Elton T. Lafky
(1930-2015)

Kevin T. Lafky
Christopher M. Edison
Amanda L. Reilly
Marcus I. Vejar

LAFKY & LAFKY
Attorneys at Law
429 Court St. NE
Salem, OR 97301
Telephone: (503)585-2450
Facsimile: (503)585-0205
Email: info@lafky.com
www.lafky.com

January 29, 2021

Oregon Legislature
Members of the Conduct Committee

Re: Rebuttal to Final Report/Investigation regarding Rep, Hernandez

Greetings:

I am writing to respond to the final Report concerning the Rule 27 investigation of Representative Diego Hernandez. This investigative process has been flawed from the beginning. Rep. Hernandez has not been allowed to present important evidence in the investigation. Rep. Hernandez's testimony, despite being supported by abundant evidence, has been ignored. Although the investigation has dragged on for many months, somehow there was a need to rush a report out without allowing Rep. Hernandez to respond to new allegations.

Process

On May 5,2020, Rep. Hernandez was notified of a LBPR 27 ("Rule 27") investigation. The notice contained the names of two individuals, Subjects 1 and 2, who were named by mandatory reports from [redacted]. Under Rule 27, the investigation was supposed to be concluded "promptly" and in no more than 84 days. The time may be extended after "advance notice" to Rep. Hernandez, which was **never provided.** The draft report was issued on December 23, 232 days later. We were given 7 days to respond.

We were not notified of any new subjects until December, seven months after the investigation started. In the Report Subject 4 was labeled as a mandatory report, which should have required this immediate follow up according to the Rule:

(e) The independent investigator shall promptly:
(A) Deliver a copy of the conduct complaint to the person accused of engaging in behavior prohibited by this rule, who shall thereafter be the respondent.

This was never done; as you can see by the attached emails, our efforts to obtain this information was characterized by the investigator as "tedious."

Under HCR221 14B(c) it states that "The independent investigator shall keep the complainant and the respondent apprised of the investigation timeline and the status of the investigation at the outset of an investigation, on a regular basis thereafter and upon request of the complainant or respondent." We made several requests for timelines and updates to the investigators; we were ignored and we were never given a timeline, nor the status of the investigation.

Rep. Hernandez was interviewed for hours on August 19th, 2020. On December 17, 2020, for the first time in this process, Ms. Ryan informed Rep. Hernandez's attorney that there were two new subjects that she was investigating. She asked whether she could interview Rep. Hernandez again concerning these new subjects. By email on December 17-18, Rep. Hernandez's attorney requested any documents that related to these new subjects, and particularly "any documents that have caused these new investigations to be initiated." Rule 27 requires that the respondent be notified of who and what he is being accused of. Ms. Ryan refused that request, calling the attempt to honor Rep. Hernandez's rights under Rule 27 and due process "tedious."

Rep. Hernandez wanted an opportunity to interview again and provide additional information once he had full knowledge of the new allegations, but that was refused. Right in the middle of Rep. Hernandez's attempts to obtain the documents regarding the new allegations, Ms. Ryan issued her draft report on December 23 after 5:00pm. It is clear that the report was already drafted and the request to interview Rep. Hernandez was a sham.

The Confidential Report focuses on three women whom Rep. Hernandez dated in 2017 and 2019. The Report is seriously flawed in a number of ways.

- The Report does not make clear that none of these women filed a complaint; [redacted]
- The Report notes that additional time was needed for the investigation. Legislative rules require reports be completed in 84 days. This report required 9 months.
- The Report does not make clear that these three women were not legislative employees and were not subject to legislative rules at the time of the alleged conduct – much of which was over four years ago, when Rule 27 was narrower in scope.
- None of the evidence was submitted under penalty of perjury as would be required in legislative rules had the "complainants" complained directly.
- The Report fails to note the salient detail that two of these [redacted] with the obvious potential for bias and collusion.
- The Report fails to note that in several cases, intimate relations continued after the so-called "break-up" of the relationship.
- The Report states that Rep. Hernandez refused to meet with investigators. This is completely untrue.

- The Report concludes that these women perceived a level of undue pressure from Rep. Hernandez because of his status as a legislator, despite the fact that each of the relationships here preceded Rep. Hernandez's election to the Legislature. The Report completely fails to provide proper context for how Rep. Hernandez knew these people, and what the nature of the relationships were long before he ran for political office. The Report fails to consider that these same women may have perceived more pressure to complain or cooperate from [redacted]

One of the challenges of this process is anonymity. While the rights of complainants should be respected, the process denies two basic rights that have always been associated with any fair administration of justice. The first is the right to question one's accusers. Without the ability to question the accuser, and obtain evidence from them, the process is skewed. The respondent is dependent on the fairness and impartiality of the investigator. But if the investigator doesn't obtain the evidence, or ignores evidence, then the process is flawed, as the respondent is unable to obtain the evidence and question witnesses. The second issue is anonymity itself. The respondent is forced to defend himself, and potentially lose his Legislative seat and associated benefits, while the complainant (who may not have even complained) is cloaked in anonymity, free to have their accusations vetted by a sympathetic investigator but not a process designed to insure a fair outcome.

[redacted]

- The investigation was allowed to drag on for months in a failed attempt to identify new subjects or witnesses. Rather than be concluded promptly, the investigation was delayed through the 2020 election cycle.

Below/attached/linked are specific documents containing relevant emails and rebuttals to many of the assertions in the Report. I apologize for the length of this document but so much evidence has been ignored that it is necessary to complete the record. Please let me know if there are any questions or requests for any additional evidence.

Sincerely,

LAFKY & LAFKY

s/Kevin T. Lafky

Kevin T. Lafky

cc: client

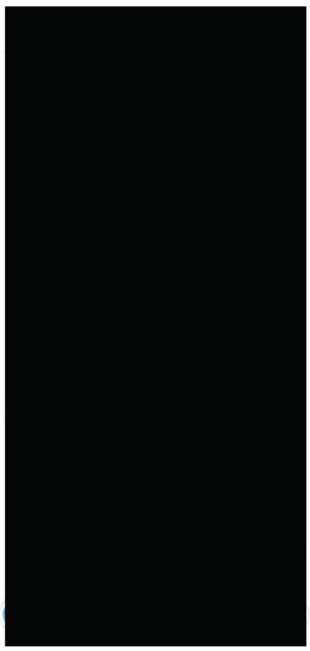
Subject 1:

Important highlights:

- In the Fall of 2017, Subject 1 switched to a job in the political campaign realm, which meant Rep. Hernandez would have to work more closely with subject 1
- It is important to note that Rep. Hernandez has not spoken to subject 1 since October 2017.
- In Late October, [redacted] counseled Rep. Hernandez to not speak to or engage with Subject 1. Rep. Hernandez complied.
- Subject 1 and Rep. Hernandez worked in the same spaces throughout 2018 without any issues.

Responses to claims:

- It was never made explicitly clear to Rep. Hernandez that the relationship had ended until May, although Rep. Hernandez does acknowledge that subject one was becoming more distant in late March/April.
- What made it confusing for Rep. Hernandez was that they were still intimate in March/April and he misunderstood that as continued interest on her part.
- Rep. Hernandez meant no harm in sending a gift box, and flowers. Rep. Hernandez got the gift box idea in December of 2016 from Subject 1 when she sent him a message from that company. Rep. Hernandez saved the image.

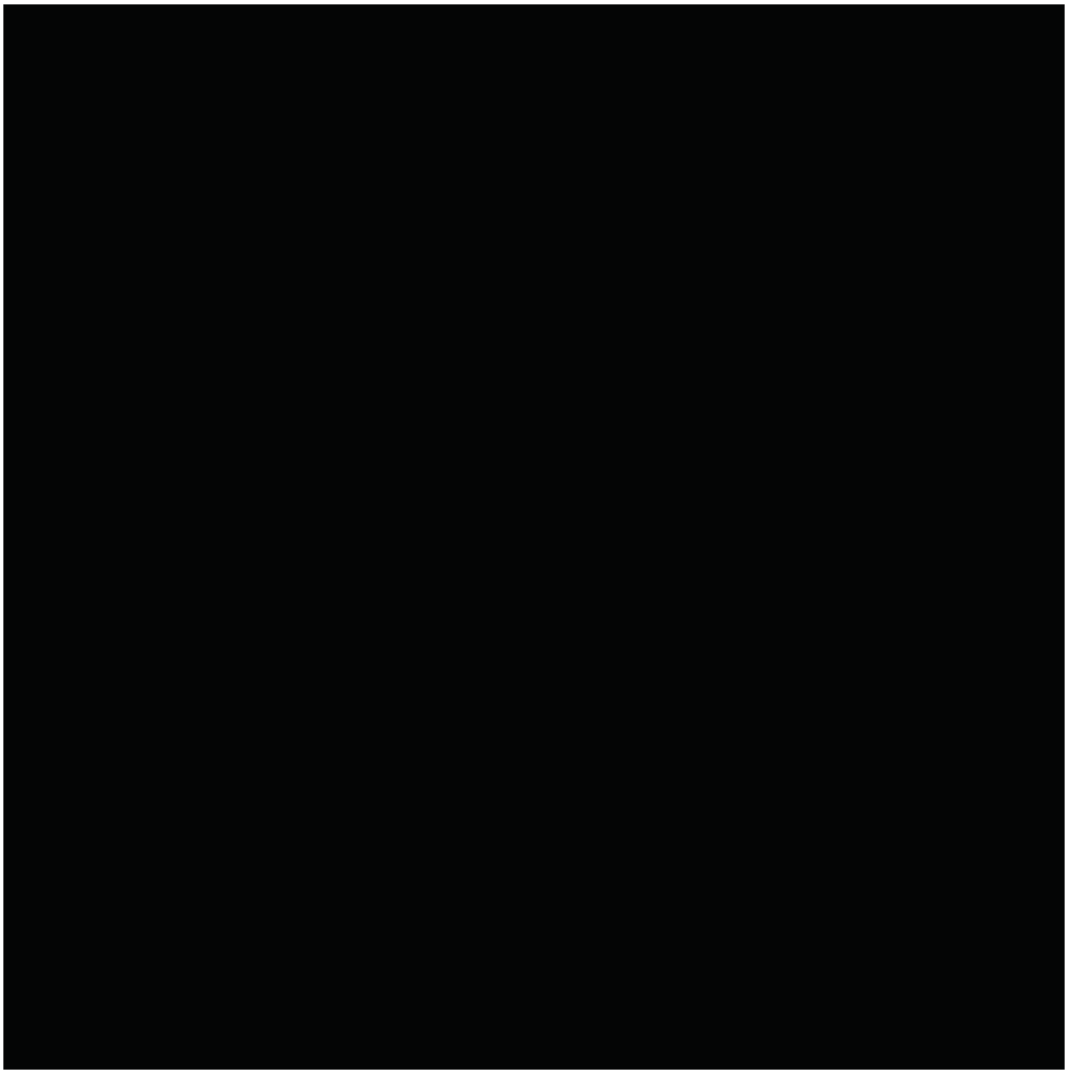


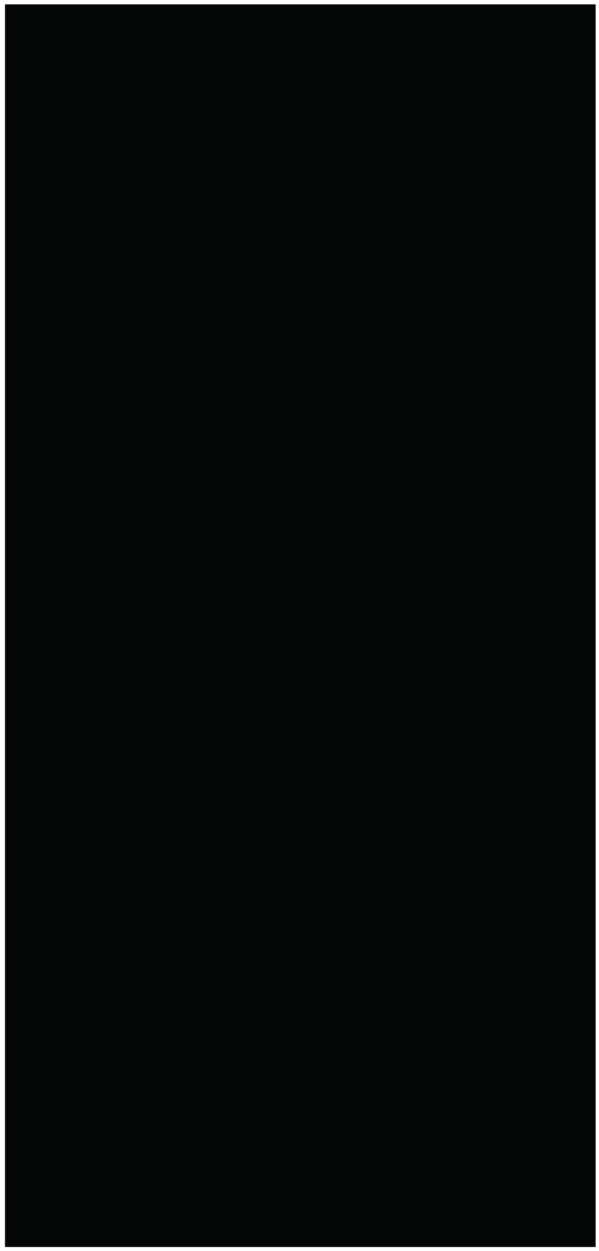
- In May, after it became clear to Rep. Hernandez that they were just going to be friends. Rep. Hernandez took that literally and mistakenly to mean they were actually going to be friends. When he invited her to go on a walk and happy hour, he did so under these beliefs.

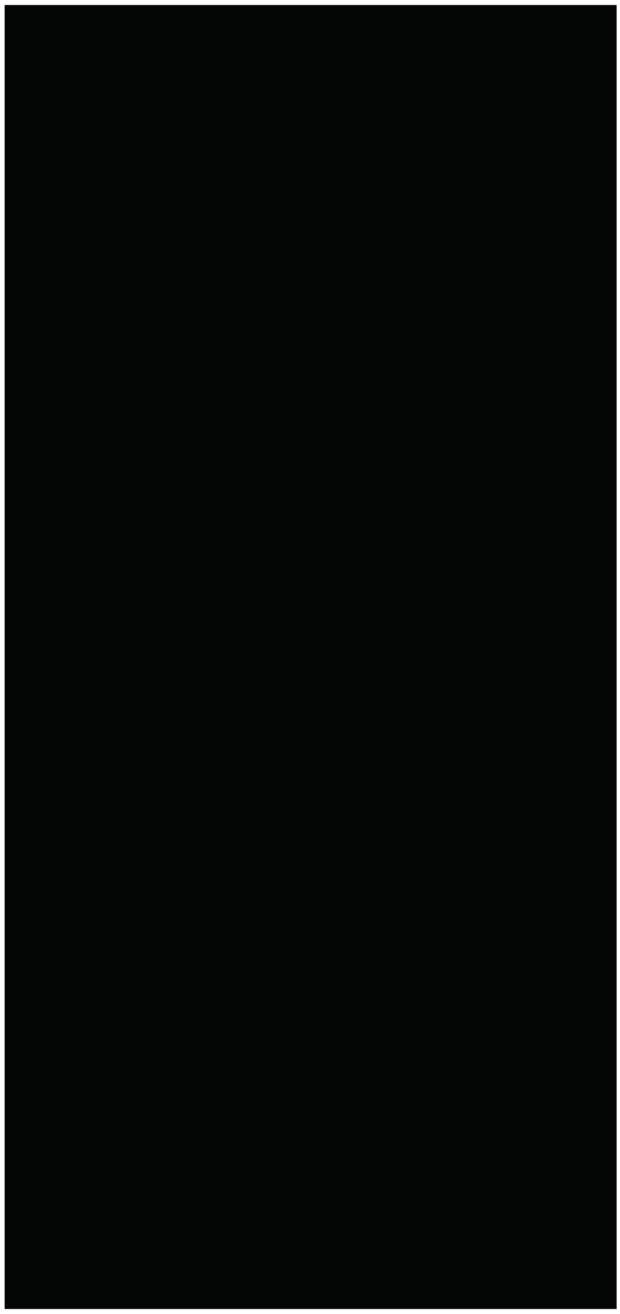
- [redacted]
    - Rep. Hernandez now understands that Subject 1 felt pressured to resume a romantic relationship. He regrets that and wishes he could have understood that before.
- The report lists a series of dates A.310-A3.17 and asserts that Subject 1 consistently tried to avoid all contact with Rep. Hernandez after the May 17 meeting where explicit clarity was given. It asserts that no meetings were sought that wasn't specific to her [redacted] job and also that she brought another person with her due to her discomfort.

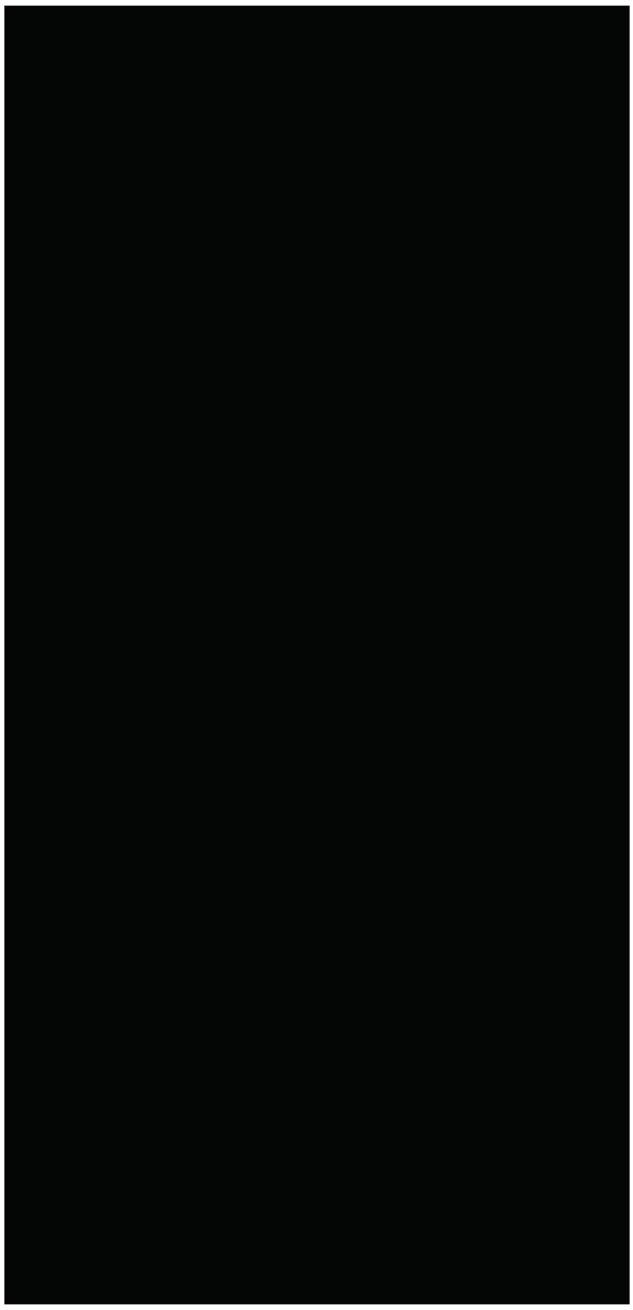
- Please read for yourselves the text messages from that time to get context and see how perhaps Rep. Hernandez viewed their relationship as having evolved to a supportive friendship. Note her outreach to him on June 22 at 9pm starting with

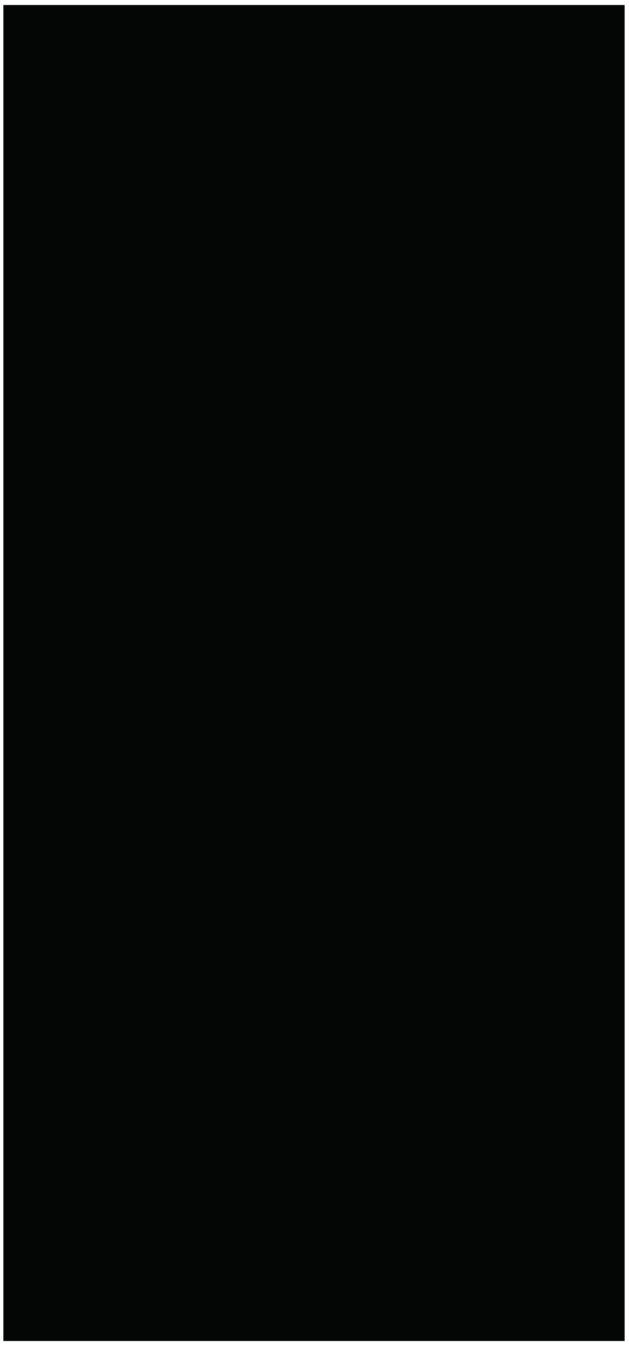
[redacted] and Subject 1's unsolicited offer to reschedule the June 22 social meeting for the next week.

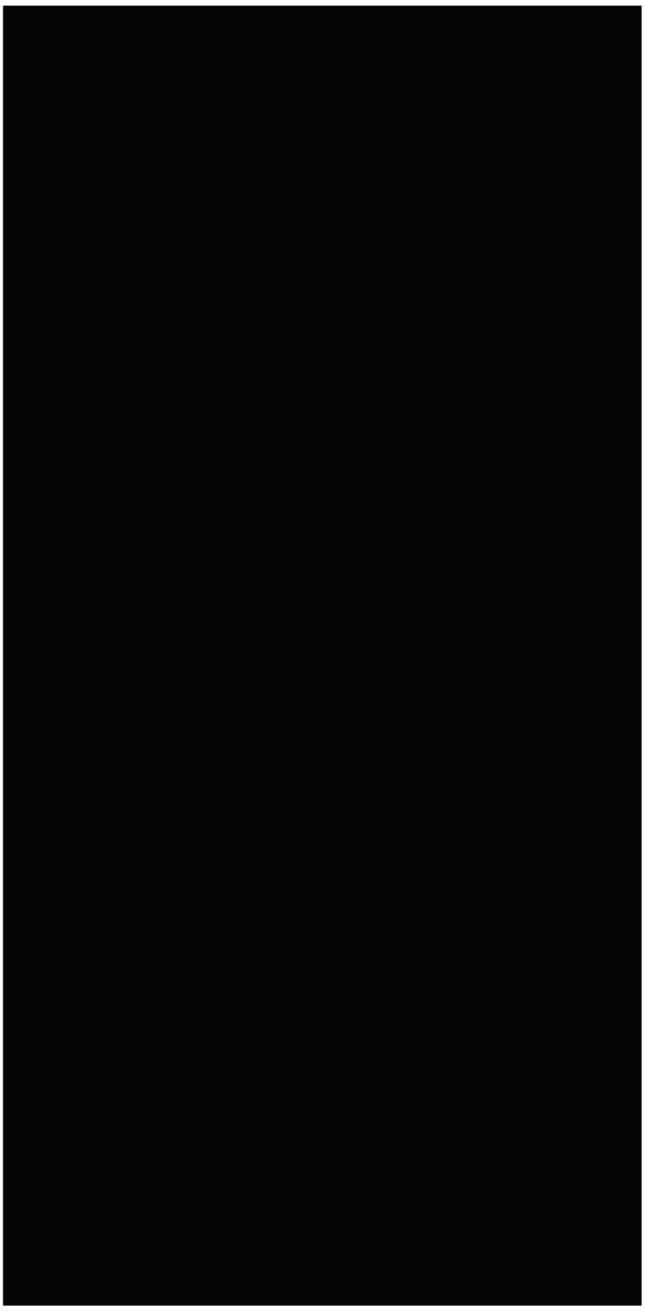
- 

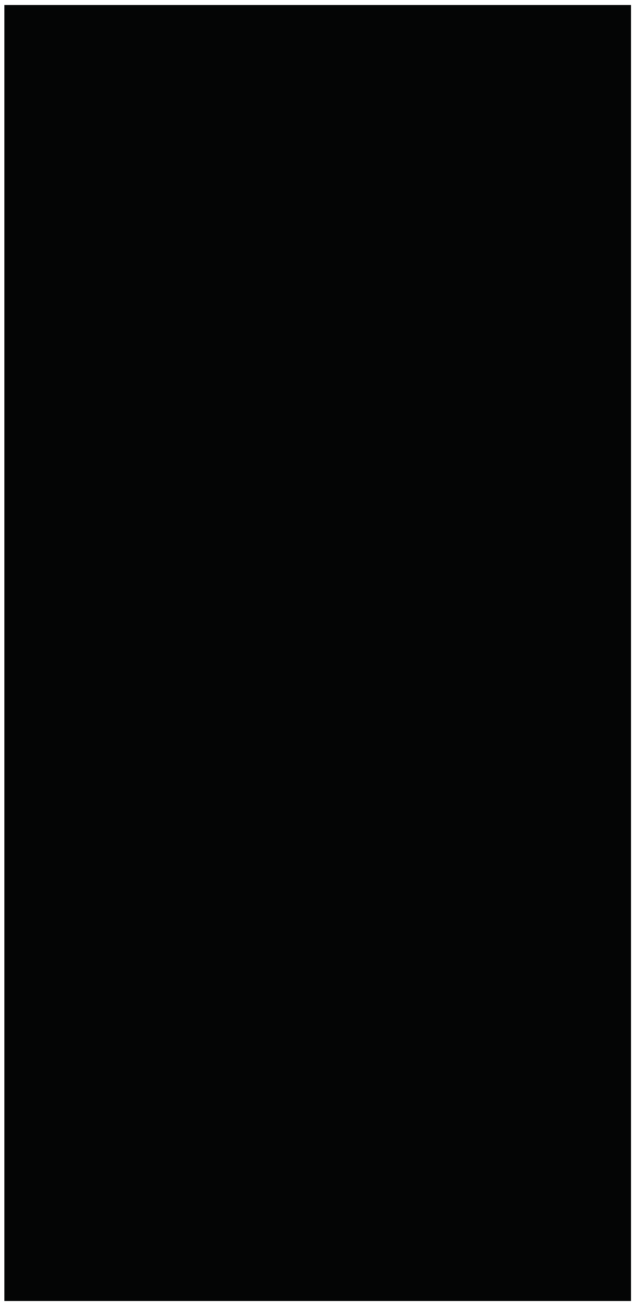


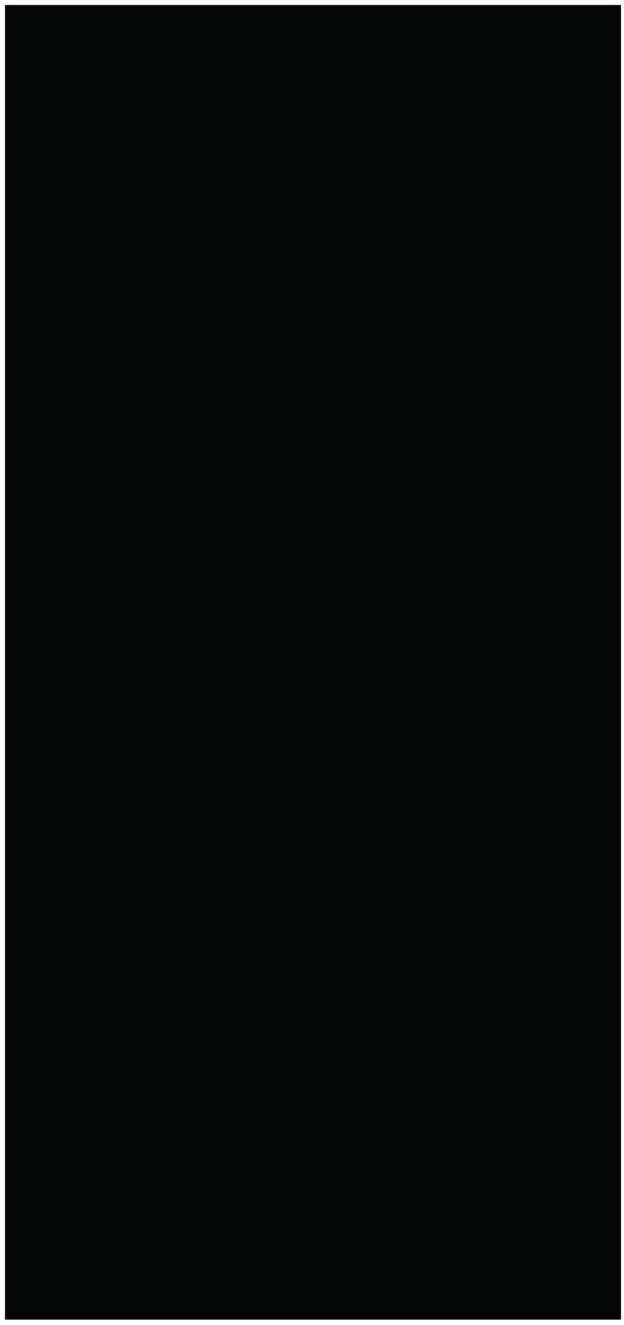


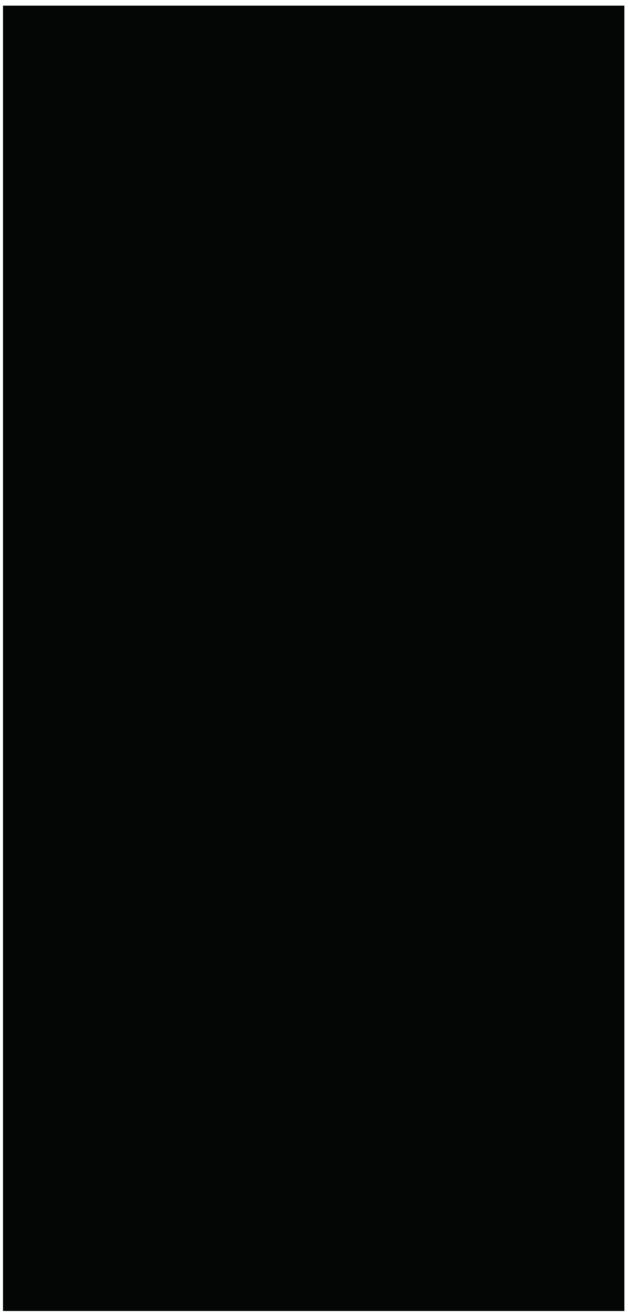


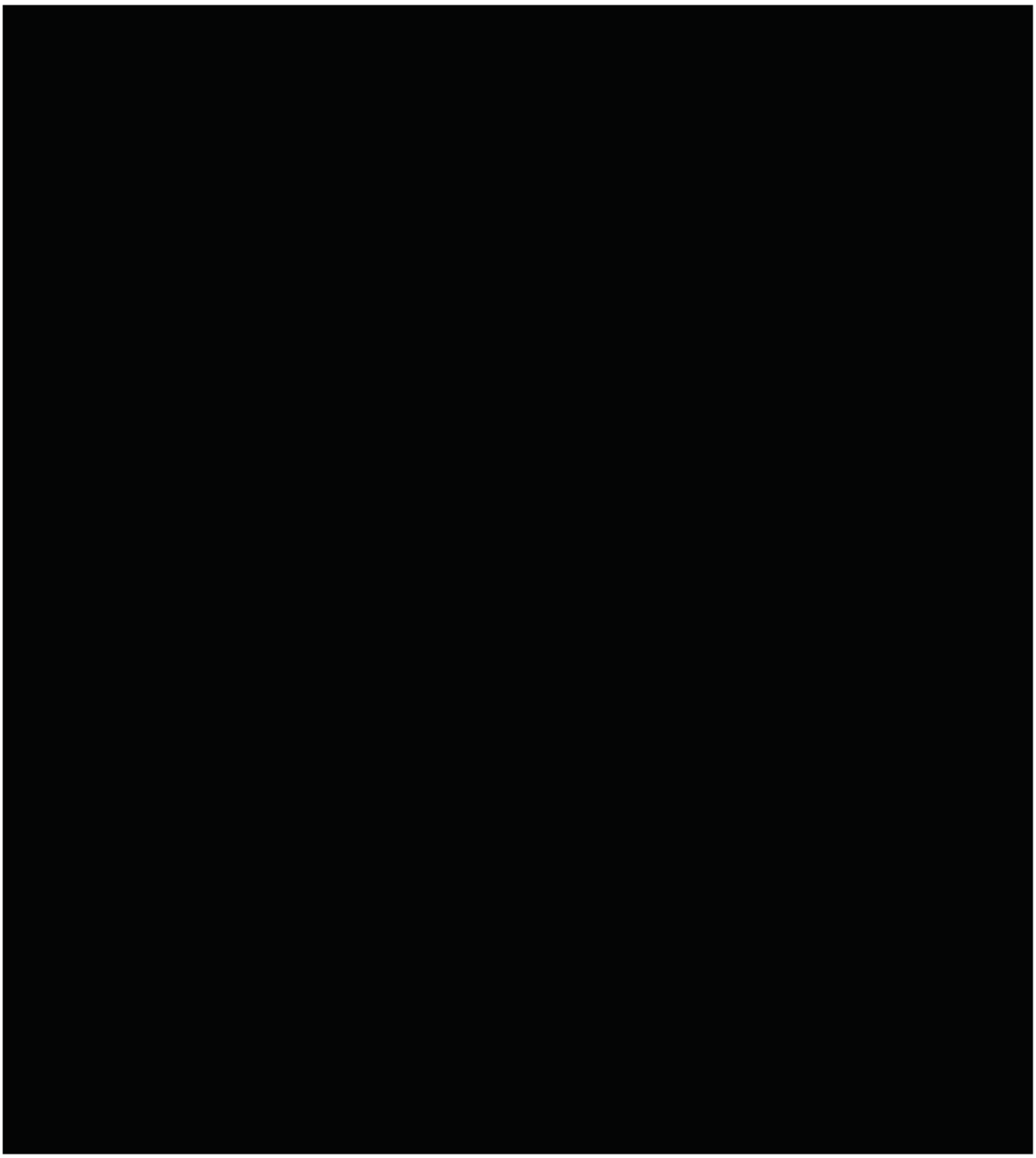


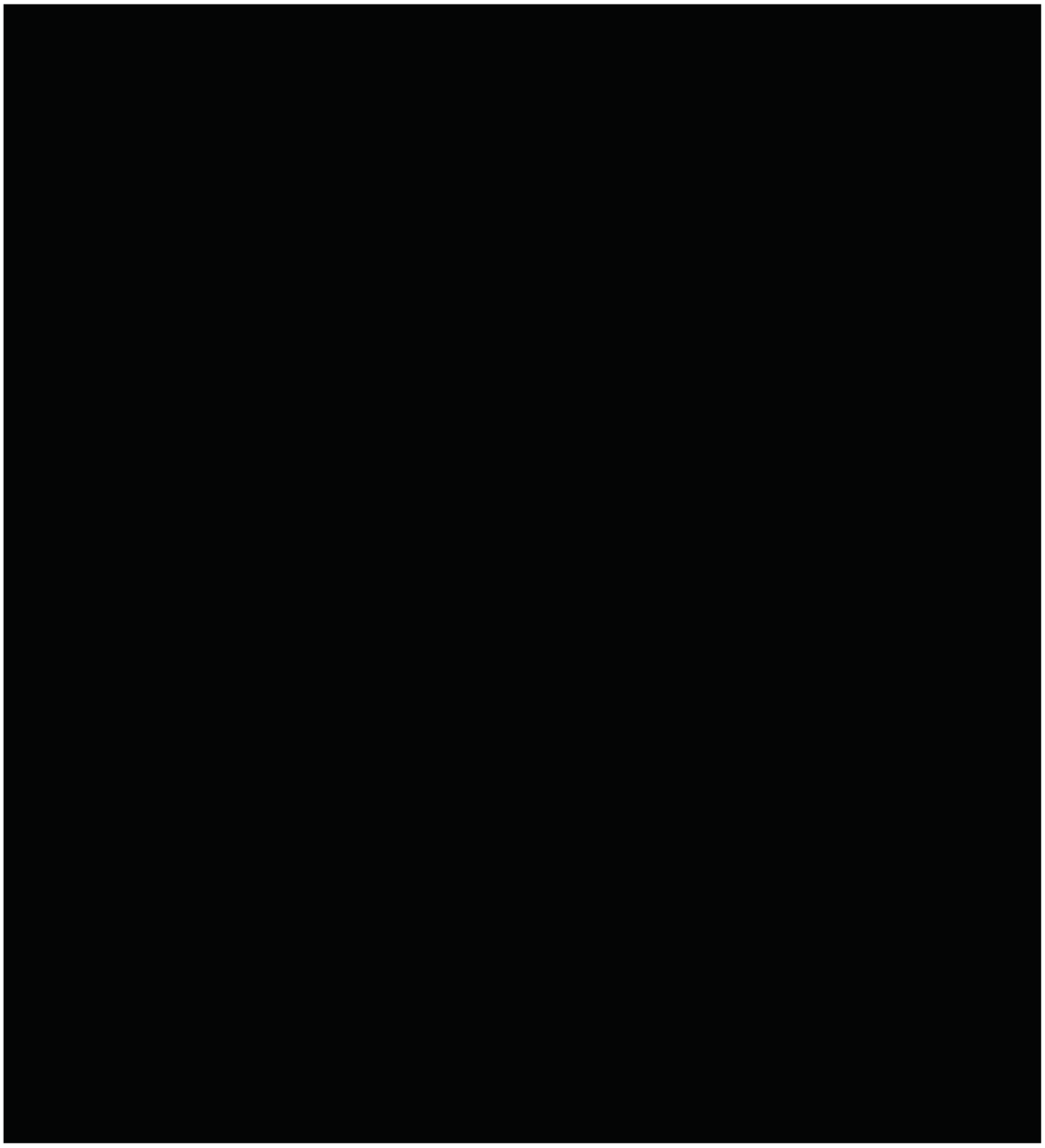










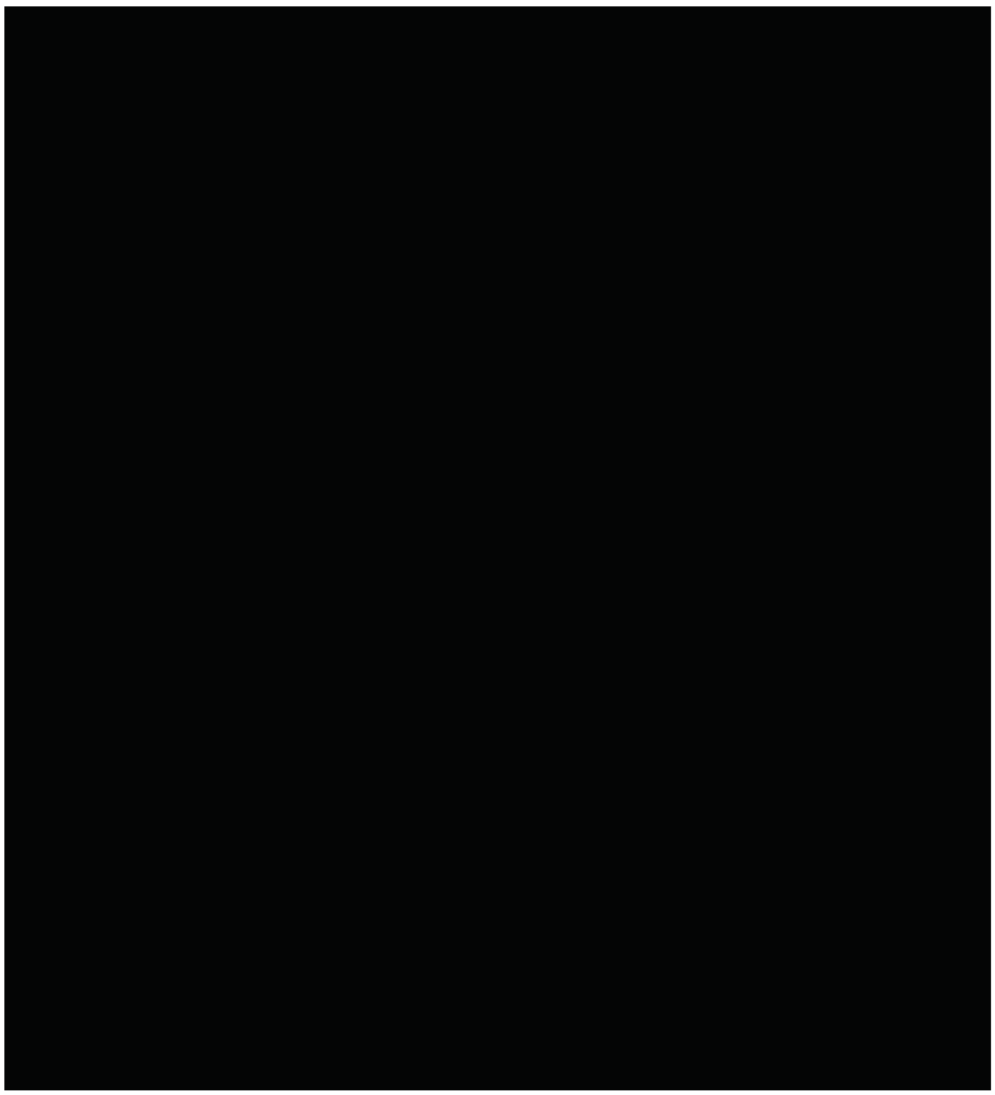


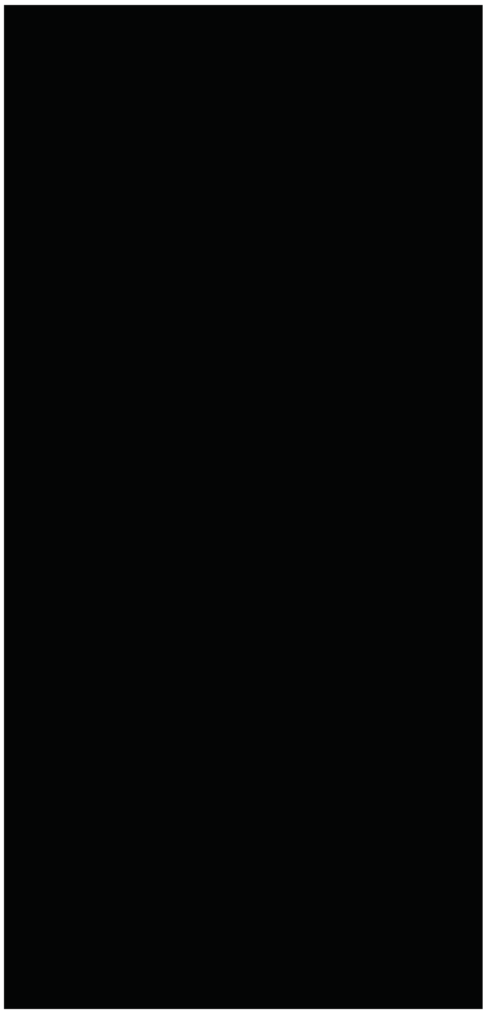
- **3.19:** Rep. Hernandez has never “knocked on Subject 1’s apartment door unannounced.” That would be impossible as her apartment complex has a main door which is locked and has a separate entry system that requires being buzzed in to then walk to any of the unit’s inside doors. He told the investigators this and yet you were not presented this critical information.

- In October of 2017, Subject 1 had a new job in the political campaign realm. At a political event, Rep. Hernandez was trying to introduce Subject 1 to a woman of color who was thinking of running for office, since it was Rep. Hernandez's job to recruit candidates [redacted] The political organization Subject 1 worked for was known to only recruit white people to run for office. She didn't just put Rep. Hernandez off, she put the woman of color candidate off as well while the potential candidate was standing next to

Rep. Hernandez. He was concerned about the message it would send to other candidates if this was the projected image of the Organization. He did later discover that she was late for a bus.

- Subject 1 also was responsible for overseeing Rep. Hernandez's [redacted] during this event. She checked in with Rep. Hernandez about the [redacted] at a party where she seemed inebriated. Rep. Hernandez felt uncomfortable. Hence Rep. Hernandez's text that memorialized this whole experience. The report implies a harsh message that made her fear for her job and we would like you to see it for yourself in its entirety.

- 



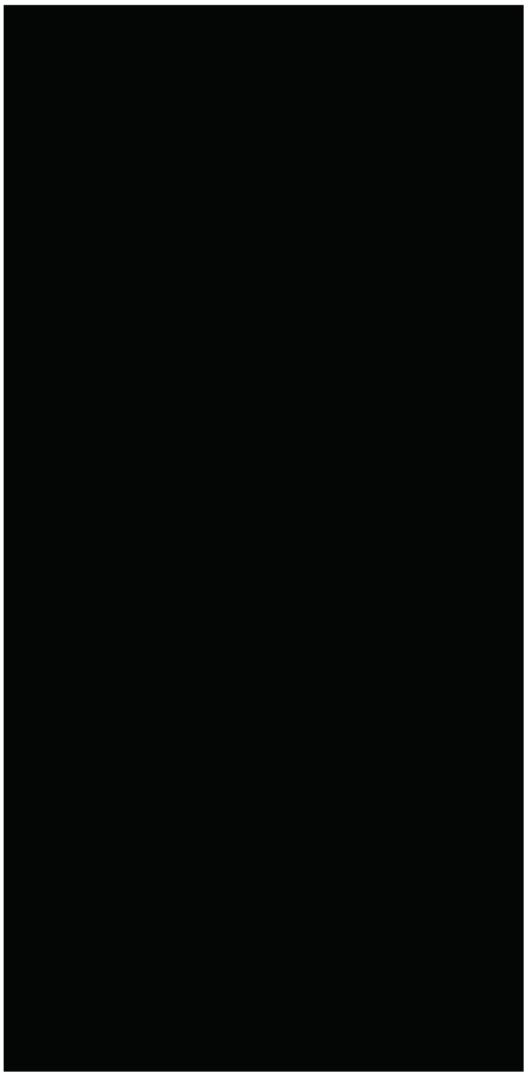
- The claim that she feared for her job is contradicted with evidence that we provided where Rep. Hernandez clearly states “she’s the right person for the job.” For Rep. Hernandez this was about a working relationship and constructive feedback.
- [redacted] met with Rep. Hernandez the day after this text message. [redacted] counseled Rep. Hernandez and Rep. Hernandez understood and complied with the counseling and ceased communicating entirely with subject 1.
- Rep. Hernandez and Subject 1 worked together professionally throughout 2018 without any issues.

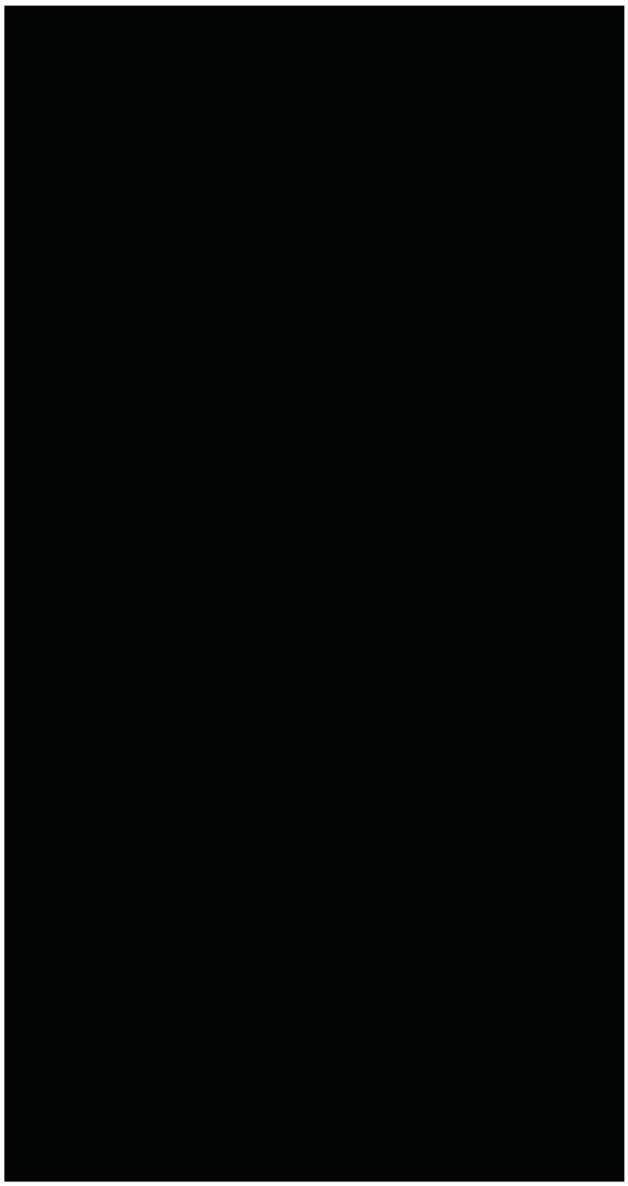
Subject 2

- Rep Hernandez has admitted to throwing a phone at a table during a verbal argument with subject 2 in July of 2019. He deeply regrets that act.

- The last time Rep. Hernandez and Subject 2 communicated was in late February of 2020, [redacted]

[redacted]





- We hope it is clear by now to the committee that the conflict between them wasn't about her safety as was presented to the media and this committee last May but instead how Rep. Hernandez broke her heart.

- Rep. Hernandez declined to engage with her after

- The report finding says she was uncomfortable around him after their relationship ended. Rep. Hernadez is also uncomfortable around her too. We don't see how

the committee could have an accurate picture of the situation without these details, yet they were not included in the report.

- In the draft report, 2 text messages were originally labeled “jealous and controlling,” and in the final report the 2 text messages were relabeled “abusive and controlling.”
    - In one of the text messages, Rep. Hernandez asked why Subject 2 sat in the front of the Uber. His concern was purely over her safety and there had been media reports of drivers assaulting women who were on a trip booked by someone else, as was the case in this situation.
    - In another text message, Rep. Hernandez asked Subject 2 to prove to her she had sent a text that he had not received.
    -
- B.3.12 - The report uses the extremely loaded term when saying Rep. Hernandez was accused of having “hacked into her account and cancelled her Oregon State Legislature subscription” to his newsletter. It then says Rep. Hernandez admitted to doing so. **This is a completely false and absurd statement** - He didn’t admit to “hacking” anything - legislators know that they can ask Information Systems or other staff to remove people’s email from our newsletter distribution list (GovDelivery) without “hacking” into accounts.

- We believe the investigators used this loaded term to try and continue a false narrative that they had hinted at in the previous item when he was accused of “hacking” into a social media account of Subject 2 and saying he can “hack a little.’ What they didn’t tell you was they pulled this quote from a January 2018 messenger thread where he was referring to high school and also said “I like tech I use to be better but things progress so fast that I get behind quick and old shit don’t work anymore, coding has advanced so much.”

Subject 4

Important highlights:

- Subject 4 worked for [redacted] when she and Rep. Hernandez dated in the Summer of 2017.
- Rep. Hernandez has repeatedly asked the investigators what "Capitol business" was being conducted by Subject 4, he has asked for examples and asked for the report to include specifics and those requests were ignored. Rep. Hernandez did not conduct any Capitol business with Subject 4. Rep. Hernandez has not seen Subject 4 since August 2018.
- In [redacted] 2017, Subject 4 got a new job in the political campaign realm.
    - Rep. Hernandez asked investigators to be very clear and provide examples of what this new job had to do with Capitol business, instead of a broad general statement. This request was ignored.
- In the final report the investigators stated: *"Rep. Hernandez admitted a consensual intimate interaction with Subject Four, but he denied that there was any type of relationship with Subject Four."*
    - This is incorrect, in Rep. Hernandez's draft report written rebuttal we stated: "The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on dates in July and August of 2017...Their dating relationship never turned into anything serious."
- The claim is that Rep. Hernandez suddenly became interested in Subject 4 and that Rep. Hernandez pursued the subject. **This claim is false.**
    - Rep. Hernandez has known Subject 4 since 2015, Rep. Hernandez was [redacted]
    - Subject 4 has been asking for Rep. Hernandez's help since 2015, in finding a job, in campaign related help all throughout 2016/17.
    - Subject 4 asked Rep. Hernandez out to "party" in late May 2017.
    - In the draft report Subject 4 claimed that throughout the fall/winter of 2017 that Rep. Hernandez kept trying to rekindle the relationship, Rep. Hernandez provided evidence to the investigators that Subject 4 was the one who was trying to meet with Rep. Hernandez, contradicting the claim. But then,the claim got flipped to Rep. Hernandez didn't want to meet with Subject 4 because he wanted a personal relationship with her. So if he would have met with her he would have been trying to rekindle a relationship and if he didn't was because he was trying to rekindle a relationship.

- **Background/Context:**
    - For context, Rep. Hernandez [redacted] she had moved [redacted] to Portland. [redacted] Rep. Hernandez to help find Subject 4 a job around 2015, Rep. Hernandez introduced her to someone in politics and Subject 4 ended up getting a job with

them. Subject 4 and Rep. Hernandez were friends. Rep. Hernandez would spend some holidays with their families, [redacted] In December 2016/January of 2017, Subject 4 shifted her job to [redacted] In late [redacted] of 2017, Subject 4 was hired onto a new job [redacted] The political campaign organization does not conduct business at the Capitol as it is a Political organization associated with political campaigns and does not conduct work at the Capitol nor does business at the Capitol.

- [redacted]
- In late 2016/early 2017, Subject 4 [redacted] She asked for a copy of Rep. Hernandez's campaign plan; she asked Rep. Hernandez [redacted] to give her money, to host fundraisers for her and to speak at her fundraisers. Evidence of this is linked below.
- In early 2017, Subject 4's and Rep. Hernandez's friendship was growing. Rep. Hernandez always looked at Subject 4 as a friend, she was [redacted] Rep. Hernandez wanted to be on good terms with her and their community of friends [redacted]. In May 2017, Subject 4 asked Rep. Hernandez out on a date [redacted], Rep. Hernandez was a little thrown off by it, because Rep. Hernandez didn't think she liked Rep. Hernandez like that.
- The relationship between Subject 4 and Rep. Hernandez turned intimate in July 2017. They went on a few dates in July and August 2017. Rep. Hernandez was really busy in the summer traveling and she was busy as well so their schedules rarely aligned.
- Their dating relationship never turned into anything serious; their dating naturally phased out. Their relationship did have conflict in October/November of 2017, when [redacted]
- Rep. Hernandez attempted to reconcile their friendship and so did she in November/December 2017.

- As you'll see in detailed evidence below, from January-July 2018, Subject 4 and Rep. Hernandez became close friends again soon after December 2017; they had a friendship. Rep. Hernandez helped her out on several occasions, including an incredible hardship in [redacted] that Subject 4 experienced.

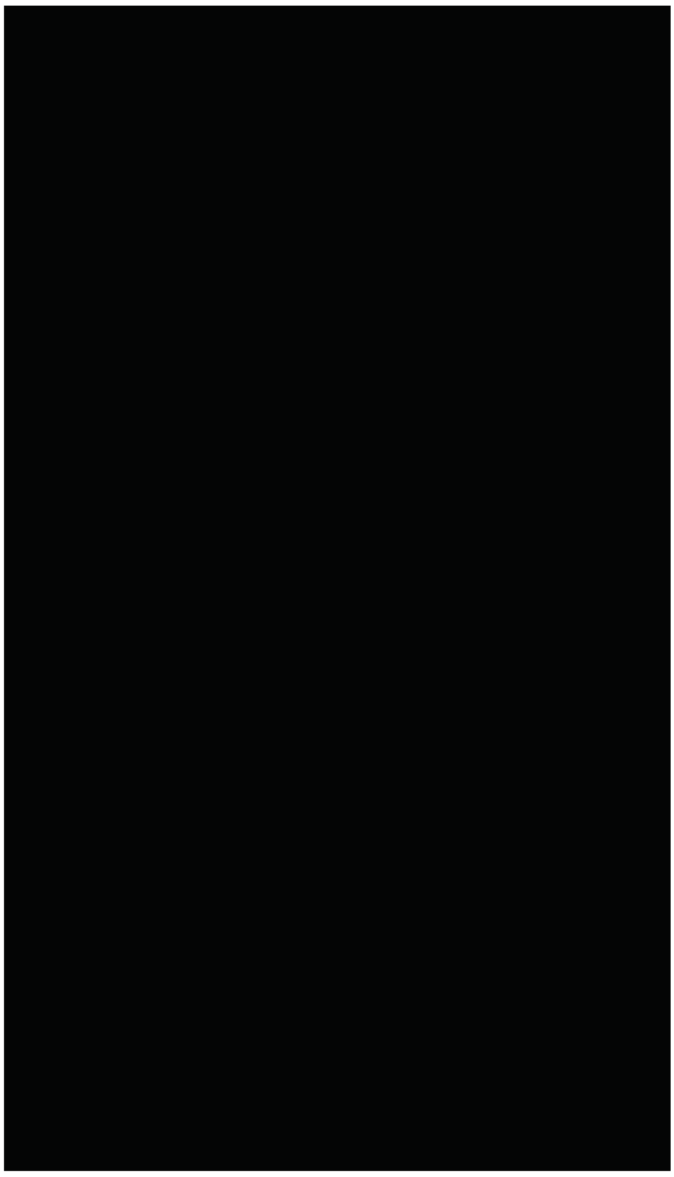
- In July/August, Subject 4 and Rep. Hernandez started to get closer, but then [redacted] and that threw a big wrench in Subject 4 and Rep. Hernandez relationship. Rep. Hernandez set clear boundaries with Subject 4 on August 13th of 2018 that Rep. Hernandez did not want an intimate relationship.

- In early November 2018, Subject 4 contacted Rep. Hernandez at night about [redacted] and sent Rep. Hernandez a very personal email [redacted] Rep. Hernandez took it as an attempt on her part to rekindle the relationship, Rep. Hernandez did not respond and they have not spoken since.

Claim/Response:

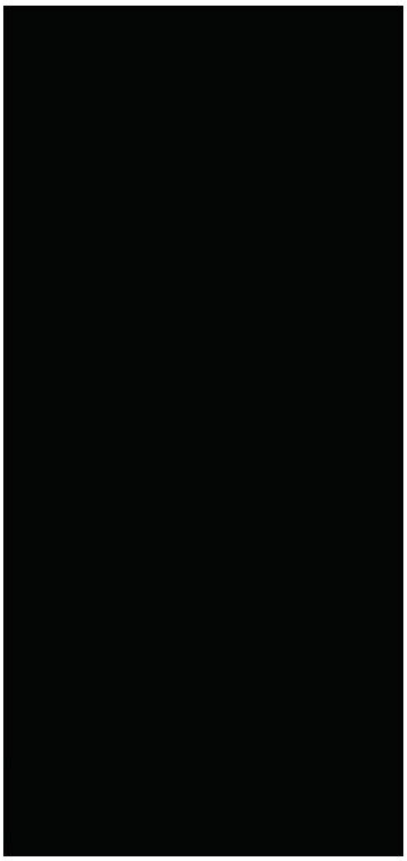
- This is not true, Rep. Hernandez's legislative agenda was already set in November of 2016. On the contrary, Rep. Hernandez has provided evidence below that she was reaching out to Rep. Hernandez for help and information. Throughout 2017, Subject 4 asked for Rep. Hernandez's help in [redacted]. In early/mid May, Subject 4 had asked him and others to host an [redacted]

- On May 13, 2017, subject 4 invited Rep. Hernandez to go out with her and party/drink with her.



- Rep. Hernandez and Subject 4 ended up spending time together this night; Rep. Hernandez invited others to tag along. Subject 4 did tell Rep. Hernandez later that night that she was just hoping it was the two of them. There was absolutely no attempt on Rep. Hernandez's part for any form of intimacy at this point. At the end of the night, Subject 4 did kiss Rep. Hernandez before she went home.

- [redacted]
    - During this night, subject 4 asked Rep. Hernandez and others to host a party for her.



- [redacted]
    - Rep. Hernandez co-organized the event on May [redacted], 2017 as requested by subject 4 [redacted]

- On the night of July 14, 2017, Subject 4 invited Rep. Hernandez over to her hotel and they did get intimate.

- On July 20, 2017 Subject 4 Invited Rep. Hernandez to a [redacted] event on Aug 17th

- [redacted]

- On August 4th and 5th 2017, Subject 4 and Rep. Hernandez went on dates, wine tasting and dinner.
  - [redacted]

- On August 2, 2017, they discussed their relationships and some of her concerns, not over anything professionally oriented, but because she was afraid [redacted] would think and do over her and Rep. Hernandez seeing each other. Rep. Hernandez told Subject 4 that she had full control over her and Rep. Hernandez's relationship and told her he was going to back away since she vocalized a

concern. She immediately responded by saying [redacted] There is more in this text thread that continues to contradict Subject 4's claims that she was concerned that Rep. Hernandez was pursuing an intimate relationship for professional reasons.

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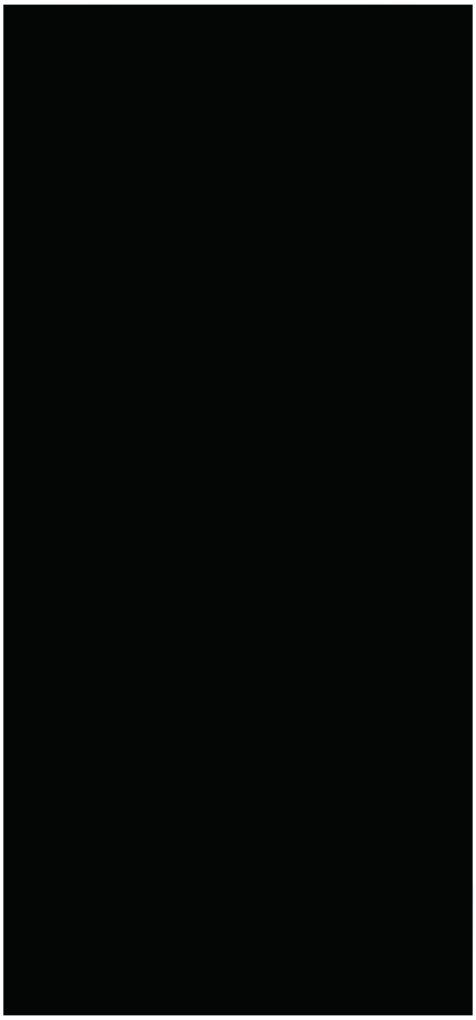
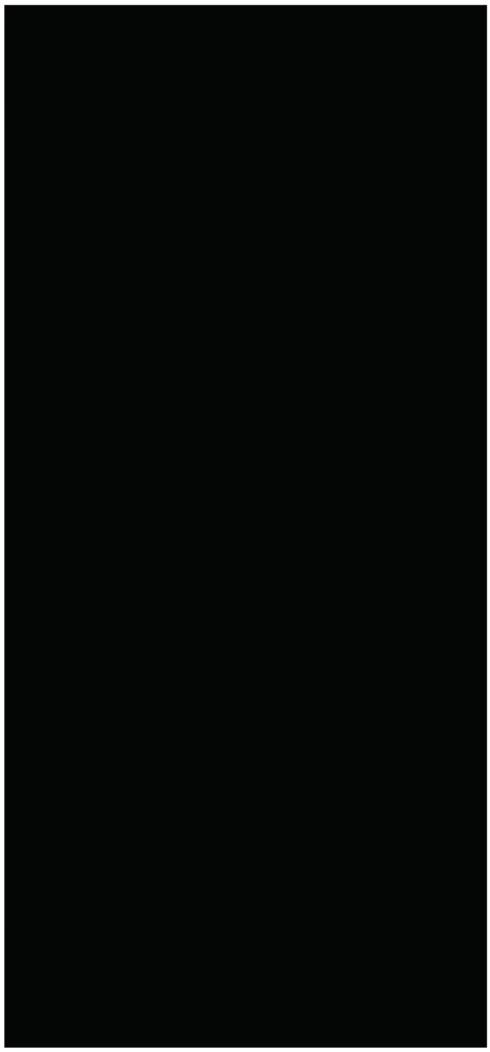
- On September 30, 2017 subject 4 invited Rep. Hernandez dancing.



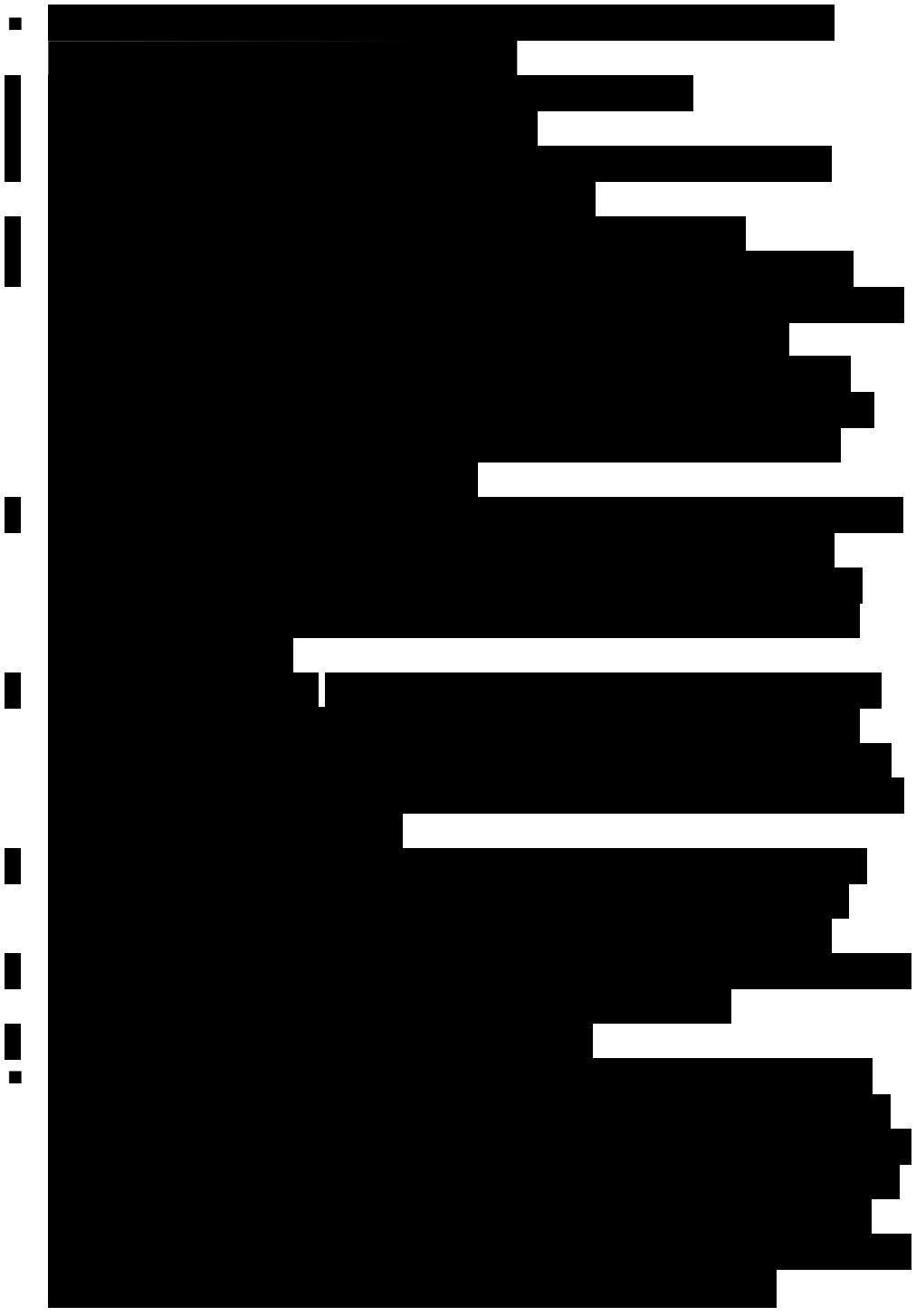
- Subject 4 and Rep. Hernandez loosely dated from July 14th to September of 2017; Rep. Hernandez was out of town a lot during this time, as you can see in the facebook messenger evidence, and Subject 4 had very limited [redacted] Their relationship was never formal, they eventually became good friends and the first corroborating evidence that Rep. Hernandez has of this is a September 30, 2017 facebook messenger message. Her quote after texting Rep. Hernandez about her ex being in town [redacted]



- D3.16: There is a lot of context missing from this that could shed more light on what fully transpired. Around Sept/October/November of 2017, Rep. Hernandez was a

- D3.13-D3.15: It should be noted that the investigators do not know how to distinguish between political campaign work and legislative business.
    - Throughout the winter of 2017, Subject 4 was trying to ask Rep. Hernandez for political favors. Subject 4 wrote on messenger These conversations were not about bills or budgets, these conversations were about her new job

- If you look at Subject 4 and Rep. Hernandez's Facebook messenger conversation on January 16th, 2018 at 9:35pm, Subject 4 messaged Rep. Hernandez a video and asking Rep. Hernandez
  - [redacted]
  - On January 17th, 2018 3:17am Subject 4 messaged Rep. Hernandez an emoji which woke Rep. Hernandez up. They continued our conversation as you can read in the thread.
  - On January 17th, 2018 3:44am she wrote:
    - [redacted]
    - Rep. Hernandez replied [redacted]
  - On January 17th, 2018 9:41am Subject 4 messaged Rep. Hernandez back:
    - [redacted]
    - I replied [redacted]
    - Subject 4 replied [redacted]
    - Rep. Hernandez replied [redacted]
    - Subject 4 replied [redacted]
    - Rep. Hernandez replied
    - She replied: [redacted]
    - [redacted]



- February 2nd 2018, Subject 4 invited Rep. Hernandez to a screening of a film [redacted]

- [redacted]

- February 13th 2018 Subject 4 and Rep. Hernandez met up for drinks, a mutual friend joined them. Rep. Hernandez memorialized this through Rep. Hernandez's instagram story and a video.
  - [redacted]

- February 22, 2018, Subject 4 emails Rep. Hernandez about meeting up at the event. [redacted]

- [redacted]

- March [redacted] 2018, Subject 4 joined a private party event Rep. Hernandez hosted. [redacted]

- On [redacted] 2018, Subject 4 took Rep. Hernandez's place to give a speech at an event because Rep. Hernandez couldn't make it, and Rep. Hernandez asked her if she could take Rep. Hernandez's place [redacted] to speak and she said yes. [redacted]

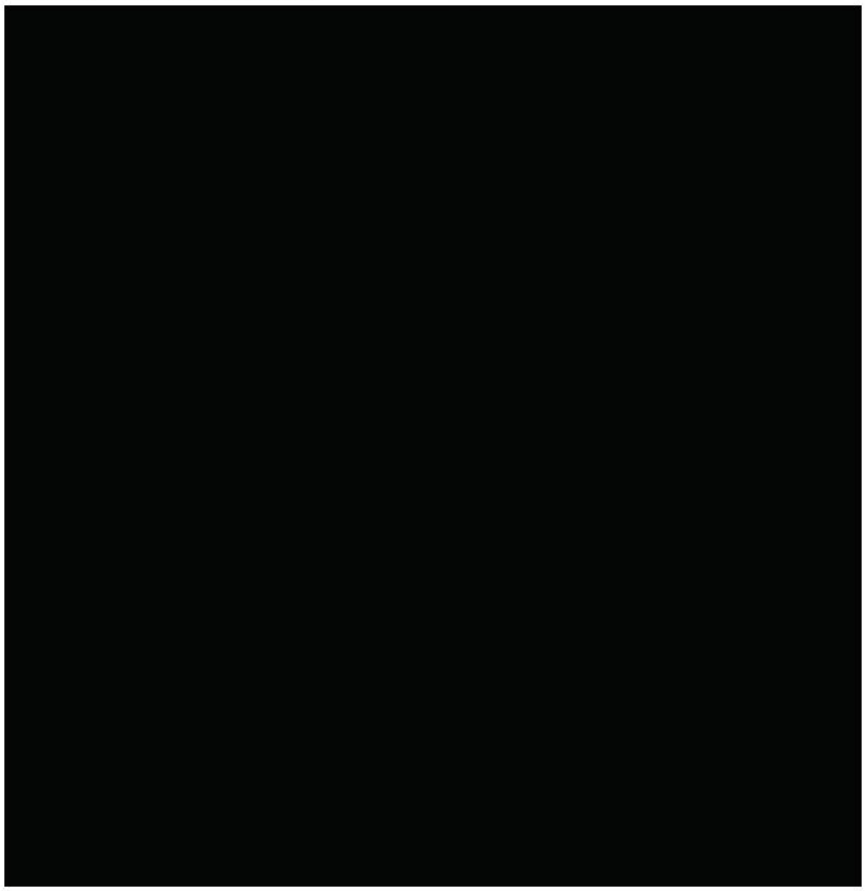
- On March [redacted] 2018, Subject 4 left Rep. Hernandez a voicemail. [redacted] and ask Rep. Hernandez for help. [redacted]
  - Rep. Hernandez coordinated picking up her [redacted]
  - [redacted]
  - On March 17th, Subject 4 asked Rep. Hernandez to help draft a statement about [redacted]

- On March 19, 2018, Subject 4 asked Rep. Hernandez for a ride to her [redacted]

- On April [redacted] 2018, Subject 4 asked Rep. Hernandez to present at [redacted] with her. [redacted]

- On April 29, 2018, Subject 4 invited Rep. Hernandez to her house to come drink and work. [redacted]

- On May [redacted] 2018 Subject 4 and a group of friends invited Rep. Hernandez to [redacted] for drinking. Rep. Hernandez did not go [redacted]

- On August 7th, 2018, Subject 4 sent Rep. Hernandez a Birthday gift card. The card read "Happy Birthday to my favorite Leo" It was a $125 gift card to a restaurant that is known for romantic dinners and dates.
  - 

- It is important to note that subject Rep. Hernandez thinks it is strange that she is saying she "felt" obligated, when they did not have any work whatsoever at the Capitol. Session was over in February 2018. Also, Rep. Hernandez's support is never contingent on a relationship; Rep. Hernandez's work is focused and centered on social justice. Subject 4 and Rep. Hernandez's friendship ended in November 2018 because Rep. Hernandez wanted to end it. And even after that, Rep. Hernandez still supported Subject 4

[redacted] and Rep. Hernandez proved that, by doing a news interview [redacted]

- On November 1st, 2018 11:10pm, Subject 4 messaged Rep. Hernandez regarding [redacted] Rep. Hernandez made the assumption that Subject 4 was looking for information because she wanted to know if Rep. Hernandez was dating [redacted] Rep. Hernandez also believed that Subject 4 was still interested in an intimate relationship with Rep. Hernandez and that she was looking to sabotage any potential relationship Rep. Hernandez would have with [redacted]

- On November 2nd, Rep. Hernandez's assumptions became more like presumptions when Rep. Hernandez received a really long and personal email from Subject 4. Please read this email, because it shows a different picture from what she tried to paint with the investigators about Rep. Hernandez. [redacted]

    - Rep. Hernandez never responded to her email. Rep. Hernandez did not want any relationship with Subject 4 after that because Rep. Hernandez's belief was that she knew that Rep. Hernandez was potentially getting in a relationship with [redacted] and she was going to try to sabotage it because she wanted to be in a relationship with Rep. Hernandez. Rep. Hernandez ceased to communicate with subject 4.