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May 13, 2024

Governor Tina Kotek
Office of the Governor
900 Court Street NE, Suite 254
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Dear Governor Kotek:

Enclosed for your review is a report prepared by the Oregon Department of Justice's Criminal Justice Division summarizing its investigation into allegations that employees of the Oregon Liquor and Cannabis Commission (OLCC) improperly used their positions and special knowledge to obtain in-demand bottles of liquor. As detailed in the report, we have concluded that criminal charges are not warranted.

I want to emphasize that this report is limited to our investigation into possible crimes and does not separately address whether the conduct of any OLCC employee violated Oregon's civil ethics laws. To the extent allowed by law, documents and reports resulting from our extensive criminal investigation will be available to the Oregon Government Ethics Commission for consideration in its pending review of ethics complaints related to this matter.

With respect to protocols to ensure employees adhere to their ethical obligations, we are aware of, and support, the OLCC's decision to adopt a policy prohibiting employees from setting aside liquor for their own purchase. We also support providing training to OLCC employees regarding their ethical obligations on an ongoing basis.

Please feel free to contact me with any questions or concerns.

Sincerely,

Lisa M. Udland

LISA M. UDLAND
Deputy Attorney General

enclosure
cc: Craig Prins, Executive Director, OLCC

ELLEN F. ROSENBLUM
Attorney General

LISA UDLAND
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DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

Subject: Summary of OLCC Investigation
Matter No.: CJD0127-23
Report Date: May 13, 2024.

I. Introduction.

In February 2023, the Oregon Department of Justice Criminal Justice Division (CJD) opened a criminal investigation regarding potential criminal misconduct by Oregon Liquor and Cannabis Commission (OLCC) employees. Our investigation focused on allegations that OLCC employees, for their own benefit or that of a third party, used their positions and special knowledge to obtain in-demand bottles of liquor that were not then available to the public.

Due to the nature of the allegations, the number of employees potentially involved, the duration of the described conduct, and the volume of documents and records to review, a thorough investigation required a significant amount of time. Other factors contributing to the length of the investigation included delays in record production, the lack of corroborating documentation, the unavailability of witnesses, unproductive leads, litigation involving financial records, and the difficulty in utilizing OLCC's existing methods for tracking inventory to identify the purchaser of any particular product.

During the investigation, CJD special agents interviewed over forty people, including OLCC employees, former employees, associates of employees, OLCC commissioners, liquor store agents and employees, liquor industry personnel, legislators, citizens who reported complaints, and other persons. Agents obtained and analyzed records from OLCC and non-OLCC sources, including liquor stores, liquor distributors, and financial institutions.

After an extensive review of all available information, we conducted an in-depth analysis of the applicable law to determine the prosecutorial merit of this matter. As we explain in this report, in light of our responsibility to prove each element of a criminal offense beyond a reasonable doubt and the sufficiency of the evidence currently available to us, we have determined that criminal charges are not warranted.

II. OLCC Background.

A. <u>Inventory Allocation, Tracking, and Accounting.</u>

Oregon is what is known as a "control state," because it oversees the distribution and sales of liquor in the state. OLCC is the regulatory body responsible for that oversight, which includes setting the price for liquor sold by liquor agents, who are independent contractors that are responsible for operating local stores, including inventory, sales, equipment, and staffing. In some instances, such as with in-demand whiskey, the retail price set by the OLCC is significantly lower than the retail price for the same product in non-control states.

The method by which OLCC allocates product to stores differs based on the type of liquor. OLCC categorizes liquor in part based on its availability from the vendor. For example, vendor-allocated products are high demand, expensive liquors, such as Pappy Van Winkle Family Reserve or Blanton's Straight from the Barrel, which are distributed in limited quantities, and usually received by OLCC once a year. Typically, the vendor will direct OLCC to ship these liquors to specific stores. Seasonal products include high demand, moderately priced liquors, such as Eagle Rare or Elmer T. Lee, which are distributed less frequently in limited quantities. Lastly, common stock consists of liquors distributed throughout the year. These products include regularly available, reasonably priced liquors, such as Jim Beam or Jack Daniel's. Generally, OLCC allocates seasonal and common stock products to stores based on internal criteria.

For inventory tracking, OLCC relies on multiple systems to manage the distribution of liquor as it moves from the initial receipt of the vendor's product through the control of the liquor agent to the final purchase by a consumer. OLCC uses an internal database to track vendor-owned products that are stored in its warehouse. This database is directly accessible only by OLCC employees and liquor store agents. However, there is no statute, rule, or policy explicitly prohibiting users from sharing information in this database with any other person.

When a product ships from the OLCC warehouse to a liquor store, it is owned by the state. These products are then tracked using a different database called Oregon Liquor Agent System (OLAS). Information in OLAS is accessible to the public through a website that allows consumers to view what liquor is available and in which store it may be in stock. There are often delays in updating the system, which results in OLAS reporting products in stock after they have been sold by the liquor store. These delays frustrate customers seeking a specific product and create challenges in obtaining in-demand products.

While products within the inventory of a liquor store are still owned by the state, they are tracked and managed by the independent liquor agent. This includes inventory controls and processing customer purchases on a point of sale (POS) system. OLCC requires the agent to periodically report general sales data for purposes such as inventory tracking, accounting, and updating of OLAS. While the agent is not required to provide OLCC with POS records that detail the product or products purchased in a transaction, OLCC requires the agent to retain such records for two years.

When a customer uses a credit or debit card for a liquor purchase, OLCC requires the transaction to be administered by the processing company selected by the state for deposit into the state's financial account. The processor maintains records of limited banking information and the total purchase amount. When a transaction involves cash, it is processed by the liquor store and deposited into the business' financial account. Additionally, when a customer purchases both state-owned liquor and store-owned items, such as food or liquor-related merchandise, the purchase is processed in a single transaction by the same methods described above, despite the different owners of the purchased items. OLCC and the liquor agent periodically account for the combined differences between the varied transactions.

In short, the varying inventory management and POS systems were likely designed to fulfill the business needs of controlling statewide liquor inventory and ensuring aggregate accounting of monies owed to the respective product owners. However, these databases are not conducive to the criminal investigative purpose of identifying a specific individual who purchased a specific product on a specific date.

To further the CJD investigation, we obtained records via a request or legal process from the state, identified liquor stores, the payment processing center, and the financial institutions of the alleged purchasers. A thorough review revealed that the temporal data from the inventory tracking records often did not coincide with financial records documenting transaction details. For example, the inventory records might report a purchase date that was different from the transaction date documented in the financial records. This may have been due in part to the less rigidly maintained inventory records that were based on varying systems, user input, and general reporting, in comparison with the more strictly controlled financial transaction records.

Nevertheless, even when a narrow date range could be discerned, financial records that documented only the total purchase price frustrated efforts to identify a single product within a transaction that involved multiple items. Despite different approaches to rectify the varying dates and values, specific transactions often could not be attributed to a particular person given records retentions, likely errors in data entry, and the anonymity of cash transactions.

B. <u>Chance to Purchase Program.</u>

Beginning in 2018, OLCC developed a lottery-style program, known as the Chance to Purchase Program, in which members of the public are given the opportunity to participate in a drawing to win the option to purchase a vendor-allocated product. At all times relevant to our investigation, there were no documented internal policies regarding the distribution of Chance to Purchase products or the subsequent release or allocation of safety stock related to the program.

Safety stock are products that OLCC retains in inventory to serve as replacements in the event a product that was offered in the Chance to Purchase Program is damaged in transport or is sold to a customer who had not been selected in the drawing. Previously, after all Chance to Purchase products had been sold to the winning participants, the remaining safety stock was distributed in the ordinary course of business, which, as explained below, may have included purchases by OLCC employees.

C. <u>Internal Distribution Practice.</u>

Formerly, OLCC had a long-standing agency practice where an employee could request that a specific product be transferred to a liquor store so that the employee could purchase that liquor for personal use. More recently, this practice was brought to the public's attention in the context of safety stock related to the Chance to Purchase Program, which, as mentioned in section II.B, was established in 2018. However, the CJD investigation determined this practice predated the Chance to Purchase Program and was not limited to safety stock of vendor-allocated products, but also included seasonal stock.

Before the current executive director, who began that role in February 2023, OLCC did not have a specific written policy that prohibited or permitted such an internal distribution practice. However, it was well-known within the agency that this practice had been occurring for a prolonged period as evident from the statements of multiple OLCC employees, including one employee who has been with the agency for more than thirty years who commented the practice predated her employment.

The CJD investigation further determined that the immediately preceding executive director, whose tenure was from 2012 to 2023, at least implicitly approved of the internal distribution practice prior to the internal investigation discussed below. The next preceding executive director was not aware of whether the practice occurred during his tenure from 2003 to 2012. He recognized it could have occurred without his knowledge and he would only have been made aware of it through a complaint process. The executive director from 1996 to 2003 was also unaware of whether the practice occurred during her term. She further noted there were neither policies that prohibited the practice, nor training that advised employees they should not engage in such a practice.

D. <u>OLCC Internal Investigation and Public Records Disclosure.</u>

In April of 2022, OLCC began an investigation of six management-level employees. That employment matter involved allegations that employees abused their positions for personal gain by diverting agency warehoused liquor from public availability to their personal use.

During that internal review, an investigator interviewed multiple OLCC employees, including the employees who were reportedly engaged in the alleged conduct. Prior to the interview, each employee was directed to be forthright and honest during the interview. They were advised that if they were not forthright and honest that would be considered a serious matter, which could subject them to discipline. Each employee then provided a statement generally admitting that they had obtained in-demand liquor by requesting that an OLCC employee deliver it to a specific liquor store so that they could purchase it.

Ultimately, the internal investigation led OLCC to determine that each of the employees had violated governmental ethics statutes and Department of Administrative Services policies. OLCC then disciplined each of the employees by reprimand.

Pursuant to a subsequent public records request, OLCC released the internal investigation to a news agency. That led to varying news articles that reported on the OLCC investigation, as well as a public release of the report that documented the findings of the OLCC internal matter. That report included statements by the disciplined employees. The above summary is based upon materials obtained from the news publication.

During the CJD investigation, we evaluated whether statements made by an OLCC employee subject to internal discipline could be considered in this criminal matter. We recognized that when a state employee is required to make a statement under the threat of job forfeiture that statement may be subject to suppression as a coerced admission. *See Garrity v.*

New Jersey, 385 US 493 (1967); *State v. Powell*, 352 Or 210 (2012). For that reason, we did not rely on the statements made during the OLCC internal matter in this criminal investigation.

III. CJD Investigation.

In February 2023, CJD began its criminal investigation of the allegations that OLCC employees, for their own benefit or that of a third party, used their positions and special knowledge to obtain in-demand bottles of liquor that were not then available to the public. As the investigation developed, agents pursued numerous leads and used a variety of methods to ascertain all legally available sources of information.

Initially, agents focused on developing an understanding of OLCC operations to assist in identifying potential sources of testimonial and non-testimonial evidence. As the investigation became more concentrated on the specific allegations, agents continued to interview (or reinterview) OLCC employees, OLCC commissioners, liquor industry personnel, legislators, and other persons who may have had relevant information. Throughout the investigation, agents also sought physical and digital sources of evidence. This primarily involved locating, obtaining, and analyzing business records for any direct or corroborating evidence. Therefore, the following sections are not meant to describe a linear progression of the case, but rather to outline categories of information relevant to the overall investigation.

A. <u>General Case Development.</u>

Given the nature of the allegations, this investigation required CJD agents and attorneys to gain an appreciation of OLCC's regulatory and business functions in managing liquor distribution for the state. Typically, when a criminal investigation requires information on the functions of a state agency, agents will contact unaffected supervisors and other management-level employees. Here, at the time the investigation began, nearly all the OLCC senior management was on administrative leave related to the conduct under investigation.

After agents spoke with the available supervisory staff, we discovered that large gaps remained in our understanding of the allocation, tracking, and accounting processes. We attempted to fill these gaps by speaking with other OLCC employees. However, as the investigation progressed OLCC also experienced significant employee turnover. For instance, as we attempted to discern the accounting methods in our efforts to track individual purchases, we learned that the financial section had nearly a 100 percent turnover rate. As such, we often encountered delays as we sought other individuals with comparable information or waited for recently hired employees to learn the business processes of the agency.

To further appreciate OLCC's role in the distribution process, agents spoke with present and former OLCC commissioners. They also contacted liquor distributors to understand how liquor first enters the stream of Oregon commerce. On the retail end, agents interviewed liquor agents and store employees to learn how liquor inventory is managed within the store, as well as how product sales are processed.

Near the start of the investigation, we also requested that OLCC produce a significant volume of records. In general, we sought relevant agency records regarding policies and procedures, training materials, employee communications on specific topics, allocation and tracking of certain liquors or categories of liquors, specific personnel records of certain employees, and other information. As agents reviewed these records and developed other leads, we requested additional materials from OLCC. In sum, over the course of approximately one year OLCC provided multiple batches of records totaling over ten thousand pages.

As the case progressed, agents gained a better appreciation of the statewide liquor distribution process. This information helped focus the investigation of the specific allegations regarding OLCC employees. This led to additional interviews of OLCC employees, liquor industry personnel, and other persons who may have had relevant information. This also led to legal process to obtain targeted information within the records of identified businesses and financial institutions. Altogether, beyond the OLCC records, agents analyzed hundreds of pages of additional business records to attempt to correlate data and track purchases.

As discussed in section III.B, the agents' many interviews developed some evidence to show that OLCC employees engaged in the internal distribution practice, described in section II.C, as well as information that OLCC employees also assisted non-employees in obtaining requested bottles of liquor. As discussed in section III.C, the agents use of different analytical methods on the large volume of records discerned some evidence to corroborate that information.

B. Information Developed During Interviews.

Early in the investigation, agents spoke with the person who was then the acting OLCC Distribution Center Manager (DCM). This manager provided general information on the process in which OLCC receives liquor from the distributors and ships those products to liquor stores throughout Oregon. The DCM also described how she assisted the OLCC internal distribution practice, which she believed was a permitted agency practice at that time.

The DCM stated that multiple OLCC employees, including individuals who were also subjects of the OLCC internal investigation, would occasionally ask her to send a certain bottle of liquor to a specific store for them to purchase. While she was not always able to fulfill such requests, she would sometimes route the product according to their solicitation. The DCM would then contact the liquor store to advise a store employee that the product was being sent for a specific customer. She also described that these requests included vendor-allocated and seasonal stock products. Beyond the general description of the practice and the names of some employees who made such requests, the DCM was unable to provide details of a specific instance where a requested product was routed for a particular OLCC employee.

CJD agents were able to corroborate the general practice that the DCM described through interviews with other OLCC employees as well as liquor store agents and employees. However, agents were again unable to locate any person who could identify a specific OLCC employee who arranged and completed a particular transaction.

During the investigation, agents also attempted to interview OLCC employees who were subjects of the internal investigation to learn the general procedures of the agency, as well as the specific details regarding the internal distribution practice. The attorneys for each employee advised us their client had declined our interview request. That said, this assertion of a constitutional right was not considered in the investigation or legal analysis of this matter. It is only mentioned to address the scope of the CJD investigation.

Ultimately, the interviews assisted in providing general information regarding the agency procedures and the internal distribution practice. The interviews also led to a refinement of the OLCC records requests and the identification of other potential sources of business records that may have provided details regarding specific transactions.

C. Information Developed From Business Records.

Throughout the investigation, CJD requested and OLCC provided a large volume of records. More specifically, CJD made the first request on February 24, 2023, and OLCC produced records related to the final request on February 22, 2024. Overall, the records assisted with our understanding of the agency's general policies, procedures, and practices. However, as previously mentioned, there were no specific policies related to the internal distribution practice.

Agents also sought information in the OLCC records to corroborate statements by persons whom agents interviewed. To this end, agents first attempted to track liquor products from the OLCC warehouse and, via the liquor agents, to the individual purchaser. Agents learned that one liquor store near an OLCC office was often used to facilitate liquor purchases by OLCC employees. OLCC records provided general information on products shipped to this store but, as discussed above, did not include the store's inventory or POS data.

When agents contacted the liquor agent for the identified store, they learned that the business had been transferred to a new owner after the conduct under investigation. The new owners did not have the inventory or POS records for transactions that preceded the transfer.

Agents then located and interviewed the prior liquor agent who did not recall specific details for any transaction involving an OLCC employee. The prior owner also informed agents that she had destroyed the prior transaction records after the sale of the business had been finalized. When agents spoke with employees of the prior owner, they too were unable to provide details for any transaction involving an OLCC employee.

Expanding the scope of the analysis, agents attempted to broadly track a specific vendor-allocated product from OLCC to a consumer. In short, this method located additional records from other liquor stores and the state bank card processor that revealed many purchases were likely made by restaurants and bars. However, given the limited details of the records, we were unable to identify specific private purchasers.

Agents also attempted to track purchases in the reverse order, meaning from specific individuals back to OLCC inventory records. Based on information from the interviews, coupled with OLCC records, we issued legal process to obtain bank records from more than twenty financial institutions related to the accounts of certain OLCC employees, including individuals who were subjects of the OLCC internal investigation. We also provided notice to each employee that we were issuing such process.

This led to litigation which ultimately resulted in a trial court's order for the financial institution to disclose the requested records to CJD. As expected, analysis of the financial records of the OLCC employees revealed liquor purchases on identifiable dates. However, after comparing those financial records with records from the relevant liquor stores, the bank card processor, and the OLCC, agents were unable to identify any liquor purchase that was directly related to a requested transfer of vendor-allocated or seasonal products.

We also analyzed OLCC communications records for evidence of an employee's attempt to assist another person's procurement of liquor. Agents located an OLCC employee's request to a liquor distributor for a case of a seasonal liquor so that it could be purchased by OLCC executives. Agents further discovered records indicating this case was later received by the OLCC and transferred to a liquor store. However, after reviewing the records of the liquor store, bank card processor, and the financial institution of the employees, agents were unable to discover any information to identify the individual who made the subsequent purchase.

Agents also located records showing that non-employees would occasionally request an OLCC employee assist them in locating a liquor product for purchase. For example, a citizen would contact an OLCC employee requesting assistance in locating a vendor-allocated product and an employee would advise them which liquor store may have the product available. Or a charitable organization would email an OLCC commissioner requesting similar assistance and the commissioner would forward the request to an OLCC employee.

In sum, an exhaustive analysis of the available records both facilitated our understanding of the general liquor distribution process and provided some corroboration that persons had obtained liquor by means other than the routine OLCC distribution process.

IV. Legal Review.

This section discusses the potential for criminal charges in light of the evidence developed during the criminal investigation. This is not intended to be an exhaustive analysis of all possible theories, but rather a general assessment of the prosecutive merit of the case.

We first determined that the employees' conduct warranted consideration under three criminal provisions, as described in section IV.A. Before analyzing those offenses, we evaluated whether there was a legal bar that prevented potential charges, as explained in section IV.B. We then assessed the prosecutorial merit for any criminal offense, as summarized in section IV.C.

A. <u>Criminal Offenses Considered.</u>

1. Official Misconduct in the First Degree, Class A misdemeanor.

In relevant part, ORS 162.415(1) provides that a public servant commits the crime of official misconduct in the first degree if the public servant knowingly performs an act constituting an unauthorized exercise in official duties with the intent to obtain a benefit. The elements of this offense include: "(1) The defendant must be a 'public servant.' (2) He or she must knowingly perform an act. (3) The act must be performed 'in' his or her official duties; that is to say, in the defendant's official capacity, exercising the powers or opportunities available by virtue of his or her official position. (4) The act must be an unauthorized exercise of this official capacity, power, or opportunity. (5) The act must be done 'with intent to obtain a benefit or to harm another.'" *State v. Florea*, 296 Or 500, 503-504 (1984).

Since *Florea*, the court has determined that all nonprocedural elements of a crime within the Criminal Code require proof of a mental state. *State v. Owen*, 369 Or 288, 316-317 (2022). When an element describes a fact that is part of the essential nature or character of the proscribed act, unless expressly provided otherwise, the minimum culpable mental state is knowledge. *State v. Simonov*, 358 Or 531, 546 (2016). Thus, first degree official misconduct would require proof that that the employees knew that the act they were performing—purchasing rare liquors not otherwise available to the public—was unauthorized.

Based on the plain language of the statute and the available legal precedent, first degree official misconduct warranted the most significant consideration.

2. Official Misconduct in the Second Degree, Class C misdemeanor.

"A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person." ORS 162.405(1).

There are no specific statutory provisions directly related to an OLCC employee's conduct within the perspective of the allegations of this case. In a broader context, all public employees must comply with government ethics statutes. As relevant here, "A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official." ORS 244.040(4). That statute is specifically enforceable by the Government Ethics Commission who may impose civil penalties for a violation of its provisions. The conduct of the OLCC's employees that was the focus of this criminal investigation is also the subject of a pending civil investigation by that commission.

The question remains whether a violation of the government ethics statute could also serve as the basis for a criminal prosecution. While the appellate courts have not directly answered this question, one court noted that certain conduct may violate public ethics laws prohibitions without rising to the level of official misconduct. *State v. Davis*, 189 Or App 436, 443 (2003). Hence, it remains arguable that in some circumstances a public servant's knowing violation of the government ethics statutes could also satisfy the elements of second degree official misconduct.

3. Misuse of Confidential Information, Class B misdemeanor.

"A public servant commits the crime of misuse of confidential information if in contemplation of official action by the public servant or by a governmental unit with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public, the public servant acquires or aids another in acquiring a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action." ORS 162.425(1).

At first blush, the text of this provision suggested a potential argument for its application. However, research revealed this statute was intended to prohibit "misconduct manifested by speculation and wagering on official action which a public servant is in a position to influence, or on the basis of confidential information to which he has access for official purposes." *Proposed Oregon Criminal Code*, Final Draft and Report (July 1970), p. 110.

Given the plain language of the statute coupled with the legislative commentary, the statute was not intended to apply to the conduct identified in this investigation, because the non-public information relied on by the employees—that a rare liquor bottle was available—did not affect the bottle itself (*e.g.*, increase its value). Therefore, the offense did not warrant further consideration.

B. Statute of Limitations.

In general, a misdemeanor prosecution must be initiated within two years from the date of the offense. ORS 131.125(8)(b). Here, the reported conduct by OLCC employees occurred more than two years ago. Hence, all allegations would be time-barred under the general statute of limitations.

However, there is an exception for cases involving misconduct in office by a public officer. ORS 131.125(9)(b). Such cases may commence while the person is still in public employment or within two years after the person leaves such employment, so long as the extension is no more than an additional three years. Here, one subject remains employed by OLCC and all others left employment less than two years ago. This generally means that a prosecution can be initiated within five years from any alleged misdemeanor.

As discussed in section III, it was difficult for agents to discern a specific date for most pertinent conduct. Hence, we often could not show such acts factually occurred within the limitations period. Additionally, even when agents were able to determine a particular date or a certain range, prosecution for such conduct was often time-barred. Overall, while the limitations period presented some barriers to potential charges, the prosecutorial merit was the more significant basis for the ultimate legal conclusion.

C. Prosecutorial Merit.

In considering whether any employee committed a crime, we found that the evidence available to us supports a conclusion that some employees used their positions to obtain high-demand, difficult to find, liquor for themselves or others, but that same evidence fell short of establishing the particulars of any instance in which an employee did so. The sole exception involved evidence that a specific employee requested a liquor distributor send to OLCC a case of a seasonal liquor so that it could be purchased by OLCC executives. However, after examining the records of that liquor store, the bank card processor, and the financial institutions, we were unable to discover the identity of the individual who made the subsequent purchase.

Moreover, although two elements of first degree official misconduct are plainly supported by the evidence—that OLCC employees are public servants and that they acted with the intent to obtain a benefit for themselves or others—the same cannot be said with respect to proof that the employees' actions were factually unauthorized or that the employees knew their conduct was unauthorized. As mentioned above, there are no statutory provisions that expressly authorized or prohibited the OLCC employee's conduct within the perspective of the allegations of this case. Further, even though the employees' behavior may have breached ethical standards, there is no explicit policy prohibiting the specific conduct, we found no evidence of relevant training, and the practice appears to have been longstanding and endorsed by at least one executive director.

Because our role is to consider whether criminal charges are provable and appropriate, we are bound by the rules and standards associated with a criminal prosecution. In light of our responsibility to prove each element of a criminal offense beyond a reasonable doubt and the sufficiency of the evidence currently available to us, we have determined that criminal charges are not warranted.

V. Conclusion

As discussed above, based on the totality of information currently available, as well as the burden of proof in criminal matters, this case does not merit prosecution.