

IN THE MATTER OF:) ALAN JEFFREY BANNISTER, CP-24) Potosi Correctional Center
) Mineral Point, Missouri 63660) _____)

APPLICATION FOR COMMUTATION OF A SENTENCE OF DEATH TO: HONORABLE MEL CARNAHAN Governor of the State of Missouri INTRODUCTION Alan Jeffrey "A. J." Bannister, by and through his attorneys, respectfully submits this application, pursuant to art. IV, § 7 of the Missouri Constitution, and §§ 217.800 and 552.070 RSMo., to the Honorable Governor Mel Carnahan, requesting that he exercise his constitutional and statutory power to commute his death sentence to the alternative sentence of life imprisonment without the possibility of parole for 50 years. Mr. Bannister's appeals are almost entirely exhausted and he fully anticipates that his execution will be set by the Missouri Supreme Court before the end of this calendar year. Mr. Bannister respectfully requests an opportunity to present evidence and argument in support of this application to Governor Carnahan and the Board of Probation and Parole, or to a Board of Inquiry. Mr. Bannister also respectfully requests that Governor Carnahan stay his execution, as contemplated by Rule 30.30, Missouri Rules of Court, so this application will receive the full and fair review which it deserves. See, e.g., Potts v. Zant, 638 F.2d 727, 730 (5th Cir. 1981) (Georgia governor granted 90 day stay of execution pending clemency consideration); Miller v. State, 473 S.W.2d 413, 414-415 (Mo. 1972) (Stay of execution ordered by governor of Missouri pending psychiatric review). A. J. Bannister has never denied that he shot and killed Darrell Ruestman in his trailer in Joplin, Missouri on August 21, 1982. Mr. Bannister does, however, dispute the prosecution's theory that he was a hired assassin who killed Mr. Ruestman for money. At trial, the prosecution's theory that Mr. Bannister was hired "hit man" was not refuted in any way by the defense. Sadly, as has been a common occurrence in Missouri capital cases, Mr. Bannister received a woefully inadequate defense by the Missouri Public Defender's office at trial. His appointed public defender, Ray Gordon, did no investigation of the facts surrounding the case and presented absolutely no defense during either the guilt or penalty phases of trial. Not surprisingly, it took the jury little time to convict Mr. Bannister and sentence him to death. The true facts surrounding the killing of Darrell Ruestman, which never came out at trial due to the inadequacy of his trial attorney, have recently been brought to light through the tireless efforts of journalist and filmmaker Stephen Trombley. Mr. Trombley became interested in A. J. Bannister's case after meeting him at the Potosi Correctional Center in 1991 while filming the documentary THE EXECUTION PROTOCOL, which was aired on the Discovery Channel in 1992. Mr. Trombley also wrote a book with the same title in which Mr. Bannister is prominently featured. After meeting Mr. Bannister in connection with the aforementioned book and film, Mr. Trombley took an interest in the facts of A. J.'s case. As a result, Mr. Trombley conducted his own independent investigation into the facts of A. J. Bannister's case and is currently working on both a book and a documentary film about the case. Mr. Trombley's investigation of A. J. Bannister's case has revealed a much more complicated story of the events leading to the shooting of Darrell Ruestman involving a series of events which preceded the murder occurring in the Peoria, Illinois area and Phoenix, Arizona. The events leading to the shooting of Darrell Ruestman begin in the Peoria, Illinois area, where A. J. Bannister was born and raised. The central figure in the killing of Darrell Ruestman is Peoria area crime boss, Ronald Wooten, a.k.a. "Indian." Indian was the major crime boss in the Peoria/Chillicothe, Illinois area. Indian's primary criminal enterprises included selling illegal drugs, prostitution, and stolen property. Indian was a very violent person who was feared by everyone, and was reportedly responsible for numerous murders for which he had never been prosecuted. Ironically, Indian is currently serving a life sentence in an Illinois prison for the 1989 murder of his wife. In the summer of 1982, A. J. Bannister sold drugs for Indian. A. J. saw

an opportunity to get out of the drug business and remove himself from Indian's domination and control by moving to Phoenix, Arizona to live with his adopted sister, Patti Bannister. A. J. gave a quantity of drugs that he had not yet sold for Indian to a young man named Eric Vincent, and directed Vincent to return the drugs to Indian. A. J. and his adopted sister Patti then drove to Phoenix, Arizona. For some reason, Eric Vincent did not return the drugs that A. J. had given him to give to Indian for several days. As a result, Indian believed that A. J. had left town and ripped him off for the drugs. On July 9, 1982, A. J. was stabbed four times by unknown persons outside a suburban Phoenix, Arizona tavern. He was hospitalized in intensive care for over a week and in fact almost died. There is strong circumstantial evidence suggesting that Indian ordered the stabbing of A. J. Bannister in Phoenix. There is also circumstantial evidence that A. J.'s step-sister, Patti Bannister, conspired with Indian to set up A. J.'s stabbing. The most interesting piece of circumstantial evidence in this regard is the fact that Patti placed a 17 minute phone call to Indian, charged to her mother's phone number, shortly after A. J. was stabbed. After checking out of the Phoenix hospital, A. J. hitchhiked back to Illinois. A few days later, while sitting on the sea wall along the Illinois River, a passing car fired several shots at him. A. J. interpreted this incident as another attempt on his life. Feeling that Indian was behind these attempts on his life, A. J. decided to confront him directly. When he confronted Indian, A. J. was told by Indian that the attempts on his life were orchestrated by a major drug dealer whom he later identified as Darrell Ruestman. At a meeting at Indian's home on or about August 17, 1982, Indian convinced A. J. that the only way to prevent future attempts on his life would be to confront Mr. Ruestman directly. That night Indian gave A. J. an old .22 pistol to take with him when he confronted Ruestman. The following day, August 18, 1982, Indian drove A. J. to the Triple T Tavern in Mossville, Illinois. A. J. remained in the car while Indian went inside the tavern for approximately 20 minutes. When Indian returned, he gave A. J. a piece of paper with Darrell Ruestman's name and address on it. Indian later gave A. J. \$400.00 in order to buy a bus ticket to Joplin and cover other expenses. After arriving in Joplin, the facts leading up to the shooting of Darrell Ruestman are basically correct as presented at his trial. However, the major dispute involves the manner in which the actual shooting occurred. A. J. contends that he knocked on the trailer door in order to confront Ruestman about the prior attempts on his life, and never had a preconceived plan to kill him. After knocking on Ruestman's door, A. J. stated "I'm from Illinois." Immediately thereafter, he and Mr. Ruestman engaged in a struggle. A. J. pulled the old .22 from his back pocket and the gun went off during the struggle. In contrast, the prosecution's theory at trial was that A. J. shot Darrell Ruestman from the porch of the trailer immediately after Ruestman answered the door. An examination of the physical evidence, however, strongly supports A. J.'s story as opposed to the prosecution theory at trial. The most significant piece of physical evidence supporting A. J.'s story is the angle of the bullet. The autopsy report indicates that the angle of the bullet was markedly downward. Photographs of the trailer indicate that the porch was 3 to 4 inches lower than the threshold of the doorway. In addition, it is well established from the record that both A. J. and the victim were large men. Thus, if the shooting had occurred from the porch immediately after the victim opened the door as the prosecutor suggested at trial, the angle of the bullet would have been either upward or at the very least, horizontal. Other independent factors also strongly support A. J.'s story, and are inconsistent with the prosecution's theory. A. J. was a paid "hit man." A. J. Bannister was arrested some seven hours after the shooting at the Joplin bus station. On Monday, August 23, 1982, A. J. was arraigned in Magistrate Court and the public defender was appointed to represent him. Shortly thereafter, A. J. purportedly gave incriminating statements to the Newton County sheriff and led

the authorities to certain pieces of evidence, including the torn up note with Mr. Ruestman's name and address. During these statements, which were not written or recorded, A. J. purportedly told the authorities about a murder for hire plot involving Indian and a payment to himself of \$4000.00, \$1500.00 up-front. However, A. J. never directly confessed to committing the murder of Darrell Ruestman. In fact, A.J. has steadfastly contended that many of statements attributed to him were fabricated by the Newton County sheriff. This theory of fabrication is supported by the fact that the Newton County authorities had received information from Illinois authorities prior to A. J.'s interrogation that this homicide was a murder for hire arranged by the estranged husband of Linda McCormick, who was living with the victim at the time of the shooting. Ray Gordon, a state public defender from Joplin, Missouri, was appointed to represent A. J. Bannister at his trial. Gordon conducted little or no investigation into the facts of the case, and only met with A. J. three or four times prior to trial. At trial, Gordon presented only one witness in the guilt phase and put on absolutely no defense. Both A. J. and his family made repeated attempts to contact Mr. Gordon to inform him of witnesses and evidence which should be presented at trial. Inexplicably, Gordon failed to return phone calls from A. J.'s family and refused to conduct any investigation into the facts and circumstances of the case. Moreover, given the limited resources of the Missouri Public Defender's office at that time, there would have been no funds or resources available to do the necessary investigation which would have involved a considerable amount of work in both Illinois and Arizona. Given the fact that no defense was presented at trial, it is not surprising that the jury convicted A. J. Bannister of capital murder after less than an hour of deliberation after a short three day trial. In addition, Gordon presented no evidence in mitigation of punishment during the sentencing phase and conducted no investigation into Mr. Bannister's background or history in order to discover any potential mitigating evidence. As result, it can come as little surprise that the jury assessed the death sentence. Since his 1983 conviction and death sentence, A. J. Bannister has been sitting on Missouri's death row while his case worked its way through the courts' appellate process. During his incarceration, Mr. Bannister has been a model inmate and poses no threat to either prison staff or other inmates. Mr. Bannister has become a sort of international media celebrity, in light of his prominent role in the book and film THE EXECUTION PROTOCOL. As result of his media fame, A. J. met and married an English woman, Lindsay Bannister on October 30, 1993. A. J. has demonstrated genuine remorse for the death of Darrell Ruestman. However, at the same time, he has steadfastly contended that the prosecution's portrayal of him as a hired hit man was untrue and that the jury who convicted him and sentenced him to death did not hear the true facts of the case due to the limited resources and clear incompetence of his public defender, Ray Gordon. In addition, the same Missouri Public Defender's office represented Mr. Bannister in his state post-conviction proceedings and due to the lack of time and resources also failed to develop any evidence that would mitigate Mr. Bannister's guilt for the killing of Darrell Ruestman. The current evidence which shows that A. J. was not a paid killer was totally developed through the independent efforts of writer and film maker Stephen Trombley in connection with his current project of writing a book and doing a documentary film about A. J. Bannister's life. Mr. Bannister and his undersigned attorneys strongly believe that a thorough examination of the true facts surrounding this particular crime and the history of the condemned prisoner will establish that permitting A. J. Bannister's execution would be disproportionate to the nature of the crime and a clear miscarriage of justice. A. J. Bannister, therefore, asks that the Honorable Governor Carnahan after a full and fair review of all the facts surrounding his case, commute his death sentence to a sentence of life imprisonment without the possibility of parole for 50 years. BACKGROUND AND

PROCEDURAL HISTORY On February 3, 1983, A. J. Bannister was convicted for the capital murder of Darrell Ruestman which occurred on August 21, 1982, and sentenced to death. On November 20, 1984, the Missouri Supreme Court affirmed A. J. Bannister's conviction and death sentence. *State v. Bannister*, 680 S.W.2d 141 (Mo. banc 1984). Thereafter, Mr. Bannister sought post-conviction relief pursuant to Missouri Supreme Court Rule 27.26. The circuit court denied Bannister's 27.26 petition on December 17, 1985. Thereafter, the Missouri Court of Appeals affirmed the denial of Bannister's 27.26 motion. *Bannister v. State*, 726 S.W.2d 821 (Mo. App. 1987). Mr. Bannister thereafter sought habeas corpus relief in the federal courts pursuant to 28 U.S.C. § 2254. On August 23, 1991 Judge D. Brook Bartlett of the Federal District Court for the Western District of Missouri entered an order denying habeas corpus relief. *Bannister v. Armontrout*, 807 F.Supp. 516 (W.D. Mo. 1991). The Eighth Circuit Court of Appeals affirmed the denial of habeas relief in *Bannister v. Armontrout*, 4 F.3d 1438 (8th Cir. 1993). The full Eighth Circuit thereafter denied rehearing en banc over the dissents of Chief Judge Richard Arnold and two other active circuit judges. The United States Supreme Court then refused to hear the case, by denying Bannister's petition for a writ of certiorari on October 31, 1994. *Bannister v. Armontrout*, ___ U.S. ___ (1994). Mr. Bannister does intend to seek further judicial review of his conviction and death sentence. However, because of the strict procedural bar rules governing such review, it is unlikely that any court will agree to hear the merits of any future appeal. Mr. Bannister will keep the Governor's office apprised of the status and progress of any future judicial proceedings in the case.

REASONS FOR COMMUTATION OF SENTENCE I Newly discovered evidence clearly establishes that A. J. Bannister is not guilty of capital murder and that the death sentence imposed in his case is disproportionate to the true facts of the crime. The prosecution's theory at A. J. Bannister's trial, which went unchallenged by his public defender Ray Gordon, was that A. J. killed the victim for \$4000.00. A. J. purportedly received this money from a middleman named Ronald Wooten, a.k.a. "Indian," at the behest of Richard McCormick, the estranged husband of Linda McCormick, with whom the victim was living at the time he was killed in Joplin. A. J. Bannister admits to shooting Darrell Ruestman -- but for a far different reason than the theory advanced by the prosecution. The case of A. J. Bannister and the killing of Darrell Ruestman is a much more complicated story involving several people, and events occurring in Illinois and Phoenix, Arizona. Before discussing the events leading to the killing of Darrell Ruestman, it is important to first learn a little background information regarding the persons involved in this case.

1. Richard "Dick" McCormick. In 1982, Dick McCormick ran a garbage collection business in Minonk, Illinois. He had married Linda, a petite strawberry blond, when she was only 14 years old. Linda kept the books for Dick's garbage business. Dick McCormick was a large heavy set man, who was a hard drinking womanizing type. Dick McCormick is well known in numerous taverns on both sides of the Illinois river. Darrell Ruestman began working for Dick McCormick in 1981. By the spring of 1982, Darrell Ruestman and Linda McCormick had fallen in love. To escape her unhappy marriage with Dick McCormick, Linda agreed to leave Illinois with Darrell to move to Joplin, Missouri where Darrell's uncle had a job waiting for him in a construction business. After his wife left him, Dick McCormick became very angry. Dick had approached a number of people during the summer of 1982, offering them money to go down to Joplin to kill Darrell Ruestman. One such plan was for Bill Russell, who ran the local flea market in Minonk, to go down to Joplin to give Darrell Ruestman a good beating. Russell, in fact did take some of Dick's money and went to Joplin, but failed to do the job. McCormick also approached Terry Widmer, who was Bill Russell's son. Dick offered Terry money to bring Darrell back to Minonk so he could torture him with acid out

of his garbage dump. Terry Widmer thought about this proposition, but ultimately refused Dick's offer. Marvin Wehrli, who worked at a service station at Minonk, turned down McCormick's offer of money to kill Ruestman on at least three separate occasions. Frustrated at his lack of success in obtaining a hit man to kill Darrell Ruestman, Dick McCormick made the rounds at the local taverns openly offering anyone \$5000.00 to kill Darrell Ruestman. As will be further explained, it appears McCormick ultimately succeeded in his plot when he contacted Richard Wooten, a.k.a. Indian. However, it is extremely interesting, and unusual for a murder for hire case that there was no evidence introduced by the prosecution in A. J. Bannister's trial that Dick McCormick was behind the murder for hire plot that culminated in the shooting of Darrell Ruestman. While A. J. Bannister's case was awaiting trial, Illinois authorities charged Dick McCormick with four counts of solicitation to murder. However, McCormick plea bargained and pled guilty to a misdemeanor, conspiracy to commit aggravated battery. Part of this plea bargain involved his agreement to cooperate and in return McCormick served six months in the Woodford County Jail and thereafter received probation. Today, McCormick lives in Bloomington, Illinois, where he runs a small catering business. Since the day after Darrell Ruestman was killed, he and Linda have lived together and remained married. No direct connection was ever established between McCormick and A. J. Bannister, and in fact there is none.

2. Ronald Rick Wooten, a.k.a. "Indian". The man called "Indian", whom the state refers to as the "middle man" in its case against A. J. Bannister, is a criminal who terrorized central Illinois for more than twenty years. He was at one time president of the Illinois motorcycle gang the Arapahoes. He was a big time drug dealer, and used his job as a long haul truck driver for Caterpillar to build a network of narcotics distribution throughout the United States. He was also into prostitution. His sexual preference is young girls, and he recruited a number of school girls from broken homes who would come and live at his farmhouse in Sparland, Illinois. When he was finished with them, he turned them into prostitutes, and worked them out of a number of properties he owned locally. Indian is a scary character, and while he is currently serving a life sentence in Illinois for the murder of his former wife, Kimberly Ray, locals to this day are frightened to say very much about him, for fear of retribution. Many local police officers become nervous and testy when pressed about why Indian was allowed to menace a community for twenty years before being sent to prison. Wooten, now forty-five years old, is the grandson of a wealthy and respected farmer. Years ago, the grandfather made a fortune by selling a large parcel of land on which Caterpillar built its main factory, just a mile from the house where A. J. Bannister was raised. During A. J.'s childhood, Caterpillar employed 26,000 people. It is still the largest employer in the region. A condition of old farmer Wooten selling the land to Caterpillar was that Indians should have a job there for life. Wooten's FBI records show a long history of arrests for crimes such as theft, assault and battery, narcotics and, finally, murder. The FBI records make interesting reading, because Indian never posted a cash bond higher than a hundred dollars. Apart from the murder charge that finally put him behind bars, Indian has never been convicted of any of the felony crimes for which he was arrested and charged, despite compelling evidence of his guilt. The present chief of police in Chillicothe, Illinois is Steve Maurer, who was one of A. J.'s closest friends in high school. Maurer believes that Indian may be implicated in as many as twenty murders. The reluctance of people to speak openly of their dealings with Indian is understandable. His reputation as someone to fear was based on the certain knowledge of some locals that he was capable of murder. Some knew because they had been witnesses to murders which, to this day, remain unsolved. And they knew that Indian's wealth and influence within the community put him above the law. As long as he was at liberty, he was the law in

certain circles in central Illinois. If you made Indian angry, you would pay. An ex-girlfriend tells how Indian terrorized her for two years after she left him and obtained a court restraining order forbidding him to come within a mile of her. It made no difference since Indian often used a combination of fear and money to get others to do his dirty work. Despite the restraining order, the girlfriend's brake cables were cut. On another occasion, a man annoyed Indian at a party held at his farmhouse in Sparland. He took the man outside. Other guests heard a single gunshot. The man was never seen again. During his trial for the murder of Kimberly Ray, it was revealed that Indian had one of his flunkies shoot her while he watched. One of the three killers then had sex with the corpse. Kimberly was later buried in a ditch near the Caterpillar plant where Indian worked. After one of the killers led police to Kimberly Ray's badly decomposed body, Indian was finally brought to justice. He received a natural life sentence, and is presently incarcerated at Joliet Correctional Center. For the first time in his criminal career, Indian couldn't bargain his way out of jail by rolling on another criminal. Now that Indian is safely locked away, some police officers will admit, off the record, that the system of "police informants" was responsible for keeping one of the areas most dangerous criminals on the streets and above the law. Although Indian is serving a natural life sentence, many of the Illinois locals continue to fear him. One woman who had the courage to testify against Indian in his trial for the murder of Kimberly Ray continues to receive death threats. Others, who have witnessed the results of Indian's anger, do not believe that he will be incarcerated for the rest of his life, and that he might someday wreak terrible vengeance against them. Perhaps more than anyone, A. J. Bannister had reason to fear Indian. According to A. J., when he was seventeen, he was riding around Peoria one night in Indian's van with another biker. Without saying a word to either of his two passengers, Indian stopped his van across the street from where a fifteen year old black youth was standing. Indian beckoned the youth over. As he approached the van, Indian pulled out his .44 and shot him dead, then drove away calmly. Indian never mentioned the incident again to A. J. It was one of Indian's ways of demonstrating that he meant business, and that he didn't need a reason to hurt someone: anyone.

3. A. J. Bannister. A. J. Bannister was born on July 1, 1958 in Peoria, Illinois, the first child of Bob and Alice Bannister. A. J.'s father worked at the Caterpillar plant, which was the area's largest employer. In 1963, the Bannister family moved to Rome, Illinois, a smaller town 15 miles north of Peoria. A. J. grew up in Rome and generally did very well in elementary and high school. A. J. began to get into minor scrapes with the law about the time he finished high school. But up until that time, he would have been what would be considered a model student and young man. In the summer of 1982, A. J. was twenty-three years old. He had been in and out of prison since his senior year of high school, when he was sentenced to 1-3 years at Menard Penitentiary for the theft of a CB radio from a truck. After two further stints in the penitentiary, A. J. had little chance of getting a job locally. Indian offered him the opportunity to make some easy money by giving him a quantity of cocaine to sell. He wanted \$1500.00 back from the sales. Any money that remained was A. J.'s profit. The cocaine turned out to be poor quality, and a local narcotics bust put the fear of arrest into A. J. He decided to return to Indian the remainder of the drugs and the money he had made so far. A. J. went looking for Indian, but couldn't find him. A. J. had just taken up with a new girlfriend. His adopted younger sister, Patti, was planning a trip out west to meet her boyfriend in Colorado, and A. J. and his new girlfriend wanted to go. He gave the drugs and money to a friend named Eric Vincent, with instructions to return them to Indian. A. J., his girlfriend and Patti ended up in Glendale, Arizona - a suburb of Phoenix. A. J. found a job with a local construction company, and was due to start work on the following Monday. That Saturday night, July 9, 1982, he went to a bar, the Cactus Inn. It was hot, and he went outside for some

air. A man called to him from across the parking lot. Suspicious, A. J. decided to go back inside. As he moved, the other men came up behind him and stabbed him six times in the back. The wounds were up to six inches deep, and one of his lungs was punctured. He was left to die in the parking lot. As he lost consciousness, A. J. could hear the man in front of him say, "he won't rip off nobody's drugs again." A. J. thought he had seen the man before, but to this day cannot place him. A. J. was rushed to hospital by helicopter, where he underwent emergency surgery. That night, someone made a seventeen-minute phone call to Indian, charging it to the phone of Alice Bannister - A. J.'s mother. Alice is adamant that her adopted daughter Patti made the call. Twelve years later, A. J. cannot understand why Patti would have called Indian. (Since that time, Alice has refused to talk to Patti. Patti continues to live in Arizona, and rarely visits Illinois, avoiding Alice when she does.) A. J. was in intensive care for ten days. Against doctor's orders, he checked himself out of hospital as soon as he felt strong enough to walk. He hitched a lift with two women who were heading to Houston, and spent the night with them. He hitchhiked another full day, sleeping at a roadside rest area, and arrived back home the next day. A. J. believed that Indian had ordered the stabbing. He believed that Indian's influence, and his network of criminal connections, was sufficient to get the job done. There was talk in Chillicothe of a confrontation between the two men. A few days after A. J. returned home, he was sitting on the concrete sea wall along the Illinois River in South Rome, a mile from his mother's house, when someone took a shot at him from a passing car on Highway 29, which runs parallel with the river. He ducked behind the wall and waited for the car to pass. A. J. resolved to confront Indian. A. J. called Indian and demanded a meeting. It was set for later that night at Indian's farmhouse in Sparland. A. J. was nervous, and was relieved to see that Indian's then wife, Trish Vandervere, was there. Trish was unlike most of Indian's other women. She was middle class, dressed conservatively, and had a good job with TWA down in St. Louis, where she normally stayed during the week. A. J. demanded to know if Indian had ordered his stabbing. Indian told A. J. that Eric Vincent did not return the unsold drugs and money owed to Indian right away. Before he delivered them to Indian, Vincent went on a three-day drunk. During that time Indian heard that A. J. had left Illinois, and assumed that A. J. had ripped him off. Indian explained that he, in turn, owed the man who had supplied him with the drugs. He had given the man A. J.'s name. Indian said that when he realized it was all a mistake, he tried to call the other guy off, but it was too late. He apologized.

A. J. only half believed Indian, but had no way of countering his story. At that point, A. J. was motivated by revenge. He was determined to find out who had him stabbed, and "to make him feel some of the pain that I felt." A. J. told a friend he was going to "carve his initials on the guy's ass, one on each cheek", so that "every time he sat down, he'd remember me." Indian said, "I know who's responsible for your stabbing." There was a loaded .22 caliber pistol on the coffee table between them. Indian gave the gun to A. J. that evening. It turned out to be the murder weapon. The next afternoon Indian drove A. J. to the Triple T Tavern in Mossville, Illinois. A. J. remained in the car while Indian went inside the tavern for approximately 20 minutes. Indian returned with a piece of paper with Darrell Ruestman's name and address on it. Indian then drove A. J. to a store where he purchased some gloves, and later gave A. J. \$400.00 to purchase a round-trip bus ticket to Joplin, Missouri, and to cover other expenses during his trip there. The next day A. J. Bannister boarded a bus for Joplin, Missouri. 4. The shooting of Darrell Ruestman. After arriving in Joplin on August 20, A. J. Bannister checked into a local motel. He made his way to the trailer park where Darrell Ruestman resided on August 21, 1982. At the trailer park, A. J. befriended a young man named Glen Miller, who lived next door to Darrell Ruestman

and Linda McCormick. Most of that afternoon and early evening, A. J. stayed at Glen Miller's trailer, hoping to get a glimpse of Darrell Ruestman. Early that evening, A. J. observed Ruestman and Linda McCormick coming and going from the trailer. A. J. needed to get Glen Miller to leave the trailer park and to accomplish this told him to meet him later at a local bar. At approximately 10:00 p.m., armed with the .22 caliber pistol that Indian had given him in his back pocket, A. J. Bannister approached the trailer of Darrell Ruestman and Linda McCormick. After knocking on the door, Darrell Ruestman answered. A. J. immediately told Ruestman upon the opening of the door, "I'm from Illinois." Upon hearing this, Darrell Ruestman began scuffling with A. J. in the doorway. A. J. pulled the .22 pistol from his back pocket and a single shot went off during the struggle. A. J. immediately ran from the trailer and made his way back to the motel. At this time, A. J. did not know whether the shot had hit Ruestman or not. In any event, A. J. had no idea that he had fatally wounded Darrell Ruestman during this scuffle. After disposing of the gun and changing clothes, A. J. returned to the motel for a short period of time. A. J. later went to a local tavern until closing time. A. J. checked out of the motel at about 4 a.m. and took a cab to the Joplin bus station. While waiting for a bus to return him to Illinois, A. J. was arrested by members of the Joplin Police Department. The autopsy of Darrell Ruestman revealed two significant facts supporting A. J.'s story of how the shooting occurred. First, the bullet that penetrated Darrell Ruestman's heart entered his body at a markedly downward angle. Had the shooting occurred as the prosecution contended, from the porch immediately after Ruestman opened the door to the trailer, the entrance wound would have not been at a markedly downward angle. In addition, there were powder burns on the victim's clothing around the area of the entrance wound, which suggests that the shooting occurred at extremely close range. Both of these irrefutable facts arising from the autopsy support A. J.'s story of how the shooting occurred, and clearly contradict the prosecution's theory that this was a murder for hire in which A. J. shot the victim from the porch of the trailer immediately after Darrell Ruestman answered the door. II. A. J. Bannister's trial counsel, due to lack of resources and incompetence, failed to investigate and discover the true facts surrounding this crime, and further failed to present any meaningful defense in either the guilt or punishment stage of A. J. Bannister's trial. A. J. Bannister's trial presents the unfortunate, yet common occurrence in death penalty cases, where the death sentence, if not the capital murder conviction itself, could have been avoided had the defendant received competent representation during his trial. In the four months between A. J.'s arrest and his trial, A. J.'s appointed attorney, Ray Gordon, met with him approximately four times for approximately an hour of total time to discuss potential trial strategies and courses of investigation. A. J. and members of his family repeatedly attempted to prod Ray Gordon into conducting a more thorough investigation of the facts of the case, in order to provide A. J. with witnesses and a defense to the charge. These pleas, for whatever reason, fell upon deaf ears. As result, Ray Gordon went to trial representing a man whose life was at stake without ever having conducted any investigation into the facts of the crime or the background of his client. Gordon simply did not present any defense at all. As result, it can come as little surprise that it took the jury less than an hour to both convict and sentence A. J. Bannister to death. Ray Gordon's failure to investigate is probably not entirely his fault. At the time of A. J.'s trial, the Missouri Public Defender System was dreadfully underfunded and understaffed. Ray Gordon did not have any available funds nor investigative staff at his disposal with which to properly investigate the case, even if he had the desire and inclination to do so. The necessary investigation for this case, if funds had been available, would have taken several man hours and several days of work. In fact, it has taken investigative journalist, Stephen Trombley, several months with which to compile all of

the facts in connection with his book and documentary film. A. J.'s entire trial, beginning with jury selection and ending with the jury's pronouncement of the death sentence, lasted a scant three days. At the guilt phase, Ray Gordon called only one witness for the defense, a police officer who had little to offer to A. J. Bannister's defense. At the penalty phase, Gordon called no witnesses and offered no evidence on A. J.'s behalf in support of his argument that the death sentence was not appropriate in the case. A. J. Bannister firmly believes that if he had been given an adequate defense at trial, he would have been acquitted of capital murder, or at the very least received a life sentence instead of the death penalty. If the case had been properly investigated and an effective defense presented at trial, the following facts could have been presented for the jury's consideration in both the guilt and the penalty phases of trial. In the guilt phase, as previously noted, there is substantial evidence that A. J. was not knowingly acting as a hit-man on behalf of Indian. This theory could have been established by the independent evidence regarding A. J.'s stabbing in Phoenix, which could have been corroborated by existing medical records from the Phoenix hospital. A. J.'s story could have also been corroborated by telephone records in Phoenix and Illinois. In particular the seventeen-minute phone call from Phoenix to Indian, charged to Alice Bannister's phone, strongly corroborates the theory that Indian was behind A. J.'s stabbing. In addition, phone records clearly establish a link between Indian and Dick McCormick through the Triple T Tavern. In addition, an investigation conducted in Illinois would have revealed Dick McCormick's numerous attempts to hire someone to kill the man who stole his wife, and the fact that he was under indictment for soliciting the murder of Darrell Ruestman at the time of A. J.'s trial. The jury heard nothing about Richard McCormick's other attempts to solicit the murder of Darrell Ruestman, even though Linda McCormick was the very first prosecution witness at trial. Coupled with the existing physical evidence regarding the powder burns and the angle of the bullet, Ray Gordon could have presented an effective defense based on accident or self-defense under Missouri law. Had this evidence been presented to the jury, Mr. Bannister is confident that he would have been acquitted of capital murder, and at the very least been convicted of either second degree murder or manslaughter. Regarding the guilt phase, one last issue needs to be addressed: A. J.'s "so-called confession." Many of the courts reviewing A. J.'s case on appeal have viewed the case as one where A. J. gave a complete confession to the contract killing of Darrell Ruestman. This conclusion is clearly not accurate. On August 23, 1982, A. J. Bannister did give certain incriminating statements to members of the Newton County Sheriff's Department. However, none of these purported incriminating statements were ever audio or videotaped by the police officers involved, nor were any written statements given by Mr. Bannister. This fact alone is suspicious, and casts doubts upon the veracity of this "confession" testimony by the police. Mr. Bannister has always contended that the police officers who testified at his trial distorted and fabricated many of the statements he gave to them on August 23, 1982. A. J. doesn't deny that he told them about Indian and Indian's complicity in the killing. However, the critical detail upon which A. J. and the police officers' stories conflict is the question of whether A. J. told them that he received \$4000.00, \$1500.00 up-front, to kill Darrell Ruestman. Several independent factors corroborate A. J.'s contention that he never told the police officers that he was a hired assassin that had been paid \$1500.00 "front money." First, Rodney Ruestman, the victim's brother and deputy sheriff in Woodford County Illinois, called the Newton County Sheriff's Department immediately following his brother's shooting prior to A. J. Bannister's arrest. During these phone calls, Rodney Ruestman told the Missouri authorities of his firm belief that the murder of his brother was a contract killing arranged by Dick McCormick. Thus, it is clear that the Missouri authorities

possessed information that predisposed them to believe that the murder of Darrell Ruestman was a contract killing, prior to the arrest and interrogation of A. J. Bannister. Thus, it would have taken little imagination for law enforcement officials to fabricate that A. J. admitted to them hereceived a sum of money from Indian to perform the killing. Second, if A. J. had been paid \$1500.00 up-front to kill Darrell Ruestman, he should have had a substantial sum of money on his person when he was arrested at the Joplin bus station. However, in fact, A. J. had only 42 cents in his pocket when he was arrested by the Joplin police. In addition, if he was a well-paid professional hit-man, why did A. J. remain in town for more than 7 hours after the "hit" was accomplished? Finally, it seems very unlikely that a professional hit-man would use a rickety .22 caliber pistol instead of a more reliable and powerful weapon. All of these factors strongly suggest that A. J. was not a hired killer. One final point needs to be addressed in regard to A. J.'s "so-called confession." Even the law enforcement officials who testified about A. J.'s oral statements concede that A. J. never actually admitted shooting Darrell Ruestman. In addition, the statements A. J. purportedly made were vague, third person narratives of how the killer could have accomplished the shooting. These vague, third person statements purportedly given by A. J. are a far cry from the total confession to a contract killing as this case has been described by reviewing courts. Inexplicably, Ray Gordon did not effectively exploit any of these weaknesses in the prosecution's presentation of A. J.'s statements. Coupled with Gordon's failure to present additional existing facts negating the contract murder theory, the jury in this case did not fully understand the circumstances surrounding A. J.'s "so-called confession" due to Gordon's incompetence. Had Gordon performed competently in presenting these arguments and evidence to the jury, Mr. Bannister believes he would not have been convicted of a capital offense, or at the very least there would have been sufficient residual doubt to spare him a death sentence even if the jury had found him guilty of a capital murder. As to the penalty phase of trial, Ray Gordon's utter ineffectiveness is also self-evident. Gordon called absolutely no witnesses nor offered any evidence to the jury in support of any argument that the death penalty was not warranted in A. J.'s case. It is well established under Eighth Amendment principles that it is crucial for the defense in capital cases to conduct a full investigation and present any relevant mitigating evidence in support of a life sentence. Gordon conducted no investigation whatsoever into Mr. Bannister's background and character. Had he done so, many members of A. J.'s family and friends from Illinois would have been willing to testify on his behalf in the punishment stage. This type of testimony could have very easily convinced the jury not to sentence Mr. Bannister to death. In addition, there was existing evidence that could have been discovered by Gordon to call into question the existence of the two statutory aggravators found by the jury in support of the death penalty: (1), that A. J. killed the victim for money; and (2), that A. J. Bannister had a substantial history of serious assaultive convictions. As to the former aggravating circumstance, as previously noted, there is substantial evidence to support A. J.'s story that he was not a paid killer. Had this evidence been presented to the jury, there is a substantial probability that they would not have found the existence of this aggravating factor. The second aggravating factor concerns the fact that the prosecutor introduced records of A. J. Bannister's prior convictions, and argued to the jury that his criminal record was sufficient to establish that he had "a substantial history of serious assaultive convictions." (Supp. Trial Tr. at 68-69). In this regard the prosecution introduced records indicating that A. J. Bannister was convicted of a residential burglary in 1976; the rape of a woman named Diane DeVoss in 1979; another residential burglary in 1979; the armed robbery of a woman named Kimberly Engquist in 1979; and finally an armed robbery and deviate sexual assault of a woman named Jenelle Nelson in 1979. On their face

alone, his criminal "rap sheet" would seem to indicate that A. J. Bannister had a substantial criminal record of an assaultive nature, excluding the burglary convictions. However, a cursory investigation into the facts of A. J.'s prior convictions would have indicated otherwise. Specifically, the 1979 rape conviction of Diane DeVoss, was a "statutory" rape not involving any assaultive conduct. The facts surrounding that charge involve the fact that A. J. had consensual sex with an under-age girl; A. J. was 17 and Ms. DeVoss was 14 at the time this consensual sexual encounter occurred. Thus, had the true facts surrounding this incident been discovered and brought forth by Ray Gordon, the jury would have learned that this rape conviction was not of an assaultive nature. Similarly, A. J. Bannister's 1979 convictions for armed robbery and deviate sexual assault of Jenelle Nelson involved a situation where A. J. and a companion, Tim Bailey, had sex with a known prostitute, paid her, then took the money back and stranded her in the country. In fact, A. J. only agreed to plead guilty to these offenses as part of a "package deal" plea bargain involving other charges. The other 1979 robbery conviction of Kimberly Engquist involved a situation where A. J. and Tim Bailey, while intoxicated, stole some packs of cigarettes from a gas station. During this robbery, A. J. had a gun in his waistband that was observed by the clerk. The facts surrounding all of A. J.'s prior convictions could have been easily discovered by Ray Gordon had he checked the police files from Illinois. Had he presented the true facts surrounding these convictions, it is evident that A. J.'s prior convictions could have convinced the jury to find that A. J. did not have a "substantial history of serious assaultive convictions." A. J. Bannister's case does not present the situation where the evidence supporting his death sentence was overwhelming. In fact, the sentencing jury obviously seriously considered the life imprisonment alternative, as evidenced by their question to the judge during sentencing phase deliberations, regarding whether A. J. could ever possibly be released prior to 50 years if they gave him a life sentence. (Supp. Trial Tr. at 84-86). The various state and federal courts who have reviewed A. J.'s conviction and death sentence have never addressed these issues relating to Gordon's incompetence at trial. In state post-conviction proceedings where issues regarding trial counsel's ineffectiveness must be raised under Missouri law, A. J.'s 27.26 counsel Robert Wolfrum was denied a continuance in order to conduct further investigation into the facts supporting ineffectiveness claims against Ray Gordon. Wolfrum, a member of the same Missouri Public Defender's Office, also lacked the needed investigative and monetary resources to fully investigate any ineffectiveness claims against Ray Gordon. As result of this defect in 27.26 proceedings, any such claim was forever procedurally barred from review on the merits by the federal courts in the future. See *Keeney v. Tomayo-Reyes*, 112 S.Ct. 1715 (1992). A. J. Bannister fully intends to ask the Missouri and federal courts to review the merits of these ineffectiveness claims against Ray Gordon. However, in light of the strict procedural bar rules enforced by the courts, it is very unlikely that the courts will reach the merits of these claims. Thus, Governor Carnahan is the only authority who has the power to remedy this obvious injustice resulting from the incompetence of A. J. Bannister's trial counsel. III. During his incarceration on death row, A. J. Bannister has demonstrated genuine remorse for his crime, has been a model inmate, and would pose no physical threat to prison staff or other inmates if his sentence were to be commuted to life imprisonment. Unlike many, if not most incarcerated individuals, A. J. Bannister does not profess his innocence. A. J. has never denied shooting Darrell Ruestman or attempted to avoid responsibility for his actions. During numerous interviews with the press and media, A. J. has candidly admitted his involvement in the shooting and demonstrated genuine remorse and sympathy toward the family of the victim. A. J. Bannister realizes that he is deserving of punishment for shooting Darrell Ruestman, but strongly believes

that his death sentence for his involvement in the shooting is clearly disproportionate and unjust. This injustice is further highlighted by the fact that the two masterminds of the killing of Darrell Ruestman, Dick McCormick and Richard Wooten, were never brought to justice for their part in the murder of Darrell Ruestman. A. J. Bannister has now spent more than 11 years on Missouri's death row. During that time, he has never posed a serious disciplinary problem to prison officials. In fact, A. J. has lived in general population since the restructuring of Missouri's death row at the Potosi Correctional Center. From his past behavior while incarcerated, it is abundantly clear that if his sentence were commuted he would pose no future threat of violence toward other inmates nor prison officials. As a result of his prominent role in the book and film THE EXECUTION PROTOCOL, A. J. has developed numerous friendships and corresponded with numerous individuals from all over the world. Last year, he met and married an Englishwoman, Lindsay Bannister. They recently celebrated their first anniversary together on October 30, 1994. Currently, A. J. Bannister's life story and the circumstances of this crime are being filmed for a Discovery Channel documentary by Stephen Trombley, who previously produced and directed THE EXECUTION PROTOCOL. This documentary and an accompanying book will be released sometime in early 1995. In light of his newly found media fame, A. J. Bannister has granted numerous interviews to the print and film media regarding not only his personal situation on death row, but his outlooks on other subjects such as illegal drugs and other criminal justice issues. A. J.'s media contacts exhibit an intelligence and level of humanity, as well as an insight into the criminal justice system, that would be tragically extinguished if he were to be executed by the State of Missouri.

IV. CONCLUSION

Since his appeals are nearly exhausted, Governor Carnahan is the only authority with the power to prevent the unjust execution of Alan Jeffrey Bannister. As is sadly all too common in death penalty cases, A. J. Bannister faces death as a direct result of an underfunded and incompetent defense attorney who represented him at trial. Mr. Bannister has aptly demonstrated in this clemency petition that had he received a competent defense at trial, he would not be forced to ask Governor Carnahan to intervene to save his life. In an ideal world, the criminal justice system fairly sorts out the guilty from the innocent, while at the same time doling out fair and just punishment to those convicted of serious crimes. However, the criminal justice system cannot operate fairly in a situation, as in A. J. Bannister's case, where an indigent defendant on trial for his life is provided a totally inadequate and underfunded defense. In addition, the appellate process in death penalty cases has become a morass of petty procedural rules, which many have argued is the result of a conscious effort by the United States Supreme Court to deny full and fair review to death row inmates of their constitutional claims. A. J. Bannister's appeals are illustrative of this legal trend and dilemma as well. The Eighth Circuit Court of Appeals, as well as the lower courts refused to hear the merits of the clear violation of A. J.'s constitutional right to counsel, which would have resulted in a new and fair trial, because of a procedural "technicality." Similarly, because 27.26 counsel did not fully develop the aforementioned ineffective assistance of counsel claims in state post-conviction proceedings, A. J. Bannister's claim that he received ineffective assistance of trial counsel will never be heard on the merits by any court. Governor Carnahan should, therefore, intervene and exercise his constitutional and statutory powers to prevent the obvious injustice of permitting the execution of A. J. Bannister. For all the aforementioned reasons, A. J. Bannister respectfully requests that Governor Carnahan, after a thorough and fair review of his clemency petition and supporting evidence, as provided for under Missouri law, enter an executive order commuting his death sentence to a sentence of life imprisonment without the possibility of parole for 50 years, or grant such other and further relief that the law may permit.

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