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MEMORANDUM

To: All Members, Assembly Judiciary Committee

From: Howard Brooks *HB*

Date: February 20, 2003

Re: Criteria For State Seeking Death Penalty (Relevant to AB 13, AB14, AB15, AB16, AB17)

Attached to this memo is an article from the Las Vegas Review-Journal (September 22, 1999 at A1). The article quotes Clark County District Attorney Stu Bell discussing the criteria for seeking the death penalty, which Bell summarizes with the following questions: Is the death penalty appropriate; Will a jury return a death sentence; and Will the sentence withstand scrutiny on appeal.

The Binion case is meaningful because the defendants, if they are truly guilty, engaged in a complicated and clever conspiracy to murder Ted Binion. The sophistication of the defendants and the cold-blooded nature of the crime make this case one of the "worst of the worst," in my view.

I compare the facts of this case with the death penalty cases I have litigated, and there is no comparison. My death penalty cases inevitably involve passion or intoxication (from drugs or alcohol). But my cases rarely involve attractive white people.

In any event, I think Stu Bell's comments in this article illustrate the subjective nature of how the State decides who must die: if the State seeks the death penalty in those cases where a jury will return a death verdict, then there is no pretense that the decision to seek a death verdict is anything but arbitrary.

R 10f3

ASSEMBLY JUDICIARY

DATE: *2/20/03* ROOM 3138 EXHIBIT *R*

SUBMITTED BY: *Howard Brooks*

Bell: Murphy, Tabish won't face capital punishment

9/22/99
□ A panel of prosecutors determines their case in the death of Lonnie 'Ted' Binion can't justify the death penalty.

By Peter O'Connell
Review-Journal

RT BL

Sandra Murphy and Rick Tabish will not face the death penalty if convicted of murder in the September



MURPHY



TABISH

1998 death of Lonnie "Ted" Binion, Clark County's top prosecutor said Tuesday.

District Attorney Stewart Bell said the six-member panel of prosecutors that reviews potential capital cases made the decision Tuesday afternoon.

"We have decided that this is not an appropriate case for seeking the death penalty," Bell said.

Prosecutors could have sought the death penalty on the grounds that Binion, a former gaming executive and a son of gaming legend Lester "Ben-

ny" Binion, was killed during the commission of a robbery.

Bell declined to specify the reason behind the decision. However, he said

Please see BINION/3A

Binion

From 1A

the panel requires that three questions be answered in the affirmative before deciding to seek the death penalty in a particular case: Is the death penalty the appropriate punishment in the case? Would a jury return a death sentence if presented with the available evidence? If a death sentence is levied, would that decision stand up on appeal?

"We answered at least one of those questions in the negative," Bell said.

Attorneys for the 27-year-old Murphy and the 34-year-old Tabish, her reported lover, were not available for comment Tuesday night.

In a brief interview last week, Binion's sister, Becky Behnen, was asked whether she hoped prosecutors would seek the death penalty against Tabish and Murphy.

"I'm Catholic, and I am against

the death penalty," said Behnen, who has said it was "woman's intuition" that led her to ask authorities to treat her brother's death as a homicide at a time when suicide or accidental overdose seemed a more likely explanation.

Murphy and Tabish are the only people charged in the death of Binion, whom prosecutors say was suffocated and forced to ingest lethal amounts of heroin and the prescribed sedative Xanax at the Las Vegas home he shared with Murphy.

Murphy, Tabish and four other people charged in two incidents

linked to the Binion case are scheduled to be arraigned before District Judge Joseph Bonaventura on Monday. A trial date likely will be set for some time next year.

Murphy and Tabish are charged with David Mattsen and Michael Milot in a failed attempt to steal \$7 million worth of silver that Binion had buried in an underground vault in Pahrump.

Murphy and Tabish are charged with Steven Wadkins and John B. Joseph in a July 1998 extortion plot involving a business partner of Joseph.