

1

1 BEFORE THE NEW YORK STATE SENATE SELECT
2 COMMITTEE TO INVESTIGATE FACTS AND
3 CIRCUMSTANCES SURROUNDING THE
4 CONVICTION OF SENATOR HIRAM MONSERRATE

4

5 Meeting Held in Executive S

ession

6

7

Room 124
The Capitol
Albany, NY

8

9

January 11, 20

10

10

4:44 p.m.

11 PRESIDING:

12

Senator Eric Schneiderman
Chair, Senate Select Committee

13

PRESENT:

14

Senator Andrew J. Lanza

15

Senator Diane Savino

16

17	Senator James S. Alesi
18	Senator Andrea Stewart-Cousins
19	Senator Catharine M. Young
20	Senator John Flanagan
21	Senator Toby Stavisky
22	Minority Counsel David Lewis
23	Special Counsel Lee M. Cortes,
Jr.	
24	Special Counsel Erica M. Gersow
itz	

, that we

14
steps,

15
e integrity

16
possible

17
e, as we've

18
complete

19
roceedings,

20
about these

21

22
evidentiary

23
ve session,

24
as ethics

really have taken extraordinary

unprecedented steps to ensure th

of this process and the fairest

process for this hearing. We ar

stated repeatedly, maintaining a

transcript and record of these p

so there will be nothing secret

proceedings.

We have agreed to hold the

parts of our meetings in executi

as the ethics committees do and

1 committees across the state do -
- across the
2 country do, really.

3 This will be the most trans
parent
4 ethics review process that's eve
r taken
5 place in New York. So I just wa
nted to note
6 that for the record.

7 And I appreciate everyone's
patience
8 and everyone's diligence. This
has been a
9 very thorough piece of work. Bu
t once
10 again, one hopefully final time,
pursuant to
11 the Public Officers Law Section
105, I am
12 going to move that the select co
mmittee go
13 into an executive session to con

duct the

14 evidentiary portion of the meeti
ng.

15 All in favor.

16 (Response of "Aye.")

17 CHAIRMAN SCHNEIDERMAN: O
pposed?

18 (No response.)

19 CHAIRMAN SCHNEIDERMAN: S
o we will

20 give a moment for the press to l
eave and we

21 will go into executive session.
And only

22 the staff members designated by
members and

23 the members of the committee wil
l remain.

24 (Pause.)

1
o we're back

CHAIRMAN SCHNEIDERMAN: S

2
taff and

down, I believe, to designated s

3

members of the committee.

4
passing out

And at this time counsel is

5
I'm

what I believe to be, as far as

6
e report.

concerned, the final draft of th

7
have been

This incorporates comments that

8
ommittee,

made by all the members of the c

9
ounsel in

work that has been done by our c

10
e counsel

cooperation with David Lewis, th

11
working

for the minority, who have been

12

together on this.

13

And this copy was sent to t

he members'

14 received a

15 s which

16 ies. And we

17 ion here

18 k at that.

19 that we've

20 alk about

21 the

22 Castro.

23 discuss the

24 in this

offices earlier. Yesterday you

red-lined version in your office

identified the specific new entr

have copies of the red-line vers

also if anyone would like to loo

The two significant entries

identified and that we want to t

today are the entries related to

interviews of Mr. Nieves and Mr.

So I'm hopeful that we will

finalization of the report later

1 meeting. But before we do that,
I think it
2 would be a good idea for us to h
ear a report
3 from counsel on these two interv
iews, since
4 it was requested that we speak t
o these two
5 gentlemen.
6 I think that it is importan
t to keep in
7 mind that our mandate is to look
into the
8 facts and circumstances surround
ing
9 Senator Monserrate's conviction,
and the
10 activities of these two gentleme
n may
11 provide -- may pose many questio
ns and
12 provide areas of further inquiry
.

13
cerned and

14
d, I don't

15
uch. It

16
of view on

17

18
hings over

19

20

21
r. Cortes is

22
erviews.

23
on,

24

I think as far as we're con
as far as our report is concerne
know that the interviews added m
certainly didn't change my point
our findings of fact.

But with that, can I turn t
to -- Lee, are you going to --

MR. CORTES: Yes.

CHAIRMAN SCHNEIDERMAN: M

going to brief us on the two int

MR. CORTES: Good afterno

Senators.

1
age is that?

SENATOR STAVISKY: What p

2
es in the

SENATOR SAVINO: What pag

3

report?

4
can turn to

MR. CORTES: Senator, you

5

first page 18, footnote 21.

6
ow, he's

CHAIRMAN SCHNEIDERMAN: N

7
have been

talking about the two areas that

8

changed.

9
ned

And would you prefer red-li

10
to the

editions? Would that be helpful

11
se we have

members of the committee? Becau

12

those. Why don't we give out --

13
y original

SENATOR SAVINO: I have m

14 draft.

15 CHAIRMAN SCHNEIDERMAN: Y
ou have your

16 red-line? Okay.

17 SENATOR STAVISKY: I don'
t. May I

18 have --

19 MR. LEWIS: Actually, it'
s probably

20 easier to read the non-red-lined
, because

21 the prior version just said that
we expected

22 to speak with them. And this is
actually

23 the data that --

24 CHAIRMAN SCHNEIDERMAN: Y
es, that's

7

1 correct.

2 MR. LEWIS: Sorry, Lee.

3 CHAIRMAN SCHNEIDERMAN: M
r. Cortes?

4 MR. CORTES: So the first
substantive

5 change is page 18, footnote 21.
And these

6 relate to the two interviews tha
t took place

7 this Saturday, Mr. Michael Nieve
s and

8 Mr. Luis Castro, who we intervie
wed pursuant

9 to the select committee's direct
ion.

10 I'm going to brief you on M
r. Nieves'

11 interview and Ms. Gersowitz, my
colleague,

12 will brief you on Mr. Castro's i
nterview, as

13 she conducted that interview.

14
ves. He was

15
uncil from

16
signed, I

17

18
ccording to

19

20
Mr. Nieves.

21
just want

22
ust

23
t sure that

24
assume

Brief background on Mr. Nieves. He was employed by the New York City Council from 1998 until last week, when he resigned, I believe.

CHAIRMAN SCHNEIDERMAN: A Mr. Nieves.

MR. CORTES: According to

CHAIRMAN SCHNEIDERMAN: I to make it clear that this all just according to Mr. Nieves. I'm not sure that any of these facts -- let's not

1 that -- counsel is not attesting
to the 2 accuracy of the facts, let's put
it that 3 way.

4 MR. CORTES: That's corre
ct. This is 5 just -- my summary is based comp
letely and 6 entirely on the responses that M
r. Nieves 7 gave to my questions during the
interview.

8 He has acted as both a poli
tical 9 consultant, paid and unpaid, he
has done 10 political consulting for Senator
Monserrate 11 in the past, beginning with Sena
tor 12 Monserrate's candidacy for distr
ict leader

13
that he had

14
or

15
, for any of

16

17
2008,

18
injured, Mr.

19
Senator

20
in the late

21
he was on

22
Nieves was

23

24
incident,

in the late 1990s. He attested
never been paid, either directly
indirectly by Senator Monserrate
his services.

Following the December 19,
incident where Ms. Giraldo was i
Nieves served as a spokesman for
Monserrate. He's known him sinc
1990s, and when Senator Monserra
the New York City Council, Mr. N
assigned to work with him.

Going to the December 19th

1 Mr. Nieves was contacted by Sena
tor
2 Monserrate's staff on the mornin
g of
3 December 19, 2008, and notified
of Senator
4 Monserrate's arrest and the fact
that he
5 needed an attorney. And it was
Mr. Nieves
6 who arranged for his attorney.
7 Mr. Nieves and Senator Mons
errate's
8 attorney were at dinner awaiting
Senator
9 Monserrate's arraignment when Mr
. Nieves was
10 contacted by Mr. Edward Irizzary
, who is now
11 counsel to the Consumer Protecti
on Committee
12 chaired by Senator Monserrate.
13 When Mr. Irizzary presented

himself to

14
been in

Mr. Nieves, he stated that he'd

15

contact --

16
e.

SENATOR SAVINO: Excuse m

17

That's -- so that's three people

.

18
That's a

SENATOR STEWART-COUSINS:

19

third person now.

20
only aware

SENATOR SAVINO: We were

21
edge that

of two people, we only had knowl

22
hat could

there were two people involved t

23
tor

potentially be connected to Sena

24
ree.

Monserate. Now we know it's th

1
Enter

SENATOR STEWART-COUSINS:

2 Irizzary.

3
t.

MR. CORTES: Yes. Correc

4
himself to

When Mr. Irizzary presented

5
been in

Mr. Nieves, he said that he had

6
ng her

contact with Ms. Giraldo followi

7
ney and the

interviews by the district attor

8
and that it

New York City Police Department,

9
ddress the

was Ms. Giraldo's intention to a

10
ding the

media and make a statement regar

11
ier that

events that had taken place earl

12

morning.

13

At that point Mr. Irizzary

drove

14
Continental

15
iting in a

16
d by her

17
anied her to

18
er 18th that

19
sly.

20
Ms. Rojas,

21
raldo.

22
red the

23
ho had been

24
t the same

Mr. Nieves to Austin Street and
Avenue, where Ms. Giraldo was wa
minivan we believe that was owne
cousin Jasmina Rojas, who accomp
the party on the night of Decemb
we have described to you previou
sly.

Waiting in the minivan was
her son, Javier Kaza, and Ms. Gi
Mr. Irizzary and Mr. Nieves ente
minivan along with Mr. Castro, w
either -- who had just arrived a

1 time or had been waiting at the
location.

2 So in the minivan was Ms. Girald
o, Mr.

3 Irizzary, Mr. Nieves, Mr. Castro
, Jasmina

4 Rojas, and Javier Kaza.

5 SENATOR SAVINO: Can I as
k a

6 question?

7 MR. CORTES: Sure.

8 SENATOR SAVINO: Why did
they pick

9 71st and Continental Avenue?

10 MR. CORTES: Didn't expla
in why that

11 location was picked.

12 MR. LEWIS: I think you've
e got to

13 wait until you hear what Mr. Cas
tro said.

14 SENATOR SAVINO: Because

that's right

15 around the corner from central b
ooking.

16 SENATOR STAVISKY: Down t
he block.

17 CHAIRMAN SCHNEIDERMAN: W
hy don't we

18 let them run through both, becau
se there are

19 also inconsistencies between the
two of

20 them. So let's just get both st
ories out on

21 the table.

22 MR. CORTES: Mr. Nieves s
aid that all

23 the occupants of the car speak S
panish and

24 that the conversation that took
place was

1 conducted in Spanish.

2 Ms. Giraldo told her story
to
3 Mr. Irizzary and Mr. Nieves, and
the two of
4 them decided that it would be --
that her
5 story was helpful and that she s
hould
6 memorialize it in an affidavit.

7 Mr. Nieves is a licensed no
tary in
8 Queens County, Kings County, and
possibly
9 Manhattan, he wasn't -- he didn'
t recall if
10 he was -- and he has been a nota
ry for
11 approximately 20 years.

12 The actual written statemen
t was
13 written, handwritten by Mr. Iriz
zary in

14
nieves, he is

English. But according to Mr. N

15

not a native Spanish speaker.

16
r. Irizzary.

CHAIRMAN SCHNEIDERMAN: M

17
is not a

MR. CORTES: Mr. Irizzary

18

native Spanish speaker.

19
content of the

Mr. Nieves described the co

20
ot

affidavit as "lawyer words" -- n

21
reflective

Ms. Giraldo's precise words, but

22
completion

of her story. And following the

23
re

of the affidavit, Mr. Nieves swo

24
signed the

Ms. Giraldo and Ms. Giraldo then

1 statement.

2 After it was completed, Mr.
Nieves said

3 that he took the signed statemen
t and

4 brought it to Senator Monserrate
's attorney.

5 That's how the statement was com
pleted.

6 And then the only other are
a that we --

7 SENATOR STAVISKY: May I
ask a

8 question about that?

9 MR. CORTES: Of course.

10 SENATOR STAVISKY: Did sh
e understand

11 what she was signing?

12 MR. CORTES: Senator, she
--

13 CHAIRMAN SCHNEIDERMAN: O
r more

14
mmunicate

properly, what did Mr. Nieves co

15
ow.

about that? Because we don't kn

16
as my

SENATOR STAVISKY: That w

17

question.

18
es

MR. CORTES: How Mr. Niev

19

communicated that it was created

was

20
. There's

Mr. Irizzary wrote it in English

21
ry said and

conflict between what Mr. Irizza

22
l get to

what Mr. Castro said, which we'l

23

momentarily.

24
izzary wrote

Mr. Nieves said that Mr. Ir

1 the statement in English and the
n read the
2 statement to Ms. Giraldo in Engl
ish,
3 explaining particular phrases th
at she
4 didn't understand, or that she w
ould say
5 that "I don't understand" and th
en he would
6 repeat that phrase in Spanish.

7 CHAIRMAN SCHNEIDERMAN: T
hat's
8 Mr. Nieves' version of how that
took place.

9 MR. CORTES: Correct. Co
rrect. And
10 then she signed the statement.

11 The only additional part of
the Nieves
12 interview is that regarding the
November 16,
13 2009, Daily News article regardi

ng the

14 security provided for Ms. Girald
o, Mr.

15 Nieves is attributed as a source
in that

16 article, and he confirmed that h
e did in

17 fact give those statements.

18 MR. LEWIS: He is also --
he's not a

19 lawyer, but as a notary he's req
uired to

20 keep a book recording when and w
here he

21 takes a notarized statement. Wh
en asked

22 about his book --

23 MR. CORTES: He said he n
o longer --

24 he stopped keeping it several ye
ars ago. So

1 he has no other reflection of ta
king this
2 statement.

3 CHAIRMAN SCHNEIDERMAN: S
o why don't
4 we hear the report on the Castro
interview,
5 and then we can discuss how they
fit
6 together, if at all.

7 MS. GERSOWITZ: So we con
ducted an
8 interview --

9 CHAIRMAN SCHNEIDERMAN: O
h, excuse
10 me, Erica.

11 Let me just say -- I'm sorr
y, I should
12 have noted this for the record b
efore. All
13 of the members of the committee
are here,

14 with the exception of Senator Ru
th
15 Hassell-Thompson, who had anothe
r
16 appointment. I spoke to her bef
ore the
17 meeting and had a discussion abo
ut her views
18 on the issues that are going to
come up.
19 Her counsel, Jerry Savage, is he
re, and we
20 will follow up with her when the
meeting is
21 over.

22 Thank you. I'm sorry.

23 MS. GERSOWITZ: So we con
ducted an
24 interview of Luis Castro, who as
you recall

1 was the subject of the Daily New
s article,
2 which is why it came to all of y
our
3 attention.

4 And in that article Mr. Nie
ves was
5 attributed with noting that he e
scorted
6 Ms. Giraldo to the courthouse on
the day
7 that she testified. Although I
don't think
8 the article specifically said it
was only on
9 the day that she testified, but
based on
10 what we learned from Mr. Castro,
he claims
11 to have only escorted her on tha
t one day.

12 So we went over his backgro
und, his

13 relationship with Senator Monser
rate.

14 Apparently he's known Senator Mo
nserrate

15 since his birth, they're old fam
ily friends.

16 They continue to be in close con
tact and

17 have been in close contact throu
ghout the

18 course of their relationship, wh
ich has been

19 both professional and personal.

20 In 2001, Mr. Castro volunte
ered with

21 Senator Monserrate's City Counci
l campaign,

22 and he volunteered by introduc
ing him to

23 various members of the community
. He

24 described himself as somewhat of
a community

1 organizer.

2 And in 2002, he was hired b
y
3 Senator Monserrate as a communit
y liaison
4 when Senator Monserrate was a Ci
ty Council
5 member. So that was the first t
ime that he
6 was officially employed by Senat
or
7 Monserrate and was actually paid
a salary.
8 The work that he did on his camp
aign in
9 terms of helping organize was al
l unpaid
10 work.

11 In 2007-2009 he worked on o
ther
12 political campaigns, and then in
13 September 2009 he took a month o

ff. And it

14
e was

15
ial

16
tion

17
sed in the

18

19
with

20
y works

21
reports to

22
e Consumer

23
t discussed.

24
hip, as he

was in early October 2009 that h

offered the position as the spec

assistant to the Consumer Protec

Committee, which is what was rai

Daily News article.

So he's got a long history

Senator Monserrate. He currentl

rather closely with him. And he

Ed Irizzary, who's counsel to th

Protection Committee, who we jus

And he also has a relations

1 described it, separate and apart
from his
2 relationship with Senator Monser
rate with
3 Karla Giraldo. He explained tha
t he's known
4 her family for over 20 years. H
e was
5 introduced to her approximately
three to
6 four years ago by her cousin, Ja
smina Rojas,
7 who as you recall testified at t
he trial.
8 And that he has known Jasmina Ro
jas and her
9 husband for a long time, as they
're involved
10 with the Spanish-language newspa
per El
11 Resumen.
12 He has served as both a fri
end and, as

13 he described it, a spiritual adv
isor to
14 Ms. Giraldo and to her family.
He's never
15 had a professional relationship
with
16 Ms. Giraldo, nor has he ever bee
n
17 compensated by her for any reaso
n.

18 SENATOR SAVINO: Excuse m
e, did you
19 say spiritual advisor?

20 MS. GERSOWITZ: Yes. He
described
21 himself as her pastor or her spi
ritual
22 advisor. He is -- according to
him, he's an
23 ordained minister.

24 SENATOR SAVINO: Do we ha
ve a picture

1 of this guy?

2 CHAIRMAN SCHNEIDERMAN: I
don't know.

3 I don't think we have a picture
of him.

4 SENATOR SAVINO: When you
're done,

5 I'll tell you why I would like t
o see it.

6 Or at least I need to see him.

7 Go ahead, I'm sorry.

8 MS. GERSOWITZ: He claims
that he

9 spent very little time with Ms.
Giraldo and

10 Senator Monserrate together as a
couple,

11 though he clearly has relationsh
ips with

12 both of them. He said on no mor
e than two

13 occasions has he spent time with
them as a

14 couple.

15 So we discussed the notariz
ed statement

16 with him because he was part of
that

17 process, though it's not clear f
rom the

18 statement itself. And he descri
bed the

19 events that led up to his partic
ipation in

20 the creation of this statement.
And he said

21 on December 19th, at approximate
ly 6:30 or

22 7:00 p.m., Ms. Giraldo called hi
m and asked

23 him to come meet her in Forest H
ills.

24 He was aware at that time t
hat

1 Senator Monserrate had been arre
sted. When
2 he first learned about Senator M
onserrate's
3 arrest, he did not know that the
woman who
4 was alleged to have been injured
was
5 Karla Giraldo.

6 He receives this call at ap
proximately
7 6:30 or 7:00. Ms. Giraldo asks
him to come
8 meet her in Forest Hills at the
location
9 that was described earlier, and
he agrees to
10 do that.

11 He goes and meets her, and
she explains
12 to him that she's very upset abo
ut the way
13 that she's been treated. She wa

s very

14
ict attorney

15
arly focused

16
attorney.

17
ed to make a

18
as not

19
f statement

20
as a press

21
ith

22
hat type of

23
ant to make

24
ttorney to

agitated about the way the distr

had treated her and was particul

on her treatment by the district

She explained that she want

statement, although Mr. Castro w

entirely clear as to what type o

she wanted to make, whether it w

statement, a statement to help w

Senator Monserrate, or exactly w

statement it was. But she did w

a statement, and she wanted an a

1 come help her make that statemen
t.

2 As a result, Mr. Castro dec
ided to call

3 Edward Irizzary, who was an atto
rney that

4 he'd known for approximately eig
ht years.

5 He said he knew him from his wor
k in the

6 community, as he has an office -
- I believe

7 it's in Forest Hills, though I'm
not

8 positive about that, but it's ce
rtainly in

9 Queens.

10 So he called Mr. Irizzary.
He said he

11 did not consider the fact that M
r. Irizzary

12 had a relationship with Senator
Monserrate,

13
did have a

14
rate. He

15
ome to meet

16
consistent

17

18
izzary came

19
ro called

20
t he was

21
he appeared

22
y little

23
n't

24
ationship

which he knew that Mr. Irizzary
relationship with Senator Monser
called him and he asked him to c
them in the van. All of that's
with what Lee just described.

A short while later, Mr. Ir
with Mike Nieves. When Mr. Cast
Mr. Irizzary, he didn't know tha
going to bring Mike Nieves, but
with Mike Nieves. There was ver
discussion beforehand. They did
establish an attorney-client rel

1 between Ms. Giraldo and Mr. Iriz
zary. And
2 they pretty soon after got to wo
rk on the
3 actual statement.

4 Now, Mr. Castro's descripti
on of the
5 way that this statement was crea
ted is a bit
6 different than the description t
hat Mr.
7 Nieves gave. The way he describ
ed the
8 process, Ms. Giraldo said each l
ine in
9 Spanish and then Mr. Irizzary wr
ote that
10 down in English and then he read
the English
11 sentence back in Spanish to Ms.
Giraldo.
12 And if there were any issues tha
t came up in

13
ted what she

14
s. We asked

15
were; he

16
ticular.

17
ished,

18
, Mr. Nieves

19
y left soon

20
sion about

21
he

22
ware of what

23
He said he

24
with

terms of whether he had represen

told him, she raised those issue

about what some of those issues

didn't recall any of them in par

After the statement was fin

Ms. Giraldo signed the statement

notarized the statement, and the

after that. There was no discus

what was going to be done with t

statement. Mr. Castro was not a

the follow-up was going to be.

never spoke about the statement

1 Ms. Giraldo, nor did he speak ab
out the
2 statement with Senator Monserrat
e after that
3 point.

4 So that was all of the info
rmation that
5 he provided us about the creatio
n of that
6 statement. We then -- are there
any
7 questions so far?

8 CHAIRMAN SCHNEIDERMAN: W
hy don't you
9 just finish the last bit. The l
ast bit's
10 short.

11 MS. GERSOWITZ: So the la
st part, of
12 course, is the -- as you all kno
w, there was
13 the Daily News article about the
fact that

14
urt. We

15
ned that he

16
nal favor.

17
ore she was

18

19
m to

20

21
ut all of

22
there, he

23
ho

24
d them to

he accompanied Ms. Giraldo to co

asked him about that. He explai

did that as -- really as a perso

She called him up a few days bef

scheduled to testify, which was

September 30, 2009, and asked hi

accompany her.

Because he had concerns abo

the press that were going to be

called a few other individuals w

Ms. Giraldo also knew and invite

1 was never

2 and he never

3 out

4 ive any sort

5 serrate for

6 day.

7 skinning him to

8 pastor or a

9 friend.

10 of other

11 o's

12 News and

come along as well. He said he compensated for that service, and spoke with Senator Monserrate about providing that. Nor did he receive any sort of compensation from Senator Monserrate for accompanying Ms. Giraldo on that day.

He said her motivation in asking him to come with her was in part as her spiritual advisor and also as a

MR. LEWIS: Just a couple of other things. First, Nieves and Castro's versions, the story in the Daily

13
because while

14
and he

15
ion --

16
n with

17
him and

18
n his own

19
Castro

20
nator

21
te just

22
re's nothing

23

24

those statements don't match. B

Nieves said "yes, I said that,"

appeared to have had a conversat

claims to have had a conversatio

Castro about it, I checked with

Castro said that Nieves did it o

and never checked with him, that

claimed to have complained to Se

Monserate about it and Monserra

said, "Well, it's the press, the

you can do with it."

How'd I do?

1
orry, I lost

2
Castro

3
the date he

4
ation with

5
ired in

6

7
ober.

8
rly October,

9
ht you

10

11
eep in mind

12
roll on the

13

The other, I think -- I'm s
my train of thought. The other
remark was about being hired and
said he was engaged, his convers
Senator Monserrate about being h
early November --

MS. GERSOWITZ: Early Oct

MR. LEWIS: I'm sorry, ea

and the timing of that, we thoug
should know about.

CHAIRMAN SCHNEIDERMAN: K

that while he started on the pay
19th, the verdict was four days

before that.

14 MR. LEWIS: And he was co
ntacted

15 prior to that date --

16 CHAIRMAN SCHNEIDERMAN: A
ccording to

17 him.

18 MR. LEWIS: -- according
to him, and

19 offered the job.

20 SENATOR SAVINO: Did he w
ork for him

21 in the City Council? Yes, he di
d.

22 MS. GERSOWITZ: Yes, he d
id, as a

23 community liaison.

24 SENATOR SAVINO: When did
he leave

1 the City Council?

2 MS. GERSOWITZ: Approxima
tely 2007.

3 CHAIRMAN SCHNEIDERMAN: Q
uite a while

4 before.

5 SENATOR FLANAGAN: Who is
"he"? I

6 just want to make it clear.

7 CHAIRMAN SCHNEIDERMAN: M
r. Castro.

8 Mr. Castro. Thank you.

9 MR. LEWIS: Nieves left t
he Council

10 as recently as last week.

11 SENATOR SAVINO: Right.
He was on

12 central --

13 CHAIRMAN SCHNEIDERMAN: H
e was on the

14 central staff.

15
t week he

MR. LEWIS: But as of las

16

isn't.

17
hat's what

CHAIRMAN SCHNEIDERMAN: T

18

he says, yes.

19
I guess we

SENATOR SAVINO: I mean,

20

could find out.

21
hem why

Did anybody ask either of t

22
the

Ms. Giraldo didn't simply write

23

affidavit in Spanish?

24
rding to

MR. LEWIS: No. But acco

1 Castro, she insisted that they m
eet in the

2 van.

3 MS. GERSOWITZ: She did i
nsist. And

4 Mr. Castro suggested --

5 MR. LEWIS: She didn't wa
nt to go to

6 a restaurant or --

7 SENATOR STAVISKY: Why di
d they meet

8 in the van?

9 CHAIRMAN SCHNEIDERMAN: I
'm sorry,

10 again, just keep in mind all we
know is what

11 Mr. Nieves said and what Mr. Cas
tro said.

12 We do not know what happened, we
don't know

13 what Ms. Giraldo did or why anyo
ne did

14

anything.

15
onsistent

So we have two somewhat inc

16
er of them

versions of the story, and neith

17
g was in the

purported to know why the meetin

18
go to --

van. In fact, Castro wanted to

19
o suggested

MS. GERSOWITZ: Mr. Castr

20
ewhere else.

going to a restaurant, going som

21
insisted

But according to Mr. Castro, she

22
e van.

that she wanted to do this in th

23
he time he

SENATOR SAVINO: And at t

24
errate but

was not working for Senator Mons

1 he did have this personal relati
onship with

2 him.

3 MR. LEWIS: Who is "he"?

4 SENATOR SAVINO: Castro.

5 CHAIRMAN SCHNEIDERMAN: M
r. Castro,

6 correct.

7 MR. LEWIS: According to
him.

8 SENATOR SAVINO: And the
reason I

9 asked about what he looks like i
s in

10 November of 2008, before this in
cident

11 happened but after Election Day,
many of us

12 were down in Puerto Rico for the
Somos El

13 Futuro conference, and he had wi
th him a

14 gentleman who I don't remember -
-

15 CHAIRMAN SCHNEIDERMAN: W
ho is "he"?

16 SENATOR SAVINO: Senator
Monserrate

17 had with him a companion. I don
't remember

18 the gentleman's name, although h
e presented

19 himself to everyone as his spiri
tual advisor

20 whose responsibility was to hand
le negative

21 energy that surrounds the Senato
r. Now,

22 this is before the incident with

23 Ms. Giraldo.

24 He was a very strange indiv
idual, and

1 he at great lengths discussed ab
out what his

2 role in Senator Monserrate's lif
e was, was

3 to manage negative energy, parti
cularly with

4 the press. It was one of the mo
st bizarre

5 encounters I've ever had with an
ybody, and

6 that's why I'm curious to see wh
ether it's

7

the same person.

8 MS. GERSOWITZ: I can tel
l you that

9 we asked whether Mr. Castro acte
d as a

10 spiritual advisor to Senator Mon
serrate, and

11

he said that he did not.

12 CHAIRMAN SCHNEIDERMAN: H
e does have

13

a website that we'll get the inf

ormation.

14 Of course you can look at him an
d see if

15 this is --

16 SENATOR STAVISKY: Is he
an ordained

17 minister?

18 CHAIRMAN SCHNEIDERMAN: H
e says he

19 is.

20 MS. GERSOWITZ: He claims
to be.

21 CHAIRMAN SCHNEIDERMAN: S
o just let

22 me note -- Senator Flanagan.

23 SENATOR FLANAGAN: I have
a couple of

24 questions. I didn't catch your
name.

1 MR. CORTES: Lee Cortes,
from
2 Kaye Scholer.

3 SENATOR FLANAGAN: Mr. Co
rtes, okay.
4 You referenced Senator Monserrat
e getting an
5 attorney.

6 MR. CORTES: Yes.

7 SENATOR FLANAGAN: It sou
nded like
8 somebody was tasked with that
9 responsibility.

10 MR. CORTES: Mr. Nieves,
yes.

11 CHAIRMAN SCHNEIDERMAN: A
ccording to
12 Mr. Nieves.

13 MR. CORTES: According to
Mr. Nieves,
14 on the morning of December 19th,
at

15
contacted by

16
staff. He

17
e Mahlke as

18
. And he

19
errate had

20
d that he

21
ome to the

22

23
r. Nieves,

24
orney for

approximately 7:00 a.m., he was

members of Senator Monserrate's

has specifically identified Wayn

the individual who contacted him

relayed to him that Senator Mons

been in touch with Mr. Mahlke an

had requested that an attorney c

precinct where he was.

Mr. Mahlke then contacted M

and Mr. Nieves contacted the att

1 Senator Monserrate. The attorne
y's name is
2 James Cullen, whom Mr. Nieves ha
s had a long
3 relationship with and who in fac
t
4 accompanied him to the interview
that I took
5 of him on this Saturday.

6 So Mr. Nieves was the indiv
idual that
7 Mr. Mahlke turned to to retain a
n attorney.
8 Which he did.

9 CHAIRMAN SCHNEIDERMAN: A
gain,
10 according to Mr. Nieves.

11 MR. CORTES: All accordin
g to
12 Mr. Nieves.

13 SENATOR FLANAGAN: Okay.
So

14
Cullen?

Mr. Nieves, his attorney is Mr.

15
represented

MR. CORTES: That's who r

16
question

him at the interview. I did not

17

him regarding the extent of his

18
h

attorney-client relationship wit

19

Mr. Cullen.

20
this is

SENATOR FLANAGAN: I know

21
Nieves hire

seemingly off-base, but did Mr.

22
Monserrate?

Mr. Cullen to represent Senator

23
?

Or when did Mr. Tacopina come in

24
he third

MR. LEWIS: Tacopina is t

1 lawyer engaged. There's an inte
mediate law
2 firm that produced the signed, n
otarized
3 statement to the DA. I forget t
he name of
4 it.

5 SENATOR FLANAGAN: Again,
just as a
6 follow-up on -- I want to follow
up some of
7 the questions about the English
and the
8 Spanish.

9 There's a reference that Mr
. Irizzary
10 is an attorney but is not a nati
ve Spanish
11 speaker.

12 MR. CORTES: According to
Mr. Nieves,
13 he is not a native Spanish speak
er. And I

14 asked him if he knew whether Mr.
Irizzary

15 could either read or write in Sp
anish, and

16 he said he didn't know. He said
he could

17 speak Spanish, but he didn't kno
w if he was

18 a native Spanish speaker.

19 SENATOR SAVINO: But he d
idn't know.

20 CHAIRMAN SCHNEIDERMAN: M
r. Nieves

21 did not know.

22 SENATOR SAVINO: He did n
ot know if

23 Mr. Irizzary was a native Spanis
h speaker.

24 Not that he wasn't, but he didn'
t know if he

1 was.

2 MR. CORTES: Correct. Co
rrect.

3 SENATOR ALESI: But Irizz
ary then

4 repeated back to Ms. Giraldo --

5 MR. CORTES: Well, I'm so
rry -- I'm

6 sorry, let me take that back. I
believe he

7 said he wasn't.

8 CHAIRMAN SCHNEIDERMAN: A
ccording to

9 Nieves.

10 SENATOR ALESI: He was no
t a native

11 speaker.

12 MR. CORTES: Yes, he is n
ot a native

13 speaker. According to Nieves, h
is belief

14 was that he was not a native Spa

nish

15 speaker. My apologies.

16 SENATOR ALESI: But if I
recall

17 correctly, she spoke to him in S
panish, he

18 wrote it in English, and then he
reiterated

19 back to her in Spanish what he h
ad written?

20 SENATOR SAVINO: That's w
hat Castro

21 says.

22 MR. CORTES: That's what
Castro said.

23 CHAIRMAN SCHNEIDERMAN: N
ieves says

24 it was more casual than that. T
hat she made

1
up and they

2

the statement, then he wrote it
explained parts to her.

3
his is

4

But let me just note that t
something that we -- the inquiry

was

5

requested, and we followed up on

it. For

6

ch is really

the purposes of this report, whi

7

facts and

supposed to be investigating the

8

nviction,

circumstances surrounding the co

9

and Mr.

the issues raised by Mr. Castro

10

to our

Nieves are really just relevant

11

lity of

determinations as to the credibi

12

do and his

Senator Monserrate and Ms. Giral

13 acceptance of responsibility.

14 So the actual changes in th
e report --

15 and these are the only two signi
ficant

16 changes that were made since the
last

17 round -- are on page 18, the foo
tnote that

18 was identified earlier, footnote
21, and

19 then on page 29, where we have t
he

20 paragraph -- again, this was req
uested at an

21 earlier meeting -- about how the
select

22 committee was also troubled by t
he fact

23 that -- and I guess we should ma
ke it three

24 individuals, based on Senator Sa
vino's

1 observation.

2
a reference

MS. GERSOWITZ: There is

3
xt

to Mr. Irizzary that's in the te

4 associated with --

5
es. It's no

CHAIRMAN SCHNEIDERMAN: Y

6 longer two.

7
here was

SENATOR ALESI: I think t

8
ssed, and

another concern that I had expre

9
ybe the

that was the possibility that ma

10
ffidavit had

affidavit or statements in the a

11 been coerced or coordinated.

12
ell, I think

CHAIRMAN SCHNEIDERMAN: W

13
tion from

what we have here is the informa

14 kly, you these two individuals. And fran
15 s are know, I think that the statement
16 we have here somewhat inconsistent, but what
17 lear picture is a pretty -- to me, a pretty c
18 up of people that, you know, there were a gro
19 nserrate who were connected to Senator Mo
20 me day as sitting in a van later in the sa
21 the incident, late in the day on
22 ment from December 19th, obtaining a state
23 hat Ms. Giraldo that was notarized t
24 nt for the essentially framed her involveme

1 rest of the proceeding.

2 So we know that's how the n
otarized

3 statement was produced, and that
's really

4 the focus of this inquiry. Beca
use several

5 members of the committee were co
ncerned

6 about the validity of it. And h
opefully as

7 you review the two entries on pa
ge 29 and on

8 page 18, that these will fairly
frame out

9 and articulate our concerns.

10 SENATOR LANZA: And the p
oint of the

11 authenticity, timing, and whethe
r or not

12 there was coercion with respect
to that

13 affidavit is made more difficult

by virtue

14
ows,

15
efore the

16

17
nd it should

18
ncelled

19
was it three

20

21
ons.

22
o it was not

23
ntlemen.

24
fact that

of the fact that, as everyone kn

Ms. Giraldo declined appearing b

committee.

CHAIRMAN SCHNEIDERMAN: A

also be noted that Mr. Castro ca

meetings with our counsel on --

occasions?

MR. CORTES: Three occasi

CHAIRMAN SCHNEIDERMAN: S

so easy to get ahold of these ge

But I think that given the

1 we're, in my view, into somethin
g that is a
2 little bit far afield from the p
oint of our
3 inquiry, I don't know that we sh
ould pursue
4 this any further.

5 Also, I would note that for
the
6 purposes of our inquiry this doe
sn't change
7 anything, in my view, ultimately
, in my view
8 of the situation or the recommen
dations. I
9 don't know if that's true of any
one else
10 here.

11 SENATOR STAVISKY: May I
point out
12 one other -- or perhaps ask one
other
13 question.

14
wo weeks to

15
the Queens

16
was obtained

17
ink, on

18

19
hat's true.

20
the final

21
ations, is

22
rt up until

23
these

24
ere several

It took him approximately t
fax that notarized statement to
district attorney's office. It
on December 19th and faxed, I th
January 3rd.

CHAIRMAN SCHNEIDERMAN: T

So I guess before we go to
discussion relating to recommend
everyone satisfied with the repo
the recommendation section, with
two -- these additions? There w

1
to do with

2
n of

3
nseel worked

4
rs of the

5
for edits or

6

7
g to

8
ceptable to

9

10

11
Yes.

12
s acceptable

13
done and

other minor edits really having
grammar and some other correctio
language. Mr. Lewis and our cou
together on this. Several membe
committee phoned in suggestions
spotted typos.

But is this portion relatin
Mr. Castro and Mr. Nieves now ac
the members of the committee?

SENATOR SAVINO: Yes.

SENATOR STEWART-COUSINS:

SENATOR LANZA: Well, it'

to the degree that I think we've

14 exhausted that which we could do

.

15 CHAIRMAN SCHNEIDERMAN: I
don't mean

16 the underlying conduct is accept
able, I just

17 mean as far as our draft.

18 And Mr. Savage is here on b
ehalf of

19 Senator Hassell-Thompson. Will
you confirm

20 with me that those two entries,
the two

21 entries relating to Mr. Nieves a
nd Mr.

22 Castro, are acceptable to the Se
nator?

23 MR. SAVAGE: Yes, Senator

.

24 CHAIRMAN SCHNEIDERMAN: T
hank you.

orating a

14
nator

15
his

16
mends that

17
der, debate

18
ulsion as

19
that

20
nate should

21
esolution

22
of

23

24
ot a

suggestion made originally by Se

Stavisky stated, at the end of t

paragraph: "The committee recom

the full Senate convene to consi

and vote on a resolution for exp

soon as reasonably possible. If

resolution fails to pass, the Se

consider, debate and vote on a r

for censure with the revocation

privileges."

And Senator Lanza has now g

1 suggestion to modify that senten
ce. And

2 that's a request that he made ea
rlier today.

3 And maybe you could read th
e

4 alternative version, Senator.

5 SENATOR LANZA: Yeah. Ju
st to bring

6 you to that -- the paragraph beg
inning with

7 "accordingly," the suggestion is
that -- is

8 that the second sentence? The s
econd

9 sentence, beginning with "the co
mmittee

10 recommends," that it should be c
hanged to

11 read as follows: "The committee
recommends

12 that the full Senate convene to
consider,

13
ons as soon

debate and vote on both resoluti

14
en to strike

as reasonably possible." And th

15
raph.

the final sentence in that parag

16

SENATOR SAVINO: Why?

17
- you know,

SENATOR LANZA: I think -

18
here,

the fact is is that each member

19
else,

probably by now more than anyone

20
s process to

because we have been part of thi

21
rounding

investigate all the evidence sur

22
nd I'm not

these events and the arrest -- a

23
, you know,

going to speak for anyone -- but

24
espect to

may have reached opinions with r

Senate 1 what you are going to do on the
2 floor.
3 I think the charge for this
committee 4 has been -- and I think we've re
mained true 5 to that -- is to conduct a thoro
ugh 6 investigation and then report to
the Senate 7 our recommendation. I think the
8 recommendation here and the cons
ensus is is 9 that there's a recommendation fo
r sanction 10 and that the possibilities are e
xpulsion or 11 censure.
12 And there's a concern that
this 13 language, while I think technica

lly not --

14
you know, a

15
ot be, I

16
nding which

17
k that a

18
and in fact

19
mittee

20
ote on the

21

22
hat I've

23
that from

24

technically does not -- I think,

reasonable reading of it would n

think, interpreted as us recomme

one the body should take, I thin

casual reading of it would do so

might be interpreted as this com

actually recommending that the v

floor be for expulsion.

And so I think the change t

suggested would, you know, avoid

happening.

1 MR. LEWIS: Can I make ju
st one
2 suggestion in thinking about thi
s.
3 Under none of our rules hav
e we ever
4 had a committee been given permi
ssion or
5 allowed to dictate the order of
business on
6 the floor. We're now for the fi
rst time
7 doing something that we don't do
. And the
8 reason we don't do that is that
even under
9 whatever traditions we have, the
leaders
10 decide the calendar. If we had
a different
11 method of doing it, even under o
ur current
12 rules we don't control as a comm
ittee what

13 happens on the floor. We can ma
ke a
14 recommendation, we can set out w
hatever we
15 do. But this goes further than
the scope
16 that a committee should be doing
. That's
17 the first level.
18 The second level is that ma
ny of the
19 changes that we've done have tak
en out
20 anything that could be read to b
e a
21 recommendation of censure as opp
osed to
22 expulsion or expulsion rather th
an censure.
23 We've tried very carefully so th
at both the
24 perception and the text have tha
t balance,

1
ever comes

2
ort is as

3
intention

4
e, leaving

5
you want

6

7
e looked at

8
you should

9
ss, because

10
second, the

11
ined by

12
o put one in

so that when it comes to -- what
to the floor, this committee rep
objective on its face and in its
as anybody could possibly produc
all of you free to vote however
once you vote as members.

So the two theories, when w
this closely today, was, first,
not commit to an order of busine
you don't have the power. And,
order of business will be determ
events. If the leaders decide t

e's 13 favor of the other, the committee

14 recommendation won't matter.

15 And rather than have a situation in

16 which the leaders may do something the

17 committee has not recommended, or put the

18 leaders in the position where they have to

19 reject what the committee has done on that

20 level or in some way create a problem, the

21 best thing to do is that we're silent on it

22 and let the process work out.

23 SENATOR LANZA: Let me just as say as

24 to the -- with respect to the order of

1 things, Senator Stavisky raised
the point
2 first in our last meeting. And
it is by
3 virtue of the sheer logic of the
way this
4 would proceed is that, you know,
if there
5 are two resolutions, that expuls
ion would
6 come first.

7 But I think the overriding
point for
8 the language change here is that
there seems
9 to be a recommendation by this c
ommittee --
10 as presently written, perhaps --
that we are
11 recommending one over the other.
And I
12 don't think that has been the in
tent of this

13 committee.

14 CHAIRMAN SCHNEIDERMAN: W
ell, let me

15 just make a --

16 SENATOR LANZA: And so --
I'm sorry,

17 Mr. Chairman.

18 CHAIRMAN SCHNEIDERMAN: G
o ahead.

19 SENATOR LANZA: And so wh
ether or not

20 we speak to the order of things,
the sheer

21 logic and mechanics of the way t
his would

22 have to unfold would dictate tha
t the one

23 would come before the other.

24 CHAIRMAN SCHNEIDERMAN: I
just want

1 to make a note that obviously al
l we're
2 doing is issuing a report and ma
king
3 recommendations. That's what ou
r resolution
4 told us to do.

5 The leaders don't have to a
dopt our
6 recommendations. The rest of th
e Senate
7 doesn't have to adopt our recomm
endations.
8 Our mandate is to make recommend
ations, and
9 hopefully all of the work we put
into this
10 report will convince people that
our
11 recommendations should be taken
seriously.

12 I guess the concern that so
me of us

13
ok, this is

14
sus. And I

15
ard for us

16
s on that,

17
effort.

18
he committee

19
tion for

20
floor. And

21
proposed

22
uld be voted

23
that that's

24

have is we want to make it -- lo

an effort, again, to have consen

think everyone has worked very h

to achieve a bipartisan consensu

and I really do appreciate that

There are some members of t

who feel very strongly that a mo

expulsion must be brought to the

I think that the language you've

saying that both resolutions sho

on as soon as possible indicates

the case.

1 I think that one of the con
cerns that

2 was raised is if we in fact do v
ote on both

3 resolutions and they both pass,
which is

4 possible, you end up having one
resolution

5 saying Senator Monserrate remain
s a Senator

6 without being stripped of his co
mmittee

7 privileges and other privileges
as we've

8 defined it, and then a second re
solution

9 saying Senator Monserrate is not
to remain

10 as a Senator. So essentially we
have two

11 conflicting resolutions that pro
duce -- if

12 you did not vote on expulsion fi
rst, that's

13 a possibility.

14 I think that that is one co
ncern. And
15 this is really structured the wa
y you would
16 structure a charge to a jury. T
hat, you
17 know, you consider murder and if
you acquit
18 on murder, that only then do you
need to
19 consider manslaughter. This is
-- anyway,
20 that's the logic.

21 And I personally think Sena
tor
22 Stavisky's point was well taken.
And it
23 does ensure that the resolutions
will come
24 to the floor, but provides some
additional

1 guidance.

2 I understand Mr. Lewis's po
int; the
3 leaders have the power to disreg
ard all our
4 recommendations. So we're not i
mposing on
5 their authority, we're just maki
ng a
6 suggestion.

7 SENATOR LANZA: Senator,
I think you
8 make a good point.

9 First, let me say I don't t
hink there's
10 a disagreement here with respect
to the
11 order of things. I think Senato
r Stavisky's
12 point is a valid point.

13 And perhaps to address your
point, the

14
e decouple

15
on from the

16
to the

17
. So that

18
ding or that

19
th. Because

20
never get

21
is you're

22

23
at we want

24
perception

point you've just made is that w

the both in the suggested revisi

vote, but retain it with respect

consideration and perhaps debate

it's clear that we're not preclu

we're not requiring a vote on bo

if there is a vote on one, you'd

to the second vote, I think what

saying.

But what we're saying is th

language that does not give the

1
ding a vote

to the body that we are recommen
on one over the other.

2
3
re.

SENATOR SAVINO: But we a

4
not.

SENATOR LANZA: No, we're

5
o, I think

CHAIRMAN SCHNEIDERMAN: N

6
.

we're just recommending an order

7
ommending

SENATOR LANZA: We're rec

8
e not

that there be a sanction. We ar

9

recommending -- at least I'm not

10
the body in

recommending that the members of

11
lsion or

this report should vote for expu

12

should vote for sanction.

13

SENATOR SAVINO: So that

we're

14
onsidered by

15
indings and

16
xamined,

17
e level that

18
on and/or

19

20
open for

21
reprimand

22
ating we

23
e ultimate

24
should be

recommending that it should be c

the full body. Based upon our f

all of the evidence that we've e

that this infraction rises to th

should be considered for expulsi

censure.

We're not leaving the door

anything else, we're not saying

or -- you know, we're clearly st

think that this could warrant th

penalty and, failing that, this

1 the next thing that the Senate c
onsiders.

2 We're not saying, you know,
take no

3 action. We're deliberately sayi
ng -- now, I

4 understand what David also says
with respect

5 to the fact that the committees
never direct

6 what goes on on the floor. And
even if we

7 were to put in here that you tak
e up one

8 resolution before the other, we'
re still not

9 directing what happens on the fl
oor, because

10 it's ultimately up to the leader
s as to

11 whether or not they're going to
accept our

12 report with our recommendations
and act on

13 it.
14 All we're doing, I think, i
s we're
15 saying we believe that this acti
on should be
16 taken. We don't have the ultima
te authority
17 to make it happen. But I think
in terms of
18 order and, you know, to prevent
some level
19 of chaos on the floor of the Sen
ate, I think
20 we should lay out what we think
makes the
21 most sense, recognizing that we
can't
22 control the final outcome anyway
.

23 CHAIRMAN SCHNEIDERMAN: D
oes anyone
24 else want to weigh in before we
--

1
ing to join

2
Lanza. And

3
ts since our

4
hink the

5

6
ion, going

7
And all we

8
lk about it,

9
ur last

10
building,

11
e report.

12
ng over what

SENATOR FLANAGAN: I'm go

my comments to those of Senator

I'm going to use the recent even

last meeting as a reason why I t

language should be more neutral.

This is clearly, in my opin

to create a perception problem.

have to do -- nobody wants to ta

but the reality is when we had o

meeting, before we even left the

all the news media had the entir

I'm still personally seethi

13
nsible.

14
ankly, if we

15
r expelled,

16
ers.

17
d to do is

18
version of

19
ous amount

20
with what

21
ere were

22
re

23
kinds of

24
out of

happened, because it was reprehe

Whoever was involved in that, fr

find out, they should be fired o

frankly, if it's one of the memb

My point is that all we nee

look at what happened with that

the report. There was a tremend

of hyperbole that was associated

was not even a final report. Th

predeterminations made, there we

aspersions cast, there were all

innuendo and other things coming

erly 1 something that had not been prop
2 finalized.

3 I firmly believe that we ar
e sending a 4 message that we are listing a pr
eferred 5 course of action. I know how I
feel; I'm 6 not going to speak for any of th
e other 7 members. But I really do think
if we say 8 that the order should be a vote
on 9 expulsion, then a vote on censur
e, what 10 we're going to read as soon as t
his report 11 comes out is "Committee recommen
ds 12 expulsion."

13 And I don't care who the me

mber is; the

14
very touchy

15
read very

16
we can do

17
most

18
gest that

19
diately.

20
could

21
-- but as I

22
ing, a true

23
d not

24
reading, I

reality is we're dealing with a

situation. I think we need to t

lightly and professionally. And

so by suggesting -- probably the

important thing we can do is sug

action be taken swiftly and imme

SENATOR LANZA: And if I

just -- I know Senator Stavisky

stated earlier, a technical read

reading of this does not -- woul

suggest the bias. But a casual

1 believe, would. And I think we
have to
2 assume the casual reading and as
sume those
3 who would try to twist this in a
way that we
4 do not intend.

5 And the suggested language,
though, I
6 think would avoid the ability fo
r those to
7 twist this and for that percepti
on without
8 changing at all, really, the tru
e meaning of
9 what we're saying here. We're s
till saying
10 both.

11 SENATOR STAVISKY: Yes, I
wanted to
12 perhaps make a suggestion, then.

13 If you left the language in

tact but

14
not

15
other, but

16
n" --

17
ould that

18

19
ld that

20
If we

21
commending

22
ply the

23

24
I'm

added the sentence that "we are

recommending one penalty over an

simply the order of consideratio

CHAIRMAN SCHNEIDERMAN: W

make it better?

SENATOR STAVISKY: -- wou

remedy some of the objections?

specifically state we are not re

one penalty over another but sim

order of presentation.

SENATOR STEWART-COUSINS:

1 comfortable with that.

2 MR. LEWIS: Once you reco
mmend the

3 process that way, even though yo
u're saying

4 you're not, you are.

5 SENATOR STAVISKY: They d
o this all

6 the time in the court, which is
why I

7 thought of it. The courts deal
with the

8 most serious offense first, and
then they

9 proceed to the less serious.

10 MR. LEWIS: But juries ar
e instructed

11 on how to do that. We're not go
ing to be

12 able to correct things in that f
ashion.

13 SENATOR LANZA: I'm tempt
ed by that,

14 Senator, I think, if we added a
final
15 sentence that said in no way is
this
16 committee recommending one over
another.
17 But, you know, your analogy
gives me a
18 different -- leads me to a diffe
rent
19 decision. It's kind of like the
20 objection -- you know, if someon
e makes an
21 objectionable statement before a
jury and
22 then the objection is upheld and
they're
23 told to forget what was said, bu
t of course
24 that's impossible.

14
s with the

15
nted in a

16
that the

17
end that a

18

19
t there is

20
uld be a

21
aft, we're

22
ink that's

23
yone to be

24
language is

think that is one of the concern

language, that this not be prese

way where there's any perception

committee is not going to recomm

vote on expulsion take place.

We're also recommending tha

another option and that there co

vote on that. In the current dr

recommending an order. But I th

just something I would urge ever

sensitive to, that whatever the

1 we choose, I know there are some
members of
2 the committee who are not prepar
ed to sign
3 onto the report if they believe
that a vote
4 on expulsion -- that we will not
be
5 recommending that a vote on expu
lsion take
6 place, whether by itself or in t
he context
7 of other votes as well.

8 I think we're going to take
a short
9 break. Anyone else want to weig
h in before
10 we do that?

11 SENATOR ALESI: I do want
to stress
12 the fact that however this commi
ttee accepts
13 the wording that we should not e

xclude the

14
the order

15
possibly

16
we expel,

17
e unless you

18
ve.

19
it may also

20
the desire

21
en bring up

22
rs might

23

24
we -- no

word "both." Because if in fact

turns out to be censure and then

expulsion, and then obviously if

there's no point in doing censur

just want to be totally vindicti

But if you do censure, then

eliminate in the political world

on the part of some people to ev

expulsion when many of the membe

want an expulsion.

So I would simply say that

1 matter what we do with this lang
uage that we
2 should always have in the senten
ce both
3 resolutions should be presented
as a
4 recommendation of the committee.

5 CHAIRMAN SCHNEIDERMAN: O
kay. Thank
6 you. Fair point.

7 So we're going to take a ve
ry, very
8 brief break. I know we have not
always been
9 accurate in our prediction of th
e duration
10 of breaks, but this is really th
ree or four
11 minutes. Thank you.

12 (Brief recess taken.)

13 CHAIRMAN SCHNEIDERMAN: S
o, ladies

14
after a

and gentlemen, we're reconvening

15

brief break.

16
e are,

Let me just go over where w

17
ng the end

because I do believe we're neari

18

of our process as a committee.

19
hat we

I would like to make sure t

20
the

confirm that all the members of

21
-Thompson's

committee -- and Senator Hassell

22
with her and

counsel is here and will confer

23
encement of

then confirm -- that by the comm

24
we say, by

business tomorrow morning, shall

1 10:00 a.m., confirmation that ev
everyone is in
2 agreement on everything else in
the report,
3 we're ready to sign off with the
exception
4 of this one sentence that has pr
oduced this
5 conflict.

6 It seems to me, based on th
e
7 discussion, that there are some
members who
8 feel strongly that our recommend
ation
9 include a recommendation that gu
arantees
10 that a resolution on expulsion w
ill in fact
11 be voted on on the Senate floor.

12 And there is a concern that
, as Senator

13 Flanagan and Senator Lanza point
ed out, a
14 casual reading as opposed to a t
echnical
15 reading might lead someone to sa
y, oh,
16 you're just saying either/or, yo
u're not
17 recommending that we ensure that
a vote on
18 expulsion go to the floor.

19 And then I think on the oth
er side some
20 members of the committee are con
cerned that
21 the language in the current draf
t appears to
22 be favoring expulsion over censu
re and the
23 stripping of privileges and have
a concern
24 that, again, a casual reading ra
ther than a

t 1 technical reading would give tha
2 impression.

3 So given the fact that it's
now almost 4 6:00 p.m., what I would like to
suggest is 5 the following, if this is accept
able to 6 Senator Lanza and the rest of yo
u. Why 7 don't we try and get a confirmat
ion that 8 everything in the report is fine
, everyone 9 is ready to sign by 10:00 a.m. t
omorrow 10 morning. Please just contact Ch
ris in my 11 office or me personally.

12 And then, in the meantime,
Senator 13 Lanza and I and our counsels wil

l try to

14
ternative

15
to the

16
that

17
just stick

18
e done, as

19

20

21
Sounds

22

23
orry, this

24
e stand with

come up with maybe one or two al

versions of language to suggest

committee. If we are agreed on

language, then we're prepared to

it into the report and then we'r

far as I'm concerned.

Does that sound acceptable?

SENATOR STEWART-COUSINS:

good.

CHAIRMAN SCHNEIDERMAN: S

sort of reminds me of a goal-lin

1 a few penalties. It just seems
as though
2 we're very close but we can't quite get
3 there.

4 SENATOR YOUNG: Excuse me
,
5 Mr. Chairman. Should we bring with us
6 tomorrow a copy of the statute that
7 brought the original charge that this committee is
8 supposed to be doing? Because maybe that
9 would be helpful in our deliberations.

10 CHAIRMAN SCHNEIDERMAN: Referring to R
11 Legislative Law Section 3?

12 SENATOR YOUNG: Yes.

13 MR. LEWIS: The full text
of it is in

14 the report.

15 CHAIRMAN SCHNEIDERMAN: Y
eah, we can

16 refer to the language of it that
's in the

17 report.

18 Senator Lanza and I will co
nfer. I'm

19 not sure about whether we're goi
ng to need

20 to convene and deliberate. We m
ay have

21 agreement without doing that and
then may

22 just be able to have a draft tha
t is

23 circulated and signed.

24 So let us visit that issue,
and then

1 we'll be in touch with everyone
tomorrow.

2 SENATOR LANZA: That is b
ecause I

3 believe that we really have achi
eved

4 consensus in substance. It's a
matter of

5 semantics and wording in the rep
ort at this

6 point.

7 CHAIRMAN SCHNEIDERMAN: O
kay, thank

8 you all very much.

9 Senator Flanagan.

10 SENATOR FLANAGAN: One ot
her point.

11 I'd just like to make sure that
the

12 transcripts are released simulta
neously with

13 the report.

14
kay, that's

CHAIRMAN SCHNEIDERMAN: 0

15 a good point.

16
get written

How long will it take us to

17
e released,

transcripts in a form that can b

18
eed hard

I guess -- not so much that we n

19
s that we

copies, but we need them on disk

20

can make available to people.

21
hing up

SENATOR FLANAGAN: Everyt

22
lieve.

until this meeting is done, I be

23
swer for the

THE REPORTER: I can't an

24
I think

previous meeting in Manhattan.

1 everything else is done.

2 CHAIRMAN SCHNEIDERMAN: A
11 right, we

3 will check that also by the begi
nning of the

4 day tomorrow and confirm.

5 I think that's a good sugge
stion that

6 Senator Flanagan has made. Is i
t the

7 consensus of the committee that
we should

8 have the full transcripts so tha
t we can

9 release them when we release the
report and

10 make it clear that this is the m
ost open and

11 transparent committee that has e
ver met

12 here?

13 SENATOR LANZA: Yes.

14 SENATOR STAVISKY: And vi
deotape or

15 surveillance tapes.

16 SENATOR SAVINO: Everythi
ng.

17 SENATOR LANZA: That is p
art of the

18 exhibits.

19 CHAIRMAN SCHNEIDERMAN: T
hat is in

20 part of the exhibits, yes.

21 SENATOR ALESI: And at th
e point

22 where we deliver our recommendat
ion, for

23 what it's worth I think we shoul
d probably

24 also proclaim the time at which
this

1 committee no longer serves a pur
pose.

2 CHAIRMAN SCHNEIDERMAN: Y
es,

3 fortunately for us, by the speci
fic terms of

4 the resolution that created this
committee,

5 once we issue our report we go o
ut of

6 existence.

7 SENATOR STAVISKY: And ho
pe we don't

8 come back.

9 CHAIRMAN SCHNEIDERMAN: T
hey need a

10 new resolution to get us back.

11 SENATOR ALESI: It would
be worth

12 stating it.

13 CHAIRMAN SCHNEIDERMAN: I
think

14 that's another valid point.

15 Thank you very much. We wi
16 ll talk

17 tomorrow morning. And please ha
18 ve someone

19 get in touch with my office conf
20 irming

21 everything but this one sentence

.

22 Thank you.

23 (Whereupon, at 5:58 p.m
24 ., the

committee meeting concluded.)

25

26

27

