

**COMMONWEALTH OF MASSACHUSETTS**

**REPORT OF SPECIAL INVESTIGATION  
IN THE MATTER OF MASSACHUSETTS  
SENATE PRESIDENT STANLEY ROSENBERG**

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## I. EXECUTIVE SUMMARY

The Senate Ethics Committee tasked Hogan Lovells with conducting an investigation into the conduct of Senator Stanley Rosenberg (“Senator Rosenberg”) related to allegations against his spouse, Bryon Hefner (“Hefner”), who was accused of sexual assault in a November 30, 2017 *Boston Globe* article. The article reported that Hefner sexually assaulted four men and suggested that Hefner sought sexual favors from one of the accusers in return for “help on Beacon Hill.”

Senate Order No. 2228 authorized a broad investigation into “the question of the conduct of Senator Rosenberg *and* whether he violated the rules of the Senate.” (Emphasis added). Accordingly, the primary focus of the investigation was Senator Rosenberg’s conduct, as it pertained to his relationship with Hefner (his romantic partner since September 2008 and spouse after September 6, 2016) and whether, as President of the Senate, he violated any Senate rules. Over the course of three months, Hogan Lovells reviewed thousands of emails harvested from the Senate email archives and interviewed 45 people who worked in or had business before the Senate.<sup>1</sup> Senator Rosenberg, his staff, and former staff fully cooperated in the investigation.

It bears noting at the outset that Senator Rosenberg and numerous witnesses, including persons who worked in and outside the Senate and observed Hefner over the years, expressed the view that Hefner suffered from an undiagnosed mental illness and regularly abused alcohol, and that either or both of these circumstances contributed to his behavior as described in this report. We express no view as to whether Hefner was in fact mentally ill or whether his mental state or alleged alcohol abuse contributed to his behavior.

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<sup>1</sup> Hogan Lovells established a hotline at the outset of the investigation for witnesses to call and report any relevant information. We received no messages on the hotline, and no witnesses otherwise independently came forward to volunteer any information. Witnesses interviewed were identified based on information gathered from documents and other witness interviews.

In considering what Senate rules were implicated by Senator Rosenberg's relationship with Hefner and Hefner's actions toward individuals who worked in or had business before the Senate, four distinct topics came into focus: (1) Senator Rosenberg's self-imposed Firewall, announced on December 3, 2014, (2) the Senate Information Technology ("IT") Policy, (3) the Senate Anti-Harassment Policy, and (4) Senate Rule 10, which in essence prohibits Senate personnel from misusing their positions for personal gain. Our report addresses all four topics.

### *The Firewall*

Shortly before Senator Rosenberg assumed the Senate presidency in January 2015, he announced that he had "enforced a firewall between [his] private life and the business of the Senate, and will continue to do so." Senator Rosenberg made this announcement in the wake of reports that Hefner engaged in disruptive conduct by allegedly ridiculing the outgoing Senate President. While the self-imposed Firewall is not a "rule" of the Senate, it was a concept that Senator Rosenberg touted to his peers in the Senate and the public in order to obviate concerns about Hefner's influence and behavior in his office as he was about to become Senate President. Although the term "firewall" connotes a complete barrier between Hefner and Senate business, Senator Rosenberg reported to us that he construed the Firewall concept more narrowly to mean only that Hefner would not have "undue influence" on Senator Rosenberg's professional decisions. To Senator Rosenberg, "undue influence" meant exerting such influence that Senator Rosenberg would do something he would not otherwise have done.

Our investigation revealed that Hefner had what amounted to unfettered access to Senate business through Senator Rosenberg's Senate email account and calendar, to which Senator Rosenberg provided him password access continuously from 2009 through February 2017, and through his day-to-day communications with Senator Rosenberg about what was happening in

the Senate. Despite this access to information, we found no circumstantial or direct evidence that Hefner actually influenced Senator Rosenberg's official actions. Thus, under Senator Rosenberg's exceedingly narrow definition, the Firewall was effective. However, Senator Rosenberg's stated concept of a firewall is quite different from what many others who worked in the Senate understood it to mean based on a common sense understanding of the term and what Senator Rosenberg said about the Firewall when he announced it. Many people reasonably understood the firewall to represent a barrier to Hefner's access to information concerning Senate business and, as such, believe that the promised Firewall was in fact non-existent. We agree. Indeed, the facts are clear that Hefner had continuous access to information concerning Senate business and that he repeatedly abused that access.

*Senate IT Policy*

Senator Rosenberg acknowledged that he provided, either directly or through his staff, his confidential Senate Legislative Information Services ("LIS") password to Hefner continuously from 2009 through February 2017. The Senate IT Policy expressly prohibits the sharing of account passwords. Senator Rosenberg told us that he shared the password only because he believed it to be the best way to give Hefner access to his daily schedule, an explanation which is corroborated by a contemporaneous email and statements from various witnesses, including Senator Rosenberg's staff members. Regardless of the reason for sharing the password, however, Senator Rosenberg blatantly violated the Senate IT Policy and, in so doing, gave Hefner inappropriate access to confidential Senate information contained in his email, including privileged communications from Senate Counsel.

After he became Senate President, Senator Rosenberg continued to share his LIS password with Hefner over the objections of his staff, who were concerned about Hefner's behavior.

Senator Rosenberg revoked Hefner's access only after his staff found that Hefner surreptitiously sent an unauthorized email in February 2017 to another elected official, as if the email had been sent from Senator Rosenberg himself.

*The Senate Anti-Harassment Policy*

The Senate Anti-Harassment Policy's stated goal is "to promote a workplace that is free from sexual and other forms of discriminatory harassment." The Anti-Harassment Policy is relevant because our investigation revealed that Hefner sexually harassed<sup>2</sup> multiple individuals who worked in the Senate. Specifically, Senate employees reported that Hefner made unwanted sexual advances towards them in Senate-related social settings and other social settings outside the Senate. They also reported that Hefner engaged in unwanted touching and sent text messages containing sexually explicit material or sexual innuendo. For various reasons, most of these witnesses never reported Hefner's sexualized conduct to anyone in the Senate; some expressed an unwillingness to report Hefner because of his relationship with Senator Rosenberg, and others were not sufficiently offended by it to feel the need to report it. Senator Rosenberg denied knowing anything about Hefner's unwanted sexual advances toward any Senate employees and we found no evidence to contradict his denials of actual knowledge.

Only two witnesses who experienced unwanted touching reported the conduct to anyone in the Senate. In one instance, the victim reported an incident to a junior staff member who did not report the incident further because the junior staff member did not believe the victim wanted to make an official report. In the other instance, the victim reported Hefner's conduct to a staff

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<sup>2</sup> Sexual harassment is broadly defined in the Anti-Harassment Policy of the Senate set forth, *supra*, at pages 11-13.



member who did not report the matter to Senator Rosenberg. There is no evidence to suggest that Senator Rosenberg was aware that Hefner committed acts of indecent sexual assault.

Although we conclude that Senator Rosenberg may not have violated the letter of the Senate Anti-Harassment Policy, we find that his failure to adequately address what he knew of Hefner's sexualized conduct towards Senate personnel seriously undermined the overarching goal of the Anti-Harassment Policy to provide a workplace free from sexual or other forms of harassment. Senator Rosenberg knew from text messages that Hefner routinely sexualized Senate staff and other Senators. He knew that Hefner downloaded and texted images of nude men and male genitalia, and on one occasion inappropriately showed such an image to another Senator. Senator Rosenberg also acknowledged that he was concerned that Hefner might make sexually offensive comments to others. We conclude that Senator Rosenberg should have perceived the foreseeable risk that Hefner would sexually harass Senate employees as defined in the Anti-Harassment policy.

We are cognizant of the difficult situation Senator Rosenberg faced with a partner, and later a spouse, whom he believed to be mentally ill. However, that did not relieve Senator Rosenberg of his obligation as the leader of the Senate to promote a workplace free from sexual or other harassment, especially when it was his own partner and spouse who perpetrated the harassment.

*Senator Rosenberg's Conduct Was Unreasonable as it Pertained to Hefner*

Apart from whether Senator Rosenberg violated any rules of the Senate, there remains the broader question of the reasonableness of his conduct, which the Senate Order requires us to assess. We acknowledge that we have the benefit of hindsight in evaluating facts and circumstances known to Senator Rosenberg during the relevant time period. Nonetheless, we

find that he acted unreasonably in giving Hefner access to Senate information, including by discussing internal Senate politics with him.

First, it is obvious that Senator Rosenberg never should have shared his LIS password with Hefner. The Senate IT Policy prohibited him from doing so, and common sense equally precluded such conduct. To the extent Hefner needed to know Senator Rosenberg's schedule, there were many other ways to provide him that information without giving Hefner access to Senate email. This prolonged and inexcusable lapse in judgment was compounded in January 2015 when Senator Rosenberg made the deliberate choice – over the objections of his staff and after he publicly announced the Firewall – to continue to share his LIS password with Hefner, whom he knew to be an untrustworthy and unpredictable alcohol abuser and whom he believed to be mentally ill.

In addition, as previously noted, Senator Rosenberg failed to adequately address the foreseeable risk that Hefner would harass Senate personnel. This failure to act was entirely unreasonable in light of all that Senator Rosenberg knew about Hefner's behavior, particularly his sexualized text messages regarding Senate personnel and the racial epithets that he directed to a Senate employee.

#### Senate Rule 10

Senate Rule 10 is the only Senate Rule that is arguably applicable to the allegations giving rise to this investigation. But it is far from a perfect fit. Among other things, Senate Rule 10 on its face does not apply to spouses or partners of Senators. We conclude that Senator Rosenberg's own conduct did not violate Senate Rule 10, which in essence has four prongs: (1) a Senator is prohibited from using "improper means" to influence any entity, including any government entities, (2) a Senator is prohibited from receiving compensation directly or indirectly by virtue

of the Senator's position in the Senate; (3) a Senator must make "every reasonable effort" to avoid the appearance of such improper influence; and (4) a Senator shall not use confidential Senate information to further the Senator's or any other person's financial interest. There was no evidence that Senator Rosenberg engaged in any conduct that could be construed as a violation of Rule 10. While we find that he shared confidential Senate information with Hefner, who was his spouse for a portion of the time he was Senate President, there is nothing to suggest that he did so to further anyone's financial interest.

Although we found evidence that Hefner attempted to exert influence over other Senators and their staff, Senator Rosenberg denied authorizing or even knowing that Hefner was doing so and we found no evidence to contradict his assertion in this regard.

## **II. CONDUCT OF INVESTIGATION**

### **A. Senate Order 2228.**

On December 4, 2017, the Senate issued Order No. 2228, authorizing the Ethics Committee to engage a special investigator. On December 18, 2017, the Ethics Committee engaged Hogan Lovells to conduct the special investigation, as authorized. Senate Order 2228 states as follows:

*Ordered,* That, the question of the conduct of Senator Stanley C. Rosenberg and whether he violated the rules of the Senate be referred to the Senate Committee on Ethics for its consideration in accordance with Rule 12A. The Senate Committee on Ethics is authorized and directed to retain a special investigator, who shall investigate the question and submit a report and recommendations as soon as practicable to the Committee. The special investigator's report shall be subject to Rule 12A and shall maintain as confidential the identity of any individual providing information to the investigator, unless the individual specifically consents to being identified. The special investigator shall have full access to the President's office and the full cooperation of his staff. The Senate Committee on Ethics is authorized to require by summons the attendance and testimony of

witnesses and the production of books and papers and such other records as the Committee may deem relevant.

**B. Pertinent Standards of Conduct.**

**1. Senate Rule 10.**

Senate Rule 10 states in pertinent part:

No member, officer, or employee shall use or attempt to use improper means to influence an agency, board, authority, commission of the Commonwealth, any political subdivision of the Commonwealth, or any other entity.

No member, officer, or employee of the Senate shall receive compensation or permit compensation to accrue to the member, officer or employee's beneficial interest by virtue of influence improperly exerted from the member, officer or employee's position in the Senate.

Every reasonable effort shall be made to avoid situations where it might appear that the member, officer or employee is making such use of the member, officer or employee's official position.

Members, officers, and employees should avoid accepting or retaining an economic interest or opportunity which represents a threat to their independence of judgment.

No member, officer, or employee shall use confidential information gained in the course of or by reason of the member, officer or employee's official position or activities to further the member, officer or employee's financial interest or those of any other person.

**2. Applicable IT Policies.**

**a. General Court Policy on the Use of Information Technology Resources ("General Court IT Policy").**

The use of Legislative Information Technology Resources ("ITRs"), defined to include "computers, printers, and other peripherals, programs, data, local and wide area networks, and the internet," is governed by the General Court IT Policy, which states in pertinent part:

It is the responsibility of any person using Legislative ITRs [] to read, understand, and follow this policy. In addition, users are expected to exercise reasonable

judgment in interpreting this policy and in making decisions about the use of ITRs.

Most desktop computers are connected to a local area network, which links computers within the General Court and, through the wide area network, to most other computers in state government. As such, it is critically important that users take particular care to avoid compromising the security of the network. Most importantly, users should never share their passwords with anyone else, and should promptly notify Legislative Information Services personnel if they suspect their passwords have been compromised.

Legislative ITRs are the property of the Commonwealth of Massachusetts and shall be used in conformity with this policy.<sup>3</sup>

Since 2006, the following message has appeared on every user's desktop upon login to the General Court network:

You are logging onto the General Court network managed by Legislative Information Services. Use of this network and all related hardware and software is for the exclusive purpose of conducting the business of the Legislature. The user should have no assumption of privacy.

By continuing this logon process you agree to the ethical and appropriate use policies of the Massachusetts General Court. Failure to comply with those policies may be considered a breach of security and/or a violation of contractual and employment terms and conditions. It is the responsibility of the user to read, understand and comply with the policy of the General Court on the Use of Information Technology Resources. For the full text of the policy please click the link in Internet Explorer Favorites entitled LIS IT Resource Policy 081904. Copies of the Legislative Policy on the Use of Information Technology Resources may be obtained from the LIS or the House and Senate Personnel Offices.

For clarification or support, please contact Legislative Information Services at 617-722-2411.

Although the foregoing message continues to indicate that the full text of the General Court IT Policy is available via a link in Internet Explorer Favorites, this link was removed from

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<sup>3</sup> The current version of the General Court IT Policy was issued on May 1, 2012. Prior to that date, use of Legislative ITRs was governed by an earlier version of the General Court IT Policy, issued on September 20, 2005, which was substantively identical to the current policy in all pertinent respects.

the standard computer image for Senate users in 2013. The full text of the policy remains available to users via Legislative Information Services (“LIS”) and the Senate Personnel Office.

### **b. Senate IT Guidelines.**

As permitted by the General Court IT Policy, the Senate has issued additional guidelines governing the use of communications made via its information technology resources. The current version of these guidelines is contained in Appendix C to the 2017 Massachusetts Senate Employee Handbook (“Senate IT Guidelines”) and states in pertinent part:

[T]he use of the information technology resources shall constitute acceptance of the terms of the General Court’s policy, the Senate’s policy and any additional policies that may apply.

Each employee will be given a user name and confidential password that allows access to the General Court’s computer network, including electronic communications such as e-mail. Sharing of Legislative account credentials is strictly prohibited. Further, each user is accountable for any action that takes place under their account. If account privileges need to be delegated, such as E-Mail management, then LIS is available to assist with setting that up.

The entirety of the Massachusetts Senate Employee Handbook, including the Senate IT Guidelines, is available to Senate users via their desktops as part of the standard computer image employed by LIS.<sup>4</sup>

### **3. The Anti-Harassment Policy of the Massachusetts Senate.**

The current version of the Senate’s Anti-Harassment Policy is contained in Appendix A to the 2017 Massachusetts Senate Employee Handbook and states in pertinent part:

It is the goal of the Massachusetts Senate to promote a workplace that is free of sexual and other forms of discriminatory harassment. Each employee has a

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<sup>4</sup> Prior to 2017, the use of Senate information technology resources was governed by earlier versions of the Senate IT Guidelines, which were substantively identical to the current iteration in all pertinent respects. The Senate IT Guidelines first appeared as an Appendix to the Massachusetts Senate Employee Handbook in 2013 and have been available on each user’s desktop since that time. Prior to 2013, the Senate IT Guidelines were set forth in a stand-alone document, which was provided to employees in hard copy upon beginning their employment.

responsibility to ensure that harassment based on an individual's gender, race, color, national origin, ancestry, religion, disability, age, gender identity, sexual orientation, genetic information, active military status, and any other characteristic protected by federal, state or local law, does not occur in the work place. Discriminatory harassment of employees in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization.

...

Please note that while this policy sets forth the Senate's goals of promoting a workplace that is free of discriminatory harassment, the policy is not designed to or intended to limit the Senate's authority to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether that conduct satisfies the definition of sexual or other discriminatory harassment.

### Definition of Harassment

Discriminatory harassment includes behavior that is not welcomed by an individual and is considered by the individual, and would be by any reasonable individual, to be humiliating, demeaning or offensive, when such conduct has the purpose or effect of unreasonably interfering with a member's work performance or creating an intimidating, hostile or offensive working environment based on an individual's gender, race, color, national origin, ancestry, religion, disability, age, gender identity, sexual orientation, genetic information, active military status, or any other characteristic protected by federal, state or local law.

Discriminatory harassment can be physical or verbal behavior and can include stereotypical statements, derogatory statements about protected characteristics, abusive and discriminatory remarks that are offensive or objectionable to the recipient and/or cause the recipient humiliation, and interfere with the recipient's job performance.

### Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is as follows: 'sexual harassment' means unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

1. Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
2. Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

...

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work environment that is hostile, offensive, intimidating or humiliating to male or female workers may also constitute sexual harassment.

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances, whether or not that involves physical touching;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies or prowess;
- Displaying sexually suggestive objects, pictures or cartoons;
- Viewing, transmitting or printing electronic or computer material of a sexual or sexist nature, including, but not limited, to e-mails, graphics and material from the internet;
- Unwelcomed leering, whistling, brushing against the body, sexual gestures, and suggestive or insulting comments;
- Inquiries into one's sexual experiences; and
- Discussion of one's sexual activities.<sup>5</sup>

### **C. Witness Interviews – Confidentiality.**

The investigative team interviewed 45 witnesses, some more than once, who worked in or had business before the General Court. As directed by Senate Order No. 2228, we have endeavored to maintain the confidentiality of each witness who did not specifically consent to be identified. One witness consented to be identified but only for the limited purpose of attempting to corroborate certain factual assertions that the witness made. Like all other witnesses, however, this witness did not consent to be identified in our investigative report. Accordingly, we have anonymized the sources of information in this report by omitting names, official titles,

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<sup>5</sup> Prior to 2017, sexual and other forms of discriminatory harassment were prohibited by earlier versions of the Senate Anti-Harassment Policy, which were substantively identical to the current version in all pertinent respects.



and other identifying data. Where relevant, we have indicated that witness statements are corroborated by contemporaneous emails, text messages or other information.

We have not disclosed the identity of any witness to the Ethics Committee. Nor has the Ethics Committee sought any such disclosure. We sought and received permission to issue subpoenas to compel two witnesses to provide information. As with all other witnesses, the identities of these witnesses were not disclosed to the Ethics Committee.

Senator Rosenberg voluntarily met with us for approximately 11 hours over two days. His attorney made separate presentations to us both prior to and after the interviews.<sup>6</sup> Mr. Hefner, through his attorney, declined to be interviewed in light of a pending criminal investigation by the Massachusetts Attorney General.<sup>7</sup>

#### **D. Scope of Review.**

On December 1, 2017, Senate Counsel issued a litigation hold notice to Senator Rosenberg and all employees in the Senate President's Office. On the same date, Senate Counsel also issued a litigation hold notice to one other member of the Senate and that Senator's staff, based on additional information reported to Senate Counsel. The hold notices informed recipients that they were not to "alter, delete, destroy, or otherwise modify any potentially relevant paper or electronic material involving Bryon Hefner." LIS took additional technological precautions against the accidental deletion of relevant material.

On December 29, 2017, Hogan Lovells engaged an outside firm specializing in forensic collection of electronically stored information to collect current and archived email from certain

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<sup>6</sup> We understand that, for purposes of preparing his presentations, Senator Rosenberg's attorney was provided access to – and in fact interviewed – certain current and former members of Senator Rosenberg's staff.

<sup>7</sup> Subsequent to our request to interview him, on March 29, 2018, Hefner was indicted by a grand jury sitting in Suffolk County. On March 2, 2018, the Attorney General's Office contacted Hogan Lovells to indicate that it was investigating some of the same conduct that Hogan Lovells was investigating and to request that Hogan Lovells refrain from reporting any findings until the end of March 2018. We honored that request.

identified Senate custodians, including Senator Rosenberg and his staff. This collection was limited to the custodians' State House email accounts. Hogan Lovells also collected forensic images of the State House issued desktop computers for Senator Rosenberg and two of his senior staff members.

Before Hogan Lovells received access to any email data for review, Senate Counsel provided the forensic vendor with numerous search terms to identify potentially attorney-client privileged communications. These potentially privileged documents were segregated into a separate database – to which Hogan Lovells did not have access – where Senate Counsel could review them to determine whether they were in fact privileged. Documents and communications that did not hit on any privilege search terms were loaded into a separate database for Hogan Lovells' review. As Senate Counsel conducted their privilege review, documents determined not to be privileged were also released to Hogan Lovells for review.

On two occasions – once in connection with the litigation hold notice issued in this matter and once in connection with a litigation hold notice issued in an unrelated matter in 2016 – Senator Rosenberg provided his iPhone to Senate Counsel to allow LIS to secure backups of his device. These backups, dated July 25, 2016 and December 1, 2017, were maintained by LIS and provided to Hogan Lovells on December 29, 2017. Hogan Lovells' forensic vendor extracted text messages, voicemails, calendars, and other data from these backups, all of which was reviewed as relevant to this investigation.<sup>8</sup> While Hogan Lovells did not have access to

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<sup>8</sup> LIS imaged the iPhone using what is known as an iTunes backup. This is not a forensic software tool, but rather a simplistic way to image an iPhone and capture any active data that exists on the device. Nevertheless, Hogan Lovells' forensic vendor was able to retrieve a voluminous amount of deleted data from the backups of Senator Rosenberg's iPhone, including text messages. Blocks of deleted messages from certain time periods were missing due to the nature of the imaging and the process by which the iPhone overwrites deleted data. We do not believe Senator Rosenberg deleted any information from his phone to avoid its production in the investigation. To the

witnesses' personal phones, certain witnesses provided Hogan Lovells with screen shots of relevant text messages, emails, and other documents, as described in this report.

**E. Senate Information Systems.**<sup>9</sup>

LIS controls information technology within the State House. In that capacity, LIS provides desktop computers, as well as individualized State House accounts and email addresses that can be accessed via Microsoft Outlook, for all Senate members and employees. These individualized accounts are protected by passwords that must be changed approximately monthly.

Senate Chiefs of Staff, schedulers, and other employees regularly require access to members' emails and/or calendars in order to perform their professional duties. While utilizing State House desktop computers, employees can freely log into their own accounts but can also obtain "delegate access" to their members' Outlook email and calendars, pursuant to LIS policy.

Delegate access is not available on mobile devices or personal computers. Nevertheless, it is common for Senate staffers to have mobile or remote access to their member's email and/or calendar. The only way for staffers to gain such access is to utilize the member's username and password. Such sharing of member passwords among office staffers is routine despite LIS's IT Policies, which state that "[s]haring of Legislative account credentials is strictly prohibited." Once a staffer logs into a mobile device or remote computer as the member, the staffer has full access to the member's email and calendar, and can view, edit, add, delete, or send emails or calendar events as if he/she is the member.

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contrary, he voluntarily produced his phone to Senate Counsel in order to have it imaged and to preserve any relevant data prior to our engagement.

<sup>9</sup> The facts set forth in this section are derived from LIS policies and interviews with LIS staff. We refer to these sources collectively as LIS.

LIS does not provide any State House-issued mobile devices. To access State House email or calendars on a mobile device or personal computer, a member or employee must set up his or her email through the device's email client or app. Doing so requires the account username, account password, server name, and domain name. LIS typically maintains the server name and domain name and does not publish this information. As such, most users ask LIS to help them set up State House email on their devices. LIS acknowledged, however, that it would be possible for someone to set up email on a mobile device without LIS' assistance if they otherwise knew the domain and server name.

In or about January 2015, LIS instituted a limit on the number of devices (including phones, tablets, and laptops) permitted to access any particular member's account remotely. This limit is, and has at all relevant times been, ten devices. When a new device is added or removed from a particular account, this event is logged on an event log maintained by LIS. LIS also maintains a current list of all devices associated with a particular email account.

Beginning in early 2015, LIS also instituted a security protocol whereby nine successive unsuccessful login attempts on a State House account would trigger a 30-minute account lockout. When this change was originally made, many State House offices had issues with repeated lockouts. These lockouts were typically caused by mobile devices – which save passwords – automatically trying to access an account after the account password had been changed. To help diagnose and resolve these issues, LIS developed a program for their own internal use to produce reports showing which user accounts were locked and which devices were causing the lockouts.

Remote access to an Outlook calendar and email is distinct from remote access to Senate documents, which are housed on what is known as the O-drive within the Senate computer network. Each Senate office has its own O-drive and controls access to it. Documents stored in

an individual office's O-drive can only be accessed remotely through a VPN connection which LIS would load onto a user's personal computer. At no time did Senator Rosenberg utilize a VPN connection. As such, he did not have remote access to the Senate network's O-drive for his office.

### **III. INVESTIGATIVE FINDINGS – INFORMATION GLEANED FROM INTERVIEWS, EMAILS, TEXT MESSAGES, AND OTHER DOCUMENTS**

The following summary of our investigative findings contains only those facts that we found to be credible based on interviews of individuals other than Senator Rosenberg, as well as our review of contemporaneous emails, text messages, and other information. In several instances we have included conflicting recollections of facts from different witnesses where we were unable to corroborate one version over the other. Senator Rosenberg's response to these factual findings and his statements appear in Section IV.

#### **A. Hefner's Access to and Communications with Senator Rosenberg's Office.**

We reviewed a significant volume of emails and text messages by and among Hefner, Senator Rosenberg, and his staff from before and after the December 3, 2014 Firewall Letter. As demonstrated below, it is apparent that the Firewall Letter did not significantly alter Hefner's interactions with Senator Rosenberg's office. Both before and after, Hefner was in routine contact with Senator Rosenberg's staff and occasionally inserted himself in Senate business.

##### **1. Hefner's Quasi-Official Role in Senator Rosenberg's Office Pre-Firewall Letter.**

Hefner worked as a summer intern in Senator Rosenberg's office in the summer of 2008. Shortly after the summer internship concluded, Hefner and Senator Rosenberg began their

personal relationship.<sup>10</sup> Beginning in or about 2009, Hefner became involved in Senator Rosenberg's political campaign and, according to his resume, from February 2010 to July 2013 he served as the Chairman of the Rosenberg Committee, a role which largely entailed planning Senator Rosenberg's district campaign events and fundraising. In his capacity as Chairman of the Rosenberg Committee, Hefner opened social media accounts on Facebook, Twitter and other platforms for Senator Rosenberg's campaign. In addition to his campaign-related social media work, Hefner was also responsible for conveying official messages from Senator Rosenberg's Senate office via social media from approximately 2011 through May 2013, when a paid staff member took over that responsibility.

On July 31, 2013, Senator Rosenberg announced that he had secured the votes necessary to become the next Senate President, succeeding Senate President Therese Murray. Senator Rosenberg's staff recalled varying degrees of contact with Hefner prior to Senator Rosenberg becoming President. As noted above, Hefner was responsible for official social media matters until May 2013. Prior to Senator Rosenberg assuming the Presidency, Hefner also routinely contacted the staff regarding the Senator's public relations matters.

In or about May 2013, Hefner began working as a Public Affairs Consultant for the Robert F. Kennedy Children's Action Corps ("RFK").<sup>11</sup> While Hefner had no formal responsibility for Senator Rosenberg's Senate-related social media presence while working at RFK, he continued to contact staff directly via email and text message to make suggestions for

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<sup>10</sup> The two were married on September 6, 2016.

<sup>11</sup> This appears to be Hefner's second of three stints as an RFK employee. In 2009, Hefner served as a paid intern at RFK. The scope of his duties during the internship is unclear. His 2016-2017 tenure as Special Assistant to the President is discussed in further detail in Section III.A.5, *supra*, at pages 32-33.

social media postings on behalf of Senator Rosenberg. He also contacted Senator Rosenberg's staff to assist RFK in its efforts to obtain public funding for one of its programs.

RFK, founded in the wake of the assassination of its namesake, Senator Robert F. Kennedy, is an organization dedicated to improving the lives of children by providing programs and services to at-risk youth and families. Hefner, whose childhood history in the Massachusetts foster care system is publicly documented, lived at RFK's residential facility in Lancaster, Massachusetts as an adolescent.<sup>12</sup> As a young adult, Hefner was viewed as a "success story" and frequently touted as such at fundraising events and in promotional materials for RFK. For their part, RFK's leadership team took an avid interest in Hefner's personal and professional growth.

One of the programs RFK administered, the Detention Diversion Advocacy Program (DDAP) subsisted through federal and state grant funding, as well as private donor gifts, from its inception in 2005.<sup>13</sup> In 2013, DDAP faced a budget shortfall and RFK began seeking alternative funding sources. According to emails and other documents, Hefner's duties as a Public Affairs Consultant would include "working on western mass [*sic*] strategy for DDAP funding and visibility" along with other special projects as needed. Hefner officially began his employment as a Public Affairs Consultant for RFK on May 1, 2013.

On May 7, 2013, Hefner emailed his colleagues at RFK, with a copy to Senator Rosenberg and two members of his staff. The email stated, in pertinent part:

Good Morning [colleagues at RFK], I was informed on Tuesday evening of a potential opportunity for the Detention Diversion Advocacy Project (DDAP) to receive state funding, pending the addition of program specific language in the FY14 State Budget. On Tuesday, Majority Leader Rosenberg (SCR) met with

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<sup>12</sup> Available at <https://www.bostonglobe.com/metro/2014/12/05/senator-partner-was-long-considered-success-story/OMpS5srxO08WO9Tz4kpzcJ/story.html>.

<sup>13</sup> DDAP is an intervention alternative to court-ordered detention for juveniles. It provides its clients with community-based support and supervision in lieu of incarceration.

representatives from [a youth advocacy program]. During the meeting they raised two programs as being exemplary and successful – [a foster care program] and DDAP...SCR would like to discuss with representatives from RFK & DYS the potential for funding DDAP through the DYS operating budget. In order to explore this with DYS, SCR wishes to speak first with RFK/DDAP representatives to determine whether or not this is a good idea. He would like to meet/speak with someone no later than Thursday afternoon, given where the Senate is in the budget process. Pending the outcome of the meeting with DDAP stakeholders, SCR would like to invite [DYS official] into his office, next week, to discuss the possibility of DYS funding of DDAP through their existing operating budget. I look forward to your reply, Bryon.

That same day, a meeting with [DYS officials] was scheduled and added to Senator Rosenberg's calendar for the following week. Hefner's RFK colleagues lauded his efforts and quickly seized upon the opportunity to meet with Senator Rosenberg. At 9:26 p.m., an RFK executive emailed Hefner to accept the invitation. At 9:35 p.m., Hefner responded that "a tentative hold has been placed for Thursday, May 9<sup>th</sup> @ 1130am @ the State House in the Majority Leaders Office. A final confirmation will come tomorrow morning, from [Senator Rosenberg's staff member]." On May 8, 2013, a meeting with [RFK officials] "Re: DDAP" was formally added to Senator Rosenberg's calendar. The meeting contact was "Bryon." These meetings ultimately took place, but RFK's efforts to secure state funding for DDAP did not gain sufficient traction in 2013.<sup>14</sup> Hefner left RFK in December 2013. As indicated above, by that time Senator Rosenberg had already announced that he had secured the votes necessary to become the next Senate President.

Aside from his apparent involvement in attempts to secure state funding for DDAP, it appears from an August 11, 2014 email that Hefner also had some involvement in recruiting staff members for Senator Rosenberg's office. On that day, Hefner forwarded to Senator Rosenberg's

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<sup>14</sup> A budget amendment for DDAP, in the form of an earmark, was first sponsored in 2015 (for the 2016 budget). By that time, RFK had engaged a registered lobbyist to assist in its efforts. The \$500,000 earmark was included in the Fiscal Year 2016 budget for DYS. DDAP has been funded at that level every year since.



Gmail account a resume and writing sample of an individual under consideration for a position in Senator Rosenberg's office. The candidate emailed Hefner, "Please let me know if you would like me to provide anything else." Hefner's transmittal email to Senator Rosenberg stated: "For the files." Senator Rosenberg in turn forwarded the materials to a senior member of his staff, stating: "Please add to resume file search. Not for chief of staff so we look at it later."

## **2. Senator Rosenberg's Release of the December 3, 2014 Firewall Letter.**

Senator Rosenberg's relationship with Bryon Hefner became the subject of multiple press reports in December 2014, just prior to Senator Rosenberg becoming Senate President. The reports detailed allegations that Hefner had engaged in disruptive conduct, including authoring disparaging social media postings concerning then Senate President Murray and allegedly bragging about his influence over Senator Rosenberg's decision-making, including selections for leadership positions for the Senate. As a result of Hefner's behavior, and in anticipation of additional impending press reports, Senator Rosenberg released what has been referred to as the "Firewall Letter" on December 3, 2014.<sup>15</sup> The letter stated in pertinent part,

You have probably seen today's *Boston Globe* story by now. As you saw from my response, I was open and transparent as I have been in the past. I intend to lead the Senate in the same way. As I have also told the *Boston Globe*, I have enforced a firewall between my private life and the business of the Senate, and will continue to do so.

On the same day, *The Boston Globe* published a story entitled, "Complaints over partner entangle state senator," which discussed the Firewall concept that Senator Rosenberg had introduced.<sup>16</sup> The article reported that Senator Rosenberg, in an interview with *The Boston*

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<sup>15</sup> Senator Rosenberg conveyed the same message to his Democratic Senate colleagues via an email sent on December 3, 2014.

<sup>16</sup> Available at, <https://www.bostonglobe.com/metro/2014/12/03/senator-moves-quell-turmoil-over-partner-tweets/uCAg3mW916Gs5T0ooAcfAM/story.html>.

*Globe* on November 26, 2014, stated that “he has made it clear to Hefner that he is not to be involved in the business of the Senate.” The article also quoted Senator Rosenberg as saying, “Very clearly, very specifically, [Hefner’s] not involved in making any decisions. All personnel decisions, all the chairmanships, are going through the normal internal processes.” On December 4, 2014, Senator Rosenberg made further public comments regarding the Firewall to WCVB Channel 5 News during an interview at the State House. When asked what the Firewall means, Rosenberg explained that “a firewall means home business stays home; work business stays at work.” He further clarified, “I am not interfering and trying to influence [Hefner’s] professional work and he will not be doing so in my case.”<sup>17</sup>

Staff members recalled that the Firewall Letter was drafted by Senator Rosenberg’s senior staff and political advisers without any input from legal counsel. The senior staff members understood that, given Hefner’s long-term relationship with Senator Rosenberg, Senator Rosenberg’s staff would inevitably interact with Hefner to some extent, but that the Firewall was intended to prevent Hefner from having any involvement in hiring decisions, day-to-day business, or policy making. According to one staff member, the Firewall was also meant to assure Senator Rosenberg’s staff that they did not have to take any direction from Hefner, and to put a “protective box” around the office that had not previously existed. Thus, senior staff directed junior staff that going forward Hefner was not to have any contact with them about Senate business and they were to report any interactions with Hefner to senior staff immediately. Senior staff understood from discussions with Senator Rosenberg that they were free to ignore requests or suggestions made by Hefner without consulting Senator Rosenberg.

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<sup>17</sup> Available at, <http://www.wcvb.com/article/sen-stan-rosenberg-promises-firewall-between-private-public-life/8050494>.

### **3. Hefner's Access to Senator Rosenberg's Senate Email and Calendar.**

Emails demonstrate that, as early as 2009, Senator Rosenberg, either personally or through his staff, was providing Hefner with his LIS-issued Outlook user name and password, which allowed Hefner to access Senator Rosenberg's Senate calendar and email remotely from his phone or other mobile device. This was not delegate access; Hefner had full access to Senator Rosenberg's email as if he were in fact Rosenberg or an official staff member.<sup>18</sup> As discussed in more detail below, Hefner's direct access to Senator Rosenberg's email and calendar continued unabated until in or about February 2017.

The earliest evidence that Senator Rosenberg shared his LIS password with Hefner is found in an email retrieved from LIS archives and dated September 29, 2009. The next instance of password sharing that is evident from Senator Rosenberg's archived emails occurred on March 22, 2011. The archived emails show that, thereafter, Senator Rosenberg kept Hefner apprised of each change to the password through October 1, 2012.<sup>19</sup> In each instance after March 22, 2011, Rosenberg forwarded the password via a transmittal email addressed to two of his staff members and to Hefner's private Gmail account.

Staff members who worked for Senator Rosenberg at the time recalled that Hefner was given access to Senator Rosenberg's account solely to allow Hefner to access Senator Rosenberg's schedule and that email access was an incidental byproduct of calendar access. They understood that Hefner was granted this access both because of his personal relationship

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<sup>18</sup> As described above, remote access to email and calendar does not include access to the Senate network's O-drive.

<sup>19</sup> The password was updated approximately monthly by adding one to the number at the end of the password sequence.

with Senator Rosenberg and because of his role with Senator Rosenberg's political campaign.<sup>20</sup>

One witness, a policy advocate who did not work in the State House, but frequently socialized with Hefner, recalled that Hefner would often pull out his iPhone and read aloud from Senator Rosenberg's Senate email and calendar, noting the major issues pending at that time, as well as the events on Senator Rosenberg's schedule. This witness recalled Hefner commenting on "how busy" Senator Rosenberg's schedule kept him.

Shortly after Senator Rosenberg was sworn in as Senate President on January 7, 2015, members of Senator Rosenberg's staff attempted to find a way to continue to provide calendar access for Hefner without allowing him access to the Senate email, which had become an acute point of concern in light of the recent Firewall Letter and the events leading up to it. Toward this end, they contacted LIS to inquire about the possibility of allowing an individual remote access to Senator Rosenberg's calendar without giving that person access to email. They also asked whether LIS could increase the number of devices permitted to access Senator Rosenberg's account in order to make room for the larger staff that he would have as Senate President.

During meetings on January 21 and 23, 2015, LIS informed members of Senator Rosenberg's staff that there was no way to separate access to an Outlook calendar from access to the associated email account by way of permissions. The staffers asked whether the problem could be solved by maintaining two distinct Outlook accounts – one strictly for email and another strictly for the calendar. LIS responded that this was not possible. LIS further informed the staff that they could not increase the limit on the number of devices that could be linked remotely to Senator Rosenberg's account beyond the ten authorized for any member's office. At

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<sup>20</sup> We learned anecdotally that other Senate offices utilize a shared Google calendar separate and apart from the LIS system in order to allow spouses and political campaign staff to have access to the elected official's schedule.

no time during these meetings, or at any other time, was LIS informed that the requests pertained to access for Hefner. LIS assumed that the requests were designed to keep Senator Rosenberg's political campaign staff apprised of his schedule.

Thereafter, members of Senator Rosenberg's staff explained to him that there was no way to provide Hefner with remote access to his calendar without also providing access to his email. Several members of Senator Rosenberg's staff discussed amongst themselves their discomfort with providing Hefner remote access because it meant that Hefner could read the Senate President's official email, delete email, and potentially even send email as if it were sent by Senator Rosenberg himself. Senior staff informed Senator Rosenberg that they were opposed to Hefner's access to the Senator's email and calendar, given the erratic and disruptive behavior that he had demonstrated in multiple ways.

First, as described above, Hefner allegedly posted disparaging comments on social media regarding the outgoing Senate President,<sup>21</sup> which precipitated the need for the Firewall Letter in the first instance. Second, Senator Rosenberg disinvited Hefner from participating in a weekly call with his political advisors and senior staff because Hefner was unable to conduct himself in a productive manner. Lastly, in an August 2014 email with Senator Rosenberg and his staff, Hefner chastised the staff for failing to "promote the Stan Brand" and that "Team Rosenberg must lead by example," among other things. This prompted Senator Rosenberg to rebuke Hefner by stating, "Bryon, I have repeatedly asked you not to send communications directly to staff and you have repeatedly agreed that you understood that it is not appropriate. I again respectfully ask you not to do this. It is inappropriate and disruptive."

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<sup>21</sup> While Hefner never admitted to staff (or Senator Rosenberg) that he in fact posted the derogatory comments about outgoing Senate President Murray, the staff came to believe that Hefner was in fact responsible. Soon after the social media postings, Senator Rosenberg asked one staff member whether it was possible to trace the postings to Hefner. The staff member investigated but could not confirm the source of the postings.

Despite his staff's objections, Senator Rosenberg insisted that his staff continue to give Hefner the password to his LIS account. Neither Senator Rosenberg nor his staff ever sought permission from LIS to allow Hefner such access, and LIS never provided such permission. LIS noted that it is a fundamental rule of any IT department that credentials/passwords are never to be shared outside of the organization as a matter of security. Consequently, LIS would not have authorized such access to Hefner had it been requested.

Senior staff assigned two staff members the responsibility of monitoring Senator Rosenberg's incoming and outgoing email, and filing incoming email into subfolders based on the content of the email, such as constituent correspondence. This monitoring and filing protocol served a dual purpose of preventing Senator Rosenberg from getting bogged down in reading and responding to emails and ensuring that Hefner was not using the Senate President's email. The senior staff was in fact concerned that Hefner would send emails from Senator Rosenberg's account and monitored the account accordingly.

In early or mid-2015, the Senate President's Outlook account experienced a number of lockouts. Staffers for Senator Rosenberg repeatedly contacted LIS for their assistance in unlocking the account. Staffers conveyed that they and the Senate President were becoming extremely frustrated with the lockouts, which temporarily shut down the operations of the office. At first, LIS simply unlocked the account each time it became locked. After several more lockouts, however, LIS began looking into the underlying cause. In July 2015, LIS reviewed their logs and determined that the device responsible for at least two of the lockouts was "Bryons-MacBook-Air.local." LIS communicated this finding to two staffers for Senator Rosenberg and told them the issue could be resolved by updating the account password in the mail client on that Mac laptop.

LIS was not aware of the owner of the device causing the lockouts; they simply knew the name ascribed to the device. Nor was LIS aware of how Senator Rosenberg's email came to be set up on the mail client on "Bryon's Macbook." In interviews, LIS noted that anyone with Senator Rosenberg's password and the server/domain names could have set up access to Senator Rosenberg's email on a remote device. LIS confirmed that the lockouts experienced on Senator Rosenberg's account were caused by "Bryon's Macbook" automatically trying to log into the account via an email client with an outdated password, as opposed to someone repeatedly entering the wrong password manually.<sup>22</sup>

LIS recalled that, after this issue was addressed in July 2015, they noticed fewer lockouts on the Senate President's account; they did not recall being contacted about lockouts by anyone in Senator Rosenberg's office thereafter. LIS provided Hogan Lovells with the log confirming that the lockouts were caused by "Bryon's MacBook," and also with contemporaneous email exchanges with Senator Rosenberg's staffers regarding the resolution of the lockout issue.

After becoming Senate President, Senator Rosenberg instructed his staff to take charge of re-setting his LIS password when the automated notice of expiration arrived, and directed that the new password be sent to Hefner via text or email to Hefner's private Gmail account. Throughout Senator Rosenberg's tenure as Senate President, different staff members were assigned the task of updating Senator Rosenberg's password before it expired and conveying it to Hefner. Numerous emails demonstrate how the password was shared and the staff's awareness of Hefner's access:

- On May 27, 2015 a staff member emailed Senator Rosenberg, "Re: Password, I cannot remember if I emailed this out last week or not." Senator Rosenberg

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<sup>22</sup> LIS stated that the logs only track device names, such as "Bryons-MacBook-Air.local," when the account is accessed by a remote device utilizing a built-in mail client.

responded, “You didn’t but helpful. We need to send it to me and Bryin [*sic*] each month. It is the only way he has access to my schedule which is very important to help us plan our lives.”

- On August 20, 2015, a Senator Rosenberg staffer emailed Hefner via his Gmail address the new password for Senator Rosenberg’s LIS account.
- On September 20, 2015 Senator Rosenberg forwarded the automatic password expiration reminder to a member of his staff, copying Hefner via his Gmail account, “it’s that time again!”
- On November 13, 2015 Senator Rosenberg emailed members of his staff “re: LIS – Your Account Password Will Expire in 2 Days, “Oh no! I thought we did this in [*sic*] Monday, so we wouldn’t run into repeated weekend ‘I can’t get access problem’ again! Please, please tell me we did this already and Bryon and I will not be kicked out again this weekend as has happened several times over this year!”
- Text messages on or about February 21, 2016 between Hefner and Senator Rosenberg reveal that Senator Rosenberg shared a password with Hefner, which witnesses confirmed was his LIS password.
- On April 9, 2016, Hefner emailed a staffer “re: Password, Morning [ ], Can you send me the outlook password when you get a chance. I need to put it in my replacement phone. Thanks, Bryon.” The email to the staffer was sent from Senator Rosenberg’s private Gmail account, as opposed to Hefner’s Gmail account.<sup>23</sup>
- Text messages on or about June 11, 2016 between Hefner and Senator Rosenberg reveal that Senator Rosenberg shared a password with Hefner, which witnesses confirmed was his LIS password.
- On August 26, 2016, Senator Rosenberg received a “spam” email informing him that his mailbox account had reached his storage limit. This email did not come from the LIS system, but Senator Rosenberg nevertheless forwarded it to members of his staff with the following instruction: “Time to deal with this. We got a warning a week or two ago and Bryon deleted enough to keep things working but time to do major clean out! Thanks. Stan”. A staffer explained to Senator Rosenberg at the time that the initial email was spam and was not to be

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<sup>23</sup> We found several instances where it appeared Hefner corresponded with Senator Rosenberg’s staff utilizing a Gmail account in Senator Rosenberg’s name. Staff understood that Hefner had access to and utilized Senator Rosenberg’s Gmail account. They also understood Hefner had the passcode to Senator Rosenberg’s iPhone and iPad. One staff member assumed that Hefner read everything that the staff sent to Senator Rosenberg via Senate email, Gmail, or via text message.



opened. The staffer understood that Rosenberg believed the email had come from LIS and that Hefner had deleted items from Senator Rosenberg's LIS account to free up space.<sup>24</sup>

- On August 26, 2016 a senior Senator Rosenberg staff member emailed a junior staff member, "Can you find time to change his password? It means entering the new password on his devices, texting the new PW to Bryon (I suggest via Stan's phone), and updating [ ]'s phone." The senior staff member suggested using Senator Rosenberg's phone to relay the new password so that the junior staff member would not have to disclose their mobile phone number to Hefner. This was intended to protect the junior staff member from future contact with Hefner via text message.

#### **4. Hefner's Unauthorized Use of Senator Rosenberg's Senate Email Account.**

As noted above, two staff members were tasked with monitoring Senator Rosenberg's email account. In so doing, they discovered at least two occasions on which Hefner used Senator Rosenberg's email account to draft and transmit an email as if he were Senator Rosenberg without permission from Senator Rosenberg or his staff. The first confirmed instance occurred on January 9, 2017 when a staff member received an email purporting to be from Senator Rosenberg requesting that the staff member arrange a meeting with another elected official employed outside the General Court. The staff member was immediately concerned that Senator Rosenberg was not the author of the email for two reasons. First, the staff member was aware that Senator Rosenberg was at that very moment in a meeting in a conference room within the Senate President's office and typically did not carry a mobile device into meetings. Second, the email contained a formal signature block which, to the staff member's knowledge, Senator Rosenberg never used. The staff member alerted a senior staff member who informed Senator

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<sup>24</sup>The Senate email system has a limit as to how many emails can be held in any given inbox. Consequently, email needs to be removed from the inbox and placed into another file. It is apparent from this email that Senator Rosenberg allowed Hefner to remove emails from his inbox to make room for new emails, which he admitted occurred. *See* Sections IV.B.1 *supra*, at pages 53.

Rosenberg immediately. Senator Rosenberg confirmed that he did not send or authorize the email, noting that he had left his iPad at home and that Hefner must have used the iPad to send the email. Senator Rosenberg acknowledged that Hefner had the passcode to the iPad and, once the iPad was opened, the Senate email account was accessible to him. The staff considered this incident a one-off breach of protocol and did not believe it to be particularly problematic because the person with whom the meeting was to be arranged was someone Senator Rosenberg would have met with in the usual course.

The second instance occurred days later on January 18, 2017, when an email was sent from Senator Rosenberg's official Senate email account to another elected official at 9:32 PM stating:

If you are up for it, I would like to schedule lunch or dinner so I can learn more about your vision for our Commonwealth. Please contact [my staff member] in my office to find a time, if you are amendable. Stan

A member of Senator Rosenberg's staff noticed the email and immediately brought it to the attention of a senior staff member. The staff member who flagged the email did so because it was out of the ordinary on its face: Senator Rosenberg had never communicated with the recipient, would have no reason to do so, and would not have done so without discussion among the staff. In light of these factors, the staff member did not believe Senator Rosenberg sent the email and, aware of Hefner's access to Senator Rosenberg's email account, elevated the issue to the senior staff member. The senior staff member immediately brought the email to Senator Rosenberg's attention. Unlike the prior unauthorized email, this email was sent to an official with whom Senator Rosenberg would not ordinarily meet. According to the staff member, Senator Rosenberg acknowledged that he did not send the email and did not authorize Hefner to

send it. He further acknowledged that Hefner must have sent it from his own device. As a result of this incident, the senior staff member insisted that Hefner could no longer have the password to Senator Rosenberg's LIS account, and Senator Rosenberg agreed. The senior staff member recalled that the password to Senator Rosenberg's account was changed immediately thereafter.<sup>25</sup>

Shortly thereafter, a staff member was instructed to implement a new protocol with respect to Senator Rosenberg's calendar. Specifically, the staff member was told to email the following day's schedule to the entire staff, with a carbon copy to Hefner, at the end of the preceding day. This daily schedule email contained the full schedule of events that Senator Rosenberg had on his calendar, including events that were not listed on the public calendar for the State House. The staff assumed that this new procedure was implemented in order to keep Hefner informed of the schedule in lieu of providing him with the password, as well as to help Senator Rosenberg keep abreast of his upcoming meetings.

#### **5. Hefner's Continued Involvement in Senator Rosenberg's Office Post-Firewall Letter.**

After the Firewall Letter, Hefner continued to make contact with Senator Rosenberg's staff on a frequent basis. The staff reported the majority of these contacts to a senior staff member, as they had been directed to do. In addition to Hefner's direct contacts with staff, there were also numerous instances after the December 3, 2014 Firewall Letter where Hefner emailed Senator Rosenberg an article or other publication of interest with suggestions for its application, which Senator Rosenberg then forwarded to members of his staff with an "FYI" or some other direction to file the material for future use. In some instances, Senator Rosenberg forwarded

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<sup>25</sup> LIS maintained a password reset log, which shows the password was not in fact changed again until February 7, 2017.

Hefner's emails to other Senators. At least one member of his staff believed this to be contrary to the self-imposed Firewall and did not understand why Senator Rosenberg did not simply cut and paste the article or link, thereby removing Hefner's email address from the chain. This staff member never raised the issue with Senator Rosenberg, but did discuss it with co-workers.

In addition to sharing his LIS password with Hefner, Senator Rosenberg also permitted Hefner to utilize the office's Instatrac account to keep abreast of activities in the State House.<sup>26</sup> On April 26, 2016, a staff member emailed Hefner the user name and password for the account assigned to Senator Rosenberg's office. A staff member believed that this account was paid for by the Senate.

We found several instances after the Firewall Letter in which it appears that Hefner's unique access to Senator Rosenberg's office was abused. For example, by the spring of 2016, Hefner had returned to his former employer, RFK, assuming the role of Special Assistant to the President.<sup>27</sup> As was the case during his 2013 tenure at RFK, Hefner's work at RFK overlapped with the work of Senator Rosenberg's office. For instance, Hefner directed Senator Rosenberg's staff and other State House personnel while coordinating a State House event commemorating John F. Kennedy's centennial birthday; Senator Rosenberg's calendar includes entries detailing Hefner's supervisor's vacation schedule; and Senator Rosenberg served as the featured speaker for an RFK-sponsored symposium. Hefner also forwarded to RFK executives a document sent to Senator Rosenberg by a human services policy advocate as part of a request to meet with Senator Rosenberg to discuss a budget amendment. Senator Rosenberg forwarded the document

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<sup>26</sup> According to its LinkedIn page, Instatrac is a web-based legislative tracking service used by leading lobbyists and government professionals monitoring actions of the Massachusetts Legislature. *Available at*, <https://www.linkedin.com/company/instatrac-inc/>.

<sup>27</sup> Hefner returned to RFK on April 25, 2016 and abruptly resigned on or about June 29, 2017. Witness interviews and other documents reveal that his tenure at RFK was marred by the same erratic behavior and angry outbursts reflected in his interactions with Senator Rosenberg's staff, discussed in Section III.A.6, *supra*, at pages 34-36.

to his staff, expressing the need for further discussion. While Senator Rosenberg did not address the email to Hefner, Hefner sent the document to his colleagues at RFK the next day and marked it “Confidential.” One RFK executive asked “[w]ill this eventually be released to the public,” to which Hefner replied, “No. This was sent to our friend.” Based on the email’s origins, we believe the “friend” was Senator Rosenberg.

Another example in which it appears that Hefner’s unique access was abused occurred on October 21, 2016. On that date, an email was sent from Senator Rosenberg’s Senate account to Hefner forwarding a cover email to a draft of the Senate Committee on Post Audit and Oversight’s report on “fine time.”<sup>28</sup> The Subject line of the email explicitly states: “Report contents embargoed until further notice.” The email further states in bold print **“Please do not share, copy, circulate, email or post this document or any part thereof online, and please do not discuss its contents with parties outside the Senate.”**<sup>29</sup>

Despite Hefner’s access to Senator Rosenberg’s email and communications with his staff, none of Senator Rosenberg’s staff members could recall an example where Hefner actually interfered with or influenced Senator Rosenberg’s office on a policy matter. Several witnesses noted that due to Senator Rosenberg’s shared leadership approach, by which much of the Senate President’s power was ceded to Committee Chairs and other Senators, Hefner could not have had any actual influence on Senate matters. Senator Rosenberg’s staff noted that Hefner was not frequently present in Senator Rosenberg’s office after he became President. Others recalled only periodically seeing him in the office after working hours. Many of the staff members described

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<sup>28</sup> Senator Rosenberg did not recall sending this email and it is entirely possible that Hefner forwarded it to himself. In either scenario, Hefner had access to confidential Senate information as a result of his continued access to Senator Rosenberg’s Senate email account.

<sup>29</sup> The native version of the email that was forwarded to Hefner did not actually have the embargoed report attached to it. This is likely because it appears to have been forwarded from a mobile device.

Hefner as a “nuisance” who believed he was adept at social media and communications matters and who frequently criticized their performance to Senator Rosenberg. It was also reported that Hefner resented being “shut out” of the office after the Firewall Letter because he was accustomed to being involved in Senator Rosenberg’s office, and that he “acted out” and intentionally caused trouble for Senator Rosenberg and his staff from time to time because of this resentment.<sup>30</sup> Many of Senator Rosenberg’s staff members expressed the collective view that Hefner suffered from some kind of mental illness and believed that many of his outbursts were related to that or his excessive drinking, which they noted was a factor when Hefner was not employed.

#### **6. Hefner Mistreated Senator Rosenberg’s Staff.**

Our investigation revealed several instances where Hefner verbally criticized and demeaned Senator Rosenberg’s staff members, both in person and via email or text message. Set forth below are some examples of such behavior that witnesses recalled or that was evident from retrieved text messages.

On or about July 4, 2016, Hefner evidently took possession of Senator Rosenberg’s mobile device and transmitted a text message to two staff members as if he were Senator Rosenberg, criticizing them for failing to effectively communicate Senator Rosenberg’s message. He wrote, in pertinent part, “you’re all still failures for your lack of foresight. The Massachusetts senate is the reason Charlie baker [sic] will be reflected [sic]. Lack of foresight,

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<sup>30</sup> One witness offered the following example: Hefner announced to a reporter on December 14, 2015 that he intended to run for Senate to fill a vacancy recently announced by an outgoing Senator. Hefner did this without consulting with Senator Rosenberg’s staff, who only learned of his announcement after the fact. Similarly, in November 2015, Hefner sent a series of text messages to a staff member stating that Hefner was going to run against Senator Rosenberg in the upcoming primary to “embarrass him to the point of resignation.” Hefner disparaged Senator Rosenberg, referring to him in demeaning and profane terms as a weak and ineffective leader.

lack of urgency, lack of competence. Sometimes the best person for the job is a straight white man .... Or a whole office full.” Senator Rosenberg later acknowledged to the staff members that he did not send the message and stated that he “was sorry for this outburst from Bryon. None of us deserve these insulting comments.”

Staff members generally recalled Hefner sending text messages to them that were inappropriate, demeaning, and critical of their performance. One staff member recalled five or six occasions when Hefner used Senator Rosenberg’s iPhone to send texts that appeared to have come from Senator Rosenberg himself. In such instances, the staff realized it was Hefner who had sent them.<sup>31</sup>

In April 2017, Hefner berated a witness who was driving Senator Rosenberg and Hefner to an event. Hefner took issue with the chosen route and demeaned the witness in front of Senator Rosenberg. The witness felt Hefner acted inappropriately and unprofessionally. The witness recalled that Senator Rosenberg tried to interject and defend the witness but Hefner did not relent. Following this incident, the witness asked not to drive with Hefner going forward and did not drive Hefner again until the National Conference of State Legislators (“NCSL”) in August 2017. During the conference, the witness picked up Hefner at the Beacon Hill residence he shared with Senator Rosenberg and drove him to the Seaport where Senator Rosenberg and a staff member were attending an NCSL event. The witness then drove the three individuals to another event in the Fenway. Hefner appeared to be visibly intoxicated when he entered the car. He repeatedly screamed at the witness about the route the witness was taking to the Fenway and

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<sup>31</sup> Notably, the text messages we reviewed were retrieved from deleted message files that our forensic vendor recovered from Senator Rosenberg’s phone. Thus, we were able to review only a snapshot of the text messages that Hefner may have sent to Rosenberg and his staff.

repeatedly insulted the witness. Rosenberg and the staff member attempted to calm Hefner, who in turn screamed at them.

Because of Hefner's behavior, the witness aborted the trip to the Fenway and pulled the vehicle over in Cambridge, which happened to be near the witness' residence. The witness then left Hefner, Senator Rosenberg, and the staff member with the Senator's vehicle. Neither Senator Rosenberg nor the staff member could calm Hefner down. At one point Hefner tried to convince a Cambridge police officer to arrest Senator Rosenberg, but the staff member intervened and the officer left the scene. The staff member then called a car service to pick up Senator Rosenberg and called the witness to return to the car to drive Hefner to the nearest T station, which the witness did without incident. Senator Rosenberg later apologized to the witness for Hefner's behavior that evening. After this incident, Senator Rosenberg was told that Hefner was never to be a passenger in Senator Rosenberg's car when the witness was driving.

**B. Hefner Communicated with Senate Personnel Outside of Senator Rosenberg's Office Regarding Senate Business Post-Firewall.**

**1. Hefner's Efforts to Secure Legislative Funding for a Program Administered by his Employer.**

As detailed above, Hefner returned to RFK as Special Assistant to the President in April 2016. He remained in that role until June of 2017. We found that, during that time, Hefner made attempts to influence other Senate offices, particularly as it relates to DDAP's funding. One Senator and staff members for three other Senators reported that Hefner contacted them by telephone in the spring of 2017 to ask for support for the FY 2018 budget amendment that provided for a \$500,000 earmark to RFK for DDAP. Hefner, who was known to the Senator as the Senate President's husband, talked to the Senator on the phone, noted that he was employed



by RFK, and asked if the Senator would be willing to co-sponsor the budget amendment. Hefner did not mention Senator Rosenberg or otherwise imply he was speaking for Senator Rosenberg. Nor did the Senator understand Hefner to be speaking on behalf of Senator Rosenberg. The Senator could not recall another instance before or after this call in which Hefner contacted the Senator or the Senator's staff about a budget item or any other official Senate business. The Senator agreed to sponsor the amendment, but would have done so for independent reasons, even in the absence of a call from Hefner.

Hefner also contacted staff to three other Senators urging support for the RFK amendment. One Senator had already informed RFK's lobbyist that the Senator declined to support the amendment, not because of any substantive disagreement with the amendment, but for procedural reasons. After learning of Hefner's request from a staff member, however, the Senator agreed to support the amendment. That Senator and staffer stated in interviews that they viewed Hefner's request as a request from the Senate President himself. The staffer did not recall Hefner specifically stating that Senator Rosenberg wanted support for the amendment, but believed that because Hefner was so involved in the day-to-day workings of the Senate and so knowledgeable about Senator Rosenberg's operations, any request from Hefner must be essentially a request from Senator Rosenberg. Hefner sent a text message to the staff member after the budget amendment passed the Senate, telling the staffer to thank the Senator for the support. The staff member reported that this was the only time Hefner contacted the staff member about pending legislation.

A staff member of another Senator also received a call from Hefner in the spring of 2017 requesting support for the DDAP budget amendment. That staffer reported that Hefner's call was not of any significance because Hefner worked at RFK at the time and this staffer

interpreted his call as outreach from the organization, rather than from the Senate President. The Senator for whom this staffer worked stated that the staffer informed the Senator of Hefner's call, but that the call had no impact because the Senator already supported the amendment.

A staff member to a third Senator received a call from Hefner on the staffer's cell phone seeking support for the DDAP budget amendment. Hefner told the staffer that he was working for RFK and asked for the Senator's support for the amendment. The staffer reported Hefner's request to the Senator, who ultimately declined to co-sponsor the amendment for budgetary reasons. Though Hefner did not invoke Senator Rosenberg's name, the staffer believed that Hefner was acting on behalf of Senator Rosenberg based on his observation that Hefner was present in the State House frequently and was in a relationship with the Senate President.

For their part, RFK executives state that they were unaware of Hefner's efforts to elicit support for the DDAP budget amendment and at no time authorized him to lobby on their behalf. Although Hefner frequently updated RFK executives as to DDAP's progress through the budget amendment process in the House and the Senate, RFK executives had engaged their own lobbyist and, as such, believed that the lobbyist's firm was acting as RFK's sole representative on Beacon Hill.

## **2. Hefner Interfered with Internal Senate Politics.**

In or about January or February 2017, Hefner contacted a staff member for another Senator to show the staff member a list of the new committee leadership appointments for the Senate. According to this staff member, the two met and discussed the list before it was made public. The staff member and Hefner had two subsequent discussions about committee leadership positions. One occurred around June 20, 2017 in the context of recent media reports that Senator Rosenberg might resign from the Senate to become President of the University of

Massachusetts Boston. According to the staff member, Hefner was irate about rumors that another Senator was jockeying for the Presidency and contacted the staff member to discuss what Hefner should do to handle the situation. Hefner and the staff member also discussed whether the staff member's Senator would be elevated to a certain leadership position if the Senator "kept being a good [senator]." The staffer interpreted Hefner's remark to mean that the Senator needed to continue to align the Senator's positions with Senator Rosenberg. Hefner told the same staff member that he often participated in calls and meetings with Senator Rosenberg's staff concerning policy matters. The staff member believed Hefner to be telling the truth based on Hefner's depth of knowledge about events occurring in the Senate.

In another encounter, on June 20, 2017, Hefner arranged to meet a policy advocate who was involved in business before the Senate. The two met at a Beacon Hill restaurant for lunch. Hefner immediately brought up the rumors, discussed above, that certain Senators were positioning themselves to replace the Senate President. Hefner accused the policy advocate of not being "loyal" to Senator Rosenberg and claimed to have been given a list of people to talk to whose loyalty to Senator Rosenberg was in question. Hefner demanded that the policy advocate tell him of any others at the State House who were not loyal to Senator Rosenberg and who might be supporting another Senator for the Presidency. The policy advocate was unable to provide any names to Hefner and simply named the districts of Senators that had not initially supported Senator Rosenberg's presidency. During the conversation, Hefner also made derogatory remarks about another Senator. The policy advocate was concerned about Hefner's comments and immediately reported them to a member of Senator Rosenberg's staff. The staff member told the policy advocate that Senator Rosenberg was already aware of Hefner's conduct and assured the policy advocate that Hefner was not taken seriously in Senator Rosenberg's

office. The policy advocate told the staff member that the policy advocate felt compelled to meet with Hefner because of how aggressive he was in requesting the meeting. The policy advocate described the meeting as an “interrogation.”

More recently, in the fall of 2017, the Senate was considering a piece of legislation that generated controversy among various Senators. Hefner sent a series of text messages that demonstrated knowledge of the internal controversy regarding this legislation to another Senator’s staff member whom Hefner had befriended. The staff member periodically socialized with Hefner, and more frequently spoke with Hefner by phone and exchanged personal text messages with him. It was in the context of this friendship that the staffer received a series of text messages from Hefner regarding the contentious legislative issue that was before the Senate in the fall of 2017. Specifically, Hefner texted the senior staffer that the staffer’s Senator had “lost all respect from my guy...literally he’s done [with the Senator]...its bad...bad...he wants [the Senator] out.” The staffer understood Hefner’s “guy” to be the Senate President.

**C. Hefner’s Discriminatory Communications and Conduct with State House Personnel.**

Our investigation revealed several incidents in which Hefner made unwanted sexual advances toward Senate staff members in person or via text message, and in which he made sexually explicit comments about staff members. Some of Hefner’s offensive text messages were shown to us by witnesses and others were deleted messages retrieved from Senator Rosenberg’s phone. Hefner also made racially charged remarks to a Senate staff member. Set forth below are the instances of harassing conduct that we identified in our investigation based on recollections of witnesses and retrieved text messages.

## 1. Hefner's Sexually Charged Communications.

Various witnesses who worked at the State House, including for Senator Rosenberg himself, reported that Hefner engaged in unwanted sexually charged behavior toward them or sent them sexually explicit text messages or text messages containing sexual innuendo. Set forth below are de-identified summaries of what several witnesses recounted:

- In the summer of 2013 while socializing with a Senate staff member, Hefner repeatedly touched the staff member's calf with his foot despite the staff member telling Hefner to stop. After the third unwanted touching the staff member abruptly left the location. Subsequent to this encounter, on or about July 10 and August 5, 2013, Hefner sent inappropriate text messages<sup>32</sup> to the same staff member asking for a "sleepover" at the Beacon Hill condo that Hefner shared with Senator Rosenberg. In a July 10, 2013 text, Hefner stated that "Stan is in edinbotoufh [*sic*]." Email and other records indicate that Senator Rosenberg travelled to Edinburgh, Scotland from July 8 to July 15, 2013 to attend a conference. Hefner also texted this staff member a photograph of what he claimed was his penis and asked the staff member what he thought about it. The staff member did not respond and quickly deleted the photograph from his phone. On August 6, 2013, the staff member requested a meeting with Hefner to establish the parameters of their relationship. The two met and the staff member told Hefner to no longer contact the staff member about anything personal in nature. Hefner agreed. The staff member chose not to report any of Hefner's conduct to Senator Rosenberg or any member of his staff because the staff member did not feel particularly aggrieved by the behavior and because the staff member did not want to have an awkward and uncomfortable conversation with Senator Rosenberg about his partner.
- A Senate staff member reported receiving numerous text messages from Hefner in 2015 and 2016 that the witness described as "incredibly erratic" and non-work related. The text messages alluded to Hefner's pursuit of sexual partners and contained sexually suggestive innuendo about other people. The witness also reported frequently receiving sexually suggestive text messages from Hefner. The witness recalled the specifics of one message received around the time of Hanukah, which stated, "You weren't my gift under the Menorah this year. I'm mad at Santa." The text was followed by a Bitmoji of Hefner sitting shirtless on Santa's lap. The staff member stated that this text was emblematic of the sort of texts Hefner repeatedly sent during the staff member's tenure in the Senate. The

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<sup>32</sup> The staff member preserved the text messages and provided them to us.

staff member viewed Hefner's inappropriate conduct as "mischievous flirtation" and did not report it to Senator Rosenberg or any other member of his staff.

- In or about May 2015, Hefner sent a series of text messages to Senator Rosenberg and a staff member stating that he had sent a sexually explicit video of himself to a third party who did not work at the state house, calling on the staff member to "deal with" the problem Hefner had allegedly created.<sup>33</sup> Hefner threatened to "destroy" the staff member and stated that his goal was "to break" the staff member. He further stated in the string of text messages "fuck all of u" to Senator Rosenberg and the staff member.
- A Senate staff member told us that beginning late in 2016 and continuing to the fall of 2017, Hefner frequently made unwanted sexual advances towards the staff member verbally, by text message, and by the transmission of sexually explicit images, but never made any physical advances. The staff member did not want to shut Hefner down or alienate him because of Hefner's relationship with Senator Rosenberg, and struggled with how to manage Hefner's advances, typically choosing to make light of them. The staff member told the Senator for whom the staff member worked that Hefner said things that were uncomfortable and sexual in nature, but downplayed their effect. The staff member did not disclose the specifics of the comments or that the staff member felt Hefner's conduct was "chronic, unwanted sexual harassment." The staff member chose this path because it was "well-known" that whenever problems with Hefner were raised with Senator Rosenberg, he excused Hefner's conduct as stemming from Hefner's "mental health issues" and would leave it at that. This staff member believed that Hefner's "general, out-of-control harassing behavior" had been reported to Senator Rosenberg, but the staff member had no knowledge that anyone reported sexual misconduct by Hefner to Senator Rosenberg. This staff member was reluctant to talk to Senator Rosenberg about problems with Hefner because he firmly believed that no Firewall actually existed between them and anything said to Senator Rosenberg would get back to Hefner.

Relevant to Hefner's actions described above are certain text messages he sent to Senator Rosenberg, which were retrieved from Senator Rosenberg's phone.<sup>34</sup> On five separate occasions between approximately March and June 2016, Hefner sent sexually explicit text messages or text messages containing sexual innuendo to Senator Rosenberg in which he sexualized a particular

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<sup>33</sup> The witness subsequently learned that Hefner did in fact send a video of himself to the identified third party but it did not contain sexually explicit content.

<sup>34</sup> Although we reviewed the entirety of the available contents of Senator Rosenberg's phone, out of an abundance of caution, we have refrained from including in our investigative report any text messages between Senator Rosenberg and Hefner dated after September 6, 2016, in light of the spousal communication privilege recognized by Massachusetts law.

member of Senator Rosenberg's staff. Hefner also made graphic sexual comments and disparaging remarks about other Senators in text messages to Senator Rosenberg, including one on or about May 28, 2016 in which he stated: "I want to roofie [a Senator] and make a sex tape."

## **2. Hefner's Unwanted Sexual Advances and Sexual Assault.<sup>35</sup>**

In addition to his inappropriate texting, Hefner also engaged in unwelcome and nonconsensual touching of a sexual nature with at least four individuals who worked at or did business in the State House. As each of the witnesses asked not to be identified, we have set forth below in summary their recollections of the events.

- Hefner repeatedly engaged in unwanted touching of a Senate staff member's leg at various social encounters over many months. On many of these occasions Hefner also attempted to kiss the staff member. Each time, the staff member would push Hefner away and tell him to stop. The staff member did not report Hefner's conduct to anyone and continued to socialize with Hefner despite his sexual advances because the staff member believed alienating Hefner might damage the staff member's career. The staff member believed this was possible because of the fact that Hefner was in a relationship with the Senate President.
- In or about December 2015, Hefner sexually assaulted a policy advocate having business on Beacon Hill. In a venue outside the State House, Hefner grabbed the policy advocate's genitals, holding onto them while he propositioned the policy advocate at some length. The policy advocate was shocked. The policy advocate repeatedly asked Hefner to stop and eventually Hefner did. Leading up to this encounter, Hefner had told the policy advocate that Hefner had access to Senator Rosenberg and discussed his plans for Senator Rosenberg's office as if Hefner had an official role in Senator Rosenberg's office. On another occasion, Hefner again touched the policy advocate repeatedly under the table at a political dinner event while the policy advocate was moderating a group discussion. On a third occasion, Hefner propositioned the policy advocate to have sex with him in a bathroom. The policy advocate reported the first instance of Hefner's behavior to a junior member of Senator Rosenberg's staff and also told colleagues about it.<sup>36</sup>

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<sup>35</sup> We do not believe that we were able to identify or speak with every individual whom Hefner may have harassed or assaulted. Nonetheless, our investigation revealed a wide range of sexual misconduct with witnesses reporting numerous instances of unwanted and nonconsensual touching by Hefner.

<sup>36</sup> Contemporaneous emails from the individual to colleagues reporting the interactions were preserved and provided to us.

The policy advocate told the junior staff member that there had been an “incident” with Hefner but did not provide graphic details. The junior staffer recalled that the policy advocate reported that Hefner had “hit on him” and played footsy with him under the table at a dinner, without any additional details. The policy advocate recalled that the junior staffer was not surprised to hear about the encounter and suggested to the policy advocate that Senator Rosenberg’s staff knew that there was something wrong with Hefner. The junior staffer did not report the incident to any other staff member or to Senator Rosenberg because the junior staffer did not understand that the policy advocate wanted such a report made or that the policy advocate was actually reporting an episode of sexual assault.

- On or about August 7, 2017, at a social event related to the NCSL conference in Boston, Hefner grabbed the genitals of a Senate staff member twice in the span of 15 minutes.<sup>37</sup> The staff member immediately reproached Hefner. Hefner apologized, stating that he was “sorry” and that he had been drinking. Approximately 15 minutes later Hefner again grabbed the staff member’s genitals as the staff member was exiting a rest room. The staff member left the social event at that point. The staff member only reported this conduct to a supervisor after the November 30, 2017 *Boston Globe* report. The staff member did not report the incident earlier because he thought of it as another “creepy guy” grabbing him at a bar.
- In the summer of 2017, a former staff member from another Senate office bumped into Hefner in the State House. Hefner approached the former staff member and, while the two were discussing business, Hefner unbuttoned the former staffer’s sweater, making a remark about the former staffer’s figure. The former staffer was offended by Hefner’s conduct and reported it to a senior member of Senator Rosenberg’s staff who did not take the complaint seriously, suggesting the former staffer was like a “doll” and that Hefner did not mean anything inappropriate.
- In May 2015, after a social engagement with a staff member in the House of Representatives, while the staff member was driving Hefner home, Hefner reached over and grabbed the staff member’s genitals. Hefner did not mention his relationship with Senator Rosenberg, which was known to the staff member. The staffer was not particularly offended by this conduct and attributed it to Hefner being young and immature. The staffer did not report the conduct for this reason.
- The staff member whom Hefner touched in May of 2015 told us that Hefner sent text messages and Snapchat images to the staff member. At one point between October 2014 and June 2015, Hefner sent a series of nude photos of an individual

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<sup>37</sup> The location of the social event recounted by the individual matched the location of an event that was publicized by NCSL in its materials for the Boston conference. Based on other witness accounts, we believe Senator Rosenberg was also present at this event.



that appeared to have been taken and transmitted without the person's consent.<sup>38</sup> The staffer deleted the photos and did not report the conduct to anyone.

### **3. Hefner's Racially Charged Comments.**

In or about February or March 2016, Hefner called a staff member's mobile phone and berated the staff member, including making inappropriate racist comments. The staff member had received obnoxious calls from Hefner before that were critical and abrasive, but found this call to be deeply offensive, and the staff member felt compelled to report the incident to Senator Rosenberg. Senator Rosenberg acknowledged that Hefner had engaged in conduct that constituted harassment and told the staff member to feel free to formally report the incident to Senate Counsel. Senator Rosenberg reportedly said that he would do everything he could to prevent Hefner from engaging in similar conduct in the future. The staff member did not officially report the incident to Senate Counsel because the staff member was satisfied that Senator Rosenberg took the matter seriously, and because the staff member felt some empathy for Hefner since the staff member believed he was mentally ill.<sup>39</sup> The staff member also believed that Senator Rosenberg sufficiently addressed the issue with Hefner because the staff member received no further phone calls from Hefner after that incident.

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<sup>38</sup> A second witness, a policy advocate who did not work in the General Court, also saw the photograph on another person's phone. The policy advocate discussed the photograph with Hefner, who claimed that Senator Rosenberg was aware of the photograph. As discussed below, Senator Rosenberg denied any knowledge of the photograph.

<sup>39</sup> The staff member did report the incident informally to Senate Counsel. Senate Counsel obtained a waiver of attorney-client privilege from Senate President Chandler to reveal to us the content of any conversation about this incident. Senate Counsel reported to us that the staff member informed Senate Counsel of Hefner's remarks but made it very clear to Senate counsel that the staff member did not want to officially report the incident. Senate Counsel gave the staff member a series of potential follow up actions that could be taken, including Senate Counsel speaking directly to Hefner, either in person or over the phone, or sending Hefner a cease and desist letter. The staff member did not wish to pursue the matter further, despite Senate Counsel stating that the facts appeared to make out a claim of a hostile work environment.

#### **IV. INVESTIGATIVE FINDINGS – INFORMATION GLEANED FROM SENATOR ROSENBERG’S INTERVIEW**

We interviewed Senator Rosenberg for approximately 11 hours over two days.<sup>40</sup> He was entirely cooperative throughout the process. In the course of the interviews, Senator Rosenberg touched upon a recurring theme: from his perspective, Bryon Hefner’s offensive and inappropriate conduct was the result of a mental illness and alcohol abuse, and he handled the situation with his staff to the best of his and their abilities. Senator Rosenberg denied any knowledge of Hefner’s alleged assaults or sexual harassment of Senate personnel. He was adamant that, despite Hefner’s interaction with Senate staff and knowledge of matters occurring in the Senate, Hefner never wielded any influence that caused Senator Rosenberg to do anything he would not have done otherwise. Senator Rosenberg repeatedly noted, as discussed below, that he believed the Firewall was only intended to prevent “undue influence” and did not restrict his own communication with Hefner about Senate business.

Another recurring theme in Senator Rosenberg’s interviews was his shared leadership model of Senate governance. Senator Rosenberg, like several of his staff members, pointed out to us that Hefner could not have exerted any undue influence on Senator Rosenberg because of the so-called shared leadership model that he enacted upon ascending to the presidency. The shared leadership concept meant that the Senate President distributed some of the powers traditionally held by that office to other Senators so that decision-making authority was diffuse. He noted that decisions about what bills were sent to the floor of the Senate were made by the Steering and Policy Committee chaired by another Senator; while Senator Rosenberg was one of seven committee members who would have had input, the ultimate decisions were made by the

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<sup>40</sup> Our interview with Senator Rosenberg concluded before the Attorney General announced that Hefner had been criminally charged.

chair of the committee. Senator Rosenberg noted that the list of bills to be sent to the floor would be reviewed by the leadership team, which would sometimes result in a bill being held back. Senator Rosenberg expressed confidence that the shared leadership model with its distribution of power meant that no person, including Hefner, could “unduly influence” Senator Rosenberg because he was only one of seven voices on the Steering Committee and rarely spoke at its meetings in order to avoid exerting his own influence.<sup>41</sup> Senator Rosenberg also stated that Hefner did not try to influence him with regard to any legislative matters.

When asked why he did not simply cut off Hefner’s access to his office and refrain from communicating with Hefner about Senate business, Senator Rosenberg stated that this was not realistic for any person in a spousal or similar relationship. He expressed the view that no spouse is expected to be completely walled off from the other spouse’s work and that to suggest he wall Hefner off in that way would be to hold him to an impossible standard to which others are not held. Senator Rosenberg expressed the view that he could not completely wall off Hefner from his work unless he either quit his job in the Senate or divorced/left Hefner, neither of which he was willing to do.

Senator Rosenberg acknowledged that Hefner had no diagnosed mental illness at the relevant time, but stated that he (Senator Rosenberg) and many others, including members of his staff and other friends, believed Hefner was mentally ill. Senator Rosenberg further echoed what had been previously reported about his relationship with Hefner – that he felt deeply indebted to Hefner for personal reasons and felt he had to stand by Hefner through difficult times as he believed Hefner had done for him.

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<sup>41</sup> Senator Rosenberg acknowledged that he did not publicly offer the shared leadership model as a defense against allegations that Hefner might have influence in his office because when the issue first arose in December 2014, he had not yet taken office and thus had not yet implemented the shared leadership model.

## **A. Hefner's Access to and Communications with Senator Rosenberg's Office.**

### **1. Hefner's Role in Senator Rosenberg's Office Pre-Firewall Letter.**

Senator Rosenberg recalled that he first met Hefner in the summer of 2008 when Hefner arrived as a new intern in his office. The two had never met previously, and became romantically involved after Hefner's internship ended. Hefner and Senator Rosenberg initially bonded over the fact that both had been raised in the foster care system in Massachusetts. Hefner had always expressed an interest in politics and political communications, which he studied in school. Senator Rosenberg stated that he relied on Hefner to manage the social media accounts for his office prior to hiring a staff member to serve in that role in or around May 2013.

Although Hefner began working at RFK in May 2013, Senator Rosenberg continued to seek his advice on social media and political communication matters as Senator Rosenberg believed Hefner to be particularly adept in those areas and valued his opinions. Senator Rosenberg stated that his memory is vague as to the circumstances leading up to Hefner's return to RFK in 2013, but he did recall that Hefner's portfolio at RFK included specific programs, one of which may have been DDAP. When shown the series of calendar entries that followed Hefner's May 7, 2013 email to his RFK colleagues detailing Senator Rosenberg's intentions with regard to DDAP, Senator Rosenberg said that the meetings with officials of RFK and DYS would have been for the purpose of gathering information in his "continuing effort to become more knowledgeable about criminal justice reform" prior to ascending to the Senate Presidency.<sup>42</sup> He also said that Hefner's email framed the proposed meetings inaccurately because Hefner made it appear as if the primary purpose for the meetings was to secure state

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<sup>42</sup> Throughout his discussion of the May 2013 meetings, Senator Rosenberg reiterated that his actions did not deviate from the "typical policy development behavior" he has engaged in "1000 times" during his career.

funding for DDAP. Although he does not recall the specifics of either meeting, Senator Rosenberg is certain that he never intended to sponsor and never did in fact sponsor a DDAP budget amendment. Viewing the email in retrospect, Senator Rosenberg speculated that Hefner, having heard Senator Rosenberg mention a particularly positive meeting with a policy advocate about diversion programs, must have connected his own dots and created an alternate narrative to exaggerate his importance at RFK.

When shown an August 8, 2014 calendar invitation circulating the dial-in information for a recurring “Monday morning call” to Senator Rosenberg’s political advisors, some of his Senate staff, and Hefner, Senator Rosenberg recalled that Hefner only participated in “one or two” such calls. He generally remembered that he and his “kitchen cabinet” had weekly calls to discuss the events ahead, what legislation might be pending, and what the office might do in terms of messaging. Hefner participated initially, but was “not a productive member” of the meetings. Hefner would offer his opinion and then argue with anyone who disagreed with him. Realizing that Hefner could not participate in the calls appropriately, Senator Rosenberg rescinded his invitation.

## **2. Senator Rosenberg’s Release of the December 3, 2014 Firewall Letter.**

Senator Rosenberg recalled that the term “firewall” was presented to him by his political advisors and members of his staff in anticipation of *The Boston Globe* article published on December 3, 2014. *The Boston Globe* contacted Senator Rosenberg’s office ahead of its publication to provide Senator Rosenberg an opportunity to comment on the story. His political

advisors and members of his senior staff met and strategized regarding how to respond.<sup>43</sup>

Senator Rosenberg believes that he did not conjure up the term “firewall” himself and did not have any previous understanding of the term beyond the notion that it connoted some kind of separation.

Senator Rosenberg stated that he viewed the Firewall Letter as a construct designed only to prevent Hefner from having any “undue influence” on the office of the Senate President. Expounding on the notion of “undue influence,” Senator Rosenberg explained that Hefner would not be permitted to “pressur[e] him to the point that he would have made decisions he would not have otherwise made.” In our interview with him, Senator Rosenberg was adamant that the Firewall was never intended to prevent Hefner from having access to his office or to prevent him from sharing information and ideas with Hefner because romantic partners/spouses communicate with each other about their work days. In Senator Rosenberg’s view, the Firewall meant that Hefner was not supposed to contact staff directly to convey ideas or thoughts, but rather was to send all communications through Senator Rosenberg. According to Senator Rosenberg, though the Firewall term was new, the concept was not: he never permitted Hefner to influence his decisions and always preferred that he not directly contact his staff, though it is clear Hefner frequently made such contact prior to December 3, 2014.

Senator Rosenberg asserted that the Firewall Letter was never intended to preclude Hefner from expressing his opinions. When reminded that the December 3, 2014 *Boston Globe* article reported that Hefner allegedly bragged about having a role in selecting chairs for Senate Committees, Senator Rosenberg noted that every Senator was trying to influence his choice of

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<sup>43</sup> Senator Rosenberg was never able to determine whether Hefner was responsible for the disparaging social media postings about Senator Murray. When Senator Rosenberg asked him, Hefner neither confirmed nor denied whether he was responsible. Senator Rosenberg did not recall asking a staff member to research if the postings could be traced back to Hefner.

chairs, as were other outside influencers and constituents. In Senator Rosenberg's view, Hefner was also free to try to influence him, but Hefner's opinion was weighted the same as any other influencer and Senator Rosenberg still made the decision himself. When asked about the distinction between "influence" and "undue influence," Senator Rosenberg expressed the view that "influence turns into undue influence if someone holds something over your head to try to force you to make a decision you wouldn't make."

### **3. Hefner's Access to Senator Rosenberg's Senate Email and Calendar.**

Senator Rosenberg recalled that for as long as he could remember he had provided Hefner with his State House network password. The sole purpose was to allow Hefner to have access to his Outlook calendar, and he could not recall a time when Hefner did not have such access.

Senator Rosenberg recalled that, shortly after he was sworn in as Senate President, members of his staff raised Hefner's calendar access with him and he told them that he wanted Hefner to continue to have access to his calendar. Senator Rosenberg recalled that members of his staff at this juncture informed him that Hefner's calendar access would pose a problem because Hefner would also then have access to Senator Rosenberg's email and that there was no way to give Hefner calendar access without also giving him email access.<sup>44</sup> Senator Rosenberg told his staff that he still wanted Hefner to have access to the calendar and instructed them to "find a way" to make that happen.

Senator Rosenberg was not involved in any of the meetings or discussions with LIS surrounding calendar-only access, but he believed that members of his staff checked with LIS to

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<sup>44</sup> Senator Rosenberg could not recall why the staff first raised the issue of Hefner's access to email in January 2015, and he acknowledged that Hefner had access to his email continuously since he first was given the password.

see if there was a way to provide such access. He recalled that he and his staff discussed what email access would entail, that it would *not* entail access to the O-drive where confidential information was kept, and that the emails Hefner could access would be limited to constituent and interest group emails that contained innocuous information Hefner could be allowed to view. Senator Rosenberg believed that Hefner was not interested in policy matters, which is what the emails concerned. Consequently, he told us that he and his staff were not overly worried that Hefner would even read the email.

Though Senator Rosenberg assumed his staff members informed LIS that they were looking for ways to obtain calendar-only access for Hefner specifically (rather than for a Senate employee), Senator Rosenberg acknowledged that he was not present for any such discussions and further acknowledged that his staff never told him that LIS was in fact informed of that detail. Senator Rosenberg could not recall who among his staff actually interfaced with LIS. Nor did he recall any member of his staff objecting to his continuing to provide Hefner with access to his Outlook account. He assumes his staff considered all options, including use of a Google calendar, though he cannot recall that this was discussed.

When asked why Hefner needed access to his Senate Outlook calendar, as opposed to some other means of providing him with information about Senator Rosenberg's schedule, Senator Rosenberg stated that Hefner had to know his schedule because they were living together, and he was travelling between Amherst and Boston at different times. Senator Rosenberg added that providing Hefner with direct access to the calendar also limited Hefner's interaction with Senator Rosenberg's staff, which was one of the goals of the Firewall.

When pressed about Hefner's disruptive and erratic behavior leading up to the Firewall Letter and whether it gave him pause before instructing his staff to continue to provide the



Outlook password to Hefner, Senator Rosenberg denied having any such concerns. He reiterated that nothing in the emails would have been of any interest to Hefner and noted that Hefner had such access without incident since 2009. Senator Rosenberg rejected the notion that he was taking a calculated risk when he decided to continue to provide Hefner with his password in 2015.

Senator Rosenberg recognized the August 26, 2016 email chain, described above, in which he forwarded a purported warning that his email inbox had reached its storage limit, and he recalled that Hefner had deleted emails from his Senate inbox to free up space. When asked how Hefner would know what emails he could delete, Senator Rosenberg could not recall and speculated that he probably would have told Hefner. He explained that he typically would have asked his staff to handle such a task and is not certain if Hefner deleted emails from his Senate inbox more than once.

Senator Rosenberg recollected that Hefner likely had access to his Senate email and calendar on three separate devices: an iPhone, an iPad, and possibly a laptop computer. Senator Rosenberg did not recall ever warning Hefner to restrict himself to the calendar and refrain from looking at emails because he believed “there was nothing problematic for him to see in the emails.”<sup>45</sup> Nor did Senator Rosenberg ever tell Hefner that his staff had expressed concern about Hefner having access to email.

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<sup>45</sup> We note that Senate Counsel routinely sent attorney-client privileged communications regarding the Senate to Senator Rosenberg’s Senate email account and we have seen multiple examples of non-privileged, but nonetheless confidential emails on topics such as pending legislation and grants.

#### **4. Hefner's Unauthorized Use of Senator Rosenberg's Senate Email Account.**

Senator Rosenberg could only recall one instance in which he was made aware that Hefner had sent an unauthorized email from Senator Rosenberg's account. That instance occurred on January 18, 2017, as described above. Senator Rosenberg did not recall the January 9, 2017 email to the elected official who worked outside the State House. Nonetheless, when shown the email, Senator Rosenberg agreed that he would not have used the formal signature block that appeared at the bottom of the email and agreed that the email was likely sent by Hefner.

Regarding the January 18, 2017 email requesting a lunch meeting with another elected official, Senator Rosenberg remembered that a staff member who was monitoring his email account brought this particular email to his attention. At that point, Senator Rosenberg's staff (he could not recall who specifically, or whether it was more than one person) told Senator Rosenberg that they were going to revoke Hefner's access to Senator Rosenberg's Outlook password, and he did not object. He could not recall whether the password was immediately changed or whether it was allowed to expire naturally and Hefner was not provided the new password. Senator Rosenberg did not recall ever discussing with Hefner the fact that he would no longer receive the password. When pressed on what, if any, consequences there were for Hefner, Senator Rosenberg noted that he admonished Hefner and questioned what he was thinking by extending an invitation to lunch to the elected official. Although Senator Rosenberg was concerned about Hefner's unauthorized use of his email in this instance, by comparison he was much more concerned about Hefner's abusive and offensive conduct toward others, particularly his staff, as discussed herein.

Senator Rosenberg stated that he never considered that Hefner having access to his calendar and email might have bolstered Hefner's claims to others that he had inside information and influence based on his relationship with Senator Rosenberg. Senator Rosenberg reiterated that he was focused on whether Hefner actually influenced his decisions and was adamant that Hefner had never done so.

Senator Rosenberg recalled that sometime after it was discovered that Hefner sent an unauthorized email from his account, his staff began to send him his daily schedule by email with a copy to Hefner. He could not recall a conversation with his staff in which this alternative method of conveying his schedule to Hefner was discussed, but assumes it was implemented because Hefner no longer had direct access to his calendar.

Senator Rosenberg stated that he never read the Senate IT Policy and was unaware that sharing his password with Hefner was problematic. He assumed his staff had obtained the requisite approvals because he delegated to them the task of getting Hefner access to the calendar.

#### **5. Hefner's Continued Involvement in Senator Rosenberg's Office Post-Firewall Letter.**

As noted above, Senator Rosenberg did not consider the Firewall to restrict Hefner's access to information in his office. Hefner was not, however, supposed to contact his staff directly unless it pertained to scheduling a social event or logistical matters; all staff contact unrelated to social events or logistics had to be made through Senator Rosenberg. Senator Rosenberg understood from his senior staff that if Hefner did contact a staff member, that person could decide either to take action as requested by Hefner or to raise the matter with someone

more senior in the office. He believed his staff was told that they did not have to follow Hefner's advice or act on any of his suggestions.

Senator Rosenberg stated that, even before the Firewall Letter, he had always tried to prevent Hefner from contacting his staff directly about anything other than scheduling matters. Although we were provided one email in which Senator Rosenberg expressed that view to Hefner (which was not sent over the LIS email system but through Gmail), we found numerous examples of Hefner contacting staff members about non-scheduling matters before and after the Firewall Letter.<sup>46</sup> We also found numerous examples of Senator Rosenberg directly emailing his staff and Hefner on the same email, and numerous examples of Senator Rosenberg forwarding emails from Hefner to his staff, asking them to take some kind of action or to file the email from Hefner for future use. Senator Rosenberg told us that the Firewall was never intended to preclude such communications involving Hefner.

Senator Rosenberg did not believe that Hefner had any involvement in his garnering the votes in 2013 to become Senate President. He also denied that Hefner had any role in hiring staff in anticipation of becoming Senate President. Senator Rosenberg had no recollection of the August 12, 2014 email, described above in which Hefner forwarded a resume to Senator Rosenberg "for the files." Senator Rosenberg reiterated that Hefner was not involved in recruiting or vetting potential hires, noting that he utilized an executive search firm to find his Chief of Staff and then delegated authority for subsequent hiring to his Chief of Staff.

Senator Rosenberg did not recall that he sent the October 21, 2016 email, described above, from his Senate email account to Hefner regarding the embargoed report from the

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<sup>46</sup> We note, however, that the volume of emails that Hefner sent directly to staff decreased significantly after Senator Rosenberg became Senate President.

Committee on Post Audit and Oversight. He acknowledged that it is possible Hefner may have seen the email in his inbox and forwarded it to Hefner's Gmail account himself. Regardless, Senator Rosenberg agreed that the email should not have been shared with Hefner under any circumstances because it contained confidential Senate information.

**B. Hefner Communicated with Senate Personnel Outside of Senator Rosenberg's Office Regarding Senate Business Post-Firewall.**

**1. Hefner's Efforts to Secure Funding for a Program Administered by his Employer.**

As detailed above, RFK's initial attempts to pursue state funding in 2013 never came to fruition. Senator Rosenberg recalled that, in 2015, Senator Barrett sponsored an amendment to the DYS budget that would earmark \$500,000 for DDAP in fiscal year 2016. After receiving an opinion from counsel, Senator Rosenberg decided to refrain from participating in any votes on the earmark. He stated that he followed this protocol out of an abundance of caution, even though Hefner was no longer working at RFK in 2015. Senator Rosenberg recalled that, in the spring of 2017, he similarly recused himself from the vote on the DDAP budget amendment because Hefner had returned to RFK as Special Assistant to the President.<sup>47</sup> Senator Rosenberg also stated that he was unaware Hefner contacted other Senators to garner support for the amendment and certainly did not authorize Hefner to speak to other senators on his behalf.

**2. Hefner Interfered in Internal Senate Politics.**

As noted previously, Senator Rosenberg was unaware that Hefner claimed to have a list of committee leadership assignments and denied that he would have shared such information

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<sup>47</sup> According to the May 23, 2017 Senate Journal, the DDAP amendment was among a group of bundled amendments that received a roll call vote. Senator Rosenberg voted for the bundle. Governor Baker ultimately vetoed the DDAP earmark prompting an override vote in the Senate. According to the October 19, 2017 Senate Journal, Senator Rosenberg did not participate in the vote to override Governor Baker's line item veto of the RFK earmark.

with Hefner before he publicly announced it. When pressed about whether Hefner was involved in or attempted to influence Senator Rosenberg's selection of committee assignments after he became Senate President, Senator Rosenberg acknowledged that he and Hefner discussed the topic. Hefner personally maintained a list of Senators who supported Senator Rosenberg for the Presidency and the order in which they offered their support.<sup>48</sup> Hefner offered suggestions to Senator Rosenberg about different configurations of his leadership team. Senator Rosenberg recalled that Hefner advocated for one particular candidate for Chair of Ways and Means, whom Senator Rosenberg did not select. Senator Rosenberg acknowledged that he and Hefner discussed why Hefner might have proposed a particular person for an assignment, but believed such discussions were harmless because he was receiving the same kinds of suggestions from other people.

When asked whether the fact that Hefner kept a list of Senators who supported Senator Rosenberg for President could have bolstered Hefner's claims that he had influence in Senate affairs if he discussed it with others, Senator Rosenberg acknowledged that this was a fair question. However, he again denied that Hefner had actually influenced any decision he made. He reiterated that, "it is all about the outcome, what actually happened, did a decision get affected."

When asked if he was ever aware that Hefner boasted about having inside information regarding possible committee assignments, Senator Rosenberg stated that he heard rumors that Hefner "talked too much" at a bar near the State House, but he never heard any specifics as to

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<sup>48</sup> Senator Rosenberg recalled that Hefner kept the list of Senators because he was adept with Excel spreadsheets and Senator Rosenberg was not.

what Hefner said or to whom.<sup>49</sup> Senator Rosenberg stated that he had no knowledge of Hefner ever disclosing the leadership list before it was made public, and when he asked Hefner about the rumors that Hefner improperly disclosed the leadership list, Hefner consistently denied having done so. Hefner reported to Senator Rosenberg that others at the State House attempted to get information from him because of his relationship with Senator Rosenberg, but their attempts were unsuccessful.

Senator Rosenberg recalled that in June 2017 a news story suggested he would become the next President of the University of Massachusetts Boston. He recalled that a Senator had taken steps to replace him as Senate President before verifying that he was in fact leaving the Senate. This resulted in a leadership meeting in which the issue was discussed with the Senator in question. While Senator Rosenberg was not aware that Hefner had confronted a policy advocate about this incident and demanded “loyalty,” he did acknowledge that he shared some information about the incident with Hefner and that the identity of the Senator in question would have been obvious to Hefner. Senator Rosenberg noted that there was a pattern of Hefner taking a comment Senator Rosenberg may have made and embellishing upon it. Senator Rosenberg stated that, had he known Hefner had engaged in this conduct, he would have done the same thing he usually did: tell Hefner to stop behaving in this manner and encourage him to seek mental health treatment. Senator Rosenberg nevertheless believed that his discussions with Hefner about Senate business were entirely appropriate conversations between spouses and not a violation of the Firewall.

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<sup>49</sup> Senator Rosenberg was not aware that Hefner contacted another Senate staffer in November 2017 to discuss the internal politics of a contentious Senate bill, as described above.

**C. Hefner’s Discriminatory Communications and Conduct with State House Personnel.**

Senator Rosenberg told us that he was well aware of Hefner’s inappropriate and unprofessional behavior toward members of his staff because he witnessed some of it. He was adamant, however, that he was not aware of Hefner engaging in any unwanted touching. He stated that he neither saw nor heard about any such conduct.

**1. Hefner’s Unwanted Sexual Remarks and Conduct.**

Senator Rosenberg did not specifically recall the several instances where Hefner sent him graphic, sexualized text messages about a staff member, but acknowledged Hefner would send sexualized messages about others from time to time. Senator Rosenberg stated that he constantly admonished Hefner not to send inappropriate text messages,<sup>50</sup> and expressed the view that Hefner sent such messages to him because Hefner was a provocateur who knew how to push people’s buttons. Senator Rosenberg told us that he was concerned that if Hefner was willing to make such inappropriate comments about a person in a text message to Senator Rosenberg then he might actually make similar comments directly to the person in question at some point. Senator Rosenberg was concerned at the time that he “did not know where Hefner’s conduct might lead” and that it could get Senator Rosenberg in trouble. When asked why there did not appear to be any texts from Senator Rosenberg to Hefner telling him the messages were inappropriate, Senator Rosenberg responded that he had those conversations with Hefner in

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<sup>50</sup> One instance where Senator Rosenberg appeared to condone Hefner’s sexual references to a staff member was in a text message on or about November 29, 2015. Hefner wrote, “fire everyone and replace them with republicans,” to which Senator Rosenberg responded, “Not everyone. U r still lusting after [staff member].” In another text on or about March 5, 2016, Senator Rosenberg initiated sexualized text messages with Hefner about the spouse of another elected official.



person.<sup>51</sup> Senator Rosenberg reiterated that Hefner was uncontrollable and that telling him to stop behaving inappropriately by text message would only exacerbate the problem and prompt more inappropriate texts. Senator Rosenberg stated that, after he had a conversation about Hefner's inappropriate conduct with him in person, Hefner would stop engaging in the behavior for a period of time, but then something would happen to cause him to revert back to the same behavior. According to Senator Rosenberg, this was a recurring pattern with Hefner.

When asked if he was aware of Hefner sharing nude photos of himself or other men, Senator Rosenberg said that Hefner sent him nude photos that he downloaded from the internet. He stated that Hefner would download a stock image and text it to Senator Rosenberg as a joke or to provoke some kind of reaction from Senator Rosenberg. Senator Rosenberg did not see it as a joke and told Hefner to stop. He was angered by it because "a few times" he accidentally opened a picture of a naked man from Hefner in a meeting and had to quickly hide his phone so other people would not see picture.

Senator Rosenberg also recounted a specific instance when Hefner showed a nude photo of a man to another elected official. Specifically, in December 2014 Hefner and Senator Rosenberg were at a social engagement at the elected official's residence. At one point in the evening Senator Rosenberg saw Hefner show his iPhone to the host and observed the host have a negative reaction. As he was leaving the residence, the host whispered in Senator Rosenberg's ear that he had "to get rid" of Hefner. When Hefner and Senator Rosenberg arrived home at the end of the night, Senator Rosenberg asked Hefner what he had shown the elected official.

Hefner at first denied showing the elected official anything and then said it was a picture of a

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<sup>51</sup> We found at least two examples in the text messages where Senator Rosenberg admonished Hefner to stop sending "racy" texts because he was in a group setting and was concerned the people standing around him might see the texts when they appeared on his phone.

naked man. Senator Rosenberg was angered, but saw no point in talking about the incident further since he had already repeatedly told Hefner to stop engaging in that kind of behavior. When asked why Hefner might have done such a thing at a party, Senator Rosenberg said that Hefner was acting out because he had wanted to leave the party earlier and the host had convinced Senator Rosenberg to stay.

## **2. Hefner's Unwanted Sexual Advances and Sexual Assault.**

Senator Rosenberg stated repeatedly that he was completely unaware of Hefner having sexually assaulted anyone. He never observed or heard of Hefner engaging in such conduct. Our review of emails and text messages uncovered nothing that contradicts Senator Rosenberg's denials in this regard. Moreover, witnesses who were with Senator Rosenberg when he learned of *The Boston Globe's* allegations reported that he appeared genuinely shocked. In sum, there is no evidence to suggest that Senator Rosenberg was actually aware that Hefner sexually assaulted another person.

## **3. Hefner's Racially Charged Comments.**

Senator Rosenberg was aware that Hefner made racist comments in person and via text message to others, including to a member of his staff. He recalled two incidents in particular in which Hefner viciously attacked his staff member in a series of texts and on a telephone call.

He could not recall if he approached the staff member or vice versa, but remembered having a conversation with the staff member, whom he recalled being visibly shaken by Hefner's remarks. He told the staff member that Hefner's conduct was unacceptable, and that, as the head of the office, he was accountable for Hefner's conduct. He further told the staff member that "until the paradigm shifts and there are consequences for [Hefner] nothing will change." He recalled telling the staff member that his orders to Hefner to stop harassing others were not

working and that the staff member “could change the paradigm by reporting the incident and filing a complaint” with Senate Counsel. After this discussion, Senator Rosenberg heard nothing from Senate Counsel or anyone else at the State House regarding Hefner’s racist comments, though he later learned that the staff member had spoken to Senate Counsel.<sup>52</sup>

Senator Rosenberg acknowledged that Hefner continued to express racist views to him and others from time to time after this incident, and that neither he nor any member of his staff made any official reports of this conduct to Senate Counsel. He also acknowledged that he was legally responsible for Hefner’s racially harassing conduct and could be held accountable for it by the MCAD.

When asked why he himself did not report Hefner’s conduct toward his staff member as opposed to essentially delegating the responsibility to his staff member, Senator Rosenberg said that he did what he thought was best at the time and that he genuinely cared about his staff member. He could not recall exactly what his thought process was at the time but he tried to be helpful in resolving the situation. He again noted that he and his staff believed they were dealing with a mentally ill person who regularly abused alcohol, and their general understanding was that they could not control his behavior.

## **V. CONCLUSIONS**

Having considered all of the facts, including the information provided to us by Senator Rosenberg and his counsel, we are able to reach several conclusions regarding Senator Rosenberg’s conduct:

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<sup>52</sup> As explained above, the staff member spoke to Senate Counsel informally, but elected not to file a formal report regarding Hefner’s misconduct.

First, we conclude that the Firewall was ineffective in restricting Hefner's access to information from Senator Rosenberg's office. To the extent that Senator Rosenberg believes the Firewall was intended only to prevent undue influence and had nothing to do with access, this is inconsistent with the commonly accepted meaning of the term "firewall" and with the understanding of many of the witnesses we interviewed.

Second, we conclude that Senator Rosenberg blatantly violated the Senate IT Policy by sharing his confidential LIS password with Hefner.

Third, we conclude that Senator Rosenberg undermined the goal of the Senate Anti-Harassment Policy to promote a workplace free from sexual and other forms of discriminatory harassment because he knew or should have known that Hefner racially and sexually harassed Senate employees and failed to address the issue adequately.

Fourth, we conclude that Senator Rosenberg did not violate Senate Rule 10.

Lastly, we conclude that, as a general matter, Senator Rosenberg acted unreasonably in allowing Hefner largely unfettered access to Senate information both through direct access to his email account and through their personal communications about Senate business.

**A. Senator Rosenberg's Firewall Created Unmet Expectations.**

Senator Rosenberg's description of the intended purpose of the Firewall in our interview – that it was intended only to prevent Hefner from having "undue influence" on Senator Rosenberg and was not intended to restrict Hefner's access to information – was inconsistent with at least one public statement he made when he announced the Firewall Letter in his December 3, 2014 communication to the Democratic members of the Senate. At that time he said "a firewall means home business stays home; work business stays at work." At the time of

our interview, Senator Rosenberg did not recall making that statement. However, his contemporaneous statement, along with the common understanding of a firewall in various contexts,<sup>53</sup> belies the notion that the Firewall he established was meant to act simply as a filter against undue influence; rather, the Firewall would be reasonably understood to act as a barrier preventing the flow of and access to information from one side to the other. Certainly, other Senate staff members, and even members of Senator Rosenberg’s own staff, understood that the Firewall was supposed to prevent Hefner’s access to Senate-related information.

The Firewall is not a Senate rule that can be enforced; it was a political promise. Nonetheless, we have raised it in our report because numerous witnesses cited it in speaking with us, and because it was announced by Senator Rosenberg to the Senate and the public as an assurance that Hefner would have no role in the Senate Presidency. The facts show that Hefner had significant access to information concerning the business of the Senate and that he used that information for his own purposes. In this sense, the Firewall was nonexistent.

**B. Senator Rosenberg Violated the General Court IT Policy by Sharing his Confidential Network Password with Hefner.**

The General Court IT policy (“the IT Policy”) states that it is the “responsibility of *any person* using” a computer in the Senate “to read, understand and follow this policy.” (Emphasis added). The IT Policy further notes that “users are expected to exercise reasonable judgment in interpreting this policy and in making decisions about the use of [computers].” The IT Policy

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<sup>53</sup> In a political context, the term “firewall” has roots in federal election law that prohibits political organizations from engaging in federal campaigns through “coordinated communications.” In 2006, the Federal Communications Commission created a safe harbor for political action committees or PACS that create a “firewall” – defined as a policy that prevents the sharing of material information between the PAC and the campaign. See 11C.F.R. § 109.21(h). Documents that we reviewed show a handful of communications to Senator Rosenberg that use the term “firewall” but do not otherwise define it.

emphasizes that “it is critically important that users take particular care to avoid compromising the security of the network” and that, “most importantly, *users should never share their passwords with anyone else.*” (Emphasis added). In addition, the Senate IT Guidelines, which Senator Rosenberg approved as part of the 2017 Senate Employee Handbook, states that the “[s]haring of legislative account credentials is strictly prohibited.”

There can be no question that the IT Policy and Senate IT Guidelines applied to Senator Rosenberg at all times and that he breached, and caused his staff to breach, the policy by providing his password to Hefner. Senator Rosenberg stated that he does not believe he ever actually read the IT Policy or Guidelines. Of course, this does not excuse his breach of the policy because he was obligated to read, understand, and follow the policy.<sup>54</sup> Regardless, we believe it is a matter of common sense that to ensure the security of the General Court network passwords must not be shared with others, particularly those who are not employees of the General Court.

Moreover, Senator Rosenberg instructed his staff to continue to provide his password to Hefner in January 2015 – after he was on notice of Hefner’s erratic and disruptive behavior (episodes of which had been the subject of multiple press reports in December 2014) and after he had announced that he “had enforced a firewall between [his] private life and the business of the Senate.” Perhaps most importantly, Senator Rosenberg gave the instruction to share the password over the objections of senior staff members who advised against it.

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<sup>54</sup> Since 2006, each time Senator Rosenberg logged onto the General Court network in his office an automated message appeared on the computer screen reminding him of his responsibility to “read, understand, and comply with” the IT Policy, and informing him that he “agree[s] to the ethical and appropriate use policies of the General Court” and that failure to comply with “those policies may be considered a breach of security and/or a violation of contractual and employment terms.” The automated message also contained a link to the full IT Policy.

It is worth noting that Senator Rosenberg did not instruct his staff to hide Hefner's access from LIS and there is no evidence that it was so hidden. However, it is also clear that no one in Senator Rosenberg's office explicitly sought approval from LIS to provide Hefner access in January 2015 when the staff was trying to find a way to provide calendar-only access, or later in July 2015 when Senator's Rosenberg's account experienced a lockout. LIS, as noted above, was aware in July 2015 only that a device named "Bryon's Macbook" was causing the lockouts, and did not know that the device in question belonged to Hefner. At no time was LIS informed that Hefner had been provided with Senator Rosenberg's password so that he could access Senator Rosenberg's Senate Outlook account on as many as three devices – an iPhone, iPad, and laptop.

Senator Rosenberg, through his attorney, has noted that it is likely that many Senators and House Members share passwords to their mobile phones with their spouses, which would thus allow a spouse to access the Member's email since the email application on a mobile phone is not separately password-protected. And indeed, the IT Policy does not address third party access to personal mobile devices that are set up to access a General Court email account. While this may be a valid criticism of the policy that Senator Rosenberg says he never read, he did more than share with Hefner his mobile phone password which would have allowed Hefner intermittent access to Senate emails only when Hefner had actual possession of Senator Rosenberg's personal device. Rather, Hefner was provided unfettered access to Senator Rosenberg's emails at all times via continuous access to the password which allowed him to view email and calendar events from his own devices.

We note that it appears to be common practice for members to give their passwords to staff to enable them to read and respond to official email from constituents and the like. There is a meaningful difference between access given to a Senate employee to allow that person to

perform their job function and access given to a non-employee spouse or significant other, particularly one who has demonstrated a lack of self-discipline and discretion.

**D. Senator Rosenberg Undermined the Goal of the Senate Anti-Harassment Policy.**

The first lines of the Senate Anti-Harassment Policy are as follows: “It is the goal of the Massachusetts Senate to promote a workplace that is free of sexual and other forms of discriminatory harassment. Each employee has a responsibility to ensure that [unlawful] harassment...does not occur in the workplace.”<sup>55</sup> As a threshold matter, we note that as the President of the Senate, no one had a greater obligation to meet the overarching goal of that policy than Senator Rosenberg. Yet, it was the Senate President’s own partner (and later spouse) who serially harassed numerous Senate employees. Indeed, Hefner brazenly engaged in both sexual and racial harassment of Senate employees. Senator Rosenberg should have intuited the extent of the problem and the need to more forcefully address it. We therefore conclude that, in light of the facts known to Senator Rosenberg, he undermined the central goal of the policy he endorsed by failing to adequately address what he knew of Hefner’s behavior.

For example, Senator Rosenberg was aware: (1) that Hefner routinely expressed in graphic terms sexual interest in members of the Senate and Senate staff; (2) that Hefner

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<sup>55</sup> Although Senators are considered “members” (as distinct from “employees”) for purposes of the Senate Rules, Senator Rosenberg is an “employee” for purposes of the Senate Anti-Harassment Policy, which adopts Massachusetts sexual harassment law. Just as a Senator is considered a “state employee” for purposes of the Massachusetts conflict of interest law, M.G.L. c. 268A, a Senator is considered a Senate employee with supervisory authority for purposes of Massachusetts sexual harassment law. There is a distinction, however, between what Massachusetts discrimination law requires and the goal that the Senate’s handbook seeks to achieve. Under Massachusetts law, sexual and other harassment by a third party, non-Senate employee such as Hefner, would only be actionable against the Senate if (1) Senator Rosenberg, as an employee with supervisory authority, knew or should have known about Hefner’s conduct and failed to take prompt, effective and reasonable remedial action, and (2) the Senate had the legal ability to control the non-employee, Hefner. *See Modern Continental v. Massachusetts Commission Against Discrimination*, 445 Mass. 96, 106 (2005). For purposes of liability under Massachusetts law, the Senate did not have the ability to control Hefner’s conduct in social settings where he encountered Senate personnel or people having business before the Senate, or to control Hefner’s use of his personal cell phone. Accordingly, we cannot conclude that Hefner’s conduct would have been actionable against the Senate as a matter of law. As previously noted, however, the Senate Anti-Harassment Policy is broader than the law.



downloaded and texted images of nude men and male genitalia; (3) that Hefner inappropriately displayed such images to another Senator; and (4) that Hefner expressed a desire to “roofie” a Senator and make a sex tape.<sup>56</sup> Indeed, Senator Rosenberg admitted that he was concerned Hefner would go beyond texting his sexually offensive comments, and would take the further step of making those comments directly to others.

Senator Rosenberg had good reason to be concerned because he knew Hefner had in fact taken that further step by engaging in racial harassment of a Senate employee. In early 2016 Senator Rosenberg was made aware that Hefner verbally attacked a staff member using racial epithets. Upon learning of the incident, Senator Rosenberg urged the staffer to report the incident to Senate Counsel. The staff member was satisfied with Senator Rosenberg’s response and stated that no further incidents of this nature occurred. While Senator Rosenberg’s response likely satisfied his *legal* duty to remediate the offensive conduct, he failed to adequately address the conduct with Hefner and thereby undermined the goal of the Senate Anti-Harassment Policy. This is evidenced by a series of text messages that Hefner sent to Senator Rosenberg and a different staffer just a few months later, in which he called Senator Rosenberg’s staff incompetent and added that “[s]ometimes the best person for the job is a straight white man.”

While we are able to conclude that Senator Rosenberg was on notice with respect to Hefner’s harassing conduct, we do not find that Rosenberg knew or should have known that Hefner would commit acts of indecent assault and battery. We credit Senator Rosenberg’s contention that he did not know that Hefner engaged in such acts. We also credit the statements of several witnesses that Senator Rosenberg appeared genuinely shocked by *The Boston Globe’s*

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<sup>56</sup> While Senator Rosenberg may have understood Hefner was joking by making such a statement, it is nonetheless relevant to our analysis which must take into account all of the facts and circumstances.

report of Hefner's sexual assaults on November 30, 2017. We believe there is a qualitative difference between the risk that Hefner would engage in harassment in violation of the Senate policy and the risk that he would commit criminal sexual assault, as has been alleged. In light of what we understand Senator Rosenberg knew about Hefner's behavior, we conclude that he reasonably should have foreseen the former risk, but could not reasonably have been expected to make the leap to the latter risk.

**E. Senator Rosenberg Did Not Violate Senate Rule 10.**

Based on the facts set forth above, we conclude that Senator Rosenberg did not violate the provisions of Senate Rule 10. Rule 10 on its face applies only to a "member, officer, or employee." It does not cover the conduct of a spouse or partner of such persons.

As noted in Section II.A, Senate Rule 10 has four distinct aspects. The first precludes a Senator from using or attempting to use "improper means to influence" any public or "any other entities." We are aware of no facts to suggest that Senator Rosenberg violated this aspect of the rule. Senator Rosenberg credibly denied any knowledge of Hefner seeking to influence other Senators or their staff to support the DDAP budget amendment, and there is no evidence to the contrary.

The second aspect of Rule 10 prohibits a Senator from receiving compensation directly or to permit compensation to accrue to a Senator's beneficial interest<sup>57</sup> by virtue of "influence improperly exerted" from the Senator's position in the Senate. We are aware of no facts to suggest that Senator Rosenberg violated this aspect of the rule. One could argue that Hefner's intercession with other Senators in the spring of 2017 to support funding for a program that

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<sup>57</sup> The term "beneficial interest" is not defined in the Senate Rules. A common definition is "profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from legal ownership or control." *Black's Law Dictionary*, 2<sup>nd</sup> Ed., available at <https://thelawdictionary.org/beneficial-interest/>.

Hefner's employer administered could have resulted in compensation to Hefner in the form of his salary, a potential bonus, or other intangible benefit or advantage, but these do not qualify as compensation to Senator Rosenberg nor would they accrue to his beneficial interest, as that term is commonly defined by law. Even so, as noted above, Rule 10 only applies to a Senator who improperly exerts influence; it does not apply to a Senator's spouse. Of course, if Senator Rosenberg directed Hefner to contact other Senators' offices to support DDAP, that would be a different matter. As indicated above, however, Senator Rosenberg stated that he was not aware Hefner had contacted other Senators to ask for their support of the DDAP budget amendment, and we have seen no evidence to contradict his assertion in this regard. Rule 10 also states that Senators "should avoid accepting or retaining an economic interest or opportunity which represents a threat to their independence of judgment." Again, there is nothing to suggest Senator Rosenberg received any economic interest or opportunity that threatened his independence of judgment in any way. In sum, there is no evidence that Senator Rosenberg took any action for financial gain or that he received any financial benefit of any kind by virtue of his or Hefner's actions. To the extent there are facts that suggest Senator Rosenberg's independence of judgment was threatened, those facts concern the actions and statements of Hefner and his boasts to others, including Senate personnel, that he had "inside" information and that he was a co-equal with Senator Rosenberg in setting the agenda for the office of the Senate President. Hefner's boasts had nothing to do with any economic interest or opportunity that could have threatened Senator Rosenberg's judgment.

Lastly, the fourth subpart of Rule 10 prohibits a Senator from using confidential information gained in the course of, or by reason of, the Senator's position to further the Senator's financial interest or "those of any other person." There is no evidence to suggest

Senator Rosenberg used any confidential information he obtained from his position to further his or Hefner's financial interest.<sup>58</sup>

Nonetheless, it is clear that Senator Rosenberg did share confidential Senate information with Hefner. Most notably, he did this directly by giving his confidential LIS network password to Hefner repeatedly over nearly nine years. In doing so, he also gave Hefner unfettered access to Senate information contained in his emails which undoubtedly contained some confidential Senate information that Hefner could have seen incidentally. Senator Rosenberg's stated reason for giving Hefner his password was to make Hefner aware of his daily schedule and not deliberately to give him access to confidential information. Senator Rosenberg's statements in this regard were corroborated by members of his staff, LIS's recollection of the staff's request for calendar access, and Senator Rosenberg's contemporaneous email from May 27, 2015. There is no evidence pointing to any other reason for Senator Rosenberg to have shared his password. Thus, we conclude Senator Rosenberg did not provide Hefner with his password – and incidental access to confidential information in his email – to further his or Hefner's financial interest, but rather to keep him apprised of his schedule. Rule 10 does not apply to Hefner's subsequent abuse of that privilege.

Nor do we find that Senator Rosenberg provided Hefner with any other confidential information to further his or Hefner's financial interest.<sup>59</sup> We note that at least one witness claimed that Hefner had a list of Senate leadership appointments which he shared with the

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<sup>58</sup> Whether Senator Rosenberg may have violated the Massachusetts Conflict of Interest law, M.G.L. c. 268, S. 23(c) (2), by disclosing Senate information to Hefner, or whether he violated any other aspects of the Conflict of Interest Law, is beyond the scope of our investigation.

<sup>59</sup> The October 21, 2016 email from Senator Rosenberg to Hefner that referred to the embargoed Senate Committee on Post Audit and Oversight Report does not appear to be the kind of confidential information that could further one's financial interests as the report pertained to criminal justice reform. Nor is it clear that Senator Rosenberg sent the report, as opposed to Hefner sending it to himself, or that the report was actually attached to the email since it appears to have been forwarded from a mobile device.

witness in advance of any public announcement of those appointments. To the extent this information was considered confidential, it is not alleged to have been shared by Senator Rosenberg in order to further his or Hefner's financial interest. Rather, the witness understood Hefner to have acquired the confidential information simply for the purpose of demonstrating his access to and importance in the affairs of the Senate President's office.

**F. Senator Rosenberg Acted Unreasonably in Allowing Hefner Access to His Office.**

Senator Rosenberg allowed Hefner an unreasonable level of access to his office and to the inner workings of the Senate. By the time he was sworn in as Senate President on January 7, 2015, Senator Rosenberg had been in a relationship with Bryon Hefner for approximately 8 years and knew Hefner better than anyone. By that point in their relationship Senator Rosenberg believed Hefner was mentally ill and prone to abusing alcohol. Senator Rosenberg also believed by then that Hefner could not appropriately participate in weekly calls with his political advisors and Senate staffers because he was disruptive and rude. Senator Rosenberg was aware that he periodically received text messages from Hefner containing images of naked men. Senator Rosenberg personally witnessed Hefner showing such a nude photo to another elected official at a holiday party hosted by the elected official just weeks earlier in December 2014. Senator Rosenberg knew that Hefner showed the photo to the elected official because he was angry that the elected official had convinced Senator Rosenberg to remain at the party while Hefner wanted to leave. Senator Rosenberg was aware that Hefner had likely authored inappropriate and disparaging tweets about the outgoing Senate President, a fact which Hefner neither confirmed nor denied when Senator Rosenberg asked him. This last incident, prompted Senator Rosenberg on December 3, 2014 to announce the existence of a firewall between his "personal life" – an implicit reference to Hefner – and the business of the Senate.

These are some of the facts our investigation revealed that were known to Senator Rosenberg shortly after he was sworn in as Senate President when he made the conscious decision to continue the practice of sharing his LIS password with Hefner over the objections of his staff. In recognition of the risk that Hefner would engage in unauthorized conduct with respect to Senator Rosenberg's email, two staff members were tasked with monitoring the Senator's ingoing and outgoing email, in part, to look for signs of Hefner improperly accessing Senator Rosenberg's email, which is precisely what came to pass. Senator Rosenberg's contention that his Senate email consisted mainly of constituent and special interest group communications is not supported by the facts. We have already noted one instance where a confidential Senate email was sent from Senator Rosenberg's inbox to Hefner. Moreover, we understand that Senate Counsel routinely sent attorney-client privileged communications regarding the Senate to Senator Rosenberg's Senate email. Thus, by providing Hefner with his LIS password, Rosenberg was providing Hefner with access to privileged Senate information. As noted above, the Senate IT Policy expressly forbids the sharing of passwords. Senator Rosenberg's conduct in this regard was patently unreasonable and arguably reckless given his awareness that Hefner was likely to act improperly. Yet, he provided Hefner with the access anyway.

We find that Senator Rosenberg also acted unreasonably in sharing his password with Hefner prior to becoming Senate President. Hefner's need to know Senator Rosenberg's schedule could have been met by a number of alternatives, including, among other possibilities, a daily email update, as was implemented in March 2017, a shared Google calendar, or a text message from a staffer or from Senator Rosenberg himself. Moreover, we question Hefner's genuine need to know Senator Rosenberg's schedule to the degree of specificity revealed by his

Outlook calendar, which included the identities of people with whom Senator Rosenberg was meeting, who was responsible for setting the meeting, and the topics to be discussed.<sup>60</sup> Our investigation leaves us with the impression that Hefner wanted to know the intricate details of Senator Rosenberg's schedule, particularly after he became Senate President, not purely for planning purposes – e.g. to know when Senator Rosenberg might be travelling or what time his day might end – but because knowing what was happening in the Senate fed Hefner's apparent need to boast about his access and influence and to boost his own professional profile. This conclusion is underscored by one witness' statement that Hefner regularly read aloud from Senator Rosenberg's Senate emails and calendar entries seemingly to impress upon the witness how important he was in the Senate President's office.

Senator Rosenberg's sharing of day-to-day Senate business with Hefner after he became Senate President was also an unreasonable exercise of discretion in light of the Firewall Letter, which was reasonably understood to prevent Hefner's access to Senate information. A purported separation between work life and private life implies a complete barrier, and Senator Rosenberg's contemporaneous comments furthered that expectation. We are cognizant of the fact that people often share confidential workplace information with their romantic partners and spouses. Such sharing is based on a mutual trust and understanding that the partner receiving the information will not misuse it. Senator Rosenberg knew or should have known that he could not

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<sup>60</sup> Hefner's email on May 7, 2013 to his colleagues at RFK regarding the FY 2014 DDAP funding is an example. Hefner informed his RFK colleagues of the meetings Senator Rosenberg attended and had planned, noting that Senator Rosenberg "would like to meet/speak with someone no later than Thursday afternoon, given where the Senate is in the budget process." He also told his colleagues that Senator Rosenberg wanted to invite a DYS official to his office the following week. These are details that a romantic partner would not know or need to know under ordinary circumstances.

trust Hefner with information regarding Senate business.<sup>61</sup> And indeed, Senator Rosenberg acknowledged that Hefner would take pieces of information he received from Senator Rosenberg and “embellish” them for his own purposes. Although Senator Rosenberg contends the Firewall Letter was never intended to connote a barrier between Hefner and all Senate information, he undoubtedly created an expectation that Hefner would not interfere in Senate business. Yet, Hefner was interfering to some degree when he confronted a policy advocate in June 2017 to demand loyalty and when he told a Senate staffer by text message in November 2017 that the staffer’s Senator had to fall in line, and this interference was only possible because of the information that Senator Rosenberg shared with Hefner.

That Senator Rosenberg and many others considered Hefner mentally ill and prone to alcohol abuse makes Senator Rosenberg’s decision to share Senate information with Hefner all the more unreasonable. We credit Senator Rosenberg’s genuine loyalty and feelings towards Hefner, but conclude that he should have done more to control Hefner’s access to information and to the people who worked in and around the Senate. Senator Rosenberg stated that, if he could not share Senate information with Hefner, he was left with two untenable choices – to divorce Hefner or quit his job. It is not for us to suggest what Senator Rosenberg should have done, but we can say definitively that, in light of the facts known to him about Hefner’s behavior at the time, what he did was not sufficient. We are aware of numerous people either working in the Senate, or having business there, who reported experiencing unwanted touching, sexualized or inappropriate text messages, racist or racially insensitive remarks, and demeaning conduct from Hefner, and we believe there are more victims of Hefner’s conduct that we were unable to

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<sup>61</sup> His allowing Hefner to create the list of Senators who supported his presidency ostensibly because Hefner was adept with Microsoft Excel is a prime example of such misplaced trust, since Hefner subsequently used this information to boast about his role in the Senate President’s Office.



identify through our investigation. While we credit Senator Rosenberg's assertions that he was not aware of much of this conduct on Hefner's part, he had a hand in enabling the behavior by continuing to provide Hefner largely unfettered access to Senate information and to the people who worked in, or had business before, the Senate.