the mitigating circumstances. Let's look at that. He listed the mitigating circumstances. I don't have them in front of me here. Age, he

<sup>347</sup> Mo. Rev. Stat. §451.090.2 (1997).

<sup>348</sup> Mo. Rev. Stat. §573.040 (1995) prohibits the distribution of pornography to "minors," which §573.010(7) (2002) defines as "any person under the age of eighteen."

<sup>349</sup> Mo. Rev. Stat. §313.280 (2001).

<sup>350</sup> *Thompson*, 487 U.S. at 834.

<sup>351</sup> 492 U.S. at 374-75.

<sup>352</sup> *Id.* at 375.

<sup>353</sup> *Id.*

<sup>354</sup> See *Stanford*, 492 U.S. at 374-375 (Scalia, J. *joined by* The Chief Justice, White, J., and Kennedy, J.); 492 U.S. at 382 (O'Connor, J., concurring in part and concurring in judgment); 492 U.S. at 393-403 (Brennan, J., *in dissent*, *joined by* Marshall, J., Blackmun, J., Stevens, J.).

says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary.<sup>355</sup>

The Court's instructions to the jury did not cure the impact of the prosecutor's unconstitutional argument. Contrary to the constitutional mandate, the jury instruction describing mitigating circumstances did not direct that the jury must consider age as a mitigating circumstance. It did not even instruct that the jury "may" consider the fact as a mitigating circumstance. Instead, the instruction dictated that the jury may consider all of the facts surrounding the murder of Shirley Crook. Without further instruction, it then listed three factors, the second of the three being the age of the defendant at the time of the crime. Absent any instruction that the jury was required to at least consider age as a mitigating circumstance, and considering the prosecutor's affirmative proclamation -- substantiated by the trial judge's failure to correct the violation -- that age was in fact a **reason to kill Chris**, it is a certainty that Chris' personal culpability was never examined in the context of his juvenile status. As stated above, none of the nine Supreme Court Justices who decided **Stanford** would validate a juvenile death sentence under these facts.

Compounding all of the above error is the fact that Christopher's trial attorneys put on no evidence to show how his age, developmental stage, and emotional damage substantially effected his level of culpability.<sup>356</sup> Instead, they suggested that the jury blindly accept their word that age was in fact a mitigator. Unfortunately, the prosecutor crafted a more emotionally compelling -- although blatantly illegal -- argument that age was in fact an aggravator. The illegal argument went uncorrected by defense counsel and the court. If things could be any worse, the argument was not only illegal, but was also wrong from a scientific and developmental point of view.<sup>357</sup> The power to correct this grievous error now rests finally in the hands of Governor Holden.

In **Brennan v. State**<sup>358</sup>, the Florida Supreme Court recognized the **Stanford** requirement that for a juvenile death sentence to be constitutional, the jury must be permitted to consider the defendant's age as a mitigator. Because the Florida statute set forth no criteria to "ensure individualized consideration of the maturity and moral responsibility," as required by **Stanford**, of those under eighteen before a death sentence could be imposed, the court invalidated the death sentence of a sixteen-year-old defendant.<sup>359</sup>

Similarly, Christopher's case did not meet the requirements of **Stanford** because,

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<sup>355</sup> Trial Transcript, pp. 1156-57.

<sup>356</sup> For details of how Christopher's attorneys ignored compelling evidence that would have proven this mitigator, see Section IA. of this petition, *supra*, pp. 1-25.

<sup>357</sup> See Are Teenagers Adults? by Dr. Doug Rushing, Professor of Biochemistry and Associate Dean, The University of Health Sciences, Kansas City, Missouri (March 2002) (Attached here as **Exhibit A**).

<sup>358</sup> 754 So.2d 1, 8 (Fl. 1999).

<sup>359</sup> *Id.* at 9.



despite Missouri's statutory scheme, the jury was given no instruction that would "ensure individualized consideration of [Chris'] maturity and moral responsibility" and instead was led to believe that his juvenile status was an aggravating circumstance justifying the death penalty. This twisted view created by the state in Chris' case flies in the face of the Court's position that "less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult" -- a position that the Court found "too obvious to require extended explanation."<sup>360</sup>

3. The Supreme Court's impending decision in *Atkins v. Virginia* will update and refine society's notion of "evolving standards of decency"

In *Atkins v. Virginia*<sup>361</sup>, the United States Supreme Court is currently considering the issue of whether the Eighth Amendment prohibits the execution of a mentally retarded defendant.<sup>362</sup> Oral argument in *Atkins* took place in February of this year.<sup>363</sup> A decision by the Supreme Court on this question is due this Summer (2002).<sup>364</sup> The last time the Supreme Court visited the issue of executing mentally retarded persons was in 1989, the same year that it ruled on the parallel question of whether the Eighth Amendment barred the execution of juvenile offenders.<sup>365</sup>

Questions and comments by the Justices at the *Atkins* oral argument demonstrate why the Supreme Court is now revisiting the mental retardation issue and suggest that the Court likely will decide in favor of the petitioner. It appears that the Court will rule that, because a majority of the states bar either the death penalty *en toto* and/or execution of mentally retarded defendants, the execution of mentally retarded defendants is prohibited by the Eighth Amendment. This same reasoning applies directly to Christopher's claim that his execution is barred under the Eighth Amendment.

Justice O'Connor is the "swing vote" on both the mental retardation and juvenile Eighth Amendment issues.<sup>366</sup> During *Atkins* oral argument, Justice O'Connor forcibly swung

<sup>360</sup> *Thompson*, 487 U.S. at 834-35.

<sup>361</sup> No. 00-8452, 122 S. Ct. 29 (Oct. 1, 2001) (Mem.) (cert. grant).

<sup>362</sup> *Atkins*, 122 S. Ct. at 29

<sup>363</sup> See Charles Lane and Michael A. Fletcher, *High Court Takes Up Two Big Issues*, Washington Post, Feb. 21, 2002, at A06 (Exhibit B); Peter Hardin, *Court Gets Retarded-Killer Case: Appeal Seeks Ban on Death Penalty*, Richmond Times-Dispatch, Feb. 21, 2002, at A1; Gina Holland, *Court Reviews Execution of Retarded*, Feb. 20, 2002; Patty Reinert, *Court to Rule on Executions of Mentally Retarded Killers*, Houston Chronicle, Feb. 20, 2002.

<sup>364</sup> Lane & Fletcher, *supra* ("[A decision is] expected by July.").

<sup>365</sup> *Perry v. Lynaugh*, 492 U.S. 302 (1989) (persons with mental retardation); *Stanford v. Kentucky*, 492 U.S. 361 (1989) (juveniles); see also *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (juveniles).

<sup>366</sup> Lane and Fletcher, *supra* ("O'Connor, who wrote the court's 1989 opinion and who is considered the pivotal vote in this case . . ."); Reinert, *supra* ("Justice Sandra Day O'Connor . . . is expected to be the swing vote this time."); see also Holland, *supra*; Hardin, *supra*; see *Stanford*, 492 U.S. at 371-73 (section III); 381-82 (O'Connor, J., concurring in part and concurring in judgment).

to the side of petitioner Atkins, clarifying that he likely will prevail and suggesting that, with the right case before the Court, O'Connor also will vote in favor of a "juvenile offender" seeking to bar his execution, leading to a likely majority on that issue. The key discussion is described by the Washington Post as follows:

In 1989, a majority of the court upheld executing retarded offenders, saying that only two states with the death penalty barred the practice, too few to demonstrate a consensus. Since then, however, 16 more states have passed laws, so that 18 of the 38 states with the death penalty, plus the federal government, now prohibit capital punishment of retarded offenders. Twelve states and the District have no death penalty. O'Connor, who wrote the court's 1989 opinion and who is considered the pivotal vote in this case, too, sharply disagreed with [Virginia Assistant Attorney General Pamela A.] Rumpz when Rumpz suggested leaving out states with no death penalty when figuring out what portion of the states have rejected executing the retarded. "Why not?" O'Connor asked. "I can't imagine that you would say we can't include those states."<sup>367</sup>

Other newspapers reported the discussion similarly.<sup>368</sup> Eighteen states now bar execution of persons with mental retardation by statute.<sup>369</sup> Twelve have no death penalty whatsoever. Justice O'Connor has signaled that the Court will find the 30 state majority to indicate that Americans now consider the execution of persons with mental retardation a violation of our evolving standards of decency. At the *Atkins* argument, some Justices also found notable the position taken by the rest of the nations in the world on the issue, and the fact that only two or three states had actually executed mentally retarded defendants since 1989.<sup>370</sup>

Sixteen states now also bar the execution of juvenile offenders by statute: California (California Penal Code § 190.5); Colorado (Col. Stat. 16-11-103); Connecticut (Conn. Gen. Stat. 53a-46a (h)); Illinois (Ill. Stat. Ch. 720 § 5/9-1 (b)); Indiana (Senate Bill 426, effective July 1, 2002); Kansas (Kansas Stat. 21-4622); Maryland (Md. Code 1957, art. 27, § 412 (g)); Montana (law passed in 1999); Nebraska (Neb. Stat. § 28-105.01 (a));

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<sup>367</sup> Lane & Fletcher, *supra*.

<sup>368</sup> Hardin, *supra* ("I can't imagine you would wouldn't include' the 12 states without any death penalty in determining whether a consensus exists.").

<sup>369</sup> See Lane and Fletcher, *supra*; Holland, *supra* (listing Georgia, Maryland, Arizona, Arkansas, Colorado, Connecticut, Florida, Indiana, Kansas, Kentucky, Missouri, Nebraska, New Mexico, New York, North Carolina, South Dakota, Tennessee, and Washington, along with the federal government; the District of Columbia also bans the practice).

<sup>370</sup> Reinert, *supra* (noting that Justice Ginsberg asked whether it was relevant that the rest of the world thinks executing the mentally retarded is wrong); Holland, *supra* (citing Justice Breyer as finding two or three states actually executing persons with mental retardation); Hardin, *supra* (citing Justice Breyer as asking whether the fact that, in recent years, 48 of 50 states had not executed anyone with mental retardation pointed to a consensus).

New Jersey (N.J. Stat. §§ 2A:4A-22(a); 2C:11-3(g)); New Mexico (New Mex. Stat. 31-18-14); New York (N.Y. Penal Code § 125.27); Ohio (Oh. Stat. 2929.023; 2929.03); Oregon (Or. Stat. 137.707); Tennessee (Tenn. Stat. 39-13-204); and Washington (by court decision; *State v. Furman*, 858 P.2d 1092 (Wash. 1993)). The federal government also bars the practice, along with the District of Columbia. E.g., 18 U.S.C. § 3591 (federal); D.C. Code 22-2104 (life sentence for first degree murder; those under 18 at time of offense must be eligible for parole). Five states specifically allow the execution of persons who were seventeen at the time of the offense. Texas (Tex. Penal Code 8.07(c)); Florida (*Brennan v. State*, 754 So. 2d 1 (Fla. 1999)); Georgia (O.C.G.A. 17-9-3); New Hampshire (N.H. Stat. § 630:1); and North Carolina (N.C. Stat. 14-17). In Eighteen states, 16-year-old offenders are eligible for the death sentence. *Id.* (Alabama, Arizona, Arkansas, Delaware, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Wyoming). **Twenty-eight states**, therefore, currently bar the execution of juvenile offenders, based upon Justice O'Connor's new position that non-death penalty states may be included in the calculus. Over the last decade, only fifteen states actually have had "juvenile offenders" on their death rows.<sup>371</sup> Since *Stanford* in 1989, only **six states** [Texas (most recently, 2001), Louisiana (1990), Missouri (1993), Georgia (1993), Virginia (1998 and 2000), and Oklahoma (1999)] have executed juvenile offenders.<sup>372</sup> **Only three have done so in the last nine years.** Finally, this year, **at least six** state legislatures are considering or have considered bills that would raise the eligibility age for the death penalty to 18 (Kentucky (HB 447; SB 127), Mississippi (HB 167), Missouri (SB 819; HB 1836), Arizona (SB 1457; HB 2302), Pennsylvania (SB 27), Florida). In legislative sessions last year (2001) bills were introduced in South Carolina (Bill 236), Arkansas (SB 78), and Texas (HB 2048). A bill will be filed in the Texas Legislature in the 2003 session. There is every indication, therefore, that soon the number of states barring the execution of juvenile offenders may equal or supercede the number of states barring execution for persons with mental retardation.

At *Atkins* oral argument, Justice O'Connor made a clear and dramatic break with the reasoning of the slim majority in *Stanford* that the non-death penalty states cannot be counted in discernment of the legislative basis for finding "evolving standards of decency."<sup>373</sup> Justice Scalia, writing for a five-Justice majority in *Stanford* that included Justice O'Connor, observed:

The dissent takes issue with our failure to include, among those states evidencing a consensus against executing 16- and 17-year-old offenders,

<sup>371</sup> Amnesty International, *On the Wrong Side of History: Children and the Death Penalty in the USA*, AMR 51/058/1998, October 1, 1998 (Table 2) (Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia); see also *Juvenile Offenders on Death Row* (Washington College of Law, American University; [www.wcl.american.edu/humright/deathpenalty/juvstat.html](http://www.wcl.american.edu/humright/deathpenalty/juvstat.html)) (visited February 2002).

<sup>372</sup> See *Juvenile Offenders on Death Row*, *supra*.

<sup>373</sup> *Stanford*, 492 U.S. at 371 n.2.

the District of Columbia and the 14 states that do not authorize capital punishment. . . . It seems to us, however, that while the number of those jurisdictions bears upon the question whether there is a consensus against capital punishment altogether, it is quite irrelevant to the specific inquiry in this case: whether there is a settled consensus in favor of punishing offenders under 18 differently from those over 18 insofar as capital punishment is concerned.<sup>374</sup>

Justice O'Connor has changed sides, joining the four Justices that indicated in *Stanford* that they *would* consider the non-death penalty states and the District of Columbia.<sup>375</sup> Although the court membership has changed since 1989, O'Connor would likely be joined now by at least four additional Justices on this issue.<sup>376</sup>

By all indications, the United States Supreme Court will grant relief in *Atkins* on the basis of a shift from its prior position in *Stanford*, the Court's leading case on the death penalty and juvenile offenders. Given the minuscule distinctions<sup>377</sup> between nationwide legislative support for the bars on executing mentally retarded and juvenile offenders, respectively, the *Atkins* decision will firmly support a decision by the Missouri Supreme Court to set aside Chris' death sentence on the grounds that the Eighth Amendment would be violated by imposition of such sentence. Because the clear trend is towards such a conclusion, Governor Holden's decision to grant clemency in this case would be, both politically and legally, well within the parameters of his executive decision making powers. The Supreme Court establishes only minimum Constitutional standards. As it appears that such minimum standard will soon prohibit the execution of juveniles, the Governor's clemency action at this stage does nothing more than follow the path the Supreme Court has already headed down in the *Atkins* argument.

#### 4. Christopher's execution would violate International Law

In continuing to execute juvenile offenders, the United States acts in defiance of substantial international consensus and law.<sup>378</sup> Indeed, such executions have all but ended around the world, except in the United States. In the last decade, the United States has executed more juvenile offenders than all the world's nations combined. Since 1990, only seven countries are reported to have executed prisoners who were under 18 years of age at the time of the crime: The Democratic Republic of Congo, Iran, Nigeria, Pakistan, Yemen, Saudi Arabia and the United States. The nations of Pakistan, and Yemen have since abolished the juvenile death penalty, while Saudi Arabia and Nigeria deny that they have executed juvenile offenders.

<sup>374</sup> *Stanford*, 492 U.S. at 371 n.2.

<sup>375</sup> *Id.* at 383, 384 (Brennan, J., joined by Marshall, Blackmun, and Stevens, JJ., dissenting).

<sup>376</sup> See *Beazley v. Johnson*, 122 S. Ct. 11 (2001) (Mem.) (Stevens, Ginsberg, and Breyer, JJ., dissenting from denial of stay on depleted court) (Scalia, Thomas, and Souter, recused).

<sup>377</sup> Although domestic differences are small between the statutory bars on executing mentally retarded and juvenile offenders, the juvenile bar has so much more universal, codified support that it has achieved customary international law and, indeed, *ius cogens* status.

<sup>378</sup> See Exhibits C and D. Letters from the European Union and The Council of Europe.

In the last three years the number of nations that execute juvenile offenders has dwindled to only three: Iran, the Democratic Republic of Congo and the United States. Moreover, just this past year, Iran stated that it no longer executes juvenile offenders while the leader of the Democratic Republic of Congo commuted the death sentences of four juvenile offenders.

The death penalty for juvenile offenders is expressly prohibited by the International Covenant on Civil and Political Rights (ICCPR), The U.N. Convention on the Rights of the Child (CRC), and the American Convention of Human Rights. While the United States has not yet ratified the CRC and specifically reserved its right to execute juveniles when ratifying the ICCPR, the execution of Christopher would further alienate the United States from the international community. Moreover, it would further damage our legitimacy as a world leader in the protection and promotion of human rights, particularly the rights of children.

II. Scared of the Police, Inexperienced in Crime and its Investigation, and Remorseful About What He Had Done, Christopher Simmons Gave a Full Videotaped Confession to This Murder, An Act the Interrogating Officers Told Him Would Be "Better For Him" in Assessing His Punishment, a Promise Yet to be Fulfilled

Ironically, if Christopher Simmons had been a cold-blooded, calculated killer with some street savvy and his own interest paramount in his mind, he would have asserted his right to counsel or his right to remain silent when he was pulled from his high school classroom by a team of detectives on September 10, 1993, and brought to police headquarters for questioning. In doing so, he might have saved his own life. His confession to the murder of Shirley Crook was easily the most detailed, powerful, damaging evidence against him and undoubtedly contributed greatly to the jury's decision that Chris was guilty of first degree murder. But Christopher Simmons was inexperienced with crime and the tactics of seasoned criminals, he was scared and frightened of police officers, and he was sorry and remorseful about what he had done – so he confessed it.

Certainly he was encouraged by the interrogating officers to do just that. They lied and told him that Charles Benjamin, his sixteen-year-old accomplice, had been arrested and was confessing in another room.<sup>379</sup> They "got in his face" and yelled at Chris from as close as a foot away.<sup>380</sup> But most importantly, they convinced him that in confessing, Chris would be helping not only the officers, but himself, that it would be better for him when it came time to decide his punishment if he confessed to the crime:

- Q. When Robertson came in the room, did Chris know he was the boss? He introduced . . .
- A. He introduced himself as Lieutenant Ed Robertson.
- Q. Commander of the Major Case Squad?
- A. Commander of the Major Case Squad.

<sup>379</sup> *State v. Simmons*, 944 S.W.2d 165, 173 (Mo. banc 1997).

<sup>380</sup> Supp. Tr. 50-51, 80-83.

- Q. And told him that he was gong to get the death penalty, and that he better confess, right?
- A. No. He didn't tell him that he better confess.
- Q. He told him that he better tell the truth?
- A. To tell the truth, but he never told him that he was going to get the death penalty. He just described that this type of crime is murder in the first degree, and the punishment with this crime normally is either life in prison, or the death penalty.
- Q. Did Robertson describe to him how it would be better for him if he told the truth, and confessed?
- A. No, he did not.
- Q. But he made that statement seconds after he mentioned the two possible punishments, life imprisonment, or the death penalty, right?
- A. You mean that he should tell the truth?
- Q. Yes. It would be better for him to tell the truth.
- A. It was all done right together, yes.<sup>381</sup>

The interrogating detectives have never denied that they told Chris Simmons about the death penalty because they believed in trying to avoid the ultimate punishment, Chris would tell them the truth about what happened:

- Q. Robertson told him about the death penalty?
- A. Yes.
- Q. Was that before or after Robertson asked Chris to cooperate?
- A. I don't remember in which order it was exactly asked, or said, I mean.
- Q. Another technique to get a confession is to – I'm sorry, strike that. You say, now, that you later on asked – that you later on told Chris about the death penalty?
- A. Afterwards, yes.
- Q. What did you say to him?
- A. I just said, 'remember what Lieutenant Robertson said. That this type of crime is – with murder first – could be life in prison or it could be death penalty.' I said, 'you have a lot to think about.'
- Q. And you said that in order to get him to give you a truthful statement?
- A. He should always give a truthful statement, yes.
- Q. Your purpose of mentioning the death penalty was in order to get him to give you a statement you thought would be truthful?
- A. Yes.
- Q. Do you recall what you said right before you mentioned the death penalty or right after you mentioned the death penalty?

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<sup>381</sup> Testimony of Det. Knoll at 1-21-94 Suppression Hrg. (Supp. Tr. 50-52)

- A. I don't know exactly how long afterwards I even said that, I just remember bringing it up.
- Q. Could you have mentioned it right before or right after that it would be best if he would confess, or however you would say that?
- A. I don't know.
- Q. You told him several times it would be best if he talked to you and told you the truth?
- A. Yes, I did.
- Q. Again, it was conveyed to him that you thought the truth was –
- A. That he committed the crime.
- Q. And so, in essence, you were telling him it would be better for him if he admitted complicity in the murder, right?
- A. If he was involved in it, yes.
- Q. And you mentioned that several times, that it would be better for him. That was kind of a theme throughout the whole two hours and five minutes.
- A. I told him that several times, yes.
- Q. And others present told him that as well?
- A. To tell the truth, yes.
- Q. No, it would be better for him to tell the truth?
- A. Yes.
- Q. You may have mentioned that it would be better for him after you discussed the different possible punishments; life imprisonment and the death penalty.
- A. I don't know exactly how long; it would have been after that though.
- Q. Again, if you videotaped it we'd know, right?
- A. Yes.<sup>382</sup>

No court has ever ruled that these statements constituted an express, explicit promise that Christopher would avoid the death penalty if he confessed. As remorseful as he was, Chris may very well have confessed anyway. But what of the suggestion put forth by these detectives, that it is indeed a positive step in consideration of punishment to admit to the crime which was committed?

Justice Scalia, writing for the dissent in *Dickerson v. United States*, 530 U.S. 428 (2000), pointed out that the United States Constitution is not offended “by a criminal’s commendable qualm of conscience.”<sup>383</sup> Justice Burger, writing for the Supreme Court in a 1977 case, *United States v. Washington*, 431 U.S. 181 (1977), noted that “admissions of guilt by wrongdoers, if not coerced, are inherently desirable.”<sup>384</sup> Of course we want people who have committed crimes to freely acknowledge their involvement – confession is the first step toward remorse, acceptance of responsibility, and rehabilitation.

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<sup>382</sup> *Ibid.*, at Supp. Tr. 54-57.

<sup>383</sup> *Dickerson v. United States*, *supra*, at 450.

<sup>384</sup> *United States v. Washington*, *supra*, at 187.

Unfortunately, Missouri's death penalty statutes do not list remorse, or the accused's willingness to confess to the crime, as a mitigating circumstance for the jury's consideration in sentencing. We know that Chris's confession saved the police and prosecutors untold hours of difficult work, and also saved the victim's family the anguish of not knowing what happened to their loved one. As importantly, it also demonstrated that this seventeen (17) year old boy had a conscience and that he was troubled, and in that we know he is human and capable of redemption.

We ask Governor Holden to carry out the promise that Lt. Robertson and Detective Knoll made to Chris Simmons on September 10<sup>th</sup>, 1993, when they assured him that it would be better for him to confess than face the prospect of dying himself. In doing so, the Governor can be confident that Chris will not only reflect on such mercy through the rest of his life, but that the remorse and contrition of others like Chris will be recognized as traits that we as a civilized society appreciate and encourage.

### III. Clemency Is Warranted Because Christopher Has Grown Into A Productive Adult Member Of Our Society

Chris Simmons is the "poster child" for the campaign against juvenile executions. A look at his life over the past nine years shows an unbelievable course of maturation, emotional development, and personal growth. His journey is made all the more remarkable by the fact that he has accomplished all of this in an environment that is wrought with physical and sexual assault, drugs and alcohol, and many destructive attitudes and behaviors. Sister Elaine AuBuchon with Criminal Justice Ministries, who is Chris' spiritual advisor, describes what she sees: "I see a man who is so overweighted with the impact of his crime that . . . he doesn't know how to express himself sometimes. I have no question that there is remorse. I have no question that he has completely turned around his character." In short, Christopher is not in anyway the same person that he was when he killed Shirley Crook.

Christopher's incarceration began in the Jefferson County Jail in September 1993. Distraught over his crime and his incarceration, still suffering the effects of his abusive upbringing and heavy drug and alcohol addictions, Chris hit rock bottom one night and attempted suicide. Fortunately, the only tools available for his self-destruction were the broken pieces of his inhaler. While the damage to his wrists was sufficient to leave a permanent reminder of his despair, the injuries he caused were not life threatening. When Chris was returned to his cell following his medical treatment, he found a Christian devotional guide called "Our Daily Bread." To this day, he is unaware of where the guide came from. Chris was inspired by the uplifting stories that came from the book. He was also occasionally attending the county jail church services during this time because he enjoyed the singing and the happiness that surrounded the services.

However, Christopher did not have strong religious beliefs at this time. His attentions towards religion were "on and off," as he struggled with flashbacks of the crime and significant sleep problems. His world at this time still consisted of his "family" of fellow drug and alcohol users, whom he befriended because he felt at "home" with them where he otherwise had no sense of home.



Following his conviction and sentence, Christopher's first year at Potosi Correctional Center was spent in protective custody, which left him very isolated in many ways. He doesn't remember any church services being offered to him during this time. In any event, it is doubtful that he would have attended church as he viewed it as "lame" and was still not "living right."

In 1996, Christopher entered general population at Potosi. His young age and appearance quickly caused problems. Another inmate began "mugging" Chris, a common practice of staring at a fellow inmate to test his reaction. Chris was afraid, and felt he had to prove himself. A verbal altercation occurred that escalated into a fight. The "fight" consisted of Chris and the other inmate wrestling on the floor for about 10 seconds before the guards threatened to mace them, causing a voluntary stop to the altercation. Chris received a conduct violation for #2 assault and spent 8 months in "the hole" for the violation.

Back in general population, Christopher began attending church again in 1997 and 1998. He started becoming more serious about his religion. He wanted to get away from the destructiveness in prison. He began to see that the relationships he could develop in the church environment were honest and caring friendships. This contrasted greatly with the relationships he had with his "friends" that were bound only by their common interests in alcohol and drugs. It was at this point that Chris became heavily involved in constructive programs offered by the prison. He received his GED in October of 1997.<sup>385</sup> He took on positions of responsibility in his housing unit, becoming the Institutional Planning Group Representative and a member of the Offender Council.<sup>386</sup>

Chris also became involved in Restorative Justice efforts in an attempt to give back for his crime in the very small ways that he was allowed. He logged Restorative Justice Hours by drawing posters for use in schools and educational programs.<sup>387</sup> The posters helped to illustrate teachings against getting in trouble with the law and warning of the dangers of alcohol, drugs, and crime.<sup>388</sup> He also enrolled, and was accepted, into a victim impact class.<sup>389</sup> This very powerful class involved approximately two months of training on how to face crime victims. The inmates then visited with approximately ten victims of violent crimes. Christopher described this meeting as involving "lots of tears." He heard stories of pain and compassion from the victims. The experience was heart-breaking. After hearing from the victims, the inmates introduced themselves. Chris was near the beginning of the introductions and was able to get through only a couple of sentences before he broke down. After the introductions concluded, an older couple representing the victims showed compassion for Chris, encouraging him to try his introduction again and helping him to express his feelings. As much as he ever could without direct contact with the Crook family, Chris realized the impact of his crime on this day.

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<sup>385</sup> See Exhibit E.

<sup>386</sup> See Exhibits F and G.

<sup>387</sup> See Exhibits H, I, J, and K.

<sup>388</sup> See Exhibits L and M.

<sup>389</sup> See Exhibit N.

Chris' life was heavily influenced by his religious beliefs by this time. He would continue to seize every opportunity to participate in -- as a student and a teacher -- every religious program offered, until April 2, 2002, the day he was placed on pre-execution status and his contact with other inmates became prohibited. These programs include a weekly meditation class sponsored by Criminal Justice Ministry, Society of St. Vincent de Paul.<sup>390</sup> Sister Elaine, the meditation teacher, describes Chris as one of the group of "core participants" who regularly attends the class. Not only does he "show up" for the class, Sister Elaine indicates that he also actively participates; bringing "many, many comments, many questions and his sincerity, I think, is very apparent."<sup>391</sup> He is also a regular participant in the Prison Fellowship programs<sup>392</sup>, which are weekend religious education programs; Rock of Ages Revivals, which are 2-3 day revivals led by out of state ministries; and he attends church and prayer services led by different prison ministers 2-3 times per week.

One of the most powerful religious programs Chris has been involved in at Potosi is the Residents Encounter Christ (REC) program.<sup>393</sup> One of the leaders of this three day program is Judy Taylor. Mrs. Taylor has witnessed Chris' transformation from a shy, distant person on the first day of the program to an inspirational leader who now sponsors inmates into the program and is "faithfully there to fulfill their emotional needs."<sup>394</sup> Chris is a consistent participant in the program<sup>395</sup>, which has not only provided an excellent opportunity for personal growth and a tool for helping him to express and deal with his remorse, but has also allowed Chris to give back to society by helping other inmates -- most of whom will be released back to the streets -- build towards productive and crime free lives.

In addition to his religious activities, Christopher has also become engaged in programs to help youth and sick inmates. Recently, Chris has become involved in the 4-H program, which gives offenders an opportunity to have more productive visits with their siblings by encouraging activities that children are interested in during the visits. On one of these visits, Chris was able to see his brothers, Kenny (18), Billy (17), and Casey (13) in this more relaxed environment. The visit was especially important to Kenny, who treasures the opportunity to talk with his brother about his problems without having his parents present. Even prior to the 4-H program, Christopher has worked hard to be a positive role model for Kenny and Billy. According to both of his brothers, Christopher has succeeded. Billy reports that he likes visiting with Christopher and that Chris "tells me to get good grades, and not to 'mess up' like he did. I have listened to what he has to say. . . . He told me to do better, and I have -- my grades show that. I am doing better in school because of what Christopher told me."<sup>396</sup> Furthermore, because of Christopher's

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<sup>390</sup> See Exhibits O, P, and Q.

<sup>391</sup> Videotaped interview of Sister Elaine AuBuchon, April 10, 2002.

<sup>392</sup> See Exhibits R-Y.

<sup>393</sup> See Exhibit Z.

<sup>394</sup> See Exhibit AA, Letter from Judith A. Taylor to Governor Bob Holden, April 17, 2002. The letter describes in detail the REC program and Chris' transformation during the program.

<sup>395</sup> *Id.*

<sup>396</sup> Affidavit of Billy Hayes, October 15, 1998.

advice, Billy has never really gotten in trouble. Instead, he says, "now I really stop to think before doing things."<sup>397</sup>

Chris has had a similar effect on his brother Kenny. Kenny sums up his relationship with his brother as follows:

Now, Christopher tries to be a role model for us. He tells us not to be like him. He tells us to get good grades, so we can play sports in high school. He also tells us not to get in trouble. He tells us to stay in school, and not to do anything bad. What Christopher tells me helps me a little bit. His advice helps me try harder in school. Now, I understand the consequences of being in trouble. I try to stay out of trouble. I only hang out with friends I know well. I do not hang out with people who might get into trouble.<sup>398</sup>

Besides helping his own younger brothers grow into successful and responsible adults, Christopher has also reached out to at-risk youth through his involvement in the Youth Enlightenment Program (YEP).<sup>399</sup> This highly emotional program allows youth from the community to come into the prison and be exposed to the lessons learned by a few selected inmates.<sup>400</sup> The YEP is run by the inmates who comprise a board that determines the rules of the program and selects the inmates who will be allowed to participate. As part of the program, Chris must share his personal story with the kids that come into the prison. This experience has provided him with a powerful opportunity to reflect on his past, better understand his actions, and warn teens who are headed down the same path he took in his early years.

In addition to providing the powerful experience to troubled juveniles, the YEP also maintains a bank account that is used to fund charity projects and the Program's banquets. The account is funded through the Program's members collecting empty soda cans from the prison and holding fundraisers by selling food to other inmates. The funds are used to hold a banquet where the inmates get certificates, share food with the staff, and get a chance to show the staff their appreciation for supporting the program. The funds are also used to make donations to groups such as the Criminal Justice Ministry and the Red Cross.<sup>401</sup> Last Christmas, the group used their funds to provide money to an underprivileged family so that the family could have Christmas gifts.

Christopher's latest effort involved becoming a Hospice Volunteer. This program allows the terminally ill inmates at Potosi to have assistance and comfort from trained inmates. Christopher applied for the program and was accepted.<sup>402</sup> He was in training to begin his work when he was put on pre-execution status and therefore unable to continue.

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<sup>397</sup> *Id.*

<sup>398</sup> Affidavit of Kenny Hayes, October 15, 1998.

<sup>399</sup> See Exhibits BB, CC, and DD.

<sup>400</sup> See Exhibit EE.

<sup>401</sup> See Exhibits FF and GG, letters of appreciation from these groups.

<sup>402</sup> See Exhibit HH.

Obviously what Christopher was -- an abused, emotionally damaged, drug and alcohol addicted child -- does not even resemble what he has grown into -- a spiritual, loving, helpful, and remorseful young man. This fact highlights the "wrong" inherent in killing our children, especially one who has grown and matured into a productive member of society. As stated before, this petition is not intended to minimize the pain and suffering caused by the death of Shirley Crook. Christopher Simmons will pay for his crime for the rest of his life, through imprisonment and through the remorse that will forever weigh on his mind and heart. But he can do more than that. As the last few years of his life show, Christopher can give back to society for his crime by helping his fellow inmates and steering an untold amount of would be inmates to another path.

### CONCLUSION

Article IV, § 7 of the Missouri Constitution invests in the Governor the "power to grant reprieves, commutations and pardons, after conviction . . . upon such conditions and with such limitations as he may deem proper." He is not restricted by strict rules of evidence, and is free to consider a wide range of legal and equitable factors in the exercise of his clemency powers.<sup>403</sup> He may consider any aspect of the case, including claims that the courts have declined to review for procedural reasons.<sup>404</sup> Governor Holden is also free to expand the relevant case law and apply his own interpretation to grant relief if he so desires.

For all of the reasons stated in this petition, we implore Governor Holden to grant clemency to Christopher Simmons and commute his sentence to life imprisonment without parole. At the very least, we ask that the Governor exercise his power to appoint a board of inquiry to investigate and determine the factual allegations in this petition.

Respectfully Submitted,

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<sup>403</sup> See *Whitaker v. State*, 451 S.W.2d 11, 15 (Mo. 1990).

<sup>404</sup> See *Ohio Adult Parole Authority, et al. v. Woodard*, 523 U.S. 272, 280-81 (1998).

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