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NEW YORK STATE SENATE

Select Committee to Investigate the Facts and
Circumstances Surrounding the Conviction of
Senator Monserrate

3:00 p.m.
December 8, 2009

250 Broadway
New York, New York

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B E F O R E:

SENATOR ERIC T. SCHNERIDERMAN, CHAIR

SENATOR ANDREW J. LANZA

SENATOR ANDREA STEWART-COUSINS

SENATOR CATHARINE YOUNG

SENATOR TOBY ANN STAVINSKY

SENATOR RUTH HASSELL-THOMPSON

SENATOR JAMES S. ALESI

A P P E A R A N C E S:

DANIEL ALONSO, ESQ.

Special Counsel

DAVID LEWIS, ESQ.

Counsel

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P R O C E E D I N G S

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SENATOR SCHNEIDERMAN: Ladies and gentlemen, we are going to begin the meeting of the Select Committee to Investigate the Facts and Circumstances Surrounding the Conviction of Senator Monserrate.

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We are going to follow the same procedure we did in the last meeting, we will have some brief opening remarks and then a report from our counsel on the status of the motion, the application that was made last week for us to get some portion of the Grand Jury materials, and then we are going to vote, as we did last time pursuant to the open meetings law, to go into executive session, at which time only the committee members and the staff explicitly designated by the committee will stay here.

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However, I do want to note that the committee has taken the extraordinary step of ensuring that all of its proceedings, whether in open session or executive

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session, are transcribed, so the public and the press and the rest of the Senate will have access to all the information at the conclusion of the committee's work.

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We are joined here today by most of our members, Senator Hassell-Thompson is on her way, Senator Alesi and Young traveled far, welcome, I hope your trips were safe.

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Senator Stavisky took just as long to get here, but that was because of traffic, and and Senator Andrea Stewart-Cousins, and my partner, the ranking member on the committee, Senator Andrew Lanza.

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I just want to say that we have been -- we have a lot to hear from our counsel about.

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Both Dan Alonso and David Lewis, counsel for the minority, were at the court for the sentencing and for the application, our application for the Grand Jury materials, and we have more material to review today, and then we are going to have a discussion about past case law and

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standards for expulsion, things that have happened in other states or for other sanctions and then talk a little bit about

4 the possible contours of the final report.
5 We have another hearing scheduled
6 for next week.

7 We have, as you know, invited
8 Senator Monserrate's counsel to attend to
9 submit information whether through live
10 witnesses or in documentary form, they
11 advised us they would not attend today's
12 meeting, and we do not know if they will
13 attend next week's meeting.

14 We are hoping our counsel will be
15 able to confirm with them what they intend
16 to do as soon as possible.

17 And we are obviously, as we head
18 into the holiday season, cognizant of
19 everyone's schedule, we are going to try,
20 as we have been charged to do, to finish
21 up our report as soon as possible, we are
22 hoping by the end of the year, but that's
23 going to require at least the counsels to
24 work very diligently for the next couple
25 of weeks.

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1 So with that, maybe we can get a
2 brief status report on the motion from Mr.
3 Alonso and Mr. Lewis and then we will go
4 into executive session.

5 MR. ALONSO: Thank you, Senator.

6 As the committee knows, we were
7 authorized, we, counsel, were authorized
8 to make an application to the trial judge,
9 Justice Earlbaum under the criminal
10 procedure law to -- for a court order
11 allowing us access to the Grand Jury
12 minutes and materials that have been
13 obtained by Grand Jury process.

14 You may remember that much of the
15 Grand Jury minutes were and are in the
16 possession of Senator Monserrate's
17 counsel.

18 We, in the hopes of cooperation, we
19 asked informally for that to be turned
20 over to us and we were declined.

21 So the District Attorney was
22 prohibited by law from providing it to us
23 without a court order, so we applied to
24 Justice Earlbaum.

25 He put the -- our motion he

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1 calendared it for the same day as Senator
2 Monserrate's sentencing, so we were there,
3 Mr. Lewis and I were there on Friday, this
4 past Friday and we sat through the
5 sentencing, and I will have a chance to

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report on that later.

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But we also argued the motion to release the Grand Jury minutes, and what the judge did was he granted it in part and denied it in part.

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He allowed us immediate access to Ms. Geraldo's Grand Jury testimony, and we have that and we have provided it to the Senate members only today.

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It is stamped confidential and we intended pursuant to the spirit in which Justice Earlbaum gave us access, we intend to keep it confidential, but we have the minutes of Ms. Geraldo's testimony and the judge asked us to get together with Senator Monserrate's counsel to work out the details of the additional materials that we, I believe, are entitled to under the order, which are things like telephone records for the operative period between

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the time in the apartment building and the time in the hospital, and I have already started the dialog with Senator Monserrate's counsel to try to agree, hopefully, on an order which we have to settle on notice, but that process is ongoing.

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The only thing I can guarantee you that we can have immediate access to is the minutes themselves.

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SENATOR SCHNEIDERMAN: Okay, and everyone I think has received those today.

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So, we will now, my colleagues, I would like now to move the Select Committee go into executive session as authorized by public officers law Section 105.

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At the committee we will be discussing matters that relate to the potential discipline of Senator Monserrate.

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Pursuant to that section of the law it can and should be done in executive session.

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All in favor of the motion, please signify by saying aye.

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SENATOR STEWART-COUSINS: Aye.

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SENATOR YOUNG: Aye.

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SENATOR STAVINSKY: Aye.

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SENATOR HASSELL-THOMPSON: Aye.

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SENATOR. ALESI: Aye.

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SENATOR LANZA: Aye.
SENATOR SCHNEIDERMAN: So we will begin the executive session.
The executive session will have a group of staff members as required by the law that have been designated to remain here with the committee, the committee staff, Mr. Diaz, Ms. Levine, Jessica, John Amodia, and you've got James Dan Dino on the list, and Senator Hassell-Thompson has two people designated who hopefully will be maybe one or both of them should be with her, at this time we will take a short break and we would like to ask everyone else to leave the hearing room at this time then we will begin.

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E X E C U T I V E S E S S I O N

SENATOR SCHNEIDERMAN: Thank you ladies and gentlemen.
We have another presentation from -- before we start the presentation, the binder that our counsel has given out to you has in Tab 1 the proposed agenda for today's meeting.
Obviously any input from any member of the Committee is in order, pretty much at any time, but this is our proposal for how to proceed as efficiently as possible.
We do have a presentation, it's not nearly as long as the last time, and then my hope is that we will at least get to a very preliminary discussion of the contours of the final report and recommendation, not necessarily to discuss the conclusion, but just the format that the report would take, because counsels have to start drafting it up now if we are going to have any chance of getting it done by the end of the year.

These are numbered because as noted by counsel, while we are not under a direct court order to maintain the secrecy of these documents, it is very clear that the judge hoped to keep the Grand Jury testimony secret, so the portion of this that is the testimony of Ms. Geraldo we hope everyone will keep confidential, and that's why the reports are numbered.

10 MR. LEWIS: The court required a
11 representation of who's going to have
12 access to it, so we have to hold it to
13 the members and to Mr. Alonso and
14 myself.

15 We said there is some staff
16 involved, but this is fairly sensitive
17 material and we made that representation
18 and as we have a pending order, so we
19 certainly don't want to have it released,
20 even though the defense did release some
21 of it as soon as they got their hands on
22 it much earlier.

23 MR. ALONSO: You may recall,
24 defense or at least somebody working
25 apparently for the defense released this

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1 to the press before the trial, so it's
2 not, you know, some of the protestations
3 of secrecy rang a little hollow, but in
4 any event, the judge gave it to us
5 pursuant to a court order, and Mr. Lewis
6 is right.

7 SENATOR SCHNEIDERMAN: So with
8 that we will go to Item 3 on the agenda,
9 which is the report on the status of our
10 discussions with counsel for Senator
11 Monserrate.

12 MR. ALONSO: So, as Senator
13 Schneiderman said in the public session,
14 obviously they told us relatively early
15 on they weren't coming today, I asked
16 well, what are you planning?

17 And the answer was that it's highly
18 likely that they will not participate at
19 all in our proceedings.

20 No testimony by Senator Monserrate,
21 no presentation by counsel, no other
22 evidence. Perhaps a letter written in
23 telling us why they don't want to
24 participate.

25 That's preliminary, nobody should

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1 hold them to that, but I'm in a constant
2 dialogue with them, I have reached out to
3 them today, was not able to reach them, so
4 as soon as I know I will report back.

5 I think whether they present to us
6 next week or not, we should have plenty to
7 do that day.

8 So I'll leave that up to the chair.

9 But I would, if I had to bet, I
10 would say we are not going to hear from
11 counsel for Senator Monserrate; or Senator

12 Monserrate himself.
13 SENATOR SCHNEIDERMAN: So, we
14 will.
15 SENATOR STAVISKY: I think the
16 record should reflect he did have a
17 member of his staff here, who has since
18 left the room.
19 SENATOR SCHNEIDERMAN: We will
20 let you know, obviously, as soon as his
21 counsel let's us know.
22 We are currently scheduled for our
23 next meeting next week, which is very
24 important because at that point we will
25 hopefully be able to -- we will either be

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1 hearing from Senator Monserrate or we will
2 be discussing what we are going to do with
3 the report, and we hope -- we are very
4 hopeful everyone can attend.

5 So, Mr. Alonso, maybe you could
6 start the Power Point presentation.

7 MR. ALONSO: Sure.

8 Today will be, as Senator
9 Schneiderman mentioned, a lot briefer,
10 although there were some very interesting
11 things in the sentencing minutes that I
12 think -- that were certainly not reported
13 in the press that I think you folks should
14 all be on the same page on, plus there are
15 some very interesting highlights of the
16 Grand Jury testimony of Ms. Geraldo.

17 So I'm going to endeavor to present
18 to you the interesting tidbits, but again,
19 I urge you to read the minutes for
20 yourself, since you have them in your
21 materials.

22 So I'm also going to go over a
23 statement that Ms. Geraldo gave to Senator
24 Monserrate's attorneys the night of the
25 incident, remember the incident happened

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1 in the very early morning hours of
2 December 19th, later that night she gave
3 an Affidavit which the D.A. calls the
4 recantation Affidavit.

5 I think it's fair to say it's an
6 Affidavit that says that it's an accident
7 and gives some detail.

8 So I will present that to you as
9 well and you have that, should have that
10 in the materials as well.

11 If you have it in your materials
12 under tab 4.

13 MR. LEWIS: I should point out it

14 was given not to Mr. Tacopina but to
15 prior counsel.

16 MR. ALONSO: MonserrateCorrect,
17 different lawyers for Senator
18 Monserrate.

19 Also two or three of you were very
20 interested in the time frame of the travel
21 from Senator Monserrate's apartment to
22 North Shore LIJ, so we have used Google
23 Maps to give us estimated times for the
24 variety of routes, so I will present that
25 as well.

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1 And some more detail, again, as per
2 request from last time, about the photos
3 of the entrances to the hospital.

4 So, you have all, I'm sure, read
5 what the actual sentence was, so I'm not
6 going to spend much time on that, unless
7 you have any questions.

8 The judge, this was the ultimate
9 result of the four hour sentencing
10 proceeding, as you see up there on the
11 slide.

12 So, there was a motion to set aside
13 the verdict by counsel for Senator
14 Monserrate.

15 I ordinarily wouldn't bore you with
16 something that's purely a legal motion,
17 but I think that there is an important --
18 there was an important aspect of this that
19 had to do with an issue that came up last
20 time which had to do with the physical
21 injury required for the misdemeanor
22 assault conviction.

23 And what the defense did at the
24 sentencing was they told -- they asked the
25 judge to throw out the conviction because

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1 the bruising and the slight skin tear on
2 her arm was not sufficient, they claimed,
3 to make out the legal argument for -- the
4 legal standard for physical injury.

5 And -- so they are talking about on
6 line 16 there that it would be amounting
7 to speculation, not proof beyond a
8 reasonable doubt, and so what they are
9 essentially saying is no reasonable finder
10 of fact could have convicted Senator
11 Monserrate under these facts.

12 And that's kind of an odd argument
13 to make to the person who, in fact, did
14 convict them, but that's the way these
15 legal arguments go.

16 MR. LEWIS: They had to preserve
17 it.

18 MR. ALONSO: There is nothing
19 wrong or right or really significant
20 about the fact they made the motion for
21 our purposes.

22 What is significant since the
23 question of physical injury and their
24 possible appeal came up at our last
25 meeting, is the judge's statements in

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1 responding to the motion about physical
2 injury.

3 He says the woman wanted 911, she
4 was actively bleeding in a region very
5 close to the eye, she's trying to staunch
6 the continuous flow of blood with a towel
7 to her head, she is screaming in pains in
8 the hallway, it's taken 37 minutes to
9 reach a hospital, maybe he doesn't get to
10 that hospital for the better part of an
11 hour, still bleeding in the hospital,
12 still in pain from the earlier episode.

13 You put that all together, plus the
14 court's observations of your client's
15 demeanor and her demeanor on the tape,
16 this is not going to be based on a single
17 nanosecond of an episode that lasted
18 almost an hour.

19 So what the judge is saying there
20 is that there is a continuing course of
21 facts that led him to conclude that there
22 was physical injury, which you may
23 remember from last time the law defines as
24 impairment of physical condition or
25 substantial pain.

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1 That's the issue they would appeal
2 on, and interestingly they said on the
3 record that they are not sure if they are
4 going to appeal, which is contrary to what
5 I told you last time.

6 Off the record they told me they
7 are definitely appealing, so I don't know
8 why they said that to the judge on the
9 record.

10 So, again, the judge continues here
11 on this slide, EMS people could have done
12 that in minutes, could have come there and
13 comforted her, could have seen whether or
14 not there would be some complication of
15 the eye, very close to the eye.

16 Putting it all together the
17 requirement of physical injury was clearly

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met.

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So, that's why I bring that up.

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Now, the judge asked Ms. Geraldo to make a victim impact statement if she wanted.

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She had submitted her intent to make a victim impact statement, which is the right of every victim, although here

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obviously she doesn't consider herself a victim, but nevertheless she had that right, she wanted to make a statement by counsel, she wanted her lawyer to make a statement for her.

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The judge said no, if you want to make a statement, you make it yourself.

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So, he actually did some tough questioning of her, a little bit of it.

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So the highlights we have selected out for you, she again reiterated that it was an accident, she said she didn't want an order of protection.

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She said she wants to be with the Senator and continue her life and that she would like to get married. He said the same thing when he spoke.

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She asked him to remove the order of protection, and she wants things to go back to normal.

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The judge, as you saw, denied the removal of the order of protection.

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He then went in with a few questions, a few sort of follow-ups, she actually said that the nurses had not

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really treated her or attended her at the hospital.

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So he asked the question, I don't understand, this is the good hospital that was selected because of its superior facilities, did they suddenly become less than capable?

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And she said that they never saw me, they were never -- they never gave me any kind of treatment or anything.

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It wasn't until the plastic surgeon arrived and two other people that my wounds were attended to.

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Now that's contrary to the trial record. The plastic surgeon got there at 6:30, she had been seen by the triage nurse, seen by Dr. Cort and seen by Dr. Froegel before then.

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So, again, the inference that

20 arises out of here, you can choose to make
21 whatever inference you want, but you have
22 to start asking yourself the question if
23 she's saying things that are contrary to
24 fact or contrary to the record, why might
25 she do that?

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1 And I'm sure that there will be
2 time for the committee to discuss the
3 possibility of conclusions you can draw if
4 you conclude that she's, in fact, not
5 telling the truth.

6 MR. LEWIS: You should point out
7 this was done through an interpreter,
8 the judge asked -- the interpreter
9 revealed her mother was Ecuadorian, so
10 the Ecuadorian issue of translation came
11 up during the trial which was removed
12 from this discussion and she seemed to
13 have no problems with the interpreting
14 some of these questions and answers in
15 her statement.

16 MR. ALONSO: Further even her
17 lawyer said she basically speaks
18 English, but she just sometimes can use
19 an interpreter, but the Ecuadorian thing
20 I agree with Mr. Lewis, I thought it was
21 a red herring at trial, and the judge
22 eliminated that issue by making the
23 interpreter say she speaks "Ecuadorian
24 Spanish."

25 All right, so the judge then,

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1 again, brings up the point that she's here
2 sitting there trashing the doctors and the
3 nurses and saying how they never treated
4 her.

5 He says, well, wait a minute,
6 Elmhurst Hospital got bypassed, now you
7 are making reference to Long Island
8 Jewish, this was the place Mr. Monserrate
9 selected for you, and you say they failed.

10 Now, there is more back and forth
11 on that, which I am skipping here and
12 turning to the theme that she continues
13 the theme that she started at the trial,
14 which is that the reason that they didn't
15 treat her and the reason that they
16 arrested him and the reason that they
17 weren't nice to her is because he was a
18 political figure.

19 And it's also the reason that they
20 called the police from the hospital.

21 And the judge wasn't buying that at

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all.

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What does that have to do with
calling the police?

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Seriously bleeding woman, et

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cetera, you think that they cared one whit
whether he was the sweeper or the
President?

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I mean the judge clearly believed
that the doctors and the nurses just did
their job.

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They saw a circumstance where they
had this woman who had been -- who had
been cut with a glass in the circumstances
that caused a lot of bleeding, there was
some suspicion and she said it wasn't an
accident, he's crazy, and so that's why
they called the police.

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The judge wasn't buying anything
that she was saying about the political
retribution.

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This segment, if you look at the
very, very bottom of the screen, it says
which Karla Giraldo are you?

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If you read the press coverage of
the sentencing or the press release from
the National Organization for Women, this
was misquoted.

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It was quoted as what, Karla
Giraldo, are you?

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Kind of saying what kind of person
are you, what are you?

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That's not what he said at all,
what he was saying was that on the one
hand people have suggested by words or
implication that you act at the
bidding of Mr. Monserrate, and that your
professed wishes shouldn't be called at
face value because of a domination over
you, some people have suggested that, and
then you suggest that you're a rational,
thoughtful person making your own
decision, not acting in a self destructive
way, which Karla Giraldo are you?

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That's what he meant, he meant to
ask her which are you, and then she
answers, this is the next page.

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She says he doesn't dominate me, I
act with my own -- he doesn't have any
control or dominion of my life.

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Again, it's a relationship, it's
just the two of us, she was unequivocal as
she's been since the point of later in the

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day of the incident that it was an
accident and there was no domination by

1 him.

2 This is the judge, this page slide
3 12 is the judge showing that he believes a
4 theme of Senator Monserrate's control over
5 her.

6 That a normal reaction would be to
7 call 911, can he just decide for you like
8 a parent or guardian can decide for a
9 minor child?

10 He's, you know, basically saying
11 that in the judge's view it didn't make
12 sense that she would be bleeding this much
13 and somebody not call an ambulance
14 workers, EMTs who could immediately do
15 something, like put a butterfly on, as
16 opposed to waiting 40, 45 minutes on the
17 way until you actually see somebody who
18 could help in that way.

19 So the judge clearly, he amplified
20 at the sentencing on what he said at the
21 trial, which was that he definitely
22 believes that Senator Monserrate was not
23 acting -- hard to say what word --
24 appropriately, wasn't the right thing for
25 him to have done to drive her, he should

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1 have called 911.

2 MR. LEWIS: More fruitful.

3 MR. ALONSO: Yes, more fruitful,
4 thank you.

5 Again, he says it was an accident,
6 he says not calling 911 was an accident.

7 He said well, if we had the car it
8 was better to go in the car. She didn't
9 really have an answer, she just said it
10 was better to go in the car because she
11 wanted to be with him.

12 Again, she threw in the theme about
13 how she acted under a lot of alcohol, and
14 you will see when you see the Grand Jury
15 minutes she was categorical that she
16 really had only had two drinks the whole
17 night, and as Senator Hassell-Thompson has
18 pointed out last time, the video from the
19 hospital seems to show somebody who is not
20 drunk.

21 This is the prosecutor, this is not
22 the judge now, so obviously take it with a
23 grain of salt from the side that it comes
24 from.

25 The prosecutor pointed out this

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1 theme, which is not an unreasonable
2 inference for you to draw, that she was
3 doing anything possible to assist the
4 Defendant in this case in terms of the
5 trial.

6 If you see her answers at the trial
7 they are laden with gratuitous references
8 to it was an accident, they only did this
9 because he's a politician, that kind of
10 stuff.

11 So this is the theme that the
12 prosecutor is hoping that the judge will
13 accept.

14 This segment, I thought it would be
15 useful for us to focus on because of the
16 question came up very briefly at the
17 sentencing about Senator's Monserrate's
18 psychological state.

19 Now we don't have any information
20 on this really, and I caution you that I'm
21 not asking you to draw any kind of
22 inference about his psychological state,
23 but I can't think it would be right not to
24 show you this portion.

25 There is a presentence

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1 investigation report that was prepared in
2 this case by the probation department.

3 The prosecution made submissions,
4 the defense made submissions, all of it,
5 it is not available to us. It's under
6 seal.

7 And it is something that is
8 supposed to be. If you go to the question
9 of what should his sentence be.

10 So what obviously they alluded,
11 they danced around it a little bit in the
12 public record and they are talking about
13 how the judge is now asking if
14 psychologically he's not optimal, and the
15 prosecutor says that that's his belief, if
16 you look at the probation report in the
17 case.

18 I suppose the probation report must
19 have commented on his psychological state.
20 I understand that his discharge from the
21 police department had something to do with
22 that.

23 But we just don't know because we
24 don't have the police report -- the
25 probation report.

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1 MR. LEWIS: And we don't know

2 whether the potential psychological
3 state in the probation report is the
4 cause.

5 MR. LEWIS: We don't know if
6 there is a link between whatever was in
7 the probation report about psychological
8 elements and whatever went on with the
9 police department, whatever that is.

10 So even if we were to find out
11 about one, we wouldn't know anything about
12 the other, so that's a second level of
13 caution that we are not really, we really
14 can't legitimately use it for anything.

15 The judge went out of his way to
16 talk about not maligning this man's
17 reputation by disclosing this, he really
18 forced the Genie back into the bottle.

19 MR. ALONSO: He did, but the
20 reason why it's important for you to
21 focus is that he also made a conclusion
22 on the record, he apparently has this
23 term, the judge on line 10 there on
24 slide 15, EDS, which is not a DSM 4
25 term, this is his term, he says that --

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1 he calls it empathy deficiency syndrome.

2 And he calls it my term, but it
3 embraces a lot of things, that's your view
4 and the prosecutor takes the bait and says
5 that's to say the least, judge.

6 So the judge has his own sort of
7 lay view of the psychiatric question.

8 Again, I don't know how much value
9 anyone should give it here, but I think
10 that it was said by the judge and singled
11 out by the judge, so I thought it would be
12 important for you to hear.

13 SENATOR STAVISKY: Did the
14 probation department have access to his
15 police records?

16 MR. ALONSO: I don't know, but
17 the ordinary practice would be that they
18 would.

19 The ordinary practice would be that
20 he would be asked to sign a release to
21 release all of his private records.

22 So likely they would.

23 MR. LEWIS: We don't know if he
24 cooperated with them, because there was
25 some discussion during the -- sorry,

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1 sentencing, about whether he fully
2 cooperated.

3 So we don't really know enough.

4 MR. ALONSO: More than that, the
5 prosecutor said outright he did not
6 cooperate with probation, he refused to
7 give contact information of co-workers,
8 he didn't give enough information in a
9 required follow-up visits.

10 The judge didn't really care about
11 that much, frankly, he basically said
12 look, probation was able to write a very
13 thick report, which is much bigger than
14 most cases, so leave it alone.

15 But the poor prosecutor clearly
16 complained that Senator Monserrate did not
17 cooperate with probation.

18 So, here, this is the prosecutor
19 talking about how the Senator, he doesn't
20 believe understands the serious nature of
21 what he committed, hasn't taken
22 responsibility, and that his idea is that
23 it's all political retribution.

24 SENATOR SCHNEIDERMAN: This is
25 the prosecutor?

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1 MR. ALONSO: The prosecutor
2 saying this, it's very important to
3 focus on it now because later Senator
4 Monserrate and his lawyer both say A, he
5 takes full responsibility for what
6 happened, and B, we are not claiming
7 it's political retribution by the
8 District Attorney.

9 So, we will get to that in a
10 minute, but I wanted to set that up for
11 you.

12 So this is the defense now, this is
13 Mr. Tacopina who spoke to the defense,
14 this is the part about the politically
15 motivated prosecution.

16 As I think I told you, Mr. Tacopina
17 is an excellent lawyer and he has a fine
18 way with words.

19 He rejects this idea of politically
20 motivated prosecution and he says it never
21 came out of the defense's mouth throughout
22 this trial.

23 I think that's true as far as it
24 goes, but I think that there have been
25 public statements by others acting on

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1 Senator Monserrate's behalf saying that
2 this was a politically motivated
3 prosecution.

4 But in any event, Mr. Tacopina
5 stayed away from that as far as he could.

6 He said it's not something we support or
7 believe, and it's not something that
8 Senator Monserrate -- and then the judge
9 just asks flat out, you are not claiming
10 this is -- the arrest was in any way
11 politically motivated?

12 He says absolutely not.

13 In direct contravention of what Ms.
14 Giraldo says when she says the arrest was
15 politically motivated.

16 This is Mr. Tacopina, further where
17 he tries to make clear that it's not like
18 he took her out of the apartment to a what
19 he called a fixer, to go to some doctor
20 and have her stitched up, he took her to a
21 hospital, so whatever you believe about
22 the remote hospital, he at least went to a
23 hospital, and it was the same hospital
24 that he had been to in the past, so he's
25 trying to show, perhaps, there are other

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1 things he could have done, but he doesn't
2 didn't do them, he took her to a hospital.

3 SENATOR STAVISKY: The question
4 came up at the last meeting that he had
5 a soda can and yet it says here that
6 there were no stops in between.

7 MR. ALONSO: We tried to use that
8 in our later argument on the Grand Jury
9 materials, he says there there are no
10 stops in between, that's it.

11 As far as I'm aware, that's the one
12 and only piece of information about
13 whether or not there were any stops in
14 between.

15 I don't know that there were stops
16 in between, I know that Mr. Tacopina says
17 there were no stops in between, but it's
18 perfectly consistent with his own
19 professional responsibility as a lawyer to
20 say there were no stops in between, when
21 what he means is there is no evidence of
22 stops in between.

23 So I don't know if there were stops
24 in between, I know he says that.

25 MR. LEWIS: It's one of the

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1 reasons why we are looking for the Grand
2 Jury materials to try and explain why it
3 took that period of time to go that
4 distance when it would seem that it
5 would be an unusually long period of
6 time.

7 MR. ALONSO: All right, again,

8 this is more by way of explanation from
9 Mr. Tacopina.
10 Panic overtook him and he accepts
11 responsibility for it.
12 It's not an intentional act, it's
13 reckless, he was in a state of panic, he
14 was fearful, he was concerned for her. On
15 line 9, he was concerned for him.

16 He was concerned, panic overtook
17 him.

18 So when I say he accepts
19 responsibility, he accepts responsibility
20 for the fact that Karla Giraldo was hurt,
21 not intentionally hurt.

22 So the judge now asks the question
23 which may be in your head, well, he's
24 panicky, which road do you want to go
25 down, that he acted out of panic or he

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1 made a studied, reflective decision that
2 she'll get better medical care if I don't
3 call 911 and if I go closer to Nassau
4 County, which road are we riding there?

5 And Tacopina says his actions in
6 the hallway, I think those actions were
7 panic.

8 I don't think he remained in a
9 state of panic for the entire 37 minutes,
10 at some point he has to take care of her,
11 he has to get her medical attention.

12 That's inconsistent with what she
13 said at trial happened in the apartment,
14 which is that they were going to the
15 hospital from the time they left the
16 apartment.

17 MR. LEWIS: The cold record
18 doesn't reflect it, but this was the
19 moment I think the judge actually
20 confronted Tacopina on, you can't have
21 it both ways, you cannot say it's both.

22 Tacopina said well, for some it's
23 one and for some it's the other, and it
24 wasn't very clear that the judge was
25 satisfied with that explanation.

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1 MR. ALONSO: By the way, it is
2 clear that, satisfied or not, whether he
3 got answers that satisfied him or made
4 him think that their version of the
5 defense was reasonable or wasn't
6 reasonable, that the judge was very
7 satisfied with his sentence because he
8 went out of his way to say, and I think
9 this is likely true, and the judge has

10 more experience than I do in these
11 areas, but from my own experience I can
12 tell you the sentence is in line with
13 what one might get as a "first arrest"
14 in a domestic violence misdemeanor case,
15 it's not -- it's not out of whack one
16 way are another.

17 MR. LEWIS: It actually in my
18 experience is a little more than you
19 usually see.

20 MR. ALONSO: After trial. You
21 don't see too many after trial.

22 MR. LEWIS: When you see both
23 probation and community service, it
24 looks like the case has been tried.

25 The unusual part is not, although
0039 they pretend that it was, the continuing
1 of the order of protection is not unusual
2 at all.

3
4 Can you say for that period of
5 time, for five years.

6 MR. ALONSO: That's the statute.

7 MR. LEWIS: For the term of the
8 probation, but it's without prejudice to
9 come back and ask for that to be lifted
10 or dropped or modified, it was
11 clearly --

12 MR. ALONSO: It's very clear the
13 judge is very open to dropping that
14 order of protection upon an appropriate
15 application, and he signaled what that
16 would be, which is that she go to a
17 domestic violence counselor by herself
18 so that she can be educated on these
19 issues.

20 He doesn't have the power to make
21 her do that, but he said, all but said
22 that it would be a carrot for them to get
23 the order of protection lifted if she did
24 that.

25 So this is sort of a summation of

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1 the defense here on slide 21, where Mr.
2 Tacopina reiterates some of the issues
3 that I mentioned to you folks last time,
4 no history of violence, no contact with
5 the criminal justice system, background of
6 community service, honorably serving in
7 the Armed Forces, and again he talks about
8 how the injury was not so bad.

9 SENATOR SCHNEIDERMAN: Let me
10 just ask a question that seemed to me
11 the defense was really focusing more on

12 the bruise on her arm and sort of trying
13 to address that as the injury, but there
14 are two separate issues, one is the
15 grabbing of the arm, but the other seems
16 to be what the judge focused on, which
17 is the additional harm to her face from
18 the pain of keeping her away from the
19 hospital.

20 Are these two separate injuries in
21 connection with the misdemeanor?

22 MR. ALONSO: It's not harm to the
23 face, it's the facial expression that
24 leads him to the reasonable inference
25 that she was in substantial pain, that's

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1 the -- but he also -- it's true that the
2 defense focuses on the bruise and the
3 judge focuses on a much broader array of
4 facts.

5 But even the defense focuses on
6 what happened in the hallway and they
7 haven't really adequately addressed the
8 question of whether she was in pain or
9 not.

10 MR. LEWIS: Right, and they
11 argued facial contortion that we see on
12 the video was panic, not pain.

13 MR. ALONSO: Right.

14 So Mr. Tacopina mentioned this
15 committee and he says even though the
16 conviction predated his oath, even though
17 no member of the New York State
18 legislature was ever expelled in its
19 history -- by the way that's not true, our
20 research has found, but we can talk about
21 that at the appropriate time.

22 He says to the judge basically that
23 the collateral punishment outside of this
24 forum is substantial, in other words he's
25 saying don't send him to jail because bad

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1 things could happen to him in the Senate.

2 Now, obviously I don't know that we
3 ever, the committee ever issued an
4 official statement, but we were asked by
5 the press in opening comment and I don't
6 think anyone here thought for a minute
7 that it would be more or less likely that
8 you would recommend one thing or another
9 depending on what the sentence is.

10 But that was an argument they were
11 making. They asked me, by the way, they
12 just called me up and said what's the
13 committee's position on whether he's

14 incarcerated what that means for its
15 activities, and I told them we have no
16 position on that, whatever happens,
17 happens.

18 So Senator Monserrate spoke, you
19 have his entire words in your materials,
20 I'm sure you'll want to read them, but I
21 tried to excerpt some of the parts I
22 thought would be most relevant.

23 First thing he says is he denies
24 the politically motivated prosecution
25 accusation.

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1 Now, the background to this is
2 Judge Brown -- the District Attorney wrote
3 a long letter to Judge Earlbaum, which was
4 not available to us, but it was obvious
5 what was in it, which was he was blasting
6 the idea that his prosecution was in any
7 way politically motivated.

8 MR. LEWIS: And the judge
9 questioned the prosecutor at the time of
10 Ms. Giraldo's statement about because
11 she suggested that the D.A. was at the
12 hospital.

13 And he, the judge made it very
14 clear he didn't believe that, and also
15 obtained information from the D.A. about
16 when they got involved, which was
17 consistent with a domestic violence report
18 which the D.A. would really not go down
19 to -- necessarily down to the hospital,
20 they have services, they have a justice
21 center, they have trained individuals, the
22 D.A. doesn't do that.

23 So all of that was established
24 during the course of Ms. Giraldo's
25 statement.

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1 MR. ALONSO: And it's smart
2 strategy, it doesn't pass the laugh test
3 that this was some politically motivated
4 arrest because the D.A. had nothing to
5 do with it, with the arrest.

6 But it was smart strategy for them
7 to reject that.

8 I cannot stress enough to you, Your
9 Honor, how sorry I am. I'm so sorry for
10 the harm that Karla endured and has
11 suffered, I love her very much. And then
12 he continues.

13 So he did say he's sorry, he did
14 say he accepts responsibility, he never
15 said he committed a crime, but again, he's

16 not required to.

17 I mean he didn't have to say
18 anything at all, and there are good
19 reasons why his lawyer would advise him
20 not to confess guilt given that they have
21 an appeal that's going to be pending.

22 So --

23 MR. LEWIS: And he clearly he did
24 not confess guilt.

25 MR. ALONSO: No.

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1 MR. LEWIS: He trod the line that
2 a good defense counsel explains to a
3 Defendant that you can accept
4 responsibility without admission itself,
5 and he said very clearly that he
6 accepted responsibility for what
7 happened to her, as opposed to some, for
8 example he did it.

9 Now, what happened to her would be
10 consistent with an accident as well, but
11 it's a very carefully crafted statement
12 and probably so, given the stakes for the
13 Defendant, and the fact that this court is
14 capable of asking any question at all of
15 anybody.

16 MR. ALONSO: Right.

17 Right. The judge made the
18 statement, which I thought was relevant to
19 our inquiry, which we talked about last
20 time, which is that his sense at the time
21 of the verdict was that in the period --
22 in the period after the glass incident but
23 before they got to the hospital he wanted
24 time to think to think, to think, to
25 think, meaning that that could have

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1 accounted for a substantial delay.

2 He talked about the controlling
3 personality stuff that I mentioned before,
4 going through your bag, checking the
5 contents, checking the wallets, that was a
6 theme the judge came back to several
7 times.

8 This is in considering the order of
9 protection.

10 This is what he denies or grants
11 the people's request for an order of
12 protection, denies the Giraldo request to
13 lift it.

14 And in doing so he just talks about
15 the facts. Again, since he was the trial
16 judge, I thought it would be useful for
17 you folks to be on the same page on this.

18 Nobody stops to pick up the towel,
19 you make it to the hospital in the better
20 part of an hour, God knows how many
21 additional minutes until you go to the
22 emergency room and you say an order of
23 protection isn't necessary?
24 Or you simply don't care about your
25 own safety?

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1 So he was very strong on the order
2 of protection question and Mr. Lewis is
3 right that it's not unusual for a judge to
4 deny -- to grant an order of protection,
5 in spite of what the victim says.

6 This is during the sentencing when
7 he's giving him probation.

8 The judge says to Senator
9 Monserrate, curb your anger, curb your
10 anger.

11 I seem to recall him saying sir in
12 there, the reporter may not have gotten it
13 down, you should have zero tolerance
14 towards abusive behavior, Ms. Giraldo, and
15 then he mentions you folks again, whether
16 or not -- however, these good folks at the
17 Senate, whether they were able to stand up
18 to the great pressures or decide they have
19 to be punitive.

20 I hope it does not depend on this
21 man being the big guy on the street, but
22 you love him for his own inherent traits,
23 I'm not really sure what he meant by that,
24 and there were a lot of times when the
25 judge kind of pontificated, so I throw it

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1 out there.

2 You have the full words that he
3 said, but he did a couple of times mention
4 community pressures, said that they did
5 not in any way affect him, which is
6 proper, of course, and then he mentioned
7 the committee and made one or two
8 statements like this one.

9 Okay, so that's it for the
10 sentencing.

11 Are there any sentencing
12 proceeding, are there any questions on
13 that before I move on to the highlights of
14 the Grand Jury testimony that was released
15 to us?

16 SENATOR SCHNEIDERMAN: No.

17 MR. ALONSO: Okay.

18 So the first part I wanted to focus
19 you on was the question of whether she was

20 drunk or not, and she said did you have
21 anything to drink at the party?
22 I had two glasses of wine.
23 And then question, is that the
24 extent of the drinks you had that evening?
25 Answer, yes.

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1 Now at the trial she tried to
2 backtrack and say I thought you were
3 asking me about the party only.
4 Now, I think the question is
5 relatively clear, but a little further
6 down, did you feel you were drunk at all
7 due to the drinks you had or were you
8 okay?

9 Answer, no.

10 Question, you were okay?

11 Answer, yes.

12 So she didn't feel she was drunk at
13 the time of the Grand Jury.

14 Let me backup a minute here and
15 just say a couple of words about why this
16 is -- why I think this is significant.

17 As you know, a Grand Jury
18 proceeding is secret. The reason that's
19 really significant is during the highly
20 charged time when a prosecutor or a Grand
21 Jury is considering whether to file felony
22 charges, maybe the only time that a
23 witness is outside the reach or influence
24 of the Defendant or anyone working for the
25 Defendant, and I'm not saying anything

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1 untoward happened here, I'm just saying
2 the reason Grand Jury testimony is
3 significant is because in the Grand Jury
4 no one else is allowed to be there with
5 that witness, so it's the only time they
6 can have a one on one discussion with the
7 District Attorney with the Grand Jury
8 there, of course.

9 But there is no one else there,
10 there are no external influences, and the
11 testimony is under oath, and so
12 technically, given the rules that require
13 a D.A. to be relatively open-ended in his
14 questioning and to be -- and this D.A. was
15 quite open-ended in his questioning, you
16 like to think there is at least some level
17 of credibility to a statement made
18 relatively early on and under oath.

19 The flip side of that is no one was
20 there to cross-examine her, so that's
21 obviously right, but there is a reason for

22 Grand Jury secrecy, there are several
23 reasons for it, and one of them is to give
24 witnesses comfort that they can actually
25 tell it like it is without worrying about

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1 who is going to hear it.

2 So she was here asked if she was
3 drunk and she said she was okay.

4 Senator Lanza, was that description
5 in your experience?

6 SENATOR LANZA: That was perfect.

7 I will add despite the fact she is
8 not a Defendant here, though, for what
9 it's worth, it's also been my experience
10 that no matter how many drinks people have
11 they never claim to have more than two,
12 and no one readily admits that they are
13 not okay.

14 MR. ALONSO: In the Grand Jury
15 when she's asked about the PBA card
16 incident, you may remember the video on
17 that where we saw the garbage being
18 thrown out and her coming out in her
19 dress and would appear to be pushing him
20 and he appeared to be holding it up.

21 She said that he took my purse and
22 he put a new card inside my billfold when
23 he saw another card that was there from a
24 policemen who was a friend of mine.

25 He tells me you don't need that,

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1 because that's why you have me.

2 He took it out of my wallet, he
3 went and he threw it into the garbage.

4 So that seems consistent with all
5 the rest of the evidence, but let's see
6 the next question.

7 Did he seem angry at all to you?

8 No.

9 Did he seem mad at all.

10 No.

11 He was calm?

12 Answer, yes.

13 Depends on the interpretation of
14 what's on the video, but he did go out and
15 throw it out and show it to her
16 beforehand, so.

17 SENATOR HASSELL-THOMPSON: She
18 disclaimed all of this, she claimed that
19 she was undressed, she said she never
20 went in the hall, she never left the
21 doorway.

22 The whole thing was -- if we hadn't
23 seen the video it might be consistent, but

24
25
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it was very clear, she was in the hall,
she had clothes on in the hall, but she

1 said she was undressed, she said he wasn't
2 angry.

3 I mean we had no audio, but it
4 certainly didn't seem the calm exchange
5 that the testimony had -- you know,
6 consistently.

7 MR. ALONSO: It would be
8 reasonable to find many or several
9 glaring inconsistencies between her
10 Grand Jury testimony and her trial
11 testimony.

12 I forgot to mention one thing about
13 why the Grand Jury is important. At the
14 Grand Jury the Defendant hasn't been told
15 what the evidence is against him, and so
16 the witnesses don't have the ability to
17 shape their testimony based on other
18 evidence.

19 SENATOR HASSELL-THOMPSON: That's
20 right.

21 MR. ALONSO: What you just
22 brought up, Senator Hassell-Thompson, is
23 exactly right, she clearly hasn't seen
24 the video at this point, and we will get
25 further into it, it will be coming even

0054

1 more clear.

2 So were you upset at all at him
3 taking the PBA card, taking from your
4 purse and throwing it out?

5 Answer, answer, under oath, no.
6 She ran out, she opened up the garbage
7 shoot to look down it.

8 I guess my question is when he was
9 outside throwing out the card, did you
10 ever leave the apartment while he was
11 doing that?

12 Answer, no.

13 That was only seconds and you never
14 went in the hallway at all?

15 Answer, no.

16 SENATOR STAVISKY: Was she
17 deliberately -- why would she not be
18 truthful, if she doesn't know what the
19 charges are and yet there are
20 discrepancies here --

21 MR. LEWIS: What she could be
22 doing is that she could be trying to
23 minimize what occurred.

24 She could be trying to create a
25 scenario without knowing that there are

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1 videotapes that shapes the Grand Jury's
2 understanding of this.

3 She did not want him prosecuted,
4 this was all against her will.

5 So she may have been trying to lay
6 out a version of events that she believed
7 would not require her to testify against
8 him.

9 Forgetting whatever anybody else's
10 motives might be, and without seeing the
11 video and knowing there is a video.

12 It's a very dangerous game to play,
13 and you will see in the video.

14 SENATOR STAVISKY: Had she been
15 coached ahead of the Grand Jury
16 testimony?

17 MR. LEWIS: I don't think we have
18 any basis for that determination, but I
19 think if you just stay with us you may
20 see some things that may lead you to ask
21 further questions, or come to some other
22 conclusions.

23 But again, it's all of a piece,
24 this first version that we got, it's in an
25 Affidavit at a later point, which is

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1 similar, but also a different version from
2 her, and now we are going to see the
3 capture in the video, but without the
4 video this would stand as the only version
5 of the "victim" that we would have and the
6 Grand Jury would have.

7 SENATOR STAVISKY: Exactly.

8 MR. LEWIS: Would probably
9 necessitate a no true bill, which means
10 they couldn't indict him for anything
11 because without the episode of the
12 confrontation, without the video you
13 wouldn't see that.

14 Just so you know in the Grand Jury
15 the prosecutor is entitled to confront a
16 witness with, who say they made different
17 statements at different times, by law
18 under New York criminal procedure law, at
19 trial the prosecutor may not do that, no
20 one could can confront their witness and
21 say you told me something different at a
22 different time, unless you are actually
23 surprised.

24 So the rules in the Grand Jury are
25 far more flexible which enables the D.A.

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1 to confront her, which is what you are

2 going to see next, and then you will see
3 another piece of the information.

4 You are really going to have to
5 weigh on the issue of do you think
6 something untoward may have been going on.

7 SENATOR LANZA: I think with all
8 the evidence before us, I think one can
9 reasonably infer that throughout the
10 process she was -- her posture was one
11 of a protective, one of protective of
12 Senator Monserrate's interest.

13 MR. ALONSO: It's not uncommon
14 for, in my experience, and I will defer
15 to others from the criminal justice
16 system as well, but in my experience
17 it's not uncommon for witnesses who want
18 things to go away to simply believe that
19 by denying it or by giving their
20 preferred version that will be it and
21 prosecutors will say oh, I guess I can't
22 prove it.

23 But the reality is that
24 prosecutors, particularly in cases of some
25 importance, are going to not just accept

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1 what people say at face value, but are
2 going to look at corroborating or
3 contradictory evidence.

4 And so she's in the Grand Jury, one
5 possible explanation might be if I say
6 this they will go away, without realizing
7 the prosecutor is not just going to accept
8 that.

9 If that were the rule, obviously
10 this case would have never gotten started
11 after day one.

12 MR. LEWIS: But you need some
13 objective evidence. If she went and
14 told the story there was no video, it
15 would be very hard, even under the Grand
16 Jury could indict a ham sandwich rule,
17 for a prosecutor to get an indictment
18 based on her testimony alone, especially
19 since she doesn't make out certain of
20 the elements in this testimony that
21 would be required to be proven and that
22 the video does make out.

23 SENATOR STAVISKY: But they had
24 already seen the video, the prosecutor?

25 MR. LEWIS: They had, but she

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1 hasn't.

2 Remember, at this stage two things
3 have happened, Defendant has been

4 arrested, that's all he knows.
5 She's already given a contrary
6 sworn statement, statement to the version
7 that we understood was being given at
8 first to the medical personnel.
9 She's given a statement and you
10 will see in short order I expect, and now
11 this is her next appearance to try and get
12 this case thrown out.
13 MR. ALONSO: And there has been
14 no obligation for the prosecutor to give
15 the videotape to the defense at this
16 point in time, so the prosecutor has it
17 closely held.
18 So here he plays it for her and she
19 says that's me, exiting the apartment, I
20 didn't remember that.
21 And then she's asked what was your
22 demeanor at the time Mr. Monserrate was at
23 the garbage chute?
24 Remember her demeanor is somebody
25 running out and pushing him.

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1 She said I was a little sad because
2 I never really thought he was going to
3 throw it in the garbage.
4 So she a little bit changes once
5 she sees the video.
6 Question from the Grand Jury, at
7 the moment the PBA card was found, was
8 there any argument, struggle or fighting
9 going on between you and Mr. Monserrate?
10 There was an argument, but normal,
11 without any fighting.
12 And remember the inferences from
13 the torn T-shirt and other stuff.
14 MR. LEWIS: Be careful, because
15 we don't know when that torn T-shirt is
16 from.
17 MR. ALONSO: You are right.
18 MR. LEWIS: This question seems
19 to place it around the PBA card, but we
20 do have her pushing him away when she
21 walks by.
22 MR. ALONSO: In the hallway.
23 MR. LEWIS: Right, in the
24 hallway.
25 MR. ALONSO: So here the

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1 prosecutor is asking whether he
2 remembered -- whether she remembers what
3 she told the female Spanish speaking
4 A.D.A. that she met with at the justice
5 center on day 1, and she said she didn't

6

remember.

7

The prosecutor then showed something, presumably notes or a report, and said does that refresh your recollection and she says, essentially, yes, it was like the devil got inside of him, because he threw away the card, and he had never done this before.

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So this is her agreeing that she told the A.D.A. that he got very upset like the devil got inside of him when he saw the PBA card, different from what she testified a few minutes earlier.

23

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In terms of the glass incident, this is not very different from what I told you last time was the defense position of what happened.

He bumped into something, maybe with my shoe, because there is a wall, there is not a lot of space in between,

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and he almost didn't fit, and so she is sort of making it into why he might have tripped and splashed the water, and then she tells the version that we talked about last time, that she felt the water, her reaction was trying to get up, that's when they bumped into each other.

When she says it was not this side it was on this side, remember last time there was a question as to what side of the bed they were on, so I was able to clarify it for you this time.

So if you take a look here, the map be that we had last time was correct, that's that little gap between the dresser and the bed, that's where, according to her description, he would have walked with the water, and she was sleeping on the side of the bed closer to the red line, just to the right of the red line.

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0063

Right there.

And there is a different angle of the bed, you can see the white part, this is slide 37 which is Exhibit 14 from the trial, the part that does not have the

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blanket on it, that's where according to her she was lying and that's where the evidence that was recovered you can see 2, 7, 8, 9 and 10 at the top pointing right at the pillow, that's where it was recovered.

So that's the side of the bed and

8 just off to the right off the photo,
9 that's according to her where he would
10 have been when he gave her the glass of
11 water.
12 Now, she's asked further in the
13 Grand Jury testimony about the decision to
14 go to the hospital.
15 This is in the apartment, according
16 to her, he said let's go to the hospital.
17 She said I did not want to go
18 because she was nervous, I'm afraid of
19 needles. This is a theme you might
20 remember from the trial.
21 He said let's go, it's for your own
22 good. That's when we decided to go to a
23 hospital.
24 Here is the part about calling the
25 ambulance.

0064

1 The D.A. asks, did you ask him to
2 call for an ambulance?
3 She said, I said if you want, call
4 an ambulance.
5 He said I want to drive you over.
6 And further down, did you ask him
7 to call for an ambulance?
8 Answer, because he was also
9 nervous. I said if you want call an
10 ambulance, but he said no.
11 And he drove and he said let's go.
12 So this confirms that he decided
13 not to call for an ambulance and it was
14 his decision to drive her.
15 She says she agreed with the
16 decision wholeheartedly, but at the trial
17 she couldn't remember if he had asked --
18 she had asked him to call an ambulance.
19 So, she says a little bit later
20 that about the hospital, that the closest
21 one was Elmhurst, but she didn't want to
22 go there, she says she's the one who told
23 him to take her to Long Island to see a
24 surgeon.

25

0065

1 A little bit odd, given she's
2 afraid of needles she would have said take
3 me to see a surgeon, but who knows, that
4 could just be a language issue.
5 She said she wanted to go to Long
6 Island and she did not want to go to
7 Elmhurst.
8 And she's -- again, she's asked
9 have you ever been to that hospital
before?

10 No, but members of his family had
11 received treatment there.

12 At the sentencing Mr. Tacopina said
13 and at the trial that it was
14 Mr. Monserrate himself that had received
15 treatment there.

16 Okay, so now they are describing
17 what's going on as they are leaving the
18 apartment, this is before she sees the
19 DVD, the video.

20 She was crying, he grabbed me by my
21 arms, my shoulder and told me we are going
22 to the hospital for your own good. So she
23 does say that.

24 And he asks, you didn't struggle
25 with him after he said let's go to the

0066
1 hospital?

2 There was no time for any struggle.

3 So after he said to you let's go to
4 the hospital, did that calm you down and
5 did you then go with him willingly?

6 Answer, yes.

7 From the time you were at the door
8 to the time you exited the apartment, was
9 there any struggle between you and
10 Mr. Monserrate at all after he said let's
11 go to the hospital?

12 Answer, no.

13 Question, none at all?

14 Answer, no. There was never any
15 struggle.

16 SENATOR SCHNEIDERMAN: So when he
17 says at your time at the door, is that
18 referring to the time knocking on the
19 neighbor's door, or is that referring to
20 them leaving her apartment?

21 MR. ALONSO: Refers to leaving
22 his apartment on the second floor.

23 That's what it means, she never --
24 the neighbor part is coming up.

25 SENATOR SCHNEIDERMAN: Okay, got

0067
1 it.

2 MR. ALONSO: At any point in time
3 from the time you were at the door to
4 the time you exited the front door, did
5 you ever try not to go with
6 Mr. Monserrate?

7 Nope, nope, we were together, the
8 two of us.

9 And again, did you go anywhere
10 before you went to the door at the bottom
11 of the first floor?

12 Answer, I was nervous, I stopped
13 for a moment, nervous. I didn't know what
14 to do.

15 Question, what to do do?

16 Answer, well, I knocked on some
17 neighbor's door. Suddenly I thought maybe
18 he could help me to get to the hospital.

19 Remember at the trial she said she
20 didn't remember stopping or knocking on
21 the neighbor's door.

22 Did you say anything?

23 Answer, someone help us.

24 Did you say the word help when you
25 were at the door?

0068

1 Answer, I did not say help, I said
2 I don't remember, but I did want to see
3 someone.

4 Why did you want to see someone?

5 Answer, I don't know, I was
6 nervous.

7 This is after watching the DVD.

8 Do you remember what you said when
9 you got to the bottom of the steps?

10 Answer, I know at that moment we
11 were going to the hospital, I was very
12 nervous?

13 Question, do you remember what you
14 said?

15 Answer, no.

16 And again, at the time you were
17 exiting the lobby do you know where you
18 were going to?

19 So, at the bottom here, she's asked
20 are you going willingly with
21 Mr. Monserrate?

22 And she answers yes, both of us
23 were going to the hospital.

24 Okay, so now that's it for the
25 apartment, now we are at the hospital.

0069

1 Any questions on the apartment
2 building.

3 SENATOR SCHNEIDERMAN: I think
4 obviously there is a lot of material
5 here, I think when we get to the point
6 of discussing what we are going to be
7 putting in the report we will have a
8 chance to review our impressions of the
9 relationship between this testimony and
10 what we saw in the video.

11 MR. ALONSO: This is the last
12 slide from the Grand Jury testimony.

13 She's asked what happened at the

14

hospital?

15

I told them Hiram was with me, I had an accident, and then a little bit further down the important thing at that moment was that I wanted to be seen by a doctor, but when they realized that he's a politician, then this nightmare began.

21

Did you speak with a doctor?

22

After the nurse, they gave me the gown, when they realized who I was, they did not clean the blood from my face.

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They started to gossip and to make

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problems by calling the police and that's when this whole thing started.

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Question for you, I guess, is for the committee is whether that's -- if that sounds reasonable, or that sounds like somebody who is trying to, perhaps, shade what's going on.

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It's contrary to the testimony that they didn't clean the blood from her face and we already have from Senator Monserrate and his lawyer their view on whether this was a politically motivated arrest and prosecution.

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MR. LEWIS: And if you go back and look at the trial testimony by the medical personnel, it's clear that the triage nurse interviews her and everyone else drives forward to try and take care of her, but at the end of the day it's a plastic surgeon who has to do the actual work.

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We haven't talked about this, but there were multiple -- the two main wounds and other wounds that were smaller.

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She refused treatment on those

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smaller wounds, she didn't want anything done on the smaller cuts on her face.

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In the scheme of things, given that answer you might want to look back and read the medical doctor's testimony, especially about her refusal to accept the recommendation, even of the plastic surgeon.

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MR. ALONSO: Is there an inference you think they can draw from that?

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MR. LEWIS: I think so, yeah, I was the one who raised it.

13

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MR. ALONSO: On the refusal, on her refusal to have the rest of the

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16 stuff treated, what inference do you
17 suggest might be made?

18 MR. LEWIS: I think the inference
19 is that they were treating her and that
20 she was resisting much of what was going
21 to be done, except what had to be done
22 by the plastic surgeon to save her face.

23 MR. ALONSO: That they were
24 treating her, contrary to her saying
25 constantly they weren't treating her?

0072

1 MR. LEWIS: That and the other
2 thing is being hit in the face by the
3 glass, however that happened, whatever
4 the episode or not, the multiple sites
5 are not just in two sites going in two
6 different directions, but there are
7 other injuries and that's something that
8 the committee should be aware of looking
9 at.

10 MR. ALONSO: This theme they were
11 not taking care of her continued until
12 this past Friday, I mean she said that
13 you saw it already and she said that to
14 the judge, the judge didn't believe her.

15 All right, so that's it for the
16 Grand Jury testimony, you have it all and
17 I urge you to read it, it's not very long,
18 actually.

19 So this was provided to us by the
20 District Attorney who got it from --

21 SENATOR SCHNEIDERMAN: This
22 being?

23 MR. ALONSO: This is slide 46, it
24 is a letter that attaches an Affidavit
25 and it is from a law firm that was at

0073

1 the time representing Senator
2 Monserrate, the letter is dated January
3 3 of '09 and the letter attaches this
4 Affidavit, a sworn statement of Karla
5 Giraldo and the statement has her
6 signature on it, and it is notarized by
7 someone named Michael Nieves who I
8 understand works for Senator Monserrate.

9 And the date of it is the 19th of
10 December, you can see right above Mr.
11 Nieves' signature the 19th day of December
12 which is that night, according to the D.A.

13 MR. LEWIS: So you understand how
14 this might fit in, in anticipation of a
15 Grand Jury a defense lawyer may if they
16 know who the players are, will reach out
17 and try and collect statements to put

18 before the D.A., the D.A. then has to
19 decide whether that goes in front of the
20 Grand Jury or not, whether that
21 document, and also what it does is
22 create a Brady obligation, disclosure
23 obligation possibly to the Grand Jury,
24 but most certainly to the defense, even
25 though ironically it's coming in a sense

0074

1 from the defense.

2 So what it does is it begins the
3 process of defending the case and trying
4 to undermine the prosecutor's case before
5 it even gets into what is totally
6 presented to the Grand Jury.

7 MR. ALONSO: The first thing to
8 notice about this Affidavit is that it's
9 in English, there is no Spanish
10 translation or any mention of whether it
11 was read to her in Spanish.

12 It -- I don't believe it's her
13 handwriting, to the extent that I can do
14 my lay analysis, it looks like one of Mr.
15 Nieves, in the same hand as what's written
16 under Mr. Nieves' signature.

17 So first thing she says is I was
18 never assaulted or hit in any way by Hiram
19 Monserrate.

20 The next thing is what occurred on
21 December 19th, 2008 was an accident.

22 Hiram was instrumental in getting
23 me to the hospital after I was
24 accidentally cut by a glass containing
25 water after we argued in the bedroom.

0075

1 The word accident appears many
2 times in this Affidavit.

3 This is a very interesting part of
4 it, the part I'm highlighting right now
5 this is slide 48 at the bottom.

6 That evening I was very upset and
7 moving around frantically and therefore
8 careless around the glass.

9 Which is fine, as far as it goes,
10 but it's completely inconsistent with the
11 version of events that she tells in the
12 Grand Jury.

13 Remember, she's not asked about
14 that at trial, because that was part of
15 the walking on eggshells part about
16 calling her.

17 But in the Grand Jury she gives
18 this version of events about lying down
19 and having the glass come up and she comes

20 up and the glass comes down and it hits
21 her and that, remember, is what the
22 defense told me the first time I met with
23 them, when I said what's your best theory
24 of what happened in that room?

25 Was that they met when she was in

0076

1 the bed. Here she says she was upset
2 moving around frantically and therefore
3 careless around the glass.

4 Remember, obviously, it's not for
5 this committee to decide whether the event
6 with the glass was an accident or was
7 intentional, because that's not part of
8 your charge under the resolution, but
9 Karla Giraldo's credibility of why she
10 might not be telling the truth is very
11 much part of what this committee is
12 looking at, and so that was a particularly
13 significant part of this Affidavit.

14 I'm very concerned with my
15 appearance and when I saw the scar above
16 my eye I became very frantic and angry.

17 This does not change the fact that
18 the injury was because of an accident
19 after two adults argued and after I was
20 not careful as I moved frantically.

21 Again, the theme of moving
22 frantically and not being careful.

23 At first I refused to go to the
24 hospital, but Hiram insisted that I go as
25 the accidental injury was in need of

0077

1 medical treatment.

2 This is now she's talking about
3 what happened in the building, as I walked
4 down the hallway of the apartment building
5 with Hiram I refused to go to the hospital
6 but Hiram insisted that I go for my own
7 good, and thankfully forced me to go for
8 my own good.

9 I refused to go to Elmhurst
10 Hospital and I asked Hiram to take me to
11 Long Island Jewish Hospital because I felt
12 that Elmhurst was not a good hospital for
13 the treatment that I needed.

14 Any questions on the Affidavit?

15 You have that as tab 4 of your
16 materials.

17 SENATOR HASSELL-THOMPSON: Go
18 back to the very last statement you
19 made, we were questioning why he passed
20 so many hospitals and this is the first
21 time that, for me, anyway, that it was

22 at her request that they went there as
23 opposed to some other hospital that was
24 closer.

25 MR. LEWIS: It's interesting,
0078

1 because in another version of that she
2 says she didn't want to go to Elmhurst
3 because of discrimination, whatever that
4 means.

5 No explanation, it's just something
6 that she says.

7 SENATOR STAVISKY: That's the one
8 place she wouldn't.

9 MR. LEWIS: I'm just putting it
10 out. I think you are asking a
11 legitimate question.

12 MR. ALONSO: She says that in the
13 Affidavit, Senator, and in the Grand
14 Jury that it was her idea.

15 SENATOR HASSELL-THOMPSON: Yes.

16 MR. ALONSO: Now, at the trial,
17 remember, Senator Monserrate's lawyers
18 introduced his records of having been to
19 Long Island Jewish himself as a patient
20 and that was what they argued to the
21 judge was why they would pick a hospital
22 of such stature compared to this not so
23 good Elmhurst that they argued.

24 MR. LEWIS: Which then led to the
25 whole issue of where the emergency room

0079
1 was and where he parked, the signs and
2 all of that.

3 MR. ALONSO: We are about to do
4 that.

5 SENATOR STAVISKY: May I ask you
6 a question about the letter.

7 MR. ALONSO: Of course.

8 SENATOR STAVISKY: Who wrote the
9 letter? She signed it.

10 MR. LEWIS: The Affidavit?

11 SENATOR STAVISKY: The Affidavit.

12 MR. ALONSO: This is not
13 evidence, but my indication from the
14 D.A. is that Mr. Nieves wrote it.

15 SENATOR ALESI: I didn't hear
16 that.

17 MR. ALONSO: I understand Mr.
18 Nieves wrote it. If it's something you
19 consider a crucial fact, I can find out.

20 MR. LEWIS: The committee might
21 want to think about whether or not it
22 wants to know whether by that time,
23 although Senator Monserrate was not then

24 Senator, whether any staff requests or
25 anything had already been made.

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1 SENATOR STAVISKY: Say that
2 again?

3 MR. LEWIS: Any staff requests or
4 staff, the indication of who staff was
5 going to be had already been made
6 because that would be a significant fact
7 setting to learn that this was done by
8 staff to be or something like that, you
9 just need to think about whether you
10 want to know about that.

11 MR. ALONSO: It hasn't been part
12 of our charge up to now to sort of
13 examine all the various circumstances
14 about who might have talked to her,
15 there is evidence there, but I think
16 that there is a value, I think, in
17 probably keeping our eye on the ball and
18 not going off on too many tangents.

19 This was a significant piece of
20 evidence that was provided to the District
21 Attorney by the defense, so I wanted to
22 make sure the committee had it.

23 SENATOR LANZA: Again, one
24 question we know it's dated December
25 19th, when do we know for sure that it

0081

1 existed?

2 MR. ALONSO: January 3rd is when
3 the D.A. gets it, that's the cover
4 letter.

5 And on the top of the cover letter
6 the D.A. says, as discussed with you
7 earlier today, I'm enclosing a copy of the
8 sworn statement of Ms. Karla Giraldo for
9 your review, statement is a total of three
10 pages.

11 So sometime between the 19th and
12 January 3rd there must have been
13 discussions between the D.A. and defense.

14 Because of the holidays, I guess it
15 happened right after the new year.

16 Okay, so I was requested by two or
17 three of you to examine the various routes
18 between where Senator Monserrate lives and
19 North Shore LIJ to figure out
20 approximately how long it should take, and
21 remember this was 3:00 in the morning so
22 one would expect there was no traffic,
23 although we can never know for sure in New
24 York.

25 So the first one I think we looked

0082

1 at four or five, the first one is taking
2 the Cross Island Parkway which is slide
3 537, and Google tells us that that's a 19
4 minute trip and could be up to 40 minutes
5 in traffic.

6 It seems a bit roundabout,
7 actually.

8 SENATOR ALESI: May I ask, would
9 it normally be heavy traffic that time
10 of early morning?

11 MR. ALONSO: 98 percent no. If
12 you drive around in New York routinely
13 you know that sometimes there is some
14 crazy construction going on on the road,
15 so you can't say no categorically, but
16 it is 3:00 in the morning.

17 MR. LEWIS: You can call it
18 random construction.

19 SENATOR STAVISKY: This was prior
20 to the accident on the Throgs Neck
21 Bridge, so that there should be no
22 traffic at all.

23 MR. LEWIS: Prior to the truck
24 that caught fire and burned the bridge.

25 SENATOR STAVISKY: Yes, I live

0083

1 right there.

2 MR. LEWIS: Not everybody knows
3 what that means.

4 SENATOR STAVISKY: There was a
5 truck that caught fire, one fatality and
6 the bridge was closed for -- an entrance
7 for trucks has just been restored
8 recently.

9 MR. LEWIS: And cars.

10 MR. ALONSO: Which backs up.

11 SENATOR STAVISKY: Which backs up
12 the Cross Island Parkway.

13 MR. ALONSO: So that's the Cross
14 Island, slide 54 shows going on Northern
15 Boulevard which is not a highway but
16 it's a main, more direct route and that
17 should take 26 minutes.

18 If you take a the Long Island
19 Expressway, which again is always a big if
20 whether it's backed up, although 3:00 in
21 the morning it's usually pretty good,
22 that's an 18 minute trip, up to half an
23 hour in traffic.

24 Grand Central Parkway which is
25 south instead of north is 19 minutes, up

0084

1 to 45 in traffic, and this one is the

2 longest one going through Union Turnpike,
3 I'm not from Queens, but I think this
4 would be kind of -- you would have to
5 really be looking for tis one to go out of
6 your way.

7 MR. LEWIS: No reason, there is
8 absolutely no reason.

9 SENATOR STAVISKY: No reason.
10 For the record, Union Turnpike crosses
11 the Grand Central Parkway in a number of
12 locations, it's easy to get confused.

13 MR. ALONSO: That's the longest
14 one, is the one that nobody would take.

15 So that's it for the routes, any
16 questions on that?

17 SENATOR STAVISKY: Do we know how
18 he went?

19 MR. ALONSO: We don't, because we
20 don't have the cell site information,
21 assuming that it exists.

22 SENATOR HASSELL-THOMPSON: And we
23 are presuming that the time is -- the
24 time that we are assuming it took is
25 predicated on the clock that was on the

0085

1 tapes when he left the building and the
2 clock that we saw on the tapes entering
3 the hospital?

4 MR. ALONSO: Not just the clocks,
5 but the clocks corrected for their true
6 time. In other words both of them.

7 SENATOR HASSELL-THOMPSON: Even
8 corrected, if it's -- if that clock is
9 20 minutes slow or fast, whatever the
10 amount of time it takes me it doesn't
11 matter, the time would be the same.

12 MR. ALONSO: Correct, but it's
13 got to be corrected first. We know that
14 one of them is 13 minutes fast, so once
15 they -- at the moment.

16 SENATOR HASSELL-THOMPSON: Which
17 one was 13 minutes fast?

18 MR. ALONSO: The one at the
19 apartment building.

20 SENATOR HASSELL-THOMPSON: The
21 apartment?

22 MR. ALONSO: The one at the
23 apartment was 4 minutes off, so once
24 they correct for the time, that's when
25 they get 37 minutes, and by the way,

0086

1 both sides agree it's 37 minutes, there
2 is no controversy over how much time it
3 was.

4 But that's how they get it, they
5 get it from the clocks, the digital clocks
6 corrected for the real time.

7 SENATOR HASSELL-THOMPSON: Okay.

8 SENATOR STAVISKY: And none of
9 these routes took 37 minutes.

10 MR. ALONSO: Correct, unless
11 there was traffic.

12 So we wanted a little bit more
13 explanation on where he dropped her at the
14 hospital, the inference that the
15 prosecution tried to suggest is that he
16 was trying to stay away from any kind of
17 publicity and parked far away, the defense
18 basically said so what, he parked near an
19 entrance to the hospital.

20 So this was the picture you saw, in
21 slide 58 you saw it already and the
22 entrance sign is off to the far right, the
23 security booth where it's indicated and
24 the ER at the top left of the photo,
25 whereas there is a parking garage the

0087

1 entire right side of the picture and
2 Senator Monserrate parked in the lower
3 middle of the picture.

4 So it wasn't that clear when we saw
5 it last week, or two weeks ago, so I
6 wanted to make it a little bit more clear
7 looking at the actual maps of the hospital
8 off of the web.

9 SENATOR LANZA: I have a
10 question, Senator Stavisky, given your
11 familiarity with the location, the
12 location that he parked, does that allow
13 you to better speculate, if you will,
14 with respect to which route he may have
15 taken?

16 MR. ALONSO: Parked on 76th
17 Avenue, do you see down there at the
18 bottom, Senator?

19 SENATOR STAVISKY: Where is Union
20 Turnpike in relation to --

21 MR. LEWIS: Go back to Union
22 Turnpike map?

23 SENATOR STAVISKY: Yes, let me
24 answer that question.

25 If he took the highway, the chances

0088

1 are -- if he took the Parkway he would get
2 off at the Lakeville Road Exit, which
3 would put him on Lakeville Road, and you
4 would enter the hospital at that area.

5 MR. ALONSO: Of the area that --

6 MR. LEWIS: Not at 76th Avenue?
7 SENATOR STAVISKY: Not at 76th
8 Avenue.

9 MR. LEWIS: Really more towards
10 the Nassau side?

11 SENATOR STAVISKY: That's
12 correct. You would be on the Nassau
13 County side.

14 MR. LEWIS: The longest.

15 SENATOR STAVISKY: Every time I
16 have been there I have taken usually the
17 Long Island Expressway to Lakeville
18 Road, I made a right turn then you pull
19 right into their complex.

20 MR. ALONSO: Okay, so we have
21 this overhead map.

22 SENATOR HASSELL-THOMPSON: Which
23 is not the longest route.

24 MR. LEWIS: If he took the
25 longest route he still wouldn't end up

0089

1 where he ended up.

2 SENATOR HASSELL-THOMPSON: That's
3 what I'm saying, he would not end up
4 there?

5 MR. LEWIS: Unless you extended
6 the longest route, yeah.

7 MR. ALONSO: So we are at the
8 point you see 7th --

9 SENATOR STAVISKY: Excuse me, you
10 can see Lakeville Road in the lower
11 right-hand corner.

12 MR. ALONSO: There it is, in the
13 lower right-hand corner.

14 SENATOR STAVISKY: Lower
15 right-hand corner.

16 MR. ALONSO: So you would go in
17 exactly where the photo that we saw last
18 week tells us the entrance sign is.

19 That's exactly where you would go
20 in, and there is a sign there that the
21 D.A. put into evidence which points to
22 where the emergency room is supposed to be
23 and that's off to the right, not off to
24 the left.

25 So here is the point of entry where

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1 it's indicated on slide 62 and the
2 emergency room where the drop off is is
3 there at the top.

4 And the building in between is what
5 you saw them walking through in video
6 after video to get to the emergency room.

7 And at the bottom, just below where

8 it says L 2 or so is where approximately
9 where he parked on 76th Avenue.

10 And you can see a picture of
11 just -- it's hard to tell exactly what
12 you're looking at, but it's -- you see to
13 the left of the M on slide 62 there is a
14 road, that's the road in slide 63.

15 So that road leads right up to the
16 point of entry, that's where he went in.

17 So 76th Avenue is what we are
18 seeing at the forefront of that picture
19 and if you walked maybe a block to the
20 right, that's where he parked.

21 And you can see that on the map
22 there.

23 Here is an overhead shot which is a
24 slightly better picture than what we have
25 seen, you can see the parking garage, the

0091

1 big structure on the right upper
2 right-hand side just under the word room,
3 you can see that large rectangular garage,
4 that's where we just determined would be
5 the likeliest point of entry, just above
6 it, and if you see the emergency room
7 there at the top you see the point of
8 entry there at the bottom and you see the
9 approximate location of the car.

10 So they walked -- the D.A. made a
11 big deal out of this at trial -- they
12 walked 150, 200 yards from the point of
13 entry from the car to the point of entry
14 and then another whatever amount you saw
15 them walking in the video to get to the
16 emergency room, when you could have gone
17 in by the parking garage, taken a right,
18 driven around, pulled right up and dropped
19 your patient at the emergency room.

20 That's the inference the D.A. asked
21 to draw, and it's one that clearly the
22 judge agrees with.

23 MR. LEWIS: And it's fair to say
24 we didn't get an alternative explanation
25 out of anything in the course of the

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1 trial.

2 MR. ALONSO: That's absolutely
3 fair to say.

4 MR. LEWIS: Everybody should
5 realize --

6 MR. ALONSO: I think I have
7 answered the questions that were raised
8 last time by the senators to the best of
9 my ability, and I appreciate Mr. Lewis'

10 help in a variety of different parts of
11 our work.

12 So, Senator Lanza.

13 SENATOR LANZA: What is next on
14 our agenda?

15 MR. ALONSO: The report on the
16 memorandum regarding possible standards
17 for expulsion.

18 SENATOR LANZA: Which is tab 5.

19 MR. ALONSO: Should be tab 5,
20 yes.

21 SENATOR LANZA: If I could
22 summarize, I suppose here, I think there
23 has been a very good and exhaustive
24 review with respect to what precedent
25 exists on the matter and there are

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1 some -- there are various cases dating
2 all the way back to the early part of
3 the last century, I believe, with
4 respect to those instances which might
5 be analogous or at least provide some
6 guidance with respect to what the
7 options are here.

8 I think everyone can draw their own
9 conclusion, but for me it just seems as
10 though there really is no real framework
11 with respect to what the options are, in
12 fact it seems to be pretty wide open.

13 Dan, would you agree with that?

14 MR. ALONSO: I would agree. I
15 think that the -- first of all, about
16 this memorandum, it's among the more
17 confidential materials in the materials,
18 so I just ask that everybody preserve
19 the attorney-client confidentiality of
20 this, it contains our current thinking
21 and obviously some of it will be
22 incorporated into our final report.

23 In terms of standards, it's true, I
24 mean there are a lot of different
25 standards that can be used and have been

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1 used by legislators in considering whether
2 or not to expel.

3 Remember, as I said in this
4 memorandum, nobody is prejudging what
5 possible discipline you may or may not
6 mete out, even short of expulsion, but
7 here the purpose is we have been asked
8 what standards should we consider in
9 deciding whether to expel a member.

10 The legislative law does not give
11 you guidance.

12 The statute legislative law Section
13 3 is very old, I mean its predecessor
14 statute could date back to as far as the
15 18th century, as far as we are able to
16 tell right now, and there is virtually no
17 legislative history, and and it just says
18 that you have -- that the House has the
19 power to expel a member.

20 The constitutional history of New
21 York tells us that the power is
22 discretionary.

23 You have the sound discretion to
24 vote your conscience as you do or the
25 Senate does to vote it's conscious as it

0095
1 does on any other matter.

2 Some of the frameworks that we
3 found that have been used are set out
4 there and they are things like conduct
5 unfitting and unbecoming a member, failure
6 to work conscientiously for the general
7 good, mistreatment of those less powerful.

8 Bringing dishonor and disrepute to
9 the House.

10 Improper conduct that may reflect
11 upon the Senate.

12 Just a variety of different, I
13 think, purposefully vague standards
14 because nobody can ever come across --
15 nobody can ever set forth all the possible
16 ways in which somebody might be no longer
17 fit to serve as a member of the
18 legislature.

19 But it is clearly within the sound
20 discretion of this body or the Senate as a
21 whole to expel its members by majority
22 vote.

23 And in terms of your actual
24 standard that you use to vote your
25 conscience, I need to defer to the Acting

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1 Chair.

2 SENATOR LANZA: I will say that
3 the purpose of this, Senator
4 Schneiderman and I have discussed this,
5 the purpose of this memorandum is not to
6 presuppose or any predetermined outcome
7 or desire of this committee toward
8 expulsion.

9 One of the things, about the most
10 important question about this committee is
11 what are the options available to us, what
12 are the powers of the Senate with regard
13 to if, in fact, this committee recommends

14 or that the body decides that sanctions
15 are appropriate, what are the possible
16 sanctions available.

17 So this is obviously the most
18 extreme and so it needed to be explored
19 with respect to whether or not that
20 authority even exists within the body, and
21 I think the answer is that you know that
22 it does, because there aren't really any
23 clear parameters or precedents which would
24 prohibit that.

25 But again, not to suggest any way,

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1 shape or form that that is the purpose of
2 this committee, that is not the purpose,
3 the purpose of this committee is to
4 investigate first the facts and then to
5 make, perhaps, a recommendation as to what
6 the options are.

7 MR. LEWIS: In looking at the
8 standards, because Dan and I were
9 talking, Mr. Alonso and I have been
10 talking about this it for quite some
11 time, the two things that we were most
12 concerned with was whether the committee
13 had the power, recognizing that there is
14 press and other materials saying we
15 didn't, and coupled with the idea that
16 it's never happened, so therefore it
17 can't be done.

18 An argument clearly rejected by
19 cases such as Skelos versus Patterson.

20 The problem is that we needed to
21 put together and collect what's been done
22 in the past in other jurisdictions in
23 order to have a working framework for you
24 folks to figure out how to exercise your
25 consciences and that is to just basically

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1 emote is not really what a committee
2 should do.

3 So in weighing the facts and
4 looking at the circumstances, these are
5 standards in which you can adopt
6 intrinsically under fundamental
7 parliamentary law the Body has the power
8 to protect itself, and that out of that
9 power to protect itself emerges the
10 ability to discipline in whatever fashion,
11 from censure to private censure to all the
12 way to expulsion.

13 Some of the problems also caused by
14 a certain amount of misdirection and that
15 is the Lipshitz case, which is the only

16 thing we really sort of have in hand from
17 the more modern era, doesn't elect in its
18 memo to discuss Legislative Law 3 at all.

19 Instead reaches back into the
20 Constitution and talks about how something
21 was omitted.

22 So therefore since it was omitted,
23 there is no way to do this.

24 You can speculate on why that
25 report was written the way it was, it came

0099

1 with a resolution of censure, so it seemed
2 to be one directed, one particular
3 direction in that report.

4 In our conversations among counsel,
5 we have tried very strongly to avoid
6 having anything like that in any
7 direction.

8 So the standards from other
9 jurisdictions became more important to
10 take a look at as we were doing our work
11 in trying to figure out what the committee
12 needed, but in the end it's really a
13 matter of your conscience, using these
14 standards as a guide, applied to the facts
15 that you are going to consider and come to
16 some finding.

17 MR. ALONSO: I do want to add one
18 thing or correct one thing in this memo
19 and in what's been bandied about in the
20 public record, my fine associate, Stan
21 Lotkin, who is sitting here, has
22 recently just in the last few days dug
23 up the fact that apparently the
24 legislature has expelled people in the
25 19th and 18th centuries.

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1 In the 1860's a member of the
2 assembly was expelled, it doesn't make our
3 job that much easier because he was
4 expelled for bribery, but unconvicted
5 bribery, in other words he received a
6 bribe, wasn't prosecuted for it, but was
7 expelled using the expulsion power.

8 And even earlier a couple of
9 members of you think the Senate, right?

10 MR. LOTKIN: The Senate, yeah.

11 MR. ALONSO: The Senate were
12 expelled.

13 MR. LOTKIN: 1778, 1781.

14 MR. ALONSO: Before the U.S.
15 Constitution but after the U.S.
16 Constitution of 1777.

17 So certainly that's a long time

18 ago, and I believe those were treasonous
19 activities.

20 MR. LEWIS: Tied to the colony's
21 relation with Britain.

22 MR. ALONSO: Nevertheless, it's
23 wrong to say no one has ever been
24 expelled from the legislature, and you
25 wouldn't be technically breaking new

0101

1 ground, even though in the modern era
2 it's not something that has been done in
3 modern times.

4 MR. LEWIS: And for our purposes
5 it's important that if we are going to
6 do this, that we understand why we are
7 doing it and what standards we are
8 using.

9 Whether it's been done before or
10 not, we need to know why we are doing it
11 and what our standards are in looking at
12 this, because the danger always is that
13 there is some charge somewhere of
14 political motivation or political
15 elements, so we need to know what's
16 motivating us and what we decide is going
17 to be right.

18 MR. ALONSO: I think we need to
19 decide or you folks, the Select
20 Committee needs to decide what to
21 recommend to the full Senate.

22 First, I think you need to find
23 facts and make inferences from events and
24 I think that's something we can suggest to
25 you, what we recommend and you folks can

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1 debate that.

2 And I think from that one possible
3 way to go would be to make a
4 recommendation based on the facts that you
5 find, whether that recommendation be for
6 some form of discipline short of expulsion
7 or whether it be expulsion.

8 In terms of standards, the way I
9 have been thinking about it is I wouldn't
10 necessarily pick one of these standards, I
11 would simply make a recommendation and I
12 don't want to speak for Senator
13 Schneiderman, but just should I yield the
14 floor to you?

15 SENATOR LANZA: Can I say one
16 thing it.

17 SENATOR HASSELL-THOMPSON: Don't
18 yield to him yet.

19 SENATOR LANZA: I just want to

20 caution the committee once again from my
21 point of view at least the purpose of
22 this memorandum is just to layout what
23 the possibility is, what the power of
24 the Senate is vis-a-vis sanctions and
25 clearly they range all the way to the

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1 most stream being expulsion, without
2 saying that that's where we are going to
3 go, and that I think is a perfect segue
4 to what Senator Schneiderman is about to
5 say, now that I know him so well I know
6 what he's going to say, but we are on
7 point 6 which is the next question for
8 us really, the contours of what kind of
9 report we want to issue, how far we want
10 to go.

11 SENATOR HASSELL-THOMPSON: I
12 don't think you are ready for a report.

13 SENATOR LANZA: I agree, but we
14 have to talk about at least the, I
15 think, the shape it will take and where
16 we think --

17 SENATOR SCHNEIDERMAN: What would
18 go into a report? What the parts of the
19 report might be, because there is some
20 stuff they can start working on now even
21 if we don't know all of it yet.

22 SENATOR HASSELL-THOMPSON: I
23 would like to -- I would not feel
24 comfortable if we did not have a set of
25 standards that whether we develop them

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1 as the modern standards or whether we
2 adopt something that exists.

3 My comfort level says that if I am
4 going to be criticized for whichever way
5 we respond, I want it to have a set of
6 standards that I can say that we agreed
7 upon and adopted to come to that
8 conclusion.

9 So I agree with Mr. Lewis, I just
10 don't -- I'm not comfortable not having a
11 set of standards by which I know that I
12 reached the point of my decision.

13 MR. ALONSO: I can tell you,
14 Senator, that a lot of these standards
15 that I have laid out in this memo are
16 really things that came out of reports.

17 It wasn't like the right committee
18 decided their standard would be a pattern
19 of conduct unfitting and unbecoming a
20 committee member, it was in discussing
21 what Representative Wright had done and

22 deciding what to recommend to their full
23 body they said what he did was a pattern
24 of conduct unfitting and unbecoming a
25 member.

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1 So one way to handle it, I think
2 it's consistent with what you and
3 Mr. Lewis are saying, is to find the facts
4 and make the inferences you believe are
5 reasonable, and then decide what you want
6 to do using your conscience and we write
7 it in a way that tells the full Senate
8 what your reasoning was.

9 SENATOR HASSELL-THOMPSON: Right.

10 MR. ALONSO: It's not like
11 writing a statute and saying if you do
12 A, B and C you are expelled.

13 It's more of a you've done A, B and
14 C, here is what we believe our
15 recommendation is because of it's not
16 appropriate for a Senator, it's not
17 fitting, it's unbecoming, whatever it is
18 you want to call it.

19 And that's going to be up to you,
20 but I think that that's my sense of what a
21 good report might look like.

22 MR. LEWIS: You see, I'm thinking
23 it may be all of them, just so we are
24 clear, because I rarely agree, I want to
25 see it may be all of these are the

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1 appropriate standards, but you can come
2 to it using different ideas which
3 incorporate the language of the
4 standards.

5 They are not really different, they
6 are just things that have been said at
7 individual times, individual inquiries.

8 So we could decide, for example,
9 that it's conduct unbecoming or we can
10 decide, for example, that it's -- that it
11 is mistreatment of less powerful, they
12 would both exist in the same universe, if
13 that's what you decide you wanted to put
14 forth.

15 SENATOR SCHNEIDERMAN: Let me
16 make one point about the committee's
17 functions as distinct from the Senate's
18 function under Legislative Law Section
19 3.

20 The Senate votes to sanction
21 whether to censure or to expel, that's a
22 vote of each of us as a Senator using
23 whatever standards we use to vote.

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We do not have the power as a committee, that would be sort of a

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legislative decision to say okay, this should be the standard for expulsion, that's not within our power.

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Our power is to issue -- to inquire into the facts and issue a report and recommendation to the Senate.

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Now, in that report and recommendation the language, as the language in these other things that you have picked out as standards, improper conduct which may reflect upon the Senate, anything repugnant, that comes out of the

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same kind of discussion we are going to have, we think that the following is appropriate because we find that this

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conduct was however we choose to describe it, pick the language we choose as a committee.

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But we are not empowered to say we are setting the standard for this for expulsion, because that's not within our

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power, that would be a statutory change. So we should --

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SENATOR HASSELL-THOMPSON: I don't think I'm suggesting that, I'm

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saying that however we -- whether we do it by discussion and the language of that discussion becomes how we reach it, it may be standard is not the correct terminology, maybe criteria is a better

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terminology, but there has to be a criteria that we use in order to reach whatever recommendation we are going to make, and that's all I'm suggesting.

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MR. LEWIS: You want something articulated.

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SENATOR HASSELL-THOMPSON: Very clearly articulated.

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SENATOR STEWART-COUSINS: We have to, obviously, articulate whatever it is that we have included, but I guess

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where -- at least where I and when you talk about contours, are you talking about what are the elements of the actual report that we are going to give so it would be an opening statement,

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a -- SENATOR SCHNEIDERMAN: Yeah, like us figuring out what the outline would look like so there is some stuff they

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1 can start to draft now, there is some
2 stuff, obviously, they can't.

3 SENATOR STEWART-COUSINS: Okay,
4 so the meat of this thing has yet to be
5 concluded, but I guess when you are
6 talking about doing contours you are
7 talking about what are the different
8 sections that we will be filling in with
9 the meat, so you have an idea of what
10 this contour would look like that you
11 want to share?

12 Because we are not at the standards
13 part of what we are putting in, but I do
14 want a general idea of what you think the
15 contours should look like.

16 SENATOR SCHNEIDERMAN: Right, we
17 are not at the decision making point
18 about conclusion, we are just talking
19 about what would have to go into the
20 report to get everyone's input about
21 what we feel comfortable.

22 This is -- again, our job is to
23 inquire and issue a report and
24 recommendation under the resolution that
25 created this committee.

0110

1 And our suggestion, and Senator
2 Lanza and our counsel talked about this,
3 but I wanted to run it by you all to get
4 your input on this, that we should start
5 with an overview of the investigation
6 explaining the resolution and what we were
7 empowered to do, what the scope of it was,
8 what steps were taken, you know, what the
9 counsels did, so the procedural history of
10 the case, talking about this is what
11 happened to get us up to where we are now,
12 the -- just really setting the history in
13 chronological order of what happened, what
14 happened to Senator Monserrate, then what
15 happened with the setting up of the
16 Committee and our convening of the
17 hearings, just to set the record straight
18 so we have that all framed up.

19 What the evidence was, and this
20 would be the second section after we get
21 just sort of layout the background of how
22 we got here and what we are supposed to be
23 doing, the evidence that we reviewed and
24 that requires us to discuss what we want
25 to put in.

0111

1 SENATOR STAVISKY: Eric, along

2 those lines one of the problems, as I
3 see it, is that we cannot divulge any of
4 the Grand Jury information when we
5 review the evidence.

6 MR. ALONSO: I think it would be
7 fair game, I talked about this with
8 Mr. Lewis, I think it would be fair game
9 to put -- it would be fair game to put
10 it into the report to the extent we deem
11 it relevant.

12 In other words, not attach it as an
13 exhibit so that it's -- so that we make it
14 a public record, to the extent we believe
15 there are segments of it relevant, I think
16 it's fair game to put it in the report.

17 SENATOR STAVISKY: Which leads me
18 to the second part of that question. I
19 am just astounded at the discrepancies
20 that we have seen here.

21 SENATOR HASSELL-THOMPSON: I am,
22 too, I just --

23 SENATOR STAVISKY: I am just
24 astounded at the discrepancies and if
25 you could somehow summarize some of

0112

1 those discrepancies for us, it might be
2 helpful.

3 For example, the discrepancy
4 about -- there are so many, but
5 primarily --

6 MR. LEWIS: Let's do it line by
7 line through the trial testimony,
8 literally line by line.

9 SENATOR STAVISKY: But there has
10 to be an outline of some of the
11 discrepancies that we have found, or
12 that are there.

13 MR. ALONSO: That would be part
14 of the factual narrative in the proposed
15 report.

16 SENATOR STAVISKY: I'm just
17 astounded at that, at her Grand Jury
18 testimony where she said she went
19 willingly and yet you saw the tape.

20 There are so many instances, I
21 jotted down a number of them.

22 SENATOR HASSELL-THOMPSON: I
23 think what Mr. Lewis described earlier
24 when he was talking about what her --

25 SENATOR STAVISKY: Good point.

0113

1 SENATOR HASSELL-THOMPSON: What
2 her -- what it appeared that she was
3 doing was actually shaping exactly the

4 way everything was going to go.
5 SENATOR STAVISKY: That's right.
6 SENATOR HASSELL-THOMPSON: And
7 she seemed to be -- I have worked with
8 DV victims in the past, and she seems
9 really bent on shaping and determining
10 the outcome of this.

11 She worked hard at it, she
12 actually --

13 SENATOR STAVISKY: You can see
14 that.

15 SENATOR HASSELL-THOMPSON: She
16 actually lies.

17 She says she doesn't remember when
18 asked, but she outright lies and she's
19 distorted the testimony so much I just --

20 SENATOR STAVISKY: I found that
21 to be astounding.

22 SENATOR HASSELL-THOMPSON: To be
23 very truthful, outside of the fact that
24 this is a DV case, I am surprised they
25 didn't throw it out of court.

0114

1 I really am surprised because there
2 is nothing consistent in any of this that
3 helps you to understand the thinking,
4 because we have to do a lot of supposition
5 about what everybody is thinking, what
6 their attempts are, because there is no
7 consistency.

8 He lies and she swears to it.

9 MR. LEWIS: Well, the interesting
10 thing is the videotape doesn't lie.

11 SENATOR HASSELL-THOMPSON:
12 Exactly.

13 MR. LEWIS: So the videotape --

14 SENATOR HASSELL-THOMPSON: That's
15 what makes her the liar.

16 SENATOR STAVISKY: That's what
17 verifies the lies.

18 MR. LEWIS: The videotape becomes
19 the anchor in the case, everything else
20 sort of hangs on as best it can while
21 that goes forward.

22 It's why they couldn't come to --
23 why the judge, properly, under reasonable
24 doubt standard, acquitted on the
25 intentional assault, because there

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1 literally was thrown out of court because
2 there wasn't anything.

3 Having said that, we are looking at
4 underlying events and facts in matching
5 the video against the statements.

6 What we have been talking about, as
7 counsel in writing a report for you, is to
8 set out all of this, and you decide what
9 you want to do, not just with it, but
10 frankly what the Senate will do about it.

11 SENATOR SCHNEIDERMAN: Right.

12 SENATOR HASSELL-THOMPSON: But
13 the difficulty that we are going to
14 experience is we have had the benefit of
15 the tapes and all the evidence, we make
16 whatever recommendation, our colleagues
17 are not going to have the benefit of any
18 of this to be able to try to figure out
19 how we got to where we are.

20 And I am not trying to second guess
21 any of my colleagues in terms of where
22 their heads are, but I came into this with
23 a couple of things pretty set.

24 There ain't nothing set, I mean I
25 am looking at the video, and the woman is

0116

1 saying oh, well he was calm.

2 Well, it was very clear neither one
3 of them was calm.

4 SENATOR STEWART-COUSINS: She was
5 sad.

6 SENATOR HASSELL-THOMPSON: No,
7 no, first can you --

8 SENATOR STEWART-COUSINS: Calm,
9 then said --

10 SENATOR HASSELL-THOMPSON: She
11 was sad later when she was questioned,
12 but she said she didn't care if he threw
13 it away because it had expired anyway,
14 and he was giving her a new one.

15 And she -- she plots this as though
16 this is -- we are having a normal
17 exchange.

18 SENATOR STEWART-COUSINS: Right.

19 SENATOR HASSELL-THOMPSON: We are
20 discussing our future.

21 Well, what does the future mean?
22 Well, Christmas is coming, so we are going
23 to talk about the things we are going to
24 be doing.

25 I'm like wait a minute, in that

0117

1 hallway you look like you were about to
2 tear him a new butt because he threw that
3 card in the incinerator, and yet, and yet
4 you want us to believe that none of this,
5 that none of this happened.

6 SENATOR STEWART-COUSINS: I guess
7 we have asked Ms. Giraldo to come, I

8 know that we began saying that the
9 Senator was not coming, Senator
10 Monserrate was not coming, did we invite
11 Ms. Giraldo?

12 SENATOR SCHNEIDERMAN: That's a
13 very good question.

14 We originally when we invited
15 Senator Monserrate to present witnesses we
16 thought that he should have the first
17 opportunity to present her, because she
18 clearly was a witness aligned with him.

19 If he is not coming in or
20 presenting any witnesses at all, then the
21 question is does the committee, should we
22 invite her to talk to us or seek anything,
23 but at least we have made the offer and it
24 can't be suggested that we didn't solicit.

25 SENATOR HASSELL-THOMPSON: We can

0118

1 issue an invite, but we should not
2 expect, if she's not coming, she's not
3 coming.

4 SENATOR STEWART-COUSINS: You
5 know, but we are sitting around here
6 confused why, because of what we have,
7 which is basically emanating from her,
8 so our confusion is certainly
9 surrounding her, and I would want to at
10 least invite her, give her an
11 opportunity to help clarify for us what
12 we are so confused about, and then of
13 course if she is not able to do that or
14 unwilling to do that, at least that's
15 part of the --

16 SENATOR HASSELL-THOMPSON: Record.

17 SENATOR STEWART-COUSINS: Of the
18 record.

19 SENATOR SCHNEIDERMAN: Does
20 anyone disagree that that we should not
21 extend an invitation?

22 SENATOR STEWART-COUSINS: You
23 disagree with everyone, are you all
24 right?

25 MR. LEWIS: I'm just a lawyer.

0119

1 SENATOR HASSELL-THOMPSON: Lewis
2 agrees with me. Trust me, Lewis agrees
3 with me.

4 SENATOR LANZA: I think this
5 discussion really points to the dilemma
6 that we face in the committee that there
7 is evidence and then there is a certain
8 lack of evidence.

9 But I think that the report can

10 very easily reflect that, I mean we can
11 talk about what we have decided, perhaps,
12 the facts that we have determined or
13 agreed are facts and we can talk about the
14 inconsistencies as well as part of that
15 report.

16 We can point those out and so
17 it's -- I think you raised the right
18 point, but we can certainly put that into
19 the report and should put that into the
20 report.

21 MR. LEWIS: I think we should
22 invite her. I think you should also as
23 committee members go back and read the
24 entirety of her presentation at the
25 sentencing, because you will get a

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1 flavor of what you will receive, and
2 frankly speaking only for myself now,
3 having watched her at the sentencing, if
4 I weren't confused before, I am
5 absolutely approbated now because it had
6 all new facts and all new things and
7 were contrary to her own statements and
8 created internal inconsistencies.

9 So while I think you certainly
10 should invite her, the expectation that
11 she's going to clarify and clear it up is
12 something that I thought she would do at
13 sentencing, to my mind it didn't happen, I
14 just wanted to venture that for the
15 record.

16 SENATOR SCHNEIDERMAN: Let me
17 also, following up on what Mr. Lewis
18 said, our job is not to resolve all
19 these factual issues, our job is to make
20 an inquiry.

21 We say here is what we found, you
22 know, inconsistencies, you can say there
23 were inconsistencies in your statement, we
24 can make comments on what we think of her
25 credibility, only as it relates to what we

0121

1 have to determine.

2 Now, the issue really before us,
3 since we have to report and recommend,
4 related to the facts of the misdemeanor
5 conviction, is what we think was going on
6 there, and that really sort of frames our
7 inquiry.

8 There are two versions of what was
9 going on there.

10 Senator Monserrate and his lawyers
11 contend he was just trying to help her get

12 to the hospital and that's it, she was
13 upset and he was helping her get to the
14 hospital.

15 The prosecution contends that he
16 was restraining her, that they were
17 fighting, that she was in fear of him and
18 that he was worrying about himself more
19 than her, so there are just two different
20 versions of the story and we can decide
21 which one we think is true, or we can
22 decide that we can't make a conclusion
23 about that.

24 But that's really sort of since our
25 focus by our mandate is limited to that

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1 particular issue, we are not going to have
2 to decide, we don't have to resolve any of
3 the conflicting four versions of testimony
4 on this, we have to just draw our
5 conclusions from the conflicts.

6 SENATOR STEWART-COUSINS: I just
7 want to be --

8 MR. ALONSO: It does affect her
9 credibility.

10 SENATOR SCHNEIDERMAN: It does
11 affect her credibility, but once we
12 decide she's incredible, we don't have
13 to explain 85 different reasons why.

14 SENATOR HASSELL-THOMPSON: No.

15 SENATOR STEWART-COUSINS: No, I
16 know, but if we decide she's incredible,
17 like I said, if it were me, if we invite
18 him then we need to invite her.

19 We all assume around this table I
20 think that she won't come, but, you know,
21 I mean she might.

22 SENATOR SCHNEIDERMAN: Or she
23 might choose to -- you can give her
24 another option, if she's afraid of a
25 circus atmosphere, maybe she and her

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1 counsel can meet with our counsel.

2 SENATOR STEWART-COUSINS: Sure.

3 SENATOR SCHNEIDERMAN: Make a
4 general offer to give her the
5 opportunity to have input.

6 SENATOR STEWART-COUSINS: Yes.

7 SENATOR ALESI: If I can, would
8 we just have her make general statements
9 based on everything that's here, or
10 would we prepare a list of questions
11 that we need to have answered if she
12 were to come, if she were to willingly
13 either come before us or come with

14 counsel to counsel?
15 SENATOR HASSELL-THOMPSON:
16 Counsel to counsel won't satisfy
17 me, I'm sorry.
18 MR. ALONSO: No, no, I think what
19 Senator Schneiderman is saying, if I
20 may, is not counsel to counsel, but
21 allow counsel a chance to interview her
22 with her lawyer present and even Senator
23 Monserrate's lawyers present.
24 SENATOR HASSELL-THOMPSON: I know
25 exactly what he meant and that's not

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1 satisfactory to me.
2 SENATOR LANZA: I agree, it
3 wouldn't be satisfactory to me either,
4 except I think all we are saying is
5 when --
6 SENATOR HASSELL-THOMPSON: If
7 that's what she'll submit to, I'm not
8 suggesting --

9 SENATOR LANZA: That's the point.

10 SENATOR HASSELL-THOMPSON: If
11 that's what she'll submit to, but that
12 won't help us, I get -- that's all I
13 meant.

14 SENATOR LANZA: The point is when
15 the process is concluded we want it to
16 be known that we offered her every
17 opportunity.

18 SENATOR SCHNEIDERMAN: That's the
19 point.

20 SENATOR ALESI: I would look at
21 it from another angle, just for
22 consideration, and that is if we extend
23 the invitation to her, I don't want it
24 to be done in such a way that I don't
25 have enough credibility without her

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1 speaking to us to make a recommendation
2 to the legislature, because in extending
3 that invitation to her, we are asking
4 for some clarification on issues, and it
5 would seem to me, and it would be
6 possible that we just might be saying
7 that we don't have enough clarification
8 to make that determination without her
9 speaking to us, when I believe with
10 what's been prepared here for us, based
11 on the Grand Jury testimony and with
12 what we have seen in her statement that
13 was notarized, that given the framework
14 of what we have to work in, which is
15 extremely broad, that we do have enough

16 information, and I just don't want it to
17 be construed that because we invited her
18 that we don't have enough to make a
19 valid, solid recommendation.

20 SENATOR SCHNEIDERMAN: I think
21 that's a fair point.

22 I think that I guess the point that
23 counsel is making is really more that we
24 don't -- I agree with you, I think we can
25 decide what we need to decide for our

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1 purposes, which are really quite narrow, I
2 mean the question is how much are we going
3 to credit her version of the events.

4 I think everyone has a pretty clear
5 sense of that.

6 I just think that counsel's point
7 is we do not want to be -- we want to give
8 every possible opportunity for the other
9 side of the story to be presented.

10 SENATOR ALESI: And again, if I
11 am sitting in Senator Monserrate's
12 position and she gives a third
13 accounting of this, then I could easily
14 say it was really railroaded because she
15 is so incredible, how could they make a
16 decision based on her Grand Jury
17 testimony, her sworn statement and now
18 what she said before, he could say her
19 testimony is injurious to me in this
20 situation.

21 MR. ALONSO: It's not
22 unreasonable for you to believe that he
23 might have some moral situation over her
24 to see, if she's going to come or not
25 come, maybe he might be able to advise

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1 on whether it comes, it's not an
2 unreasonable inference to believe that
3 if you're saying he would be upset that
4 he doesn't have -- that you, Senator
5 Alesi, haven't heard her version, well
6 he may have -- he can make it happen, I
7 would guess.

8 MR. LEWIS: Although he's got a
9 full order of protection against him
10 contacting her, so let's --

11 MR. ALONSO: He personally,
12 perhaps, but not Joe Tacopina.

13 MR. LEWIS: Let's be careful in
14 what we ask for and the way we do it.

15 One of the things to think about is
16 this, we have the authority as the
17 committee to ask anybody to appear in

18 front of us for any reason whatsoever.

19 We could have enough right now, we
20 could decide any number of things.

21 Giving the witness or an individual
22 to opportunity to appear to speak is not a
23 concession that we don't have enough.

24 If we are making a credibility
25 determination about her, then we really

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1 need to see her, it's a little unfair in
2 some ways for you folks because really
3 only Mr. Alonso and I have seen her really
4 speak in open court under the judge's
5 questioning.

6 We didn't --

7 MR. ALONSO: With her back to us.

8 MR. LEWIS: With her back to us.

9 SENATOR LANZA: I agree with
10 Senator Alesi, but I think it cuts both
11 ways.

12 I think at the end of the day to
13 maintain the integrity of this process,
14 after all she is the one and only and
15 really most important witness, and for us
16 not to even ask her, I mean I understand
17 that it can lead us down this road
18 creating more difficulty for us, but at
19 the end of the day, I think on balance how
20 do you not ask, even invite the most
21 important witness to come.

22 Because she can always say hey, if
23 they invited me this is what I would have
24 said.

25 SENATOR STEWART-COUSINS: That's

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1 exactly right. The only reason we are
2 sitting here is because of what happened
3 to her.

4 SENATOR SCHNEIDERMAN: Then the
5 consensus seems to be that counsel
6 should invite her to appear, and just as
7 we have invited Senator Monserrate and
8 his attorneys in the broadest possible
9 terms to submit anything they want, we
10 will invite her to appear and listen to
11 what she has to say.

12 MR. LEWIS: We should set a time
13 for at the next meeting for her to
14 appear that doesn't conflict with the
15 time he has to appear so they can't use
16 that as a reason not to both appear.

17 SENATOR SCHNEIDERMAN: I think if
18 you can, without -- I mean it sounds as
19 though your communication is at least

20 quite cordial on the scheduling matters
21 with his counsel, the sooner that they
22 can clarify for us whether they intend
23 to appear or submit anything, the better
24 and we can move along to her, because
25 the initial thought was that they may

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1 want to produce her as a part of their
2 case, but obviously --

3 MR. ALONSO: It's cordial on all
4 matters, there is just no cooperation.

5 MR. LEWIS: The other thing, she
6 has her own lawyer, Marshal, who
7 appeared for her at the sentencing, so
8 we should direct it probably to Marshal.

9 SENATOR SCHNEIDERMAN: Obviously
10 counsel will communicate with counsel.

11 SENATOR ALESI: I have a request,
12 then I know we requested some things
13 earlier.

14 I'm sorry, Senator, did I cut you
15 short?

16 SENATOR SCHNEIDERMAN: No.

17 SENATOR ALESI: I would be
18 curious to know, I think that the sworn
19 statement that she made before the
20 senators staff person was -- it seems to
21 me that it was handwritten by the staff
22 person but I have no way of knowing
23 that, could we find that out?

24 SENATOR STAVISKY: There are
25 legal words in there that I am sure she

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1 did not write, aforementioned.

2 SENATOR LANZA: Since we are
3 cutting through, the reason why I asked
4 about the date was because it just
5 seemed to me that I can't imagine
6 anybody was thinking about the hospital
7 issue, which hospital issue already on
8 December 19th.

9 So it just seemed to me, look,
10 obviously it's more than reasonable to
11 infer that whenever that letter was
12 written it occurred at the height of
13 damage control mode, and that's something
14 that we are going to have to consider
15 here.

16 The fact that clearly she has bent
17 over backwards to protect Senator
18 Monserrate's interest I think is pretty
19 well-established.

20 SENATOR ALESI: I speak out, from
21 my point of view is pretty

22 well-established in all the evidence and
23 it's for each member here and for the
24 body to determine whether or not that's
25 any more evidence of guilt or not guilt,

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1 but clearly that's pretty much
2 established.

3 SENATOR YOUNG: One of the
4 questions I had was whether that staff
5 person who wrote the Affidavit is the
6 same staff person who allegedly during
7 the trial was assigned to be her
8 bodyguard?

9 MR. ALONSO: No, no.

10 MR. LEWIS: The answer to that is
11 no.

12 MR. ALONSO: Senator Alesi, if
13 it's okay with you, I hesitate to start
14 interviewing Senate staff, what I would
15 like to do is ask the District Attorney
16 if they know the answer, and if they do,
17 if that's okay, we will pass that on.

18 SENATOR ALESI: Whatever simple
19 means can be taken to find out, I don't
20 think it's life and death, but it would
21 be beneficial for the committee here to
22 know because I think it's fair that we
23 can suppose anything, we are not really
24 bound by any standards, that we could
25 suppose if it were written by somebody

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1 other than her that it might be helpful
2 to us.

3 SENATOR SCHNEIDERMAN: I just
4 would like to urge everyone to remember
5 that our -- the interest of the Senate
6 here is not in retrying the case, all we
7 have to do is make a report and a
8 recommendation given the circumstances
9 in the case what we think.

10 And her credibility, while it's
11 interesting and a complicated issue,
12 really has a fairly narrow bearing on our
13 work.

14 I mean she has made a bunch of
15 statements defending, essentially saying
16 that it was an accident, he was looking to
17 help her get to the hospital.

18 If we find that we don't believe --
19 if we find her not to be a credible
20 witness, it has bearing on those
21 statements, it really doesn't go much
22 beyond that.

23 So that's -- I think that's a

24 little bit helpful as far as how
25 complicated we have to get in the report.

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1 Let me suggest this, if there are
2 any other specific suggestions, I think
3 maybe we could request that counsel do a
4 little written outline of what we are
5 suggesting we have just gone over for the
6 report, and distribute it among the
7 committee members, get any feedback you
8 have, please report to Mr. Alonso.

9 Obviously the last piece I haven't
10 gotten to after the introduction, the
11 procedural history, the facts and then a
12 section on legal standards, which is
13 really because there is no finding of
14 binding legal standard from any of these
15 cases from other states, it's really a
16 recitation of the kinds of things that
17 have happened similar to what was in the
18 memo.

19 Obviously the last part is
20 recommendation, and that's something we
21 should all be thinking about but we
22 haven't gotten to yet, given all of the
23 facts we find and all of the whatever
24 wisdom each of us can take from the cases
25 that have gone before us.

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1 But this is really up to us to make
2 a recommendation and as Senator
3 Hassell-Thompson was pointing out, we have
4 to have an explanation of why we are
5 making that recommendation, we can't just
6 be like here is a bunch of facts we think
7 X, it has to be we conclude that we find
8 this conduct to be something.

9 So I think that's -- is that sort
10 of a consensus?

11 SENATOR HASSELL-THOMPSON: Yes.

12 SENATOR STEWART-COUSINS: Yeah.

13 SENATOR HASSELL-THOMPSON: We are
14 meeting again when?

15 SENATOR SCHNEIDERMAN: On Monday.

16 MR. ALONSO: Is anyone not
17 getting my e-mails?

18 SENATOR STEWART-COUSINS: I am
19 getting them, I just can't open them.

20 MR. ALONSO: That I understand,
21 but is anybody not receiving them?

22 I want to make sure because if we
23 are going to be communicating on this
24 outline question by e-mail, I want to make
25 sure everyone is actually receiving them.

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1 SENATOR ALESI: I have just a
2 simple question, again as a lay person,
3 but when it says that the -- as long as
4 we comply with all of the rules of the
5 legislature, et cetera, et cetera, that
6 the body, meaning the legislature, a
7 determination is absolute, that the
8 power is absolute for the body to make
9 the determination, whatever
10 determination the body makes the
11 legislature makes.

12 MR. ALONSO: You mean final,
13 there is nowhere to appeal it to?

14 SENATOR ALESI: That was my
15 question, can this go to --

16 MR. ALONSO: It's an interesting
17 question.

18 There is a strong argument to be
19 made that it is a question for the
20 legislature alone and not reviewable by
21 the judicial branch of government.

22 However, that's the same argument
23 that was made in the Adam Clayton Powell
24 case in the Supreme Court and that failed,
25 the Supreme Court actually considered the

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1 failure to seat Representative Powell.

2 So under New York Law I'm not sure
3 what the answer ultimately is, there is a
4 strong argument that the court wouldn't be
5 able to touch it.

6 But that would be decided by the
7 court itself, so -- and the likely answer,
8 it would be unlikely it would be
9 reviewable what your actual decision is.

10 A much more likely decision would
11 be whether you have the -- that you, the
12 Senate, have the authority to do it,
13 that's where the litigation would probably
14 join issue.

15 MR. LEWIS: Process first, and
16 then Constitutional authority.

17 SENATOR SCHNEIDERMAN: So the
18 statute conveys this very broad
19 authority and what I think you are
20 saying is that the decision itself is
21 probably not reviewable, but the statute
22 itself the court could strike down and
23 say you can't have authority that's this
24 broad and this vague.

25 MR. ALONSO: Once the court

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1 decides that you do have the authority,

2 I think that it would be virtually
3 certain that it would be unreviewable
4 how you exercise it.
5 SENATOR ALESI: Thank you.
6 SENATOR ALESI: What happens in
7 the meantime?
8 SENATOR HASSELL-THOMPSON: Do you
9 get this testimony back?
10 MR. ALONSO: You can keep it with
11 my request that it not be copied or
12 distributed.
13 SENATOR SCHNEIDERMAN: Let me say
14 we have done, I think, everyone has done
15 a very good job of us being circumspect
16 about our dealings and I really
17 appreciate that, and I hope that will
18 continue, particularly with regards to
19 the material that we get from the court.
20 We are meeting on Monday and what
21 we will do is have Chris and the staff are
22 going to try to figure out what people's
23 schedules are in the next few weeks, and
24 people have vacation plans because even
25 though we may not meet very much, we may

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1 be circulating drafts to get people's
2 input on that.
3 SENATOR YOUNG: If we have a
4 meeting after the 14th, I know that it's
5 more convenient for everyone to be here,
6 but however it's very inconvenient for
7 me.
8 SENATOR SCHNEIDERMAN: Is Albany
9 better?
10 SENATOR YOUNG: If you want to
11 come to the casino in Salamanca you are
12 more than welcome.
13 I am just saying if we could have
14 maybe at least one of the meetings in
15 Albany that would be helpful to me.
16 SENATOR SCHNEIDERMAN: I
17 appreciate that.
18 SENATOR ALESI: I live in
19 Rochester, it's easier to get to
20 Manhattan.
21 SENATOR STAVISKY: Of course, it
22 is JetBlue.
23 SENATOR HASSELL-THOMPSON: Monday
24 the 14th.
25 SENATOR ALESI: Can't take

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1 JetBlue to Cathy's district.
2 SENATOR SCHNEIDERMAN: Thank you
3 all very much.

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C E R T I F I C A T E

I, STEPHEN J. MOORE, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That the proceedings as hereinbefore set forth is a true and accurate record of said proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

Stephen J. Moore, RPR,
CRR.