



Michael D. Schrunk, District Attorney

1021 SW Fourth Avenue, Room 600
Portland, OR 97204-1193
Phone: 503-988-3162 Fax: 503-988-3643
www.mcda.us

MEMORANDUM

To: District Attorney Michael D. Schrunk

From: Senior Deputy District Attorney Don Rees

cc: Chief Deputy District Attorney Norm Frink

Date: July 30, 2010

Subject: Al Gore Investigation

This case was submitted by the Portland Police Bureau (PPB) on July 27, 2010 for review of possible criminal charges against Al Gore related to an incident alleged to have occurred on October 24, 2006. The complaining witness, Molly Hagerty states that she was sexually abused on that date in 2006 by Mr. Gore during a professional massage session at the Hotel Lucia. Upon completion of this investigation PPB is not recommending prosecution due to a lack of credible evidence. After evaluating the materials submitted by PPB I have concluded that I agree with the assessment that a sustainable criminal case does not exist.

Ms. Hagerty has presented a lengthy account of alleged sexual abuse against Mr. Gore. The conduct described, if factually supported by the evidence and established in court, would constitute a sexual offense described in Chapter 163 of the Criminal Code of Oregon. Ms. Hagerty's detailed statement however, is insufficient to support a criminal charge given other contradictory evidence, conflicting witness statements, credibility issues, lack of forensic evidence and denials by Mr. Gore.

This case also involves a delayed report, which, while common in sexual assault cases, is generally considered an impediment to prosecution. Delayed reporting and other issues such as "unusual" victim behavior can frequently be explained through an understanding of the dynamics of sexual assault. "There is nothing normative about being sexually victimized; there cannot be a 'normal' reaction to such a traumatic event." American Prosecutors Research Institute, *Victim Responses to Sexual Assault: Counterintuitive or Simply Adaptive?* (2007). As outlined below, however, prosecution in this case is barred by a number of deficiencies that go far beyond the usual challenges presented in a delayed report sexual assault prosecution.

DEFICIENCIES IN THE CASE:

1. Ms. Hagerty, who has red hair, states she called Mr. Gore immediately following the alleged incident and told him to "dream of redheaded women" seemingly in contradiction to her assertions that she was terrified of Mr. Gore. Two days after the alleged incident Ms. Hagerty also sent an email to the Hotel Lucia stating that she appreciated the business referrals she received from the hotel. She did not mention any problem with Mr. Gore;

2. Witnesses at the hotel where the alleged incident occurred state they do not remember seeing or hearing anything unusual---directly contradicting Ms. Hagerty’s published claim in the July 12, 2010 of the National Enquirer that she was “shaking and in shock” and “rushed down the hall and to the lobby where the front desk clerk noticed she was upset was asked if she was OK”;
3. Forensic testing of pants retained by Ms. Hagerty as possible evidence are negative for the presence of seminal fluid;
4. Ms. Hagerty has not provided as repeatedly requested medical records she claims are related to the case;
5. Ms. Hagerty has also failed to provide other records related to the case;
6. Ms. Hagerty failed a polygraph examination;
7. It appears Ms. Hagerty was paid by the National Enquirer for her story; and
8. Mr. Gore voluntarily met with detectives and denied all of the allegations.

SUMMARY TIMELINE OF EVENTS

| Date | Event |
|-------------|---|
| 10/24/2006 | Massage session between Mr. Gore and Ms. Hagerty at Hotel Lucia. |
| 12/19/2006 | PPB is made aware of alleged unwanted sexual contact via phone call by Randall Vogt, attorney for Ms. Hagerty. A meeting to discuss details of the incident is scheduled for 12/21/2006. |
| 12/21/2006 | Meeting is cancelled by Mr. Vogt and rescheduled for 12/26/2006. |
| 12/26/2006 | Meeting is again cancelled by Mr. Vogt and rescheduled for 1/4/2007. |
| 1/4/2007 | Meeting is cancelled for the third time. Mr. Vogt states no meeting is required because case will be handled as a civil matter. PPB closes investigation. |
| 11/21/2008 | Portland Tribune decides not to publish story because their investigation raises credibility concerns about Ms. Hagerty. |
| 1/8/2009 | Ms. Hagerty demands to a make a report to PPB about the 2006 incident at the Hotel Lucia. She reads a written statement recorded by a PPB detective. The transcript of that statement and the answers to follow-up questions are 67 pages long. |
| 5/28/2010 | Transcription of recorded statement is requested by Ms. Hagerty. |
| 6/14/2010 | Ms. Hagerty tells PPB she is taking her reports to the media. |
| 7/5/2010 | The National Enquirer publishes Ms. Hagerty’s story. |

Ms. Hagerty's Attorney tells PPB to Close Investigation

PPB first became aware of allegations against Mr. Gore on December 19, 2006 when contacted by civil attorney Randall Vogt. Mr. Vogt stated his client, a professional masseuse named Molly Hagerty, had been subjected to "unwanted sexual contact" by Al Gore at the Hotel Lucia in downtown Portland.

Mr. Vogt declined to discuss any details of the complaint. He requested that PPB investigators meet at his office with Ms. Hagerty on December 21, 2006. On the day of the meeting, Mr. Vogt cancelled the appointment stating Ms. Hagerty was unavailable. The meeting was rescheduled for December 26, 2006 but again was cancelled by Mr. Vogt who stated Ms. Hagerty would be unable to attend for personal reasons. A third attempt to meet at Mr. Vogt's office with Ms. Hagerty was set for January 4, 2007. On the day of the meeting, however, Mr. Vogt once again cancelled. Mr. Vogt stated the matter would be handled strictly as a civil case and no complaint regarding the matter would be filed with PPB.

PPB notified the Multnomah County District Attorney's Office about the contact with Mr. Vogt and the matter was deemed closed by PPB following notification the case would be handled as a civil matter.

To date, no civil action has ever been taken. Ms. Hagerty sought legal counsel from three civil attorneys in addition to Mr. Vogt but no action was ever brought. Ms. Hagerty is now represented by two lawyers: Judy Snyder and entertainment/media lawyer Kohel Haver. Ms. Snyder states there is no viable civil claim due to the lapse of time.

Ms. Hagerty Actively Sought to Get Her Story Published
Portland Tribune declines to publish due to credibility concerns

In addition to seeking the services of several different civil attorneys, Ms. Hagerty was in contact with the Portland Tribune newspaper repeatedly over an 18 month period. During that time Ms. Hagerty reportedly placed a number of conditions on the Tribune in exchange for her story. Ultimately, the Tribune reports it did not use the story, in part because Ms. Hagerty's memory and perceptions were deemed questionable. Reportedly, when told on November 21, 2008 the Tribune would not write a story about her claims, Ms. Hagerty stated she would find some other way to get her allegations published.

Ms. Hagerty Meets with PPB and Reads Her Statement in 2009
PPB determines claims do not merit further inquiry

On January 6, 2009, Ms. Hagerty appeared at the PPB Detective Division and stated she wanted to file a criminal complaint regarding the October 24, 2006 incident.

At her request, an appointment was scheduled for Ms. Hagerty to meet with a detective on January 8, 2009. On that date, a PPB detective met with Ms. Hagerty and recorded Ms. Hagerty's detailed written statement. The transcript of the statement is 67 pages long. Ms. Hagerty's statement describes a series of events surrounding a 90 minute massage and 75 minute Jin Shin Do session billed at \$540.00 that occurred in Mr. Gore's hotel room while he was visiting Portland for a speaking engagement. Ms. Hagerty described numerous instances of unwanted sexual contact including an open mouthed kiss, "an inescapable embrace," touching of

the back, buttocks and breasts. Ms. Hagerty stated that although she “tried to remain in seemingly outer good humor throughout this” she feared she was “on the brink of being forcibly raped.”

A sergeant assigned to the Sexual Assault Detail notified his command staff regarding the newly raised claims. No notice however, was provided to this office. PPB determined that Ms. Hagerty’s claims did not merit further inquiry.

Ms. Hagerty Requests Copy of Transcript from PPB
Ms. Hagerty tells police she is going to release her story to media

On March 28, 2010 Ms. Hagerty requested a copy of the transcribed statement. Several days later she notified PPB of her intent to take her story to the news media. On June 23rd, 2010 the on-line version of the National Enquirer reported some of Ms. Hagerty’s claims for the first time, relying largely on the transcribed statement. The published version of the story appeared on July 5, 2010. Ms. Hagerty again appeared in the Enquirer on July 12, 2010 complete with photographs featuring Ms. Hagerty in what appears to be the law office of her entertainment/media lawyer Mr. Haver. After Ms. Hagerty’s assertions were published in the Enquirer, PPB opened a full investigation. Detectives have not received full and complete cooperation however, from Ms. Hagerty and her attorneys.

When asked by detectives if she was paid by the Enquirer for her story Ms. Hagerty refused to answer the question. Ms. Hagerty’s entertainment/media lawyer Mr. Haver also refused to answer any questions about payment from the Enquirer. Reportedly, the Enquirer will neither “confirm nor deny” that Ms. Hagerty was paid. Based on those responses and the Enquirer’s documented practice of paying for stories, it is logical to assume Ms. Hagerty has been compensated. Although Ms. Hagerty has the right to seek profit from her story, this issue severely undermines her credibility in the context of a criminal case.

Forensic Testing Has Negative Results
There is no seminal fluid on pants retained by Ms. Hagerty

The assigned case detectives met with Ms. Hagerty and her attorney Ms. Snyder on July 7, 2010 in an effort to learn more about Ms. Hagerty’s claims and to gather any evidence that had already been documented through the course of the attorney’s work on the case.

Ms. Hagerty produced a pair of pants to detectives she asserted she wore at the time of the incident. Ms. Hagerty stated she saved the pants because she thought they might have been stained with Mr. Gore’s semen during her contact with him at the Hotel Lucia. The pants were tested by the Oregon State Police Crime Lab on July 12, 2010. The results were negative. Because the crime lab detected no seminal fluid on the pants additional testing for DNA is not warranted. The presence of DNA in this case would not be probative of any fact in dispute. Skin cells with Mr. Gore’s DNA would be expected on the pants following a massage.

Ms. Hagerty also provided a bar of Ghirardelli brand chocolate to the police she claimed Mr. Gore had nibbled at the hotel. In her recorded statements to police, however, she says the chocolate he ate was Moonstruck brand. The Hotel confirms it supplies its guests with Moonstruck brand, which is a gourmet chocolate made in Oregon. There is no explanation for

this apparent discrepancy, but in any event, the chocolate saved by Ms. Hagerty has no evidentiary value in terms of either proving or disproving the claims against Mr. Gore. For this reason the State Police Crime Lab did not subject the chocolate bar to forensic testing.

PPB Learns Ms. Hagerty Failed Polygraph

She has not provided polygraph to police for further examination

In meeting with Ms. Hagerty and her attorney Ms. Snyder, detectives learned Ms. Hagerty took a polygraph regarding her allegations and failed. Ms. Snyder asked the detectives not to document that failure in their reports. The detectives requested copies of the polygraph so that the questions, answers and associated polygrams could be reviewed, but Ms. Hagerty and her attorney have not provided those materials.

The results of polygraphs are not admissible in trial and Oregon law prohibits the state from requiring victims of sex crimes to take polygraphs as a prerequisite to filing an accusatory pleading (ORS 163.705). In this case however, where the complaining witness voluntarily submitted to a polygraph and failed, it is a highly relevant fact to consider when weighing whether this case is prosecutable. Polygraph results are commonly relied upon by the police, courts and attorneys. Ms. Hagerty's failure to release the detailed polygraph results to police makes it impossible to review the quality and nature of this particular examination.

Ms. Hagerty Has Not Provided Medical Records to PPB

Ms. Hagerty has not released any medical records to investigators. Although it is her right to retain the privacy of these records, a medical history can serve as important evidence in a sexual assault case. Statements made to doctors, nurses and other medical personnel for purposes of diagnosis and treatment may be admissible at trial pursuant to Oregon Evidence Code Rule 803.4. In this case, Ms. Hagerty claims she suffered physical injuries to her left leg and knee requiring several months of medical treatment following her described physical struggle with Mr. Gore at the Hotel Lucia. Her failure, without explanation, to release records that may support her claim is a further deficiency in this case.

Ms. Hagerty's Phone Call to Mr. Gore and E-Mail to the Hotel Lucia

When interviewed by detectives on July 7, 2010 Ms. Hagerty stated she called Mr. Gore after the massage while she was driving home from the Hotel Lucia. Ms. Hagerty stated she told Mr. Gore to drink some extra water and to "dream of red headed women tonight." Ms. Hagerty told detectives she said this to Mr. Gore because she feared he was angry with her. She stated she wanted Mr. Gore to take the events between them "to the dream world" so he would be less likely to complain to the hotel staff which could harm her business.

Following the massage, Ms. Hagerty wrote a receipt to the Hotel Lucia for \$234.00 and was paid in cash by hotel staff in the early morning hours of October 25, 2006. Ms. Hagerty later disputed the amount and sought an additional payment of \$306.00. In an email from Ms. Hagerty to the Hotel Lucia dated October 27, 2006 Ms. Hagerty writes "I am more than confident (sic) that the guest was completely happy with the professional services I delivered..." Ms. Hagerty also thanks the Hotel Lucia for the referrals she receives. She makes no mention of any problems surrounding the massage provided to Mr. Gore. The phone call reported by Ms. Hagerty and the subsequent email to the Hotel Lucia serve as further impediments to the prosecution of this case.

PPB Interviews Witnesses at Hotel Lucia
Employees state they saw nothing unusual

The assigned case detectives interviewed all Hotel Lucia personnel on duty at the time of the alleged sexual misconduct. None of those persons recalls anything unusual other than a billing dispute between Ms. Hagerty and the Hotel Lucia. This fails to support Ms. Hagerty's claim that after escaping Mr. Gore she rushed visibly shaken to the hotel lobby and that the clerk at the front desk asked if she was okay. Although the hotel does have video surveillance, the staff reported all recordings are recycled every sixty days so no video is available for review in this case. The hotel staff told detectives it is common for guests to receive in-room massages from licensed professionals such as Ms. Hagerty. Service providers are told they can leave at any time or call the desk if there is a problem with a guest.

Other Witnesses Have No Direct Knowledge of Incident

Ms. Hagerty provided investigators with the names of approximately twenty individuals, primarily her friends, who purportedly had information relevant to this case. To date, a number of these individuals could not be contacted or did not return calls from detectives. Of those individuals who were successfully contacted by detectives, it was determined that none were eyewitnesses to the events described by Ms. Hagerty.

Three of the witnesses contacted by PPB investigators stated that Ms. Hagerty told them she was afraid to flee the hotel room fearing Mr. Gore's security people or Secret Service Agents might be outside. One witness stated Ms. Hagerty asserted she was afraid Mr. Gore's security people would point guns at her if she went running into the hallway. This is seemingly contradictory to Ms. Hagerty's recorded statement to PPB where she stated there was no security detail at the hotel and no one around Mr. Gore.

Other witnesses told detectives Ms. Hagerty had told them she had been sexually assaulted by Mr. Gore during a 2006 massage session. Several of these witnesses stated they observed Ms. Hagerty seemed "frazzled", "scared", "freaked out and traumatized."

A former boyfriend of Ms. Hagerty, Greg Boatman, stated he clearly remembers Ms. Hagerty calling him in the middle of the night in October of 2006 crying that she had just been sexually assaulted by Mr. Gore.

Another witness, Ms. Hagerty's ex-husband Jeffrey Bakely, who is a Philadelphia psychoanalyst, told PPB detectives Ms. Hagerty first mentioned this case a year or two ago in relation to the Portland Tribune's investigation. Mr. Bakely said Ms. Hagerty asked him to "vouch for her character." Mr. Bakely stated he was recently contacted by the National Enquirer regarding this case and was offered \$5,000 in exchange for use of his name and photograph.

Janet Brown told investigators she has been friends with Ms. Hagerty for about twenty five years. She stated that in August or September of 2007 Ms. Hagerty told her Mr. Gore trapped her in a corner and forced his tongue down her throat. Ms. Brown stated Ms. Hagerty said she did not want to report the matter to the police because she was afraid people would wonder why she did not leave the hotel room. Ms. Brown stated she spoke twice to the Portland Tribune about Ms. Hagerty's allegations and was disappointed that the newspaper declined to publish a story.

Ms. Brown stated that Ms. Hagerty believed her phones were being tapped and that she was being watched because of her allegations against Mr. Gore.

Oakley Garnett, a longtime friend of Ms. Hagerty and former news reporter for OPB Radio told detectives Ms. Hagerty came to him in October 2006 and stated she had been sexually assaulted by Mr. Gore. Mr. Garnett stated Ms. Hagerty did not discuss reporting the matter to the police but wanted advice about how to handle potential media attention.

Although the Oregon Evidence Code allows for complaints of sexual misconduct as an exception to the hearsay rule, the exception only allows “receipt of the fact that the complaint was made, not the identity of the alleged perpetrator or other facts surrounding the alleged offense.” OEC 803(18). The primary value of such evidence is where there is a delayed report to the police in order to rebut claims of fabrication. In this case, however, the limited fact that Ms. Hagerty told many of her friends about her allegations is greatly outweighed by the other evidentiary weaknesses in this case. Moreover, the timing of the statements by Ms. Hagerty to her friends is quite significantly delayed in many instances and the details told appear to conflict with information Ms. Hagerty gave to police in at least one important respect.

PPB Interview with Mr. Gore

Mr. Gore denies Ms. Hagerty’s allegations and allegations of other therapists

On July 22, 2010 members of PPB met with Mr. Gore and his attorneys in San Francisco for an interview regarding Ms. Hagerty’s allegations. Through a pre-arranged agreement, Mr. Gore’s attorneys were provided with 14 questions posed by PPB. The attorneys agreed the investigators could also ask additional questions. Although presenting questions in advance is not the best procedure from our standpoint, when a person does not have to submit to a law enforcement interview it may be an appropriate practice in order to gain an interview.

Mr. Gore categorically denied the allegations made by Ms. Hagerty to the police and the press. He stated he could not recall anything unusual about the massage he received in Portland on October 24, 2006 and remembered nothing about Ms. Hagerty other than she had a pleasant demeanor and was talkative. Mr. Gore stated the allegations are causing pain for him and his family and stated he is “completely baffled” by Ms. Hagerty’s statements. Mr. Gore stated he had no recollection of a phone call from Ms. Hagerty following the massage.

An aide to Mr. Gore, Joshua Cherwin was later interviewed by telephone from New York regarding his recollection of the visit to the Hotel Lucia. Mr. Cherwin stated he scheduled the massage through the concierge and brought Ms. Hagerty to Mr. Gore’s room on the ninth floor. Mr. Cherwin stated he returned to his own room after introducing Ms. Hagerty to Mr. Gore and had no further contact with Ms. Hagerty.

During the interview with Mr. Gore in San Francisco on July 22, 2010, detectives also asked about allegations reported on July 21, 2010 by the National Enquirer that two additional massage therapists---one in Beverly Hills, the other in Tokyo had also complained about Mr. Gore’s past sexual misconduct. Although outside of this jurisdiction, the complaints, if true, could potentially be used as evidence here. Mr. Gore strongly denied these newly reported allegations.

Following the interview with Mr. Gore, Ms. Snyder told PPB investigators she knows the name and address of the masseuse from the alleged Beverly Hills incident. Ms. Snyder declined to

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provide that information to investigators, however, stating the woman does not want to participate in a police investigation. Ms. Snyder stated she would only divulge the information if PPB could promise it would benefit Ms. Hagerty's case. Such assurances cannot be made by PPB investigators. Even if the alleged Beverly Hills victim wanted to be involved in an investigation, further inquiry into an event outside this jurisdiction, even if provable, does not seem justified given the various deficiencies presented in this case.

In conclusion, for the reasons summarized above, this case is not appropriate for criminal prosecution. The matter is closed and the investigative materials will be returned to PPB.