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MEMORANDUM

To: MICHAEL D. SCHRUNK
From: Donald N. Rees
cc: Norman W. Frink
Date: September 19, 2006

This case was reviewed for criminal prosecution of Rape in the First Degree, Sodomy in the First Degree, Sexual Abuse in the Second Degree, Promoting Prostitution and Prostitution. The Portland Police Bureau became aware of this case on August 14, 2006 when **WOMAN A** told the staff at St. Vincent Medical Center she had been sexually assaulted by Zachary McKenzie Randolph on August 11, 2006 at the Hotel Vintage Plaza in downtown Portland.

Four people were in the hotel room during the incident described by **WOMAN A**. All but one have been interviewed by detectives: **WOMAN A**, **WOMAN B** and **MAN** aka "Love." Randolph, through his attorney, refused to be interviewed by police.

WOMAN A has a 1999 PCS I conviction. **B** has a 2000 Theft II conviction. Another witness in the case, **C**, who was not present at the Hotel Vintage Plaza but offered information to police regarding events before and after the August 11th event has a 1999 conviction for Theft I.

WOMAN A reports and **B** confirms that Randolph offered \$500.00 to view a live sex show between **WOMAN A** and **B**. **WOMAN A** had never met Randolph before and stated to the police she agreed to perform in the sex show with **B** because she "needed the money." **B** is Randolph's occasional sex partner and told police Randolph frequently asked her to perform in a sex show with another woman for his gratification.

B states that the agreement called for **WOMAN A** to perform oral sex on her, but **WOMAN A** denies this, stating the agreement was to simulate a sex act. This is

significant because ORS 167.002 defining prostitution related terms requires actual contact. There is apparently no dispute, whatever the agreement, that the sex show only consisted of simulated sexual activity. As a result, **WOMAN A** told police, Randolph expressed his lack of satisfaction with the performance and refused to pay **WOMAN A**.

After the sex show, **WOMAN A** reports she engaged in consensual sexual intercourse with Randolph's associate **MAN** and then fell asleep or "passed out." **WOMAN A** states that she then awoke with Randolph attempting to [REDACTED]. She states this happened twice and that on both occasions she "slapped" Randolph away and that he stopped. **WOMAN A** then states that Randolph lifted her onto a table and performed vaginal intercourse. During vaginal intercourse **WOMAN A** describes that she shook her head "no."

WOMAN A states she was extremely intoxicated throughout the reported episode, stating she drank three cocktails and three double shots of tequila, purchased by Randolph prior to arriving at the hotel.

WOMAN A does not describe any specific acts of force nor any threats by Randolph. Additionally, there is no medical evidence to corroborate **WOMAN A**'s statements regarding the sexual contact with Randolph.

B claims she did not witness any of the sex acts between **WOMAN A** and Randolph, stating that she was physically ill from intoxication and spent approximately two and a half hours in the bathroom. **B** states that when she left the bathroom Randolph had already left the hotel.

MAN accompanied by his attorney Larry Matasar, describes himself as a barber who met Randolph five years ago and became his close friend. **MAN** states he is member of the "Hoop Family" a group of associates who spend a great deal of time with Randolph. **MAN** further states he frequently sexually shares women with Randolph. **MAN** states he met **WOMAN A** a few hours before the alleged incidents. He denies any knowledge of any financial agreements between Randolph, **WOMAN A** and **B**. He also claims he did not witness the live sex show performed by **WOMAN A** and **B** because he was occupied with setting up music on his laptop computer in order to play the music in the hotel room. He does admit that he engaged in consensual sexual intercourse with **WOMAN A** in the hotel room. He also states that after he had sex with **WOMAN A**, he watched as Randolph and **WOMAN A** engaged in sexual activity. **MAN** states that the activity between Randolph and **WOMAN A** was

consensual and that he attempted to join the pair. **MAN** denies that force was ever used against **WOMAN A** by Randolph.

Following the events at the Hotel Vintage Plaza, **WOMAN A** and **B** agreed to meet Randolph at a concert at the Portland Art Museum on August 12th, 2006. The meeting did not take place, however, and **WOMAN A** on August 13th sent a text message to **B** demanding \$10,0000 from Randolph and threatening to take the matter "through lawyers" the next day if she did not receive the money. On August 14th, 2006 **B** sent a text message reply to **WOMAN A** stating she could pick up \$500.00.

C who is a friend of **WOMAN A** and roommate of **B** told police that on August 13th, **WOMAN A** stated that **MAN** and Randolph "did a train" on her, meaning that both had sex with her. **C** further stated that **WOMAN A** reported that Randolph had sex with her while she was sleeping. **C** stated that when **B** paid the \$500.00 to **WOMAN A**, **B** stated "Zach (Randolph) gave me the money to have you keep your mouth shut."

On the night of August 14th, **WOMAN A** sought an examination at St. Vincent Medical Center and reported the sexual assault. Although she gave a detailed statement which was consistent with her later statements to police, no forensic or medical evidence was obtained during the examination due to the delay in reporting.

Based on the review of all of the evidence provided by the Portland Police Bureau there is an insufficient basis to prove forcible compulsion and absence of consent beyond a reasonable doubt. Notably, in addition to the lack of any forensic or medical evidence there are difficulties posed by witness intoxication, delayed reporting, and contradictory statements. The various witnesses have competing interests, bias and motives. No objective, independent witnesses are identified who can provide corroboration of **WOMAN A**'s statements regarding the sexual contact with Randolph. Therefore, the sexual assault charges are declined.

The evidence that Randolph directed and paid for an act of prostitution between **B** and **WOMAN A** is much stronger. The prostitution related charges cannot be corroborated however by any source other than those involved in the potentially criminal acts. Randolph makes no admissions and does not offer any explanations for the described conduct. **WOMAN A** denies she ever agreed to engage in actual sexual contact or conduct. Finally, the reasoning in *State v Ciancanelli* may bar prosecution of promoting prostitution under these facts where there is payment of money to view sexual conduct in a private setting. Therefore, the prostitution related charges are declined as well.