

1 NEW YORK STATE SENATE

2 -----  
3 SELECT COMMITTEE TO INVESTIGATE THE FACTS  
4 AND CIRCUMSTANCES SURROUNDING THE  
5 CONVICTION OF SENATOR MONSERRATE  
6 -----

5 Senate Hearing Room  
6 250 Broadway - 19th Floor  
7 New York, N.Y.

7 December 14, 2009  
8 Monday  
9 10:30 a.m.

9 PRESIDING:

10 Senator Eric Schneiderman  
11 Chair, Senate Select Committee

12 MEMBERS PRESENT:

- 13 Senator Andrew J. Lanza
- 14 Senator Andrea Stewart-Cousins
- 15 Senator Toby Ann Stavinsky
- 16 Senator James S. Alesi
- 17 Senator Ruth Hassell-Thompson
- 18 Senator John Flanagan
- 19 Senator Diane Savino

20 ALSO PRESENT:

- 21 Daniel Alonso, Esq.  
22 Special Counsel
- 23 David Lewis, Esq.  
24 Counsel

1                   P R O C E E D I N G S

2                   SENATOR SCHNEIDERMAN:     Thank you  
3                   ladies and gentlemen, we have everyone here  
4                   today.  And we have -- except for Senator  
5                   Young, who has been in communication and we  
6                   will get all the information to her that we  
7                   deal with today, and of course we are  
8                   keeping transcripts of this, so the members  
9                   of the Committee can always review anything  
10                  that they need to, once we get to the final  
11                  stages of our work.

12                  Before we go into executive session, I  
13                  just want to note that the -- our requests  
14                  to Senator Monserrate through his counsel  
15                  have not been successful, we have given them  
16                  notice of all the meetings and they have  
17                  indicated that they do not want to  
18                  participate in any way in our proceedings.

19                  And we also, as per the committee's  
20                  suggestion, made efforts to contact Ms.  
21                  Giraldo, through her counsel, maybe Mr.  
22                  Alonso can report on that.

23                  MR. ALONSO:     As the committee will  
24                  recall, on Tuesday you folks authorized

1           counsel to reach out to Ms. Giraldo's  
2           lawyer and I did that Wednesday, first thing  
3           Wednesday morning.

4                     And he informed me by message on  
5           Wednesday that he had reached out to her and  
6           was trying to communicate our request.

7                     By Thursday morning he had not heard  
8           back from her, so I sent a letter to Mr.  
9           Marshal, who is counsel, confirming our  
10          request, giving the date of this meeting  
11          today and also offering that if she didn't  
12          wish to appear at the meeting, that we could  
13          make arrangements to have her appear with  
14          counsel and we could interview her in some  
15          mutually agreeable way.

16                    That letter is part of your materials.

17                    Since then I have spoken to Mr. Marshal  
18          two more times, on Friday and this morning,  
19          and he says that she is not returning his  
20          calls.

21                    So he does not know where she is, he  
22          thinks that she may be out of the country,  
23          but he has no information on that, in that  
24          respect.

1           I have asked him whether his -- there  
2           is anyone else who he can reach out to see  
3           if they are in contact with Ms. Giraldo,  
4           and he said that there might be someone. He  
5           tried to call that person then called me  
6           back and said he can't get in touch with  
7           anybody.

8           And so I don't know that if her own  
9           lawyer can't get in touch with her, I'm not  
10          sure that she is going to be able to avail  
11          herself of the opportunity that we are  
12          giving her.

13          But I will keep trying, but I don't --  
14          I'm not optimistic given that her lawyer has  
15          been leaving voicemails and has not gotten  
16          any response.

17          But in this day and age even if you are  
18          in a foreign country you can check your  
19          messages.

20          MR. LEWIS:     We should note Mr.  
21          Marshal indicated at the sentencing he was  
22          continuing to represent her with regard to  
23          the issuing the order of protection, so the  
24          relationship as far as we understood is

1 still continuing.

2 MR. ALONSO: And he has made every  
3 indication to me that that's the case, that  
4 he still represents her on this matter, and  
5 the rest is as I said.

6 SENATOR SCHNEIDERMAN: Okay, and so  
7 we are going to go into executive session  
8 now as we have, to go over the evidence that  
9 we can consider, and as we have in the past  
10 three meetings I would move that we go into  
11 executive session as authorized by Public  
12 Officers Law Section 105, as we will be  
13 discussing matters relating to the potential  
14 discipline of Senator Monserrate.

15 SENATOR LANZA: I second that.

16 SENATOR SCHNEIDERMAN: All in favor  
17 say aye.

18 SENATOR STEWART-COUSINS: Aye.

19 SENATOR FLANAGAN: Aye.

20 SENATOR STAVINSKY: Aye.

21 SENATOR HASSELL-THOMPSON: Aye.

22 SENATOR. ALESI: Aye.

23 SENATOR LANZA: Aye.

24 SENATOR SAVINO: Aye.

1           SENATOR SCHNEIDERMAN:     Nays?  Then we  
2           will now go into executive session along  
3           with the staff members that have been  
4           designated by members of the committee.

5           We would like to request that anyone  
6           else present who is not on that list leave  
7           at this time.

8           So, Senator Lanza and Senator Flanagan  
9           are outside they will be back in a moment,  
10          but Mr. Alonso will walk us through this,  
11          but we want to spend as much time as we can  
12          after going through the outstanding issues  
13          talking about the final item in the binder,  
14          which is the draft outline for the final  
15          report, fleshing out what we are in  
16          agreement on and where we have issues to  
17          resolve, and then the thinking was we would  
18          break at some point, caucus and discuss any  
19          other issues that we wanted to discuss in  
20          that form, and then come back together and  
21          I'm hoping by the end of today we can reach  
22          a pretty general agreement, if not specific  
23          agreement on most of the format for the  
24          report, and what we want to say in it, then

1 the counsels can be busily drafting away and  
2 we will obviously have a chance, the members  
3 of the Committee, to view everything and  
4 provide their comments before we finalize it  
5 and vote on it, vote on submitting the  
6 report.

7 But we are making every effort, as per  
8 our mandate, to finish this by the end of  
9 the year.

10 SENATOR HASSELL-THOMPSON: When you  
11 say end of the day, what time does that  
12 portend?

13 SENATOR SCHNEIDERMAN: No, no, I  
14 didn't mean we are staying here all day, the  
15 end of the meeting.

16 SENATOR HASSELL-THOMPSON: Thank you.

17 SENATOR STAVINSKY: That was a  
18 phrase.

19 SENATOR SCHNEIDERMAN: It was a  
20 rhetorical flourish. With the end of this  
21 meeting before the end of the day.

22 (Discussion off the record.)

23 SENATOR SCHNEIDERMAN: So, Mr.  
24 Alonso, do you want to report to the

1           committee on what's -- well, is there  
2           anything else you have to update us on as  
3           far as the procedural goings on?

4           I think we are pretty much up to speed.

5           MR. ALONSO:     Sure.  Let me take that  
6           out of order because we have that on the  
7           agenda a little bit later on, but before we  
8           discuss -- what I want to do is at the  
9           request of a good number of you, talk a  
10          little bit about sanctions that are possible  
11          other than expulsion.

12          We have that memo that I have --  
13          confidential memo that we passed around last  
14          week about the authority to expel under  
15          various standards or reasons for  
16          determination that various legislators and  
17          the Supreme Court and the Congress had used  
18          in the past.

19          Some members asked for very brief  
20          outline on sanctions short of expulsion, so  
21          I want to do that.

22          But before I do, it's worth talking  
23          about the state of the evidence and where we  
24          are on that.



1           The sort of overview on the evidence is  
2           I think that you have been presented with an  
3           extraordinary amount of materials for a  
4           relatively simple set of facts.

5           The trial was very, very thorough, it  
6           was litigated a lot between both parties,  
7           there was -- it was heavily investigated by  
8           the D.A.'s office, so you have received,  
9           actually, a great deal of evidence and I was  
10          very glad that the judge was amenable to  
11          giving the committee the Grand Jury  
12          testimony of Karla Giraldo because I think  
13          that significantly advanced the ball as well  
14          in terms of the committee's understanding.

15          And so that's all by way of saying we  
16          really do have quite a bit of information  
17          upon which to base recommendations and  
18          findings.

19          And I just wanted to tell you the  
20          couple of things we don't have, and I think  
21          that we might get it, we might not, but I  
22          don't believe -- my own advice to the  
23          committee is that it's not necessarily  
24          something that should hang up your decision

1 making.

2 And that's the materials that were  
3 obtained by subpoena by the Grand Jury  
4 things like phone records and cell site  
5 information.

6 It would be great to have that, it  
7 would be nice to have it, I'm hopeful that  
8 we will have it, the problem is that the  
9 judge invoked a procedure under the CPLR to  
10 obtain that material which is to settle an  
11 order on notice, and that just basically  
12 means that it's a two to three week process  
13 to actually get the judge to agree on an  
14 order with both sides having input, so it's  
15 something that I think is probably not worth  
16 the delay in the committee's proceedings to  
17 wait it out, although we are doing it, we  
18 are going to be submitting that order on  
19 notice today, and you may have noticed in  
20 the letter that I wrote to Senator  
21 Monserrate's lawyers, which is tab 3 of your  
22 materials, the purpose of the letter was  
23 just to confirm that he's not going to take  
24 part, but I also said let me know if you're

1 willing to stipulate to an order, in other  
2 words to agree on what the contours are of  
3 this order so that we don't have to wait  
4 this two or three week CPLR period, and not  
5 surprisingly since they don't want to  
6 participate, they haven't responded to me.

7 So we are going to have to do that a  
8 little bit the old-fashioned way, which I'm  
9 going to do, but which I don't -- I want to  
10 sort of suggest that it's not something that  
11 is so crucial, given the other evidence that  
12 you have.

13 SENATOR STAVINSKY: May I ask a  
14 question along those lanes?

15 MR. ALONSO: Of course, Senator.

16 SENATOR STAVINSKY: Does this  
17 committee have the power to subpoena those  
18 records?

19 MR. ALONSO: Yes, as a technical  
20 matter. The problem is that they are  
21 unlikely to still exist given how long phone  
22 companies keep them, and also there is a  
23 delay in getting materials under -- pursuant  
24 to a subpoena in the first place.

1           So we could recreate the wheel by doing  
2           that, but I think it's probably not that  
3           likely to be fruitful.

4           I can try, if you would like me to, but  
5           I think that we have been focusing our  
6           energies on other areas, and since the D.A.  
7           not only has the materials, but also has it  
8           analyzed, remember if you get a set of phone  
9           records you get a dozen, couple of dozen  
10          phone calls in a few hour period, and then  
11          you've to track down who those numbers are  
12          and that might require more subpoenas and  
13          more subpoenas, and so the D.A. has that in  
14          summary form.

15          So that seems --

16          SENATOR STAVINSKY:     You have not  
17          subpoenaed that the committee, could not  
18          subpoena that material from the D.A.?

19          MR. LEWIS:     Technically we could do  
20          that, but what you would end up doing is  
21          testing the parameters of the subpoena power  
22          in the Senate, which we have never actually  
23          had to do.

24          And it would create a tremendous crisis

1           between the branches when the legislature  
2           seeks confidential District Attorney  
3           prosecutorial material from the executive  
4           branch, and having litigated a couple, I  
5           can't tell you that necessarily I'm  
6           confident that in that situation we would  
7           win.

8           MR. ALONSO:     We also would be right  
9           back where we are now, in other words we  
10          would be in front of a court, either on our  
11          motion to compel compliance with our  
12          subpoena, or on their motion to quash, and  
13          we would be in the same place, except maybe  
14          not in Queens, we may be in Manhattan, but  
15          so I have thought of those issues, and taken  
16          into account the practicalities of it, I  
17          think this is the best way to proceed.

18          MR. LEWIS:     The other danger is that  
19          sometimes in my experience the phone records  
20          that you get are not the same phone records  
21          someone else got, because of the nature of  
22          mass storage of that type of data, so  
23          sometimes you don't even get the same phone  
24          calls on the same records, so we would not

1           be assured we would be seeing even what the  
2           D.A. saw.

3                   MR. ALONSO:     I will note we would  
4           have had these two weeks ago if Senator  
5           Monserrate's lawyers had agreed to it.

6                   So it's not -- this is a little bit of  
7           a frustrating exercise, but we need to  
8           remember it's not a criminal proceeding.

9                   One would expect there to be a level of  
10          cooperation when a committee is doing an  
11          investigation of this nature, particularly  
12          when that was announced at the beginning of  
13          the Committee's existence.

14                   SENATOR SCHNEIDERMAN:     Yes, that's  
15          something that we will discuss how we deal  
16          with it in the report, but clearly it's  
17          something that we have to note that Senator  
18          Monserrate publicly stated that they would  
19          be cooperating with the committee, and has  
20          essentially stonewalled us all the way  
21          through.

22                   SENATOR STAVINSKY:     That's why I  
23          asked my question.  That's exactly the  
24          reason that I asked my question.

1           SENATOR ALESI:     Would we be able to  
2           ask directly, rather than with David's  
3           concerns about the different branches of  
4           government, would we be able to ask Senator  
5           Monserrate directly without going through  
6           the court?

7           MR. ALONSO:     Let me clarify two  
8           things, one is that we have subpoenaed the  
9           D.A., but not in the way David was referring  
10          to.

11          In other words the D.A. before they  
12          were willing to go to the court for a court  
13          order, they asked for a subpoena to be able  
14          to tell the court we have a subpoena.

15          So it's not a hostile subpoena, so to  
16          speak, it's a subpoena they asked for.

17          So we have issued a subpoena to the  
18          D.A., and based on that the D.A. asked for  
19          an order, the court said no, the Senate  
20          committee should ask for an order, so we  
21          did, and we are where we are.

22          In terms of asking Senator Monserrate  
23          for the materials, there were some materials  
24          he had, i.e., the testimony of Karla Giraldo

1           which he refused to give us, and those that  
2           he doesn't have, he doesn't have the phone  
3           records, his lawyers were never given that.

4           As we understand as part of the  
5           pretrial discovery, that was something that  
6           the D.A. had, decided not to use as evidence  
7           in chief, and still has.

8           SENATOR SAVINO:     So we only have  
9           received what was presented at trial?

10          MR. LEWIS:     Yes.

11          MR. ALONSO:     That plus the Grand Jury  
12          material, and there was an Affidavit that is  
13          in the materials from last time that were  
14          presented.

15          SENATOR SCHNEIDERMAN:     And we have a  
16          request in for some more materials, but I  
17          think the view is that we have enough  
18          information now to --

19          MR. LEWIS:     We also asked for the  
20          defense exhibits from the defense, we asked  
21          for basically whatever they put in.

22          We got nothing from them.  Whatever we  
23          got from the defense side we actually got  
24          D.A.'s copies of from them.



1           So not only have they not -- not only  
2           have they stonewalled us on our requests  
3           that could go beyond the trial, they  
4           stonewalled us on requests for stuff that  
5           were part of the trial.

6           MR. ALONSO:     It's a significant  
7           point.  And we could have pushed this as  
8           well.

9           Look, we could have done a lot of  
10          things, we could have issued a subpoena to  
11          the defense lawyers, but you don't want to  
12          do that, obviously there are a lot of good  
13          systemic reasons why you don't want to do  
14          that.

15          But the fact that they wouldn't give us  
16          even materials that are supposedly part of  
17          the public record, is a significant fact.

18          You might think you can go to the court  
19          file and get things in a public record in  
20          Queens, they have a practice where each  
21          lawyer who introduces evidence keeps the  
22          exhibits as a custodian of the court.

23          SENATOR SAVINO:   Hold on.  Tania has  
24          to drop off something.

1           MR. ALONSO:     So even something that  
2           they have as a custodian of the court they  
3           are not willing to provide us.

4           Now, the judge ought to order them on  
5           our request, but we were asking the judge  
6           for something very specific, I didn't want  
7           to push my luck on that.

8           SENATOR SAVINO:     So in spite of their  
9           original assertion that they would cooperate  
10          with the committee to the fullest extent,  
11          they have, in fact, not cooperated at all?

12          MR. ALONSO:     Let me just make sure  
13          that the short answer is sort of. Let me  
14          make sure that everyone is on the same page.

15          SENATOR SAVINO:     Hold on.

16          MR. ALONSO:     I just want to make sure  
17          everyone is on the same page on what they  
18          said and what they didn't.

19          Right after the announcement of the  
20          intention to form the committee, Senator  
21          Monserrate's spokesperson said that Senator  
22          Monserrate's lawyers expect or Senator  
23          Monserrate expects his lawyers to cooperate  
24          fully.

1           So when I wrote a letter early on,  
2           which you have, saying thank you for saying  
3           you would cooperate fully, could you please  
4           do A, B and C for us, they wrote back and  
5           said we didn't say we would cooperate fully,  
6           we said we expect to and since this is an  
7           illegitimate process, we are not going to do  
8           that.

9           That's essentially paraphrasing what  
10          they said to us.

11          The actual words are in the  
12          correspondence, but it was -- and I wrote  
13          back saying guys, I hope we are not going to  
14          parse words like that, I hope we are not  
15          going to split hairs of that sort.

16          Nevertheless, they have less than  
17          cooperated, they have not cooperated at all,  
18          let alone fully.

19          SENATOR SCHNEIDERMAN:    As a practical  
20          --

21          MR. LEWIS:        The judge at the  
22          sentencing said you guys work it out, and  
23          basically they haven't responded to us at  
24          all, even on the order on notice.

1           So even the conversation that would  
2           form the order to give an agreed upon order  
3           to give the judge to release this material,  
4           they haven't participated.

5           MR. ALONSO:     I don't want to go too  
6           far, they are perfectly professional and  
7           courteous when we speak, they are not  
8           telling me to buzz off, but they are.

9           SENATOR SCHNEIDERMAN:     But they are  
10          telling you no.

11          MR. ALONSO:     But they are telling me  
12          no.

13          SENATOR SAVINO:     Not literally, but  
14          figuratively.

15          SENATOR LANZA:     And as Dan mentioned,  
16          it's consistent with their approach which we  
17          can all question whether or not it's the  
18          right approach for them, that's their  
19          decision, but they have questioned the  
20          legitimacy of this panel, and therefore to  
21          cooperate would undermine what has become  
22          their defense, really, and it's also worth  
23          noting, not to defend, but they don't have  
24          any -- there is no requirement that they

1 cooperate either.

2 SENATOR FLANAGAN: Can I ask two  
3 questions, first paying very close attention  
4 to this, I know everybody is, but at some  
5 point what we are discussing will be some  
6 type of public record.

7 You mentioned that Senator Monserrate  
8 would not have access to his own phone  
9 records. Just as an average person I think  
10 that's just absolutely ludicrous.

11 If I were to call up right now if I  
12 want to check on what my kids are doing, who  
13 they are calling, I want to look at a bill  
14 from nine months ago, phone company should  
15 be able to provide that for you instantly.

16 MR. ALONSO: You are quite right. Do  
17 you want an answer or do you want me to  
18 wait?

19 SENATOR FLANAGAN: Answer that, then  
20 I have something else.

21 MR. ALONSO: You are quite right.  
22 What I was referring to is that the phone  
23 records as evidence in the Grand Jury  
24 investigation were never turned over to the

1 defense.

2 You are right, Senator Monserrate ought  
3 to either have his phone bill, which  
4 presumably has his cell phone calls, or  
5 should be able to get it.

6 I haven't asked for it because they  
7 have told us we are not participating in  
8 anything, so they are going to say no.

9 But if you want me to I would be happy  
10 to.

11 SENATOR FLANAGAN: I just want to  
12 clarify that.

13 MR. ALONSO: You are right, he ought  
14 to have them, they are his.

15 Well, there are two cell phones, one is  
16 hers, one is his, so he has his, I don't  
17 know whether he has hers or not; I don't  
18 know.

19 MR. LEWIS: One other thing, the data  
20 you get when you serve a subpoena for phone  
21 records is greater than what is on your  
22 phone bill. There is more information.

23 MR. ALONSO: Calling information is  
24 the same, but the cell site information is

1 not ordinarily on somebody's phone records,  
2 so you would know, to the extent that it  
3 informs the pathway that he took to the  
4 hospital, we wouldn't have that.

5 Now, Senator Flanagan, Senator  
6 Stavinsky, you weren't here last time, the  
7 Power Point that we sent you contains the  
8 requested analysis of various routes you  
9 could take and how much time Google tells us  
10 it should take.

11 SENATOR ALESI: That was the point of  
12 my question, was just to see if calls were  
13 made and from his personal bills rather than  
14 go through the process, that's why I  
15 mentioned without regard to David's  
16 concerns, it would give us some help, as  
17 Senator Flanagan is saying maybe not, but  
18 the point is, another way of looking at it,  
19 it might be to his advantage if he gave us  
20 that information so we could see whether or  
21 not he was conspiring along the way or if he  
22 was not.

23 MR. ALONSO: I think that's worth a  
24 formal request, actually.

1           SENATOR SCHNEIDERMAN:     Yes, to the  
2           extent -- we did make a request for  
3           information, we were told they will provide  
4           us with no information, so we could go back  
5           and make a slightly different request for  
6           information, but I think it does not appear  
7           that they are changing their minds, and are  
8           going to start providing us with things.

9           So the view of our view was the most  
10          likely way to get the records was to go to  
11          the D.A.'s office, and that still appears to  
12          be the case, but Senator Monserrate through  
13          his counsel has been -- could not be clearer  
14          that he intends not to provide us with no  
15          information of any kind.

16          So that's the situation we are left  
17          with, although he's not talking to the  
18          committee, although I do note that he has  
19          been appearing on TV to talk about the case.

20          And I think that we, to the extent  
21          people have not seen him, I think we have a  
22          copy of some of that that we can make  
23          available if anyone is interested.

24          MR. ALONSO:     I was going to raise



1           that as the next piece of evidence, that  
2           maybe the last piece of evidence that we  
3           have, which is that he has not availed  
4           himself of the opportunity to be heard by  
5           this committee directly, and a corollary of  
6           being heard is being questioned, obviously  
7           you would all have questions for him.

8                     What he has done is he has availed  
9           himself of the public airwaves and has  
10          given, to my knowledge, one interview to  
11          N.Y. One and one interview to News 4 to  
12          Chuck Scarborough, and I have viewed both of  
13          those, I think they are fair game for the  
14          committee to view, and I think we should  
15          send those around, there are links on the  
16          internet, so they are easy to look at.

17                    I think the committee should look at  
18          them, they are both statements made by him  
19          which you can consider for what they are,  
20          for whatever weight you want to give them.

21                    And they also stand in stark contrast  
22          to his silence before the committee.

23                    SENATOR FLANAGAN:     I have a second  
24          point/question.

1           You mention about practice of the court  
2           in Queens that each side, they become the  
3           custodian of the records.

4           MR. ALONSO:     Yes.

5           SENATOR FLANAGAN:     Can you explain  
6           that in a little bit more detail, because  
7           part of my initial reaction is how does  
8           Queens get to be different from Brooklyn?

9           MR. LEWIS:     Can I answer that?  Every  
10          county in the City, and I know all the way  
11          up to at least Orange County, if you have a  
12          trial, especially if you have a criminal  
13          trial as an example, whoever puts in the  
14          exhibits, keeps the exhibits.

15          If they are needed on appeal then the  
16          Appeals Court either asks for them or you  
17          reproduce them, but you are the custodian of  
18          the exhibit.

19          SENATOR FLANAGAN:     But as a matter of  
20          course, if the judge were to say I want  
21          something --

22          MR. LEWIS:     The judge will look at  
23          it, but he won't retain it for the file, it  
24          won't be retained in the court file, it is

1 returned to counsel.

2 MR. ALONSO: I think Senator  
3 Flanagan's point is they have a duty to give  
4 it up if the judge asks for it, of course,  
5 and from my point of view triage after the  
6 judge has now essentially given us a pretty  
7 hard time in terms of getting what we asked  
8 for, but granted us important stuff, do we  
9 now say can you please have them give the  
10 defense exhibits?

11 I mean if they don't want to just give  
12 us the exhibits that they thought were  
13 relevant at the trial, then we are not going  
14 to consider the exhibits they thought were  
15 relevant at the trial.

16 We have some of them, the D.A. kept  
17 some copies of some, so we have given them  
18 to you, but we just don't have them all, and  
19 I agree, they should, and frankly they must  
20 turn them over, but they haven't.

21 SENATOR FLANAGAN: Thank you.

22 MR. ALONSO: So I think that the  
23 committee should review the interviews of  
24 Senator Monserrate.

1           Did you have a comment on that, Mr.  
2           Lewis?

3           MR. LEWIS:    I watched the interviews,  
4           I think they are useful as admissions  
5           against his interest in the strict  
6           evidentiary sense that these are the  
7           statements, he's making them, he's making  
8           them, they are self-serving, but they are  
9           certainly of value to us and it's clear that  
10          in a nonstructured, nonconfrontational sense  
11          of legal standards he's been able to say  
12          whatever he wants.

13          His election to not participate in this  
14          committee is a decision and apparently is  
15          also not just his lawyers' but his, because  
16          he went out of his way to speak about what  
17          he saw were the effects of the committee on  
18          the television appearance with Chuck  
19          Scarborough which I want to be very clear,  
20          should not be part of what we use in regard  
21          to considering this, but we should consider  
22          only what he says about the events that we  
23          are charged with looking at and in the  
24          resolution.

1           MR. ALONSO:     The decision not to  
2           appear in front of this committee is not his  
3           lawyers', I don't want anyone to think oh,  
4           he would only appear but for his lawyers.

5           It would be unethical for a lawyer to  
6           make that decision on behalf of a client.

7           MR. LEWIS:     Or prevent.

8           MR. ALONSO:     The best a lawyer can do  
9           is give his best advice and the decision  
10          whether or not to appear before a committee  
11          investigating the facts and circumstances  
12          surrounding his conviction is his and his  
13          alone.

14          So if that surfaces later, that is not  
15          a valid argument, in my view.

16          SENATOR HASSELL-THOMPSON:     I need to  
17          come back to it.

18          SENATOR STAVINSKY:     I actually saw  
19          one of the interviews that he did, I didn't  
20          see the second one on NBC yet, which as you  
21          pointed out you can see it on the internet.

22          And discounting the comments he made  
23          about the committee and the validity of the  
24          committee and motivation of the committee,

1           what I think we should focus on if you  
2           haven't seen it, take a look at it, is the  
3           comments he made with respect to the  
4           original incident and the conviction.

5                     And in his comments he takes absolutely  
6           no responsibility for even his conviction.

7                     The actions that occurred that led to  
8           his conviction he maintains in the video  
9           that the original act was an accident and,  
10          in fact, he was acquitted for that.

11                    But it's the circumstances that led to  
12          his conviction, he takes zero responsibility  
13          for anything that happened during that  
14          period of time, and states more than once in  
15          the interview that she was -- it was her  
16          behavior that led to the actual conviction,  
17          it was her erratic behavior, it was her  
18          drunken behavior, it was her refusing to be  
19          allowed to go to the hospital.

20                    So I think if you haven't seen it, you  
21          should really watch it.

22                    SENATOR ALESI:     For those of us who  
23          are media challenged is there a way for us  
24          to get access to that?

1           MR. ALONSO:     We will send a link  
2           around to you today.

3           SENATOR SAVINO:     It's a 23 minute  
4           interview.

5           SENATOR ALESI:     That's pretty --

6           MR. ALONSO:     The N.Y. One, yes, the  
7           News 4 is shorter.

8           SENATOR HASSELL-THOMPSON:     I wanted  
9           to come back for one minute to something  
10          that is still puzzling me, because we are --  
11          a lot of what we are deciding is predicated  
12          on this time lapse.

13          How did you determine that the clocks  
14          were off?

15          MR. ALONSO:     That's established in  
16          the trial record, in other words the  
17          witnesses --

18          SENATOR HASSELL-THOMPSON:     Based on  
19          what?

20          MR. ALONSO:     Based on the witnesses  
21          who authenticated those tapes.

22          There is a superintendent at the  
23          building and somebody at the hospital who  
24          testified about how the video systems are

1           kept and how these tapes were reproduced and  
2           brought into court.

3           It was not a controversial issue at  
4           trial, it was something that everyone agreed  
5           on, so the question of the time shift  
6           between the stamp on the video and the real  
7           time is established.

8           Off the top of my head I don't  
9           remember, I think it 13 minutes for the  
10          first one and 4 minutes for the second one,  
11          but it's not something that was contested at  
12          trial, it's something that everyone assumed  
13          to be the case.

14          And I'll tell you from my own  
15          experience, Senator, that you never have a  
16          surveillance case with a surveillance tape  
17          where there is not at least a few minute  
18          lapse, that is explained early on.

19          SENATOR HASSELL-THOMPSON:    All that  
20          may be true, but our contention is that when  
21          we looked at the videos the maximum amount  
22          of time in all the routes that we looked at  
23          should have been 34 minutes, in traffic.

24          As we looked at the videos -- one route



1           that took the most time, assuming there was  
2           traffic, was 34 minutes.

3           SENATOR LANZA:     That's what Google  
4           tells us.   That's where we get that number.

5           SENATOR HASSELL-THOMPSON:    I know how  
6           that number comes about.

7           What I'm curious about, though, is that  
8           17 minutes, we are giving so much credence  
9           to this time, and I am just -- I am just  
10          very curious that there is an inaccuracy in  
11          the clocks and I'm not -- I'm just not  
12          comfortable that the time is real.

13          Help me with this.

14          MR. LEWIS:     Let me see if I can help  
15          you with this.

16          First of all, there is a tremendous  
17          amount of painful reading of testimony about  
18          these clocks.

19          SENATOR HASSELL-THOMPSON:    I'm sure.

20          MR. LEWIS:     That I would send you to  
21          if I had some depth of cruelty to me, but --

22          SENATOR HASSELL-THOMPSON:    If you  
23          have some depth of cruelty to you.

24          MR. LEWIS:     Yes, I would send it to

1           you.

2                    SENATOR HASSELL-THOMPSON:     Remember  
3           that.

4                    MR. LEWIS:     They take the time from  
5           the event around the house, around the  
6           building and they layout what those times  
7           are, as you read them.

8                    The witness testifies, two witnesses  
9           actually, one, the guy who keeps the tapes,  
10          and second the police officer who took down  
11          the information, says I matched my clock  
12          with this clock and it's X minutes off and  
13          everybody agrees okay, it X minutes off.

14                   SENATOR HASSELL-THOMPSON:     Okay.

15                   MR. LEWIS:     That starts the clock  
16          running though from the time until he gets  
17          to the hospital.

18                   That tape then, we can count the  
19          minutes by the clock running because we now  
20          know what the real time in the hospital is,  
21          but that tape is wrong, so we now adjust the  
22          hospital time to real time setting that  
23          particular gap.

24                   In other words, you adjust each of the

1 two times for a fixed time period as between  
2 the two places.

3 That's how we get that time. We don't  
4 know what happens between those minutes, we  
5 just know how long it is.

6 Because we can time it by virtue of the  
7 technician's ability to tell us how off each  
8 of the tapes are.

9 SENATOR HASSELL-THOMPSON: Okay.

10 MR. LEWIS: Does that help?

11 SENATOR SCHNEIDERMAN: And, Ruth, the  
12 defense did not contest this.

13 SENATOR HASSELL-THOMPSON: Don't  
14 confuse me.

15 SENATOR SCHNEIDERMAN: The defense  
16 used the times, too, it wasn't like they are  
17 saying the times were off, everyone agreed  
18 this time is accurate.

19 SENATOR HASSELL-THOMPSON: It's okay,  
20 but we are giving so much credence to it in  
21 this committee is what I'm saying, because  
22 everybody is saying well it took 47 minutes  
23 and that's a horrendous amount of time, and  
24 based on that that's undue cruelty.

1           So my comfort level says, to me, I'm  
2           still trying to figure out what you're  
3           really telling me.

4           If that clock is 15 minutes fast, it  
5           still doesn't matter what time the clock  
6           says, what you're telling me is that 47  
7           minutes from whatever time that clock says  
8           that's where all the action took place.

9           MR. LEWIS:     That's the elapsed time,  
10          yes.

11          SENATOR HASSELL-THOMPSON:     That's all  
12          I want to know.

13          MR. ALONSO:     By the way, it's 37 just  
14          to be clear, it's 37.

15          SENATOR HASSELL-THOMPSON:     Okay, 37,  
16          because that's why I was uncomfortable  
17          because I'm saying wait a minute, now if  
18          there had been a little bit of traffic it  
19          was 34 minutes if we took one of the routes.

20          MR. LEWIS:     Right.

21          SENATOR HASSELL-THOMPSON:     So the  
22          difference between -- well, you didn't --

23          SENATOR STAVINSKY:     Union Turnpike  
24          route.

1                   SENATOR HASSELL-THOMPSON:     Union  
2                   Turnpike takes 34 minutes, I'm saying but  
3                   that's only a three minute difference, I  
4                   mean that bugged me the whole weekend, so I  
5                   couldn't wrap my head around that.

6                   MR. LEWIS:        If you think of it as  
7                   elapsed time.

8                   SENATOR HASSELL-THOMPSON:     It just  
9                   lapsed, no matter what the times.

10                  MR. LEWIS:        Elapsed.

11                  SENATOR HASSELL-THOMPSON:     That's  
12                  what time I'm saying, the amount of time  
13                  that elapsed doesn't matter what time the  
14                  clocks say, that's what elapsed regardless.

15                  MR. ALONSO:        Right.

16                  SENATOR HASSELL-THOMPSON:     That's  
17                  where I needed to be, okay.

18                  MR. ALONSO:        So we have the two  
19                  statements that Senator Monserrate made,  
20                  plus the statement that he made at the  
21                  sentencing, which we went over last time and  
22                  you have in your materials.

23                  By the way, he did at the sentencing we  
24                  talked about last time, he did purport to

1 take responsibility for what happened.

2 SENATOR SAVINO: That's why I thought  
3 it was so odd.

4 MR. ALONSO: He didn't say he was  
5 guilty of a crime, he said he wasn't, but he  
6 said, I'm paraphrasing, I take full  
7 responsibility for the actions that happened  
8 that night, something like that.

9 SENATOR HASSELL-THOMPSON: Right.

10 SENATOR SCHNEIDERMAN: And he  
11 expressed remorse in the sentencing, but not  
12 particularly.

13 SENATOR SAVINO: Was that  
14 presentence?

15 SENATOR SCHNEIDERMAN: Yes.

16 MR. ALONSO: Yes.

17 SENATOR SAVINO: So his comments post  
18 sentencing, which then appeared on a news --  
19 in the news interview are in conflict with  
20 his presentencing hearing.

21 MR. ALONSO: It's also worth  
22 reminding the committee respectfully that  
23 his comments on his interviews about this  
24 process being illegitimate, that's his

1 defense.

2 But my advice to you, and I think Mr.  
3 Lewis agrees, is that what we are doing here  
4 is incontrovertably legal.

5 All that's happened is by resolution  
6 the Senate has formed a committee to report  
7 and recommend.

8 There is nothing illegitimate about  
9 this, it's well worn, well-established, this  
10 is what legislators do.

11 And so what he's arguing is that the  
12 Senate doesn't have the power to expel.

13 Well, he's arguing about something that  
14 hasn't happened yet.

15 Now I have advised you on whether my  
16 best legal advice is that you do have the  
17 power to expel.

18 SENATOR SCHNEIDERMAN: The Senate has  
19 the power.

20 MR. ALONSO: Thank you, that's  
21 correct, that the Senate has the power to  
22 expel upon a report by a committee like this  
23 one.

24 But that's not what is before them

1 right now.

2 So, it's an argument that I submit to  
3 you is protest too much, it's not really  
4 what's preventing him from appearing here,  
5 that's a tactical decision not to appear.

6 MR. LEWIS: It's actually unusually  
7 premature.

8 SENATOR STAVINSKY: Dan, are you  
9 suggesting they are claiming that the  
10 committee, or the Senate, because the  
11 distinction must be made, on the punishment  
12 powers --

13 SENATOR SCHNEIDERMAN: Who's.

14 MR. LEWIS: Can I make a suggestion,  
15 it's probably not fruitful for us to engage  
16 in discussion about their legal defenses and  
17 their reaction to us.

18 SENATOR STAVINSKY: My question is  
19 the committee, are they questioning the  
20 committee or the body of the Senate?

21 MR. LEWIS: The answer is both.

22 SENATOR SAVINO: Both.

23 MR. LEWIS: I caution you, it's  
24 really something we should not consider and



1 we should put out of our minds, because it's  
2 not relevant to what we are supposed to be  
3 doing, and my suggestion is that the only  
4 reason I raised it with you is it is on  
5 these interviews, and I suggest to you that  
6 it's not for your consideration as this  
7 committee.

8 You may when you sit in Senate have a  
9 different view and consider it as you wish,  
10 but in terms of what we are doing, and the  
11 charge in this resolution, which is fairly  
12 narrow, we need to make sure that we stay  
13 within the parameters of what we have been  
14 asked to do and not either react to or be  
15 involved in any way with those statements  
16 that are really outside our purview and  
17 whether they are even appropriate for them  
18 or not.

19 MR. ALONSO: I mention it because  
20 it's part of his admission, it's part of  
21 what he said, so that's what he said.

22 He talked about how he was taking her  
23 to the hospital and then he talked about the  
24 illegitimate situate of the process.

1           SENATOR SCHNEIDERMAN:    I do think it  
2           important to note that there is a legal  
3           distinction between what the committee's  
4           powers and mandate are and what the Senate  
5           can do.

6           And we actually met, had a few people  
7           ask about this and we asked for a memo which  
8           we will distribute to everyone, very simple  
9           two pages explaining this.

10          We are operating, and as Mr. Alonso  
11          indicated, unquestionably lawfully to make  
12          an inquiry and issue a report to the Senate  
13          and we report and recommend and the  
14          resolution that created our committee  
15          identifies exactly what we are supposed to  
16          do, we are supposed to make an inquiry on a  
17          specific area of facts and make  
18          recommendations; that's it.

19          The actual -- if he wants to challenge  
20          at some point the issue of whether he can be  
21          expelled or not, that's not a challenge to  
22          this committee, we do our job, the Senate  
23          votes under legislative law and that's not  
24          something that is really anything we have to

1 address now and will never have to address  
2 as a committee.

3 I think the only issue for us is what  
4 we consider in our work as a committee in  
5 making -- in coming to our conclusions and  
6 making our recommendations.

7 SENATOR FLANAGAN: Senator  
8 Schneiderman, on that point, we are talking  
9 about the interviews, I think it will be  
10 useful and beneficial to get the links, and  
11 I certainly will look at the interviews and  
12 I'm sure everyone else will, whoever hasn't  
13 seen it already.

14 But frankly I would use a word of  
15 caution in terms of how we would interpret  
16 these things, because looking at material  
17 provided at the sentencing, we have the  
18 benefit of the whole transcript and part of  
19 that transcript is the judge making a  
20 decision on the motion by the media to  
21 provide that coverage.

22 My only caution would be N.Y. One, if  
23 it's 23 minutes it's probably the whole  
24 interview, but if it's NBC, we may be

1 getting little vignettes that are salacious  
2 and juicy for their benefit, but for all we  
3 know, and I don't need to defend him,  
4 Senator Monserrate may have used words of  
5 contrition as part of that interview that we  
6 are not privy to.

7 SENATOR STAVINSKY: I think they  
8 interviewed him live, John, on Channel 4,  
9 with Chuck Scarborough.

10 SENATOR FLANAGAN: Even live can  
11 ultimately get edited.

12 MR. LEWIS: You should know if you  
13 watch the Channel 4 version while he's  
14 speaking about what happened, they are  
15 showing a clip of her being dragged through  
16 the vestibule, so I think your caution is  
17 extremely appropriate.

18 SENATOR SCHNEIDERMAN: Yes.

19 SENATOR SAVINO: Same thing with N.Y.  
20 One.

21 SENATOR SCHNEIDERMAN: I think that's  
22 a fair point, and this is worth looking at,  
23 but we should consider it only for what it's  
24 worth, we all have our experience with the

1 media that guides that thought process.

2 SENATOR ALESI: I think if we were  
3 going to apply that rationale, which I don't  
4 disagree with, then the videos that we saw  
5 in the stairway and the hallway are taken  
6 out of context with a lot of what occurred,  
7 too, so.

8 MR. ALONSO: Except that those  
9 videos, at least, show everything that there  
10 is to show in that time frame.

11 There is no, as far as we know, from  
12 the evidence at trial, there are no other  
13 images from the time of the PBA card to the  
14 time of going to the hospital that are in  
15 that building.

16 MR. LEWIS: The evidence in trial,  
17 the only claim that's viable is her coming  
18 up the stairs supposedly intoxicated is not  
19 -- was not --

20 SENATOR HASSELL-THOMPSON: Yeah, I  
21 wanted to ask about that.

22 MR. LEWIS: Was not copied because  
23 the cops told them they didn't need that.

24 Everything else is, according to the

1 testimony, any image of her or him during  
2 that entire period of time from all the  
3 cameras, so what we have got is, and it  
4 seems the defense agreed to this, too, that  
5 everything, every image that was available  
6 was provided for that period of time.

7 SENATOR SAVINO: And -- go ahead, I  
8 am trying to remember something about that  
9 intoxication.

10 SENATOR HASSELL-THOMPSON: I am  
11 listening to you, and it is just a little  
12 bit amazing that if the tape of her coming  
13 into the building, I can't understand why  
14 that wasn't part of the testimony.

15 MR. LEWIS: The testimony is that the  
16 police officers told the super, who actually  
17 showed them the tape, we don't need that, we  
18 need it beginning at this point.

19 MR. ALONSO: When he was asked why,  
20 the explanation of the officer at trial was  
21 that he was investigating an assault, and he  
22 saw at the time of the PBA card vignette  
23 from the video she was okay, she wasn't yet  
24 cut, so he just took the first moment when

1 he saw she was okay, or the last moment when  
2 he saw she was okay, through the part where  
3 they left for the hospital.

4 He thought that that was what was  
5 relevant for the assault. Should he have  
6 been more expansive? It would have been  
7 great, but that's what he said.

8 SENATOR HASSELL-THOMPSON: I remember  
9 hearing in the very beginning that there  
10 were -- there was some question about  
11 whether the tapes would even be used because  
12 of the footage that they had chosen to  
13 present.

14 MR. LEWIS: Be careful, you are  
15 talking about the motions they made and you  
16 are talking about their argument in the  
17 motion, and the judge's comment at the  
18 motion hearing.

19 So you all know, he said the images are  
20 horrific, you are talking about emotions  
21 here that was argued about whether they  
22 would be admitted at all.

23 SENATOR HASSELL-THOMPSON: No,  
24 originally before he actually saw the clips

1           there was some discussion that the tapes  
2           were not going to be used because they did  
3           not represent the entirety of everything and  
4           they couldn't -- he could not be sure.

5           MR. ALONSO:     That's what happens in  
6           pretrial motions a lot, is that arguments  
7           like that get made and then they get really,  
8           really hashed out, both sides, and the judge  
9           ultimately makes a decision.

10          So the defense may well have claimed  
11          that, but in the end of the day at the trial  
12          where all the facts came out, the only  
13          remaining defense claim was that her entry  
14          into the building should have been what was  
15          recorded.

16          The rest of it the defense did not  
17          argue, in fact they used it in their  
18          summation that what was happening on the  
19          tape, was the entirety of what was available  
20          for that time period, they were okay with  
21          that.

22          They just said geez, you should have  
23          shown us the part where she came into the  
24          building, because the judge would have then



1           been able to see how drunk she was at  
2           midnight; that's the only thing.

3                    SENATOR HASSELL-THOMPSON:     That was  
4           my contention, because he says that her  
5           behavior was what precipitated his behavior  
6           towards her, because she was drunk and out  
7           of control.

8                    MR. ALONSO:     Correct.

9                    MR. LEWIS:     The two things that  
10          happened here, first of all as a defense  
11          lawyer you make a motion to exclude  
12          everything because that's the best you can  
13          ask for, you ask for everything.

14                   SENATOR HASSELL-THOMPSON:     True.

15                   MR. LEWIS:     The judge's response in  
16          one form or another which is the usual  
17          response is great, counselor, that goes to  
18          weight, not admissibility, so it comes in.  
19          You could have a field day on whatever you  
20          complain about that.

21                   So that's the part you heard. With  
22          regard to her physical condition and  
23          intoxication, we have the image of the PBA  
24          card, we have that interaction with them, so

1 we have roughly about 15 minutes after she  
2 -- ten minutes after she walks into the  
3 apartment, we now have a tape of her that we  
4 can see her moving around and dealing with  
5 him.

6 So what's lost --

7 SENATOR HASSELL-THOMPSON: And you  
8 see evidence of intoxication?

9 MR. LEWIS: If you notice I very  
10 carefully didn't say anything like that.

11 SENATOR HASSELL-THOMPSON: I know you  
12 didn't.

13 MR. LEWIS: Nor would you get me to.

14 SENATOR HASSELL-THOMPSON: Nor would  
15 I try.

16 MR. LEWIS: That's really the  
17 committee's decision, but you see them, you  
18 see the two of them and it would have been  
19 able better if we had that image, it would  
20 have been better if we were able to show  
21 that.

22 But there is no perfect way to  
23 investigate a case, and good defense lawyers  
24 use that.

1           SENATOR HASSELL-THOMPSON:    I want too  
2           much damn closure, what can I tell you.

3           SENATOR SAVINO:       Also in the Grand  
4           Jury and in the jury there is conflicting  
5           statements from both Karla Giraldo with  
6           respect to how much she had to drink that  
7           night, and her cousin who was with her and  
8           other people who were there.

9           So in some testimony she said she only  
10          had one or two drinks, and then later in the  
11          trial she stated that she drank so much, but  
12          that she wasn't drunk, she was tipsy.

13          And then someone else said something to  
14          the effect that --

15          MR. LEWIS:       Happy.

16          SENATOR SAVINO:       Happy, so there is a  
17          lot of conflicting testimony with respect to  
18          whether or not she really was so inebriated  
19          that had she couldn't walk, and certainly I  
20          did not see anybody in that condition in the  
21          videos that we were able to see.

22          MR. ALONSO:       She's pretty clear in  
23          the Grand Jury, Senator, that she was not --  
24          she was okay, she was not drunk and she had

1 two drinks the whole evening.

2 It's the trial defense, she supported  
3 in her trial testimony which was that she  
4 was so drunk, which fits into the defense  
5 that the defense was putting forward.

6 The part you say about you didn't see  
7 somebody drunk, that was, I thought, an  
8 excellent point that Senator  
9 Hassell-Thompson made on day one, which I  
10 hadn't focused on, you see her walk 100, 200  
11 yards through that hospital and she's  
12 walking in a straight line, that's 37  
13 minutes after they left the building.

14 MR. LEWIS: You see her come down the  
15 steps without having to hold on or anything  
16 like that.

17 SENATOR SAVINO: Later on.

18 SENATOR HASSELL-THOMPSON: But there  
19 is a question, she says she got home at  
20 12:00.

21 MR. ALONSO: Around midnight.

22 MR. LEWIS: Around 12:00.

23 SENATOR HASSELL-THOMPSON: This was  
24 3:00?

1           MR. ALONSO:     When they left the  
2 building or got to the hospital.

3           SENATOR HASSELL-THOMPSON:     She says  
4 she took a nap.

5           MR. ALONSO:     Said she was lying down.

6           SENATOR HASSELL-THOMPSON:     I thought  
7 took a nap.

8           MR. LEWIS:     She sort of claimed she  
9 was asleep, although somehow also asked for  
10 a glass of water.

11          MR. ALONSO:     And felt the water  
12 enough to pop up, except on the Affidavit  
13 where she was careless around the glass.

14          It's hard to -- you have to ask which  
15 statement are we talking about, she said  
16 several things.

17          SENATOR HASSELL-THOMPSON:     I thought  
18 I remembered reading in here that she had  
19 taken a nap and so if she did take a nap,  
20 the inebriation we might have seen earlier  
21 didn't appear to be evidence when we see  
22 her, even the activity with the PBA card,  
23 none of that.

24          MR. LEWIS:     The PBA card is before

1 the nap.

2 SENATOR STAVINSKY: Yeah.

3 MR. ALONSO: Two hours before.

4 MR. LEWIS: PBA.

5 SENATOR HASSELL-THOMPSON: After she  
6 gets to the apartment.

7 MR. LEWIS: Ten minutes or so.

8 SENATOR HASSELL-THOMPSON: There it  
9 is, that puts the time frame, it just  
10 doesn't look right to me.

11 SENATOR SAVINO: The neighbor  
12 downstairs, her testimony about the frenzy  
13 of activity.

14 MR. LEWIS: Chaos.

15 SENATOR SAVINO: I don't remember,  
16 what time did they say that this noise or  
17 fighting?

18 MR. LEWIS: Neighbor said it was  
19 going on continuously.

20 SENATOR HASSELL-THOMPSON: Continuous  
21 ly.

22 SENATOR SCHNEIDERMAN: There was  
23 testimony as to one particular thump and he  
24 could hear --

1           MR. ALONSO:     The thump was about ten  
2 minutes before the ringing of the doorbell.

3           SENATOR HASSELL-THOMPSON:     They all  
4 started running out.

5           SENATOR STAVINSKY:     The other point  
6 about walking, you notice when they are  
7 walking both in the building toward the exit  
8 and in the street and at Long Island Jewish,  
9 on only one occasion does he put his arm  
10 around her, and that's when they are out in  
11 the street in front of their apartment house  
12 walking towards the car, and if she were  
13 staggering, I think he would have had, or if  
14 he was trying to comfort her, but they are  
15 walking apart from each other.

16          MR. LEWIS:     Just you need to remember  
17 one thing, Dr. Kort in her testimony said  
18 there was a smell of alcohol on her breath.

19                         So there was a smell of alcohol.

20          SENATOR HASSELL-THOMPSON:     Right.

21          SENATOR STAVINSKY:     It could have  
22 been on her clothes.

23          MR. LEWIS:     Just saying when we look

24                         --

1           SENATOR ALESI:     Doesn't matter, they  
2           already know she was drinking, she went to a  
3           party.

4           SENATOR SAVINO:     Exactly, she never  
5           said she didn't have anything, she said she  
6           had a couple of drinks but that she was not  
7           drunk, that she was happy in one testimony,  
8           or tipsy, and so I think the question is not  
9           whether or not she had something to drink,  
10          that's already been established.

11          It's whether or not she was so drunk.

12          SENATOR STAVINSKY:     So drunk.

13          MR. ALONSO:     And --

14          SENATOR SAVINO:     There is nothing to  
15          support that.

16          MR. ALONSO:     And remember again, the  
17          significance of a statement before the Grand  
18          Jury, which is that that's at a time when  
19          she doesn't know and he doesn't know what  
20          the theory of the prosecutor is going to be  
21          down the road.

22          So she's asked a question which she may  
23          or may not have anticipated were you drunk  
24          and she answered it, and there is a school



1 of thought which defense lawyers use a lot,  
2 that you give a little bit more credence to  
3 the statement somebody makes in front of a  
4 Grand Jury early on before they know what  
5 all the issues are in private, closer in  
6 time to the incident; than you do later on  
7 when maybe they might not be, when they  
8 might have some additional motives that  
9 weren't present at the Grand Jury.

10 MR. LEWIS: Giving a lot of credence  
11 is what helps us.

12 SENATOR SCHNEIDERMAN: Yes, it's an  
13 argument.

14 MR. LEWIS: The other thing the  
15 committee may want to look at is his  
16 statements that night, the conflicts between  
17 his statements and her statements.

18 Because at some point there was some  
19 focus on activity between the two of them in  
20 which he went out of his way to tell one of  
21 the doctors that they had sex, she was  
22 interviewed she said at the Grand Jury she  
23 said they didn't.

24 Whether that's relevant or not, it's

1           just odd that --

2           MR. ALONSO:     I saw that and I didn't  
3           bring it up.

4           It's true, apparently she says that  
5           they didn't have sex and he said to Dr.  
6           Froegel that they did have sex.

7           And I'm not sure which way that cuts,  
8           myself.

9           SENATOR STAVINSKY:     I found that odd  
10          myself when I read it, because I didn't  
11          understand why it would be relevant.

12          MR. ALONSO:     Well, I guess he was  
13          asked what happened, so he told the story of  
14          what happened that evening, but --

15          SENATOR STEWART-COUSINS:     As he saw  
16          it.

17          MR. ALONSO:     I wonder why one of them  
18          would not tell the truth about it.

19          SENATOR STEWART-COUSINS:     Maybe one  
20          was napping.

21          SENATOR STAVINSKY:     She was asleep.

22          SENATOR HASSELL-THOMPSON:     Toby, we  
23          are on the record here.

24          MR. ALONSO:     For the record, that was

1 not a serious statement.

2 SENATOR STEWART-COUSINS: No.

3 SENATOR ALESI: Maybe it wasn't that  
4 memorable.

5 SENATOR HASSELL-THOMPSON: No, the  
6 issue I was raising was I think he was  
7 trying to establish that there was really a  
8 -- that the arguing that everybody is  
9 alluding to really just didn't happen,  
10 because they were, you know --

11 SENATOR STEWART-COUSINS: Or it  
12 wasn't that serious.

13 SENATOR HASSELL-THOMPSON: Or wasn't  
14 that serious, right.

15 SENATOR STEWART-COUSINS: It was a  
16 normal --

17 SENATOR HASSELL-THOMPSON: Maybe the  
18 thumping was not what they thought it was.

19 SENATOR STEWART-COUSINS: It was just  
20 one thump.

21 SENATOR HASSELL-THOMPSON: She said  
22 noise, she had to knock on the ceiling.

23 SENATOR SCHNEIDERMAN: I think we  
24 should move along here, I think for

1 purposes, our purposes and the committee,  
2 keep in mind our mandate is to focus on the  
3 circumstances relating to the misdemeanor  
4 conviction, and for those purposes, in my  
5 view, the video is tremendously important  
6 because as discussed at an earlier meeting  
7 of the committee, it really anchors us in  
8 our view of all the other statements that  
9 were made, we at least, and it's a very  
10 unusual situation to have this significant  
11 portion of the conduct that we have been  
12 directed to look at available on a video, so  
13 we can look at it and look at it over and  
14 over, and I think most of what we have to  
15 include as far as the facts comes out of  
16 that.

17 We certainly can consider in  
18 determining what our view is of the conduct  
19 and what are the inferences we draw from it,  
20 we can consider the fact that there were  
21 inconsistent statements made and statements,  
22 frankly, that we may not believe made in  
23 Karla's statements on the night of the  
24 incident, Hiram's statements on the night of

1 the incident, Karla's statements in the  
2 Grand Jury and then any of the testimony at  
3 the trial.

4 But our job is not to re-evaluate the  
5 entire situation, our job is to look at  
6 circumstances of the misdemeanor conviction,  
7 which does bring us into the question of  
8 whether we buy the story that is the final  
9 version of the story that emerged, which  
10 Senator Monserrate has continued to repeat,  
11 that they had -- they had an accident, he  
12 was helping her, she was in fear going to  
13 the hospital, then he was helping her in  
14 trying to get her to care as best he could.

15 The prosecution obviously contends that  
16 was obviously not what was going on, so  
17 there is another way to interpret the  
18 events, that she was afraid of him, that he  
19 was forcing her to be with him when she  
20 wanted to get away from him and that he was  
21 either, because he was concerned about  
22 misconduct that had taken place before, he  
23 was just so self-obsessed that he was  
24 worried about his reputation, rather than

1 her.

2 SENATOR HASSELL-THOMPSON: So, is  
3 that why he never called 911?

4 SENATOR SCHNEIDERMAN: That's the  
5 prosecutor's contention.

6 SENATOR HASSELL-THOMPSON: Because a  
7 lot of times in here throughout the  
8 testimony she talks about how many times she  
9 requested that he call 911.

10 She had her own cell phone, I was  
11 curious as to why she didn't call 911  
12 herself.

13 SENATOR LANZA: Called the --

14 SENATOR STAVINSKY: He had possession  
15 of it.

16 SENATOR HASSELL-THOMPSON: She called  
17 her facialist.

18 MR. ALONSO: That's once they were  
19 already on the way to the hospital.

20 MR. LEWIS: And in the car together.

21 SENATOR HASSELL-THOMPSON: But the  
22 assumption is that he did not have  
23 possession of her cell phone until they got  
24 to the hospital, and we saw him possibly



1           SENATOR HASSELL-THOMPSON:     While you  
2           were in the apartment did you ask him to  
3           call for an ambulance?

4           I said if you want an ambulance, and he  
5           said I want to drive you over, then she kept  
6           saying that she was asking for an ambulance  
7           and he -- several times she asked for 911.

8           MR. ALONSO:     I think it's a  
9           reasonable inference what you are making,  
10          just not in those words is what the  
11          testimony is.

12          SENATOR LANZA:     I think the judge's  
13          reliance on this 911 call that never  
14          happened, to me it cuts both ways, and I'm  
15          not sure what importance, I mean everyone  
16          can make their own decisions here, but if he  
17          wanted to help himself out, Senator  
18          Monserrate could have called 911 and looked  
19          like the good guy.

20          SENATOR HASSELL-THOMPSON:     That's my  
21          point. That's the only reason I'm raising  
22          it.

23          SENATOR LANZA:     From my own personal  
24          experience, I have three kids, they have



1           been injured along the way, mishaps in the  
2           yards, and I have never called 911, thank  
3           God, because I've never been confronted with  
4           a situation that serious that I thought I  
5           needed somebody there, as opposed to me  
6           getting in the car, and for me, thinking  
7           that the best way to deal with the situation  
8           is get to the hospital the quickest route  
9           possible, which is not to wait for somebody  
10          else to come pick them up and bring them to  
11          the hospital.

12                 Now, other people would handle their  
13          parental duties different, that's worked for  
14          me and it has been the sound course of  
15          action as opposed to waiting a half hour for  
16          an ambulance to get there.

17                 SENATOR HASSELL-THOMPSON:     My  
18          grandson, four and a half years old, just  
19          fell down November 12th, we were all  
20          dressing to go to an event, community event,  
21          he's playing with his Wii, he's not supposed  
22          to sit on the radiator, but he does, and all  
23          this action and movement, he falls off the  
24          radiator, hits his head he goes -- his

1 mother grabs him, takes him to the hospital  
2 in the car, he has four staples.

3 You're right, that's -- that tends to  
4 be what people do.

5 SENATOR LANZA: If you want to get  
6 them there quick, you get them there  
7 yourself, if, God forbid, it's something  
8 worse --

9 SENATOR HASSELL-THOMPSON: Because  
10 there are some community --

11 That's why I'm trying to figure out  
12 what was the judge's thinking, because  
13 sometimes neighborhoods, certain  
14 neighborhoods, if you call the ambulance you  
15 do yourself a bigger service getting in that  
16 car and if you have access and getting there  
17 yourself, because ambulances don't respond  
18 in some communities the same way they do  
19 with others, we all know that.

20 SENATOR LANZA: I can tell you on  
21 Staten Island --

22 SENATOR SAVINO: But it's not his  
23 child.

24 SENATOR LANZA: Can I finish? If the

1 point is that he didn't call 911 because he  
2 didn't care about her, I would suggest to  
3 you that no one cares, there is no  
4 relationship where there is more care and  
5 love than a parent and a child.

6 And so I'm telling you if you talk to  
7 parents, when you go through it and you've  
8 had these situations that occur and then you  
9 then talk to other parents and friends and  
10 you say this is what happened to my son and  
11 they tell you a story, I can tell you just  
12 my personal experience almost invariably  
13 everyone will tell you they didn't call 911,  
14 and it's probably the right -- without  
15 giving other people advice, but if you want  
16 to get them to the hospital, where I live on  
17 Staten Island, you get in the car and you  
18 get them there.

19 SENATOR SAVINO: All that may be  
20 true, however there are two things, one,  
21 this was not his child, this is a grown  
22 woman.

23 SENATOR LANZA: Who could have called  
24 911 herself.

1           SENATOR SAVINO:     Or he could have  
2           done what she asked him to do, which was  
3           call 911.

4           He chose not to, and then in an effort  
5           to get her to the hospital as quickly as  
6           possible, he drove past five other  
7           hospitals.

8           So if it was really about trying to  
9           avoid waiting for an ambulance, because he  
10          didn't want to depend on EMS, or he wanted  
11          to get her to the hospital as expeditiously  
12          as possible to get her help, he could have  
13          taken her to Elmhurst General, which they  
14          could have walked to.

15          SENATOR STAVINSKY:     Could have walked  
16          to.

17          SENATOR SAVINO:     Or he could have  
18          taken her to Booth Memorial Hospital, he  
19          could have taken her to Queens General  
20          Hospital, he could have taken her to  
21          Flushing Hospital, he could have taken her  
22          to Wykoff Hospital.

23          MR. ALONSO:     By the way, New York  
24          Hospital was closer.

1                   SENATOR STAVINSKY:     That's true.

2                   SENATOR SAVINO:     That's Booth  
3                   Memorial.

4                   MR. ALONSO:     New York Hospital in  
5                   Manhattan was closer.

6                   SENATOR SAVINO:     He chose not to do  
7                   any of those things, he chose however to  
8                   take her to LIJ and not call 911 as she  
9                   asked for.

10                  SENATOR STEWART-COUSINS:     And it took  
11                  what looks like for a 3:00 a.m. Time frame  
12                  an inordinately long period of time, and  
13                  even where one parks, again, if you're  
14                  trying to -- I know most haven't been out to  
15                  this hospital, but I know most of the times  
16                  you can at least park somewhere in the  
17                  proximity of the emergency room, even --  
18                  it's for a limited amount of time, get in  
19                  there with your person, go through whatever  
20                  the triage or whatever it is to at least  
21                  establish this is a person who is in need of  
22                  some help.

23                  We don't park so many blocks away and  
24                  then take another long walk to the emergency

1 room.

2 I mean it's just unfortunately what we  
3 have here is just so many inconsistencies.

4 SENATOR LANZA: There are a lot --  
5 remember, this is the hospital he took  
6 himself to.

7 So, when it was him --

8 SENATOR STEWART-COUSINS: Yes.

9 SENATOR LANZA: He passed all those  
10 hospitals, too, so people do make choices.

11 SENATOR SAVINO: You can assume risk  
12 for yourself, but not for somebody else.

13 SENATOR LANZA: Wait a minute, no,  
14 but if the argument that he was going to  
15 this hospital to somehow avoid being  
16 recognized, which is absurd, as a person who  
17 is on the City Council for the years that he  
18 was, he didn't go to Iowa, he went a half  
19 hour away, so that's an absurd argument, the  
20 judge I think was whatever, wrong,  
21 inconsistent with logic to me, and it's a  
22 hospital that he went to when he made the  
23 choice for himself.

24 So you can talk about whether or not he

1           has the right or not, but I'm just saying it  
2           is inconsistent with what he did before, so  
3           perhaps, and again everyone is free to feel  
4           -- draw their own conclusions, perhaps it is  
5           because he thought, perhaps, that was the  
6           best place for her to go, could be.

7           SENATOR STEWART-COUSINS:     Could be.

8           SENATOR HASSELL-THOMPSON:    Better  
9           care, it's all about care.

10          SENATOR LANZA:     Again, using my  
11          experience, I drove right past the hospital  
12          when my son -- I will give you the  
13          specifics, he had an accident and he cut his  
14          finger severely, it was a partial  
15          amputation, and we drove right -- we decided  
16          to go to the hospital that was further away  
17          because I knew that that was the place he  
18          needed to be.

19          SENATOR STEWART-COUSINS:     Absolutely.

20          SENATOR STAVINSKY:     To add to that,  
21          if he had called 911, 911 would not have  
22          taken him to Long Island Jewish, they would  
23          have taken him to Elmhurst.

24          MR. ALONSO:     But what they would have

1           done is immediately treat her, put a  
2           butterfly on it.

3           SENATOR STAVINSKY:     Yes, they would  
4           have treated and stemmed the bleeding.

5           SENATOR SAVINO:     She could have got  
6           what she wanted after that.

7           SENATOR STAVINSKY:     She might not  
8           have had to go to the hospital.

9           MR. ALONSO:     Everybody's statements  
10          are obviously well taken, the couple of  
11          things I would just throw out is that as  
12          he's rushing to take her to the hospital  
13          without having anyone having stemmed the  
14          bleeding, she's got a towel over her eye and  
15          that towel when he pulls her drops, and I  
16          think it's reasonable since she's screaming,  
17          it's reasonable to assume she was saying  
18          something like my towel, my towel.

19          And yet the pulling continues and you  
20          saw that look on her face in the vestibule  
21          right after she had dropped the towel.

22          So that's one thing that I think is not  
23          consistent with taking her best interests  
24          into heart.



1           And the other thing is the point  
2           Senator Stewart-Cousins just made, which is  
3           the parking on the street and that long  
4           distance from the emergency room, when you  
5           have signs showing you where the emergency  
6           room is, you've got a well-defined emergency  
7           area where you can drop off or she's  
8           bleeding, double park the car, run in with  
9           her, that's what people do, and to sort of  
10          do it in this far away way does suggest to  
11          me that at least that it's reasonable to  
12          infer, and it's for the committee to infer,  
13          that something else is going on, like let's  
14          fly under the radar, and it's possible, much  
15          more possible near the Nassau County border  
16          than it is right in his district to be at  
17          least a little bit incognito.

18                 SENATOR STAVINSKY:     Was she carrying  
19                 a towel when she exited the car, when she  
20                 entered the Long Island Jewish?

21                 SENATOR SAVINO:        She had something in  
22                 her hand.

23                 MR. ALONSO:           Her plastic bag.

24                 SENATOR STAVINSKY:     So she had no

1 towel?

2 SENATOR STEWART-COUSINS: No, the  
3 towel she lost in the hall.

4 SENATOR STAVINSKY: Presumably the  
5 bleeding stopped.

6 MR. ALONSO: Or didn't -- we don't  
7 know.

8 SENATOR STAVINSKY: It didn't, so she  
9 must have.

10 SENATOR SCHNEIDERMAN: She was trying  
11 to get back inside and maybe to get the  
12 towel.

13 MR. LEWIS: There is one other thing,  
14 a 911 call generates a tremendous amount of  
15 paper, generates police attention, and once  
16 a public official is part of that police  
17 attention it generates, for example, a night  
18 watch report, it goes through the -- goes up  
19 through the ranks to have attention brought  
20 to it.

21 SENATOR LANZA: It cuts in his favor  
22 because he knows all this and so I think it  
23 would have been exculpatory for him to have  
24 called 911 to be the person that was looking

1 for help.

2 I'm just saying the 911, I know we are  
3 taking a lot of time on it, but it cuts both  
4 ways.

5 SENATOR ALESI: The best anybody  
6 could really conclude here is it's both,  
7 that he made a choice, I'm saying, my view,  
8 that she would get better treatment based on  
9 some previous experience, maybe, and at the  
10 same time let's fly under the radar while we  
11 are doing it.

12 SENATOR STEWART-COUSINS: Right.

13 SENATOR STAVINSKY: Did he make any  
14 attempt to stem the bleeding, because he's a  
15 police officer who, presumably, had first  
16 aid training.

17 SENATOR LANZA: There is no evidence.

18 SENATOR STAVINSKY: There is no  
19 evidence that he tried to stop the bleeding.

20 MR. LEWIS: We don't know why he was  
21 treated at the hospital, because we didn't  
22 get the record that went into evidence that  
23 they used to show he was treated previously  
24 at the hospital, we have no idea why he was

1 treated.

2 MR. ALONSO: Could have been tertiary  
3 care, for all we know.

4 SENATOR STAVINSKY: Could have gone  
5 for a flu shot.

6 SENATOR ALESI: She wasn't bleeding  
7 when she got to the hospital as I remember,  
8 the doctor said there wasn't that much blood  
9 loss.

10 SENATOR STEWART-COUSINS: She also  
11 said they never cleaned off her face, she  
12 was never treated.

13 So whatever it looked like, according  
14 to her, which was different than what the  
15 doctor said, nothing happened, her blood,  
16 the blood was still on her face.

17 But the only thing that, it seems to  
18 me, is regardless of how we all handle  
19 personal emergencies, I don't think anyone  
20 around this table wouldn't say that having a  
21 gash under your eye, bleeding profusely was  
22 not an emergency.

23 So how you handle that emergency,  
24 whether it's 911 or driving yourself, is,

1           again, personal, but then if it's still an  
2           emergency, what I am missing in after how we  
3           determine we get to the hospital, the look  
4           of an emergency, at least on his part or her  
5           part as they did what they did, they just --  
6           nobody looked like how most people feel when  
7           there is, indeed, an emergency.

8                     So, again, there is just so much --

9                     SENATOR SAVINO:     She was probably in  
10            shock.

11                    SENATOR STEWART-COUSINS:     She might  
12            have been in shock, but he is the guy that  
13            is the responsible adult here who is taking  
14            this person in an emergency room, face  
15            bleeding, gash, all she is saying she's  
16            nervous throughout the whole thing, he's the  
17            responsible person, and I'm not seeing that  
18            urgency or emergency in anything that  
19            happened, whether it's the time frame of 37  
20            minutes, or whatever, whether it's the walk  
21            from the street, whether it's the meandering  
22            through the hospital corridors.

23                    MR. ALONSO:     It's an interesting  
24            point that I hadn't focused on, you see

1           urgency getting out of the building, you see  
2           no urgency getting to the triage nurse.

3           SENATOR HASSELL-THOMPSON:     None and  
4           no wheelchair, no wheelchair.

5           MR. ALONSO:     I suggest that the  
6           urgency, the emergency only began after she  
7           rang the neighbor's doorbell, that's when  
8           the urgency in the building --

9           MR. LEWIS:     She does walk down the  
10          steps on their own, and they seem to be in  
11          that situation, then things change when she  
12          disappears from that video.

13          SENATOR HASSELL-THOMPSON:     We don't  
14          see blood flowing in those tapes, and if I  
15          missed it --

16          SENATOR LANZA:     In the hospital.

17          SENATOR SCHNEIDERMAN:     In the  
18          hospital.

19          SENATOR HASSELL-THOMPSON:     In the  
20          hospital?

21          MR. ALONSO:     You don't see it.

22          SENATOR HASSELL-THOMPSON:     You don't.

23          SENATOR SAVINO:     Was she treated for  
24          shock?

1                   SENATOR STEWART-COUSINS:     No.

2                   SENATOR SAVINO:     Do the medical  
3 records --

4                   SENATOR HASSELL-THOMPSON:     None of  
5 the testimony speaks to that.

6                   SENATOR SAVINO:     Do the medical  
7 records say that beyond the suturing?

8                   MR. ALONSO:     No.

9                   SENATOR HASSELL-THOMPSON:     She seemed  
10 to be coherent when they got the  
11 interpreter.

12                   MR. LEWIS:     And the triage nurse.

13                   SENATOR SAVINO:     In the apartment  
14 there was -- we saw the photos in the  
15 apartment.

16                   SENATOR LANZA:     Medical records said  
17 there was not a lot of blood loss.

18                   SENATOR SCHNEIDERMAN:     Not like  
19 pints.

20                   MR. LEWIS:     Talking about two  
21 different things, there was a lot of blood,  
22 there was not a significant blood loss so as  
23 to cause shock.

24                   When you are talking about shock you

1           are talking about pints of blood, this is  
2           just the cut, generally there is all this  
3           blood all over the place as almost any head  
4           injury would.

5           SENATOR HASSELL-THOMPSON:     Head  
6           wounds do.

7           SENATOR STEWART-COUSINS:     Sure.

8           MR. LEWIS:     The triage nurse in those  
9           notes indicates she wasn't in shock at all,  
10          in fact she was answering questions, she  
11          later said nobody asked her.

12          SENATOR STAVINSKY:     Did they examine  
13          her?

14          SENATOR HASSELL-THOMPSON:     They did,  
15          but she said they didn't.

16          SENATOR STAVINSKY:     Did they examine  
17          her in the emergency room to see if she was  
18          --

19          MR. LEWIS:     Triage nurse does the  
20          preliminary evaluation.

21          SENATOR STAVINSKY:     Presumably she  
22          was examined.

23          SENATOR SCHNEIDERMAN:     Sure.

24          SENATOR HASSELL-THOMPSON:     Yes.



1           MR. LEWIS:     I didn't know what you  
2           meant by examined.

3           SENATOR STAVINSKY:     To see if she was  
4           in shock.

5           SENATOR SCHNEIDERMAN:     Yes.  I think  
6           --

7           SENATOR HASSELL-THOMPSON:     And the  
8           fluency with which she answered the  
9           questions, whether she lied or didn't lie is  
10          not relevant, the fluency with which she  
11          answered the questions indicated that she  
12          was not in shock, there is nothing in the  
13          testimony that speaks to that.

14          SENATOR STEWART-COUSINS:     And quite  
15          sober.

16          SENATOR HASSELL-THOMPSON:     Quite  
17          sober, all of that is the quite sober part.

18          SENATOR SCHNEIDERMAN:     I think that  
19          for the purposes of assessing what we think  
20          about the misdemeanor conviction, what we  
21          think about the assault, him pulling her --  
22          and the judge, really, put two issues on the  
23          table, him pulling her through the hall and  
24          the aggressive way he's doing that and

1 pulling her and her screaming and clinging  
2 on and losing the towel and trying to get  
3 away, what we think of that set of  
4 circumstances, then the judge added in  
5 addition to whatever harm she was caused  
6 there, the whole question of the  
7 unreasonable delay, the extra pain she  
8 suffered, the extra risk to her from that  
9 which starts with not calling 911 and goes  
10 through the route to the hospital, skipping  
11 the hospital, not going to the emergency  
12 room, that whole combination of  
13 circumstances.

14 That's what we have to assess and  
15 really deal with in the factual section of  
16 the report, and I think it's important for  
17 the members of the committee to think about  
18 how we come out on that.

19 Whatever our experiences, and I have  
20 had times I have called 911 and times I have  
21 not called 911, but what do we think of the  
22 whole overall pattern as far as our  
23 assessment of, and how does our view of her  
24 credibility feed into it, because it's very

1 clear that Senator Monserrate, and it's  
2 supported by her later testimony, not her  
3 earlier testimony, is saying that this was  
4 -- it was an accident, they are friendly,  
5 they are a loving couple and he was trying  
6 to help her get care as quickly as possible.

7 And she was scared, but that basically  
8 they were together.

9 That is their story, and we have to  
10 take into account -- we have to make some  
11 determination of what we think about that.

12 Do we think this was, as the judge  
13 obviously thought, a fairly serious assault  
14 and didn't think much of his treatment of  
15 her, or do we think this is something that  
16 is completely understandable and that their  
17 version of the events are credible, because  
18 I think that does lean into our conclusion  
19 which we are going to have to come to as to  
20 whether or not we recommend that the Senate  
21 take some action.

22 So that I would just like to frame up  
23 where we are going with all these questions  
24 about all of these issues, and I think the

1           credibility, his conduct, her inebriation,  
2           or lack thereof, the choice of the routes,  
3           the choice of where to park, all fits into  
4           our determination on that, but that's really  
5           how -- what we have to determine, how  
6           serious we think this is, and because I  
7           think quite honestly we don't have -- we  
8           don't have a huge body of facts to assess.

9           We have a lot of information about a  
10          very small set of facts, but I think we all  
11          have to sort of -- at some point we are  
12          going to have to go around and decide  
13          whether we think this is conduct that  
14          requires us to recommend some sanction,  
15          without getting into the issue of what the  
16          sanction is, or not.

17          MR. ALONSO:     I think the chair  
18          correctly framed the issues and I just want  
19          to say that some of you have already  
20          expressed some views on those issues in the  
21          last 45 minutes or so, and I just want to be  
22          clear for the record that no one has made a  
23          final determination of what their view is or  
24          what the consensus of the committee is or

1           what the vote is, so anything we have all  
2           said previously, please tell me if you  
3           disagree, is all just you folks hashing it  
4           out as members of the committee.

5           Because you may -- it's a process, and  
6           we may well come to an ultimate resolution  
7           that is not exactly where you folks just  
8           said, and that's just the nature of  
9           committee work.

10          SENATOR SCHNEIDERMAN:     Right, that's  
11          fair.

12          Since we are sort of moving into the  
13          last item on agenda anyway, what we wanted  
14          to spend the bulk of our time on today  
15          before you actually started that and this is  
16          the final -- sorry, we skipped over  
17          standards for censure, sanctions, so why  
18          don't we do that first.

19          MR. ALONSO:     Okay, so as I said I had  
20          been asked by several members about  
21          recommendation of sanctions short of  
22          expulsion, we have already talked about  
23          expulsion.

24          Obviously one possibility is to

1 recommend no action at all, that is  
2 uncontroversial, doesn't require any legal  
3 advice from me, you can do that.

4 You can also recommend, and I think  
5 this is also relatively uncontroversial, you  
6 can recommend a censure which is a public --  
7 that the Senate issue a public resolution of  
8 condemnation of conduct, that's a censure.

9 And you could also issue or recommend  
10 that the Senate issue a censure plus some  
11 other consequences, like, for example,  
12 stripping somebody of their Chairmanships,  
13 stripping somebody of the additional  
14 compensation that comes with that.

15 MR. LEWIS: Senator.

16 MR. ALONSO: Some other legislators  
17 have stripped people of seniority, the  
18 Senate doesn't really have a seniority based  
19 system, does it?

20 SENATOR SCHNEIDERMAN: Not in a  
21 formal sense.

22 MR. ALONSO: So there is precedent in  
23 both the New York State Senate and the New  
24 York State Assembly for the censure of

1 members, most recently in 2007 the Assembly  
2 censured Assemblyman Mike Cole by letter for  
3 fraternizing with an intern, and that was a  
4 public statement of disapproval of his  
5 actions.

6 The Senate censured Senator Richard  
7 Schemerhorn in 1973, that was, I believe,  
8 ultimately withdrawn, is that correct?

9 Yes, ultimately it was withdrawn  
10 because they were acting on misconception of  
11 the facts, but that was the last time the  
12 Senate censured a Senator.

13 The court that dealt with the  
14 defamation action that followed incorrectly  
15 said that that was the first time in the  
16 Senate's history that it had ever censured a  
17 Senator.

18 In fact, we found a New York Times  
19 report in 1892 that the Senate censured  
20 three separate New York State Senators for  
21 refusing to vote on a particular matter.

22 Whether that's a grounds for censure or  
23 not is not an issue for you folks, but at  
24 least since the 19th century Senators have

1           been censured, and most recently in 1973.

2           MR. LEWIS:     Actually in the Senate  
3           rules the power to do that is in the Senate  
4           rules, because you cannot not vote.

5           MR. ALONSO:    Finally you may remember  
6           the Lipschitz report in the Assembly the  
7           Gerty Lipshitz report and you may recall  
8           that counsel at least disagrees with the  
9           conclusion that the Assembly was without  
10          power to expel Assemblywoman Lipshitz, we  
11          believe that they were, and I have explained  
12          the reasons why previously.

13          However, even that body which believed  
14          itself or at least the Ethics Committee of  
15          the Assembly which believed the Assembly was  
16          without power to expel did recommend  
17          Assemblywoman Lipshitz's censure and  
18          stripping her of all sorts of perks of her  
19          tenure in the Assembly.

20          MR. LEWIS:     Which was passed.

21          MR. ALONSO:    No, no, it wasn't  
22          passed, she resigned.

23          SENATOR STAVINSKY:    She resigned and  
24          she is alive and well living in Florida.



1           MR. LEWIS:     The committee also  
2           drafted a resolution of censure as part of  
3           its report.

4           MR. ALONSO:     So, I think it's  
5           noncontroversial to make a statement of  
6           censure, to take away privileges of  
7           membership and you have that as an option,  
8           and I think that one, it could be an option  
9           that you provide two options to the full  
10          Senate in your report, but that's getting a  
11          little bit ahead of myself.

12          SENATOR SCHNEIDERMAN:     Okay, thank  
13          you.

14          MR. LEWIS:     Just one thing you need  
15          to know, the Lipshitz report claims to not  
16          have the power of expulsion, in no way or  
17          ever addresses the section of legislative  
18          law that accords the legislature the power  
19          of expulsion, doesn't even refer to it.

20          MR. ALONSO:     We have gone over that  
21          before.

22          MR. LEWIS:     Not everyone might  
23          remember.

24          SENATOR SCHNEIDERMAN:     I think this

1 will not be a matter for the committee, but  
2 to the extent there is a challenge to the  
3 Senate's ability to expel in this or any  
4 other case, it's going to really go to the  
5 Constitutionality of the Legislative Law  
6 Section 3.

7 The law couldn't be clearer, that's an  
8 issue for another body and another day.

9 MR. ALONSO: But I would advise that  
10 we include in the report to the Senate the  
11 basis for the authority, if that's what the  
12 full Senate wants to do.

13 SENATOR SCHNEIDERMAN: Correct.

14 MR. LEWIS: And also the inherent  
15 power of the body to protect itself, which  
16 --

17 SENATOR SCHNEIDERMAN: So, maybe we  
18 can take a -- what I want to do next is  
19 really go through the last section or the  
20 last attachment in the handout from counsel  
21 for today's session, walk through the draft  
22 outline for the final report, and hopefully  
23 at least come to the agreement amongst  
24 ourselves as to the agreement as to the

1 draft outline, discuss a little bit what we  
2 think is going to go into the -- our  
3 recommendation, and then counsel can get to  
4 work drafting up the report so that we have  
5 time to review it and edit it and everything  
6 else before the end of the year.

7 Before we do that, though, there has  
8 been a request made for everyone to -- I'm  
9 sort of surprised at the results, for  
10 everyone to check their availability for a  
11 meeting on December 29th, and apparently  
12 everyone says they are available.

13 SENATOR STAVINSKY: Asked me.

14 SENATOR HASSELL-THOMPSON: I'm not.

15 I'm not. I'm going to be in Virginia.

16 SENATOR ALESI: It's unlikely I would  
17 be available.

18 SENATOR SAVINO: I have a meeting at  
19 1:00.

20 SENATOR SCHNEIDERMAN: 29th.

21 SENATOR HASSELL-THOMPSON: I'm not  
22 here.

23 SENATOR SCHNEIDERMAN: So Toby, yes.

24 SENATOR STAVINSKY: I'm not available

1 on the 30th or 31st.

2 SENATOR HASSELL-THOMPSON: I have a  
3 95 year old aunt I have not seen in a year  
4 and every time I planned the trip we have  
5 been called back to Albany, so I am -- at 95  
6 I'm not taking any chances, thank you.

7 SENATOR SCHNEIDERMAN: All right.  
8 Well, if pretty much everyone is available,  
9 we may try to convene something here, just  
10 to finish this up.

11 We also do have the ability to have a  
12 meeting where some of the people are in  
13 Albany and some of the people in the City  
14 with our video conferencing system, we  
15 actually have a very good one now.

16 MR. ALONSO: We are also available  
17 if, say, one or two Senators were to be  
18 absent that day, and I understand there is  
19 at least one concern, we have the ability  
20 separately to brief that Senator and make  
21 sure she or he is fully up to speed, and we  
22 will make ourselves available for that.

23 SENATOR SCHNEIDERMAN: Let's make to  
24 the extent prior meetings, we will let you

1 all know, I think it would be a good idea  
2 for us to have a meeting, if we can, after  
3 the report has been circulated, and we have  
4 had comments for us to finalize it.

5 If we are satisfied with where we are,  
6 to vote on passing the report along, if not,  
7 to identify what very hopefully very narrow  
8 outstanding issues remain.

9 So we are going to do what we can to  
10 try to organize that with regard to the  
11 holiday season and everyone's schedule.

12 I am going to suggest now that we break  
13 for a moment and then come back to discuss  
14 the outline of the report, and one or two  
15 other things we have to address and  
16 hopefully get out of here before much longer  
17 today.

18 (At this point in the proceedings  
19 there was a recess, after which the  
20 proceedings continued as follows:)

21 SENATOR SCHNEIDERMAN: So, going back  
22 on the record reconvening.

23 So reconvening with a view towards  
24 giving some direction to our counsel's, the

1 draft outline for the final report is  
2 attached here, and I just wanted to make  
3 sure we get -- we are able to give our  
4 counsels guidance as to what -- that we  
5 agree on the draft outline and what -- and  
6 flesh out a little bit of what we would like  
7 them to draft for the report.

8 They could start drafting, obviously we  
9 will get a chance to review the draft and  
10 give our comments and probably best  
11 directed, although anyone can talk to --  
12 committee members are all welcome to talk to  
13 me or Senator Lanza any time, but comments  
14 directed through us and to counsel probably  
15 if you have specific questions are  
16 appropriate.

17 I don't think that the first part of  
18 the draft outline is particularly  
19 controversial, but I want to give everyone a  
20 chance to speak up.

21 We have an Executive Committee, it is  
22 just what it says, overview of the  
23 investigation, which I think starts with the  
24 resolution just sort of laying out, again,

1           we are telling the story of what this  
2           committee has done, what our scope of our  
3           mandate is, what investigative steps we  
4           took, and the drafting of the report.

5           The procedural history is really the  
6           history of the underlying incident.

7           I'm not sure, I'm not sure that the  
8           formation of the committee and scope of the  
9           investigation needs to be in there, since  
10          it's really, I would view it as being the  
11          first part of the -- first dot under number  
12          2.

13          MR. ALONSO:     Agreed.

14          SENATOR SCHNEIDERMAN:     And then the  
15          Section 4 is really the evidence, and this  
16          is the part where we do need to make some  
17          decisions, obviously counsel will list what  
18          evidence we looked at, I guess there is a  
19          question as to what decisions we need to  
20          make about inferences that we as a committee  
21          draw from the evidence or conclusions we  
22          come to.

23          SENATOR SAVINO:     Wouldn't that come  
24          after?

1           SENATOR SCHNEIDERMAN:     Well, it  
2           could.

3           SENATOR SAVINO:     Investigation,  
4           review of the evidence, review of the other  
5           evidence, then review of any fact finding  
6           and conclusions drawn by the committee,  
7           wouldn't that make sense, to put it in that  
8           order?

9           MR. ALONSO:     I think that's how it  
10          would ultimately be drafted.

11          I mean I think review of other  
12          evidence, Grand Jury should probably be just  
13          before review of fact finding, you are  
14          right.

15          SENATOR SAVINO:     Yeah.

16          SENATOR SCHNEIDERMAN:     You are saying  
17          the review of any fact finding and  
18          conclusions drawn by the committee.

19          MR. ALONSO:     After the other  
20          evidence.

21          SENATOR SCHNEIDERMAN:     That is the  
22          last one, and that's where we have whatever  
23          our conclusions are about the facts.

24          This is the fact finding, this is not



1 the recommendation, but this is -- and  
2 frankly a lot of -- most of the members of  
3 the committee have expressed at one point or  
4 another that we have to draft this in a way  
5 so that it's very clear that we are just  
6 making -- we are explaining what we found,  
7 we are making a recommendation in this very  
8 specific case, and only for the purposes of  
9 this specific case, we are not purporting to  
10 set standards for anything else.

11 The conclusion that we draw about the  
12 facts, I think we should talk about at least  
13 briefly now and then I think the legal  
14 authority is --

15 SENATOR HASSELL-THOMPSON: In the  
16 wrong place.

17 SENATOR SCHNEIDERMAN: Excuse me?

18 SENATOR HASSELL-THOMPSON: The legal  
19 authority to investigate should be separated  
20 from the sanction, and it should be right up  
21 under the procedural history, because how do  
22 you do the investigation?

23 How do an investigation without  
24 establishing the authority for the

1 investigation?

2 MR. LEWIS: Should be two separate  
3 topics.

4 SENATOR HASSELL-THOMPSON: And it  
5 should be two separate topics.

6 SENATOR SCHNEIDERMAN: To investigate  
7 and legal authority sanction.

8 MR. LEWIS: Our investigation comes  
9 from one source, and our power.

10 SENATOR SCHNEIDERMAN: Yes, that  
11 makes sense.

12 SENATOR HASSELL-THOMPSON: Of course  
13 it does.

14 SENATOR SCHNEIDERMAN: So the legal  
15 authority to investigate comes up at the  
16 beginning.

17 SENATOR HASSELL-THOMPSON: Yes.

18 SENATOR LANZA: The sanctions stays  
19 there.

20 SENATOR SCHNEIDERMAN: Okay, good.  
21 And then the recommendation.

22 So in my view the two things that we  
23 really have to discuss, because I think a  
24 lot of this we have gone through and counsel

1           has presented to us, we have the authority,  
2           we understand the time line that we have  
3           gone through to get here, what the  
4           investigative steps were that we took, the  
5           legal authority to investigate I think is  
6           very straightforward, the legal authority to  
7           sanction is also fairly straightforward.

8                     Really what the rest of the work of the  
9           committee is for us to try to agree, or if  
10          we can't agree, provide and I think it's  
11          certainly preferred to have a consensus on  
12          the report, again what we think about the --  
13          what conclusions we draw from the facts that  
14          we reviewed about the conduct and the  
15          circumstances that were included in the  
16          misdemeanor conviction, the reckless assault  
17          conviction and do we, essentially do we  
18          think that that rises to the level of being  
19          sanctionable conduct.

20                    That really is what our threshold  
21          decision is.

22                    And again, Senator Monserrate has told  
23          a story that there was an accident, they  
24          were a loving couple, he was trying to take

1 her to the hospital and was very concerned  
2 for her well-being and the judge, obviously,  
3 did not find that was what was going on.

4 He found fairly explicitly that,  
5 whether it was because there was an assault  
6 rather than an accident, or not, that the  
7 conduct, the way he treated her in the hall,  
8 pulling her and dropping the towel, her  
9 screaming was just inconsistent with that  
10 story, and that the extra time it took for  
11 him to get to the hospital and parking far  
12 away and not calling 911, the whole totality  
13 of the circumstances and facts led the judge  
14 to conclude to reject Senator Monserrate and  
15 Ms. Giraldo at least at trial's version of  
16 the events.

17 So I think we have to make a  
18 determination as to what we think about  
19 that, because really the threshold question  
20 for us is do we think this should be  
21 sanctionable or not, and if we disagree with  
22 the judge and we think this was someone  
23 trying to get his girlfriend to the hospital  
24 and acting in good faith, then I don't

1           really think that that would rise to the  
2           level of sanctionable conduct.

3                       So we do have to make that  
4           determination about what we think about all  
5           the facts that we have reviewed, and then  
6           after that, if we think the conduct is  
7           sanctionable, we have a decision to make  
8           about what we recommend, how we recommend  
9           the Senate take this up.

10                    SENATOR FLANAGAN:     Can I offer a  
11           couple of quick observations, first, based  
12           on some of what was discussed today I will  
13           just speak for myself.

14                    I would like to see those news  
15           interviews before, and I know we are going  
16           to go through a draft process, but before we  
17           reach anything final, because in a way even  
18           indirectly it's the only real opportunity  
19           that we have to hear from Senator  
20           Monserrate.

21                    So, I think having the ability to  
22           review that would be important.

23                    And I would hope at some juncture, I'm  
24           not sure where probably, but in the

1 investigation part that we delineate, even  
2 if it's just on a chart of some sort, things  
3 that were asked for that were not received.

4 SENATOR SCHNEIDERMAN: Yes.

5 SENATOR FLANAGAN: The facts at trial  
6 are different, I would like if you are going  
7 to have people look at this, these were the  
8 17 or 22 things that we asked for, these  
9 were the results.

10 MR. LEWIS: And the report should  
11 reflect that we have given him the  
12 opportunity two separate times to appear,  
13 and also that we have asked for Ms. Giraldo.

14 SENATOR LANZA: Together.

15 SENATOR STAVINSKY: No cooperation.

16 SENATOR LANZA: Together with the  
17 information that can be drawn that neither  
18 he nor she decided to come before this  
19 committee.

20 SENATOR HASSELL-THOMPSON: Right.

21 SENATOR LANZA: Given all the  
22 unanswered questions and inconsistencies,  
23 certainly something that could have been of  
24 value to this committee, and I think there

1 is an inference that could be drawn in the  
2 negative.

3 SENATOR SCHNEIDERMAN: Okay. So we  
4 will get the TV clips out to you  
5 immediately.

6 MR. ALONSO: Right away. There may  
7 actually be transcripts of that, I will see  
8 if I can get that.

9 SENATOR SCHNEIDERMAN: Although it's  
10 worth it to watch.

11 MR. ALONSO: Yes.

12 SENATOR SCHNEIDERMAN: So, any other  
13 agreements, disagreements, does this sound  
14 like a good outline?

15 SENATOR STAVINSKY: I think it does.

16 SENATOR ALESI: Is there any previous  
17 not directly related to this, is there any  
18 previous behavior patterns that occurred,  
19 and I know that they can't be brought into  
20 the court, but we have broader parameters  
21 here that we are unaware of that we could be  
22 made aware of?

23 SENATOR SAVINO: There is a prior  
24 assault charge, but --

1           MR. LEWIS:     We should be very careful  
2           what we do.    The parameters of the committee  
3           is confined to this case and the facts  
4           around the misdemeanor conviction.

5           Anything else from the record, Tacopina  
6           said in sentencing that he has no other  
7           criminal record, even if there was an arrest  
8           it won't be fair game to consider it for  
9           lots of reasons, but I think we should stick  
10          with --

11          SENATOR ALESI:    I don't disagree with  
12          that, but I think again we don't have to  
13          follow the same rules as the court, and this  
14          is about conduct of a member of the Senate.

15          Any conduct of a member of the Senate  
16          in my view is at least worth knowing about  
17          and discussing.

18          MR. ALONSO:     I have to agree with Mr.  
19          Lewis.

20          It's not that I disagree, Senator, and  
21          there are, of course these things that are  
22          kind of out there, had the Senator come  
23          before the committee, perhaps we might have  
24          asked him about his background, is it true



1           what your lawyer says that you've never been  
2           arrested, that you don't have any issues  
3           with -- no history of violence, I don't know  
4           the answer to those questions, and I think  
5           Mr. Lewis is right, that it's the better  
6           part of caution not to consider those, since  
7           that would be a whole ancillary  
8           investigation that we haven't done, nor do  
9           we have a mandate to do.

10                  Likewise, that reminds me that I  
11           mentioned a psychiatric issue last time when  
12           I was presenting.

13                  I want to make clear that I only did  
14           that because it came up in the record of the  
15           sentencing brought up by the District  
16           Attorney, that was just by way of  
17           explanation, I am in no way suggesting that  
18           you consider the circumstances of which he  
19           left the police department when you make  
20           your recommendations here.

21                  SENATOR STAVINSKY:        Wouldn't that  
22           have been included in any probation report?

23                  MR. ALONSO:        It apparently was  
24           included, which is why it was mentioned on

1 the record, we don't have the probation  
2 report, nor do we have the right to get it,  
3 so that's probably why it came up and that's  
4 why I raised it last time.

5 For no other reason.

6 SENATOR SCHNEIDERMAN: So, I think  
7 that he again we have -- the good news and  
8 the bad news is we have a narrow mandate, we  
9 are supposed to inquire into the facts and  
10 circumstances relating to the misdemeanor  
11 conviction and make a recommendation.

12 We will be distributing the memo to all  
13 the members, brief memo because we had a  
14 request for this to clarify the relationship  
15 between what the committee does and what the  
16 Senate does as far as legal authority, which  
17 is important for us to make clear to our  
18 colleagues and anyone else who is asking,  
19 because there is a lot of confusion out  
20 there and a lot of folks may be lobbying,  
21 you saying your committee should expel him,  
22 our committee doesn't have the power to  
23 expel, we will not expel, we are making an  
24 inquiry into the facts and circumstances of

1 the conviction and we make a report and  
2 recommendation and then the Senate has to  
3 vote, and the Senate under the law has the  
4 power to expel, but that's not an issue,  
5 that's really not an issue for this  
6 committee how that vote, when and how, if  
7 that vote takes place.

8 So if the rest of this seems to be  
9 sensible enough, subject to the editing and  
10 suggestions of counsel which I have kind of  
11 tried to mark up and counsel we can go over  
12 after we are finished, in my view the only  
13 two areas where we really need substantial  
14 input are some guidance as to the review of  
15 fact finding and conclusions drawn by the  
16 committee and then the recommendations.

17 As far as the review of fact finding,  
18 it really has to do very simply put do we  
19 accept the story of what was happening, what  
20 the context was for this conduct that led to  
21 the misdemeanor conviction that Senator  
22 Monserrate has put forward, or do we find  
23 ourselves essentially agreeing with the  
24 judge and taking the view that this was not

1 a good faith conduct of someone after an  
2 accident concerned with -- who's primary  
3 concern was an injured loved one.

4 So that really is, from my point of  
5 view, the threshold question as to -- and  
6 the answer to that question really tells us  
7 whether or not we would recommend if this is  
8 sanctionable conduct.

9 I would urge that our standard for this  
10 or our rationale for this is not tied to and  
11 the resolution does not tie it to the fact  
12 of a misdemeanor conviction.

13 There is no way the resolution should  
14 be interpreted as indicating that  
15 misdemeanor convictions in and of themselves  
16 are the basis for a sanction.

17 Because otherwise we wouldn't need a  
18 special committee to inquire.

19 It's the conduct and the nature of the  
20 conduct and the circumstances surrounding it  
21 and the fact that they have presented a  
22 story, which for me I don't find credible,  
23 and I think that the issue about her  
24 credibility I think is for me pretty

1           straightforward.

2           I don't think, it does not appear that  
3 she was telling the truth, that's something  
4 that I take into account in assessing this.

5           But I want to make sure, see if we have  
6 any sort of agreement or if there is a  
7 suggestion for what we might think about our  
8 view of those events.

9           Do we think this is sanctionable  
10 conduct or not, and that's really the most  
11 essential fact finding we have to make.

12           Different people may have different  
13 facts that influence them more strongly than  
14 others, but that's really sort of the heart  
15 of the committee's work.

16           So --

17           SENATOR FLANAGAN:     On that point, it  
18 would seem to me you almost want to  
19 bifurcate this in a way, that you start off  
20 with, at least in my own head, here is  
21 everything that we looked at, and it seems  
22 to me that is mostly what the investigation  
23 section should come down to.

24           I don't know that in that part that we

1           need to make qualitative differentiations  
2           other than to say we had available at our  
3           disposal Grand Jury minutes, correspondence  
4           back and forth between and amongst the  
5           counsels, that seems to me it should be more  
6           recitation of what we had a chance to look  
7           at, either simply or in great detail.

8                     And that if there is going to be the  
9           meat, that should probably be more in the  
10          recommendations, whatever they may be.

11                    SENATOR SCHNEIDERMAN:     But when we  
12          recite the evidence, should we note the  
13          inconsistencies or should we discuss what  
14          our conclusions were about the evidence, or  
15          just list sort of what we reviewed?

16                    At some point we are going to have to  
17          discuss the evidence, and say something  
18          about it.

19                    MR. ALONSO:     I suggest the review of  
20          the evidence be sort of like the first time  
21          I presented the evidence to the committee,  
22          very sort of neutral, dispassionate, this is  
23          what one side says, this is what the other  
24          side said, and the fact finding and

1 conclusions drawn should be a subsequent  
2 section which would be more like last  
3 meeting, where we started to come to the  
4 tentative conclusion, and I don't want to  
5 speak out of turn, but the tentative  
6 conclusion that what Senator Schneiderman  
7 just said, that her version of events is not  
8 credible and his story, such as it is, also  
9 does not tell the whole story, and if that's  
10 what we get, a consensus on that, would be  
11 in the next section, then there would still  
12 be a later section which says okay, that's  
13 the evidence, that's the fact finding, here  
14 is our recommendation or recommendations as  
15 the sanctions -- as the resolution says we  
16 should do.

17 SENATOR HASSELL-THOMPSON: I am  
18 concerned now.

19 If we are saying that her testimony is  
20 not credible, what bearing does that have on  
21 whatever conclusion we come to?

22 What's the correlation?

23 SENATOR SCHNEIDERMAN: Well,  
24 essentially it's the decision of what we

1 think was happening on this videotape, what  
2 we think happened in the conduct that forms  
3 the basis for the conviction for misdemeanor  
4 assault.

5 Do we think this is -- that the judge  
6 was wrong and this was just a guy trying to  
7 help someone get to the hospital, and then  
8 as she said in the first Grand Jury  
9 statement, we weren't fighting, we weren't  
10 arguing, it was okay, or do we think this is  
11 something that's more like someone who  
12 people who are not getting along and that  
13 she was in fear and she's trying to get away  
14 from him.

15 It's really that question, the  
16 credibility.

17 If we credit her testimony it's very  
18 hard to find that anything untoward was  
19 going on.

20 So in my view I think either explicitly  
21 or implicitly we either buy what she had to  
22 say, or we don't.

23 SENATOR LANZA: Which, said another  
24 way, if you don't believe the Senator, then



1           you can't believe her.

2           MR. ALONSO:     And if you don't believe  
3           her, there is a conclusion that flows from  
4           that.

5           SENATOR STEWART-COUSINS:     So your  
6           first question was whether or not we agree  
7           with the judge who actually calls into  
8           question the credibility or not, which is  
9           what you --

10          SENATOR SCHNEIDERMAN:     Right, I am  
11          just saying it a little bit obliquely,  
12          because, again, I don't think the standard  
13          for this committee is to say oh, we agree  
14          with the judge, we don't agree with the  
15          judge. We are making our own assessment,  
16          but the fact that the judge found this is  
17          something we can note.

18          But I'm just using that for shorthand,  
19          that the judge had a view of what happened,  
20          they had a different story and the  
21          prosecution essentially supported that they  
22          had a different story, and we have to make a  
23          decision of what we think happened.

24          SENATOR ALESI:     I don't think -- my

1 view, I don't think we really can ever say  
2 that we don't agree with the judge, because  
3 he was working on a different playing field  
4 with different rules.

5 I think it would be dangerous for us to  
6 say that we don't agree with the judge, I  
7 think we are just simply taking it from an  
8 in-house approach.

9 MR. ALONSO: Just so long as you  
10 understand you have the authority to  
11 disagree with the judge, there is no  
12 requirement that you do.

13 SENATOR ALESI: Right, but I don't  
14 think we have to exercise that as far as  
15 stating a public opinion.

16 SENATOR STEWART-COUSINS: No.

17 SENATOR ALESI: I think that it would  
18 be best for us if we didn't state that we  
19 disagree with the judge, because then that  
20 might compel us to take a more aggressive or  
21 less aggressive actions and the possibility  
22 exists that we could just really -- this  
23 goes back to what you were saying before  
24 about two houses or two branches.

1           My view, I just avoid saying we don't  
2           agree with the judge.

3           SENATOR SAVINO:     I don't think that's  
4           going to happen.

5           SENATOR ALESI:     Pretty much a  
6           foregone conclusion.

7           MR. LEWIS:     An observation, I think  
8           we should take from what the judge said  
9           those things that are of -- that we can find  
10          ourselves, we should also be clear that we  
11          are using that, as well as opposed to  
12          agreeing or disagreeing with him, because  
13          the standard is reasonable doubt, there is  
14          no reason for us to agree with him, that's  
15          not our standard, but we can certainly take  
16          from that the facts and some of the  
17          conclusions because we can come to the same  
18          conclusions.

19          Senator Hassell-Thompson, your question  
20          has the core of something very important in  
21          it and that is if you find her not credible  
22          what's left, which is what I think the  
23          nature of the question is.

24          SENATOR HASSELL-THOMPSON:     Yes.

1           MR. LEWIS:     When you line up all the  
2           versions, if you can not be comfortable with  
3           what she says as being true, you can  
4           basically find that she has not been  
5           truthful about the surrounding  
6           circumstances.

7           What that means is that it leaves you  
8           with your own ability to judge what you see,  
9           because you have no evidence in which to  
10          rely on from one of the participants.

11          So the videotape and all the material,  
12          the documents, all of that are available for  
13          you to come to your own conclusion, you can  
14          reject her testimony without being left with  
15          nothing.

16          It just sounded like you were asking  
17          what's left.

18          SENATOR HASSELL-THOMPSON:     I was  
19          asking what's left, because --

20          MR. LEWIS:     There is a lot left, it's  
21          just --

22          SENATOR HASSELL-THOMPSON:     Tell me  
23          what's left, Lewis.

24          MR. LEWIS:     What's left is the

1 videotape, the videotapes, what's left is  
2 the testimony of the doctors and the  
3 hospital records about the surrounding  
4 circumstances of how she got hurt and the  
5 nature of the wound, which shows how deep it  
6 was and how much blood there was.

7 The physical photographs in the  
8 apartment, the torn T-shirt in the garbage  
9 that has no blood on it, that may be  
10 evidence of some sort of fight.

11 The clothing, other clothing around the  
12 room, the placement of the glass, the broken  
13 glass, all those events, that's one.

14 The neighbor who hears the commotion,  
15 or whatever she calls it, chaos, that same  
16 neighbor who gets the ringing -- the  
17 multiple rings on the bell when we see her  
18 go there away from him.

19 That's all I can do off the top of my  
20 head.

21 SENATOR LANZA: The Grand Jury  
22 testimony, the videos.

23 MR. LEWIS: The Senator asked what's  
24 left if you take out her testimony.

1           SENATOR HASSELL-THOMPSON:     Because  
2           the testimonies are so conflicting how can  
3           you accept any of her testimony?

4           MR. LEWIS:     If you don't --

5           SENATOR SCHNEIDERMAN:     We don't have  
6           to.

7           MR. LEWIS:     You don't have to.

8           SENATOR HASSELL-THOMPSON:     That's the  
9           whole point, because there is nothing  
10          credible. She tells the triage nurse that  
11          he took a piece of glass and cut her.

12          Not cut her with the glass, took a  
13          piece of glass and cut her.

14          That's what she says.

15          MR. LEWIS:     That's what the triage  
16          nurse reports herself.

17          SENATOR HASSELL-THOMPSON:     That's  
18          what the triage nurse reports her saying.

19          She then denies it. She denies that.

20          SENATOR STAVINSKY:     At the time when  
21          she says he was acting crazy.

22          SENATOR STEWART-COUSINS:     He's crazy.

23          SENATOR HASSELL-THOMPSON:     I want to  
24          go back to the crazy, because the crazy says

1 to me, she pretended that she was not upset  
2 about what he did with the PBA card.

3 I submit to you that her body language,  
4 now you want to go to the tapes, I am good  
5 at tapes, and her body language in the tapes  
6 says to me she was pissed.

7 She was absolutely pissed. But she  
8 says they were calm, they had this  
9 discussion.

10 SENATOR STEWART-COUSINS: A little  
11 sad.

12 SENATOR HASSELL-THOMPSON: This  
13 exchange, exchange, I mean, you know, there  
14 was no hostility, there was no anger.

15 Bull diddley. She was pissed.

16 SENATOR STEWART-COUSINS: Of course.

17 SENATOR HASSELL-THOMPSON: And in  
18 that anger she -- if she was angry about  
19 that, when you're angry, what do you say?  
20 He was crazy.

21 His behavior, which she described, was  
22 his behavior which identified his being  
23 crazy.

24 Yet she turns around and totally

1           contradicts that and says but I told you  
2           from the beginning it was an accident.

3           I don't know why you keep asking me  
4           these questions, you are trying to put words  
5           in my mouth, this was an accident, I told  
6           you it was an accident.

7           SENATOR LANZA:     When someone presents  
8           different stories that have facts which are  
9           mutually exclusive, then one thing is for  
10          certain, which is that you conclude there is  
11          at least one story that's not true.

12          Whether or not there are any stories  
13          that are true here or anything that she's  
14          saying is true, you know, is the subject of  
15          this debate.

16          But we know that there is at least one  
17          story that's not true that she's given.

18          SENATOR HASSELL-THOMPSON:     But you  
19          said fight, now how are you defining fight?

20          Because we have been describing what  
21          possibly took place as she got beat down, in  
22          my neighborhood it's called beat down.

23          Torn T-shirt stuff, there was a fight  
24          in there, and I'm not clear who got --



1 MR. LEWIS: The worst of it.

2 SENATOR HASSELL-THOMPSON: Well, she  
3 did, obviously, because she came out  
4 bleeding.

5 MR. LEWIS: We see that.

6 SENATOR HASSELL-THOMPSON: She came  
7 out with cuts and whatever.

8 But there was definitely a lot of  
9 hostility, and I'm just trying to figure out  
10 at what point who prompted, because there  
11 was some prompting and that's the part  
12 that's really disturbing me.

13 MR. LEWIS: It's clear that they want  
14 to get married, they both want to get  
15 married.

16 SENATOR HASSELL-THOMPSON: A man cuts  
17 me in the face and I tell you he's crazy and  
18 I want to marry him?

19 MR. LEWIS: I'm not responsible for  
20 her decisions, I'm merely reporting what  
21 they have both said and she has said in open  
22 court.

23 SENATOR HASSELL-THOMPSON: Yes.

24 MR. LEWIS: That may give her a

1           motive to fabricate a new story at the time  
2           she testifies.

3           Whatever relationship --

4           SENATOR HASSELL-THOMPSON:     He could  
5           buy her a washing machine.

6           SENATOR STEWART-COUSINS:     I know.

7           SENATOR SCHNEIDERMAN:     I think for  
8           our purposes here, though -- I'm sorry,  
9           Senator Stewart-Cousins.

10          SENATOR STEWART-COUSINS:     I think we  
11          were just going around to, again, the  
12          beginning, and I repeated what you said,  
13          because I think at the end of the day what  
14          happened in the courtroom is different in  
15          many levels from what's happening here, at  
16          the end of the day since you have all these  
17          things that are consistent, at the end of  
18          the day you have what you have, which is are  
19          all the things that counsel has said that we  
20          have, and then you have common sense, and I  
21          think that we have to reach some  
22          conclusions, obviously, based on what we  
23          have been given, and all the things that you  
24          are talking about, all the things we have

1 all been talking about is just the fact that  
2 in normal logical sequence a lot of these  
3 things wouldn't have happened.

4 SENATOR HASSELL-THOMPSON: That's  
5 right.

6 SENATOR STEWART-COUSINS: So  
7 therefore we have to draw on our resources,  
8 in addition to this report to come to a  
9 conclusion and be comfortable enough with  
10 what we know having been through a range of  
11 experience, what we have in terms of real  
12 tangible evidence.

13 Obviously what the court decided, and  
14 then decide based on that.

15 So I think that's what we have, we have  
16 our common sense and our ability to put that  
17 in a document.

18 SENATOR STAVINSKY: I think we also  
19 -- we don't have to determine whether or not  
20 he's guilty or innocent of the actions that  
21 led to his conviction, that's already been  
22 determined.

23 It's already been adjudicated in a  
24 court of law.

1           He's guilty with respect to that  
2           assault charge.

3           I think for us, we go through the whole  
4           discussion of the analysis of the testimony,  
5           the inconsistencies and we can cite all of  
6           those things, but at the end of the day it's  
7           the action that he was ultimately convicted  
8           of, we have to determine whether or not his  
9           actions at that time render him fit or  
10          unfit, should he be sanctioned or not  
11          sanctioned, what that sanction should be.

12          It's already been determined that the  
13          evidence was inconsistent, testimony was  
14          inconsistent and the judge did not believe  
15          that he was, in fact, trying to help her to  
16          the hospital.

17          It's already been established, we are  
18          not rewriting that or retrying that.

19                 SENATOR SCHNEIDERMAN:     We --

20                 MR. LEWIS:        Except the legal standard  
21                 is different.

22                 SENATOR HASSELL-THOMPSON:     You are  
23                 talking about a legal standard.

24                 MR. LEWIS:        Legal standard of the

1 judge making the decision.

2 SENATOR SCHNEIDERMAN: I think  
3 Diane's point is that our job is to review  
4 the same sets of circumstances and determine  
5 if we think this conduct is egregious enough  
6 that we should recommend a sanction.

7 SENATOR SAVINO: Right.

8 SENATOR SCHNEIDERMAN: That's our  
9 job.

10 And I think that the issue of the  
11 credibility comes into it quite clearly  
12 because look, as Senator Lanza said, we know  
13 one story is not true.

14 If we see everything and it appears to  
15 be there is fighting, there is the thump,  
16 there is the videotapes of throwing out the  
17 PBA card, the body language of pulling her  
18 down the stairs, whatever each of us thinks  
19 about the failure of 911, the passing of the  
20 other hospitals, not going to the emergency  
21 room, whatever that totality of  
22 circumstances tells us, she then, we know,  
23 started to tell a story, not that night, but  
24 started to tell a story thereafter that was

1 inconsistent with the idea that he had  
2 assaulted her, they were fighting or they  
3 had trouble.

4           And I think that if we find that there  
5 are inconsistencies so that we don't really  
6 credit her, the stories she told the Grand  
7 Jury and then even though they were changing  
8 that, she told at trial to a certain extent,  
9 I think that leaves us with the ability to  
10 put that aside and use our common sense to  
11 determine, as Senator Stewart-Cousins says,  
12 whether we think this conduct, this is what  
13 the findings were, is something that we  
14 think needs to be sanctioned, and I think  
15 that's sort of the threshold decision.

16           I do think we, in the section that  
17 reviews the evidence, we should let the  
18 counsels, let counsel note the  
19 inconsistencies and note this sort of thing,  
20 and then I think it's up to us to decide  
21 what conclusions we draw from that.

22           Is there a consensus that we don't  
23 really credit her later versions of the  
24 story, because that's kind of an important

1 decision for us to make.

2 SENATOR HASSELL-THOMPSON: It's the  
3 crux of it, because -- it's the crux of it  
4 to me.

5 Part of what we have established at  
6 least -- let me backup, take out the plural.

7 Part of what seemed evident to me was  
8 that there was an atmosphere of anger, and  
9 whatever, that we bought into, so in that  
10 kind of environment anything could have  
11 happened.

12 And from that context, from what we --  
13 coming with that context and then looking at  
14 the video, we can superimpose some sense on  
15 what we saw.

16 His behavior overall does not lend  
17 itself to what I would consider to be  
18 acceptable behavior of anybody towards  
19 someone who is injured.

20 And that's without title. I mean you  
21 want to talk about titles, how you are fit  
22 to serve, that's not even -- to me that's  
23 not where the question really is.

24 And maybe that behavior then may give





1 the judge did say, the judge didn't say that  
2 he convicted because the Senator did not  
3 want to get her to the hospital.

4 In fact, he did get her to the  
5 hospital.

6 What he convicted on was based upon the  
7 fact that he recklessly delayed getting her  
8 to the hospital, which contributed toward  
9 the exacerbation of the pre-existing injury,  
10 and perhaps some new injuries, and that's  
11 something that I think it helps us inform us  
12 of.

13 The issue of fitness to serve, you  
14 know, it's a touchy subject for me.

15 I'm of the mind that the only -- that  
16 the ultimate arbiter of fitness to serve  
17 really are the electorate, the people who  
18 vote.

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

21 SENATOR LANZA: While I, perhaps,  
22 second guess that more often than I should  
23 with respect to their decisions in other  
24 districts, and sometimes in my own, that's a

1           touchy subject for me, and when it comes to  
2           affects or capacity, people act differently,  
3           we all have our own different standards, and  
4           to start to get into whether or not -- I  
5           just think that's -- I couldn't make a  
6           decision based on whether or not he acted  
7           the way I would act or expect someone to  
8           act.

9                     But when you look at the  
10           inconsistencies in the stories and the lack  
11           of truthfulness, the lack of cooperation,  
12           the fact of the conviction, so I do think  
13           this committee needs to concern itself with  
14           whether or not we believe what happened or  
15           didn't happen and try to make a decision  
16           based on that as opposed to just this  
17           general he didn't seem like he cared about  
18           her enough.

19                    SENATOR SCHNEIDERMAN:     I think it's  
20           also -- Senator Lanza raises a very  
21           important point, which is you are also  
22           allowed to take into account, if you think  
23           there was a lack of truthfulness, that in  
24           and of itself is another factor.

1           SENATOR STAVINSKY:     That is part of  
2           the pattern, yeah.

3           SENATOR ALESI:        But that is the  
4           question that you asked, is there consensus  
5           here that she was completely contradicting  
6           or is completely inconsistent in her  
7           answers.

8           SENATOR STEWART-COUSINS:    Yes.

9           SENATOR ALESI:        I would like to know  
10          if the committee wants to answer that  
11          question; my answer would be yes.

12          SENATOR STEWART-COUSINS:    Yes.

13          SENATOR SAVINO:        Does anyone think  
14          she's not?

15          SENATOR ALESI:        That leads me to a  
16          question, which is what is the reason for  
17          the inconsistencies or the contributions and  
18          when did it begin, did it begin when she was  
19          given an Affidavit that was hand-drafted by  
20          his staff member?

21                 Did it begin at some point where she  
22          might have been intimidated or coerced or  
23          what?

24                 Or is she just confused over the

1 issues?

2 In answer to your question I would say  
3 yes, that obviously she is contradicting  
4 herself left and right, and it's very  
5 inconsistent, but that just leads me to ask  
6 those questions, what the nature of the  
7 inconsistencies were and why, is she  
8 intimidated or coerced or what?

9 SENATOR HASSELL-THOMPSON: Because I  
10 used the word coached.

11 SENATOR ALESI: Obviously we have no  
12 hard evidence.

13 SENATOR HASSELL-THOMPSON: That's why  
14 I was hoping she would come.

15 SENATOR STAVINSKY: I think  
16 motivation is really the key for us to try  
17 and determine for both, what motivated her  
18 to change her story, was it her fear of your  
19 loss of love, was it her fear that she was  
20 going to get him in trouble?

21 What, what was it, and the same thing,  
22 I think, holds true for him, we have to  
23 determine as we said, it's already been  
24 determined by a court of law that he's

1 guilty of reckless assault because he took  
2 longer than he should have to get her to the  
3 hospital.

4 MR. ALONSO: In part because of that.

5 SENATOR SCHNEIDERMAN: In part.

6 MR. LEWIS: There is more to that  
7 finding than just that sentence.

8 SENATOR SCHNEIDERMAN: It's also the  
9 way he pulled her across.

10 SENATOR SAVINO: But what motivated  
11 him to take that action? Was it concern for  
12 himself and a lack of concern for her?

13 It's all about motivation.

14 MR. LEWIS: I think you have to make  
15 a finding without ever hearing from him, and  
16 based on what you can draw from what you see  
17 and without hearing from her in any form  
18 except where she's given inconsistent  
19 statements.

20 SENATOR SAVINO: That's what makes it  
21 harder for us, because one, we have no  
22 statements from him other than what he's now  
23 saying in the news media.

24 MR. LEWIS: There is a statement from

1 Dr. Froegel in which he says it was an  
2 accident.

3 SENATOR SAVINO: That was hearsay,  
4 right, David?

5 MR. LEWIS: But.

6 SENATOR SAVINO: He's never  
7 testified.

8 MR. LEWIS: One thing at a time.

9 SENATOR LANZA: What Senator Savino  
10 is saying is he didn't come before this  
11 committee.

12 SENATOR SAVINO: Did he go before the  
13 Grand Jury?

14 MR. ALONSO: No -- yes, but we don't  
15 have that testimony.

16 SENATOR STAVINSKY: Did he go before  
17 the Grand Jury?

18 SENATOR SAVINO: We don't have any  
19 testimony.

20 MR. ALONSO: The conduct of hearsay,  
21 Senator, doesn't really apply here, because  
22 first of all we are allowed to consider  
23 hearsay, second of all it's all hearsay.

24 SENATOR SAVINO: What I'm saying,

1 Dan, we don't really have any direct  
2 testimony from him that we can read, we have  
3 no direct statements from him that we are  
4 allowed to see, with the exception of what  
5 he's now saying on the news.

6 MR. ALONSO: And what he said at the  
7 sentencing.

8 MR. LEWIS: And what he said at the  
9 sentencing.

10 SENATOR SCHNEIDERMAN: I think, just  
11 -- let's distinguish sort of motive in the  
12 sense of, we are never going to get inside  
13 her head and figure out if it's more fear or  
14 love or whatever.

15 If she made a determination to  
16 fabricate a story, from our point of view, I  
17 think the significant thing is she certainly  
18 doesn't appear to be fabricating a story to  
19 make it sound worse than it was, she is  
20 trying to -- she's fabricating a story to  
21 try and get him out of trouble.

22 SENATOR STEWART-COUSINS: Get him off  
23 the hook.

24 SENATOR SCHNEIDERMAN: Whether it's

1 more fear, intimidation or true love, it  
2 doesn't really matter.

3 SENATOR ALESI: Or this gives her  
4 tremendous leverage over him as well, I  
5 think it should be considered.

6 SENATOR STEWART-COUSINS: Can I --  
7 let me just, then I will stop.

8 SENATOR ALESI: You are shaking your  
9 head.

10 SENATOR SCHNEIDERMAN: I hear you.

11 SENATOR ALESI: It's a possibility,  
12 she doesn't appear to be very stable in a  
13 lot of ways, I'm not saying that's a case,  
14 it's worth considering.

15 SENATOR STEWART-COUSINS: I'm just  
16 remembering what brought us here, and what  
17 brought us here was this resolution, and the  
18 resolution was very clear in terms of why  
19 this, above every other, why now, despite  
20 any other.

21 And what that was, what I remember of  
22 the resolution was about domestic violence.

23 I think it's important that when we  
24 reconstruct our lives and we reconstruct it



1 with that context because all the kinds of  
2 things that we are talking about, I think  
3 again we know are really consistent many  
4 times in these kinds of cases.

5 The same thing we were just talking  
6 about, well maybe you buy me a washing  
7 machine, these are not inconsistent with  
8 these types of cases, and that's the  
9 reality.

10 We are here because according to the  
11 resolution it's a very specific thing and  
12 domestic violence was part of it.

13 So we cannot suspend everything that we  
14 know about behaviors in that context.

15 SENATOR SAVINO: That's true.

16 SENATOR LANZA: And that's a great  
17 point, authority, and that should be part  
18 of, I suggest, part of the report, the  
19 nature of the underlying issue here, I think  
20 that needs to be described as part of the  
21 concern here, and I think it's also part of  
22 the difficulty, at least for me, and I think  
23 for everyone, why we are struggling with  
24 respect to the victim here is because at the

1 end of the day what is suggested is that  
2 she's a victim and, you know, you don't want  
3 to disbelieve a person who at the end of the  
4 day you are ultimately trying to protect.

5 But the fact of the matter is, as  
6 Senator Stewart-Cousins said, in these types  
7 of cases it is, perhaps, because of the  
8 psychological dynamic par for the course.

9 SENATOR FLANAGAN: I want to  
10 follow-up and I hope I am going to be  
11 consistent.

12 We are speaking a lot about Ms.  
13 Giraldo, I'm not particularly comfortable  
14 with that on the consensus question, do we  
15 think she's telling the truth?

16 I think there is a lot of  
17 inconsistencies, but do I think she loves  
18 him? Yeah, I do.

19 Do I think she's smart for doing that?  
20 That's not really relevant.

21 But there is so much focus on her as it  
22 relates to domestic violence that is  
23 absolutely something that is worthy of  
24 consideration.

1           But I want to make sure as we are  
2 moving ahead and as we are reporting that  
3 this is about Senator Monserrate, not about  
4 someone who may be in love with him, but  
5 what did he do and what were the actions  
6 that he took with much more specificity as  
7 opposed to making her the focal point.

8           MR. ALONSO:     I can assure you that's  
9 how we are going to write it, but I think  
10 that the focus on her is more because we  
11 have to look at all the facts and  
12 circumstances and make an inference as to  
13 what's going on with him, what was his  
14 motivation, and her statements are much more  
15 in evidence than his statements.

16           I mean his statements are measured and  
17 few and short and counselled and very late  
18 in the day.

19           So I agree with you, absolutely the  
20 focus will be in the draft report that we  
21 produce to you what are his actions, what  
22 are his statements.

23           SENATOR FLANAGAN:     Again, I will go  
24 back to something I said before, if I'm

1 looking at behavior of Senator Monserrate,  
2 it's the totality of the circumstances,  
3 there are things he did affirmatively, and  
4 the things he did by omissions.

5 MR. ALONSO: Yes.

6 SENATOR FLANAGAN: And the lack of  
7 cooperation.

8 SENATOR STAVINSKY: I was going to  
9 make that very same point, I agree with you  
10 completely, that we are trying to determine  
11 state of mind of Ms. Giraldo and contrast  
12 that with the known actions of Senator  
13 Monserrate, far more sophisticated, he's on  
14 message, he's doing exactly what he's  
15 supposed to be doing in terms of protecting  
16 himself.

17 And I think we see a pattern through  
18 her testimony, a pattern emerges of somebody  
19 who may not have been totally candid with  
20 us.

21 But on the other hand, it's not about  
22 the girlfriend, it's about the Senator,  
23 because if it were only about the  
24 girlfriend, about Giraldo, we wouldn't be

1           here.

2           But it's about Senator Monserrate.

3           SENATOR SCHNEIDERMAN:    I think that's  
4           right.

5           SENATOR STAVINSKY:       I think that has  
6           to be our focus.

7           SENATOR STEWART-COUSINS:   Absolutely.

8           SENATOR SCHNEIDERMAN:    I think we  
9           just have to get over the hurdle of this  
10          issue.

11          SENATOR STAVINSKY:       She is  
12          corroborating.

13          SENATOR SCHNEIDERMAN:    She is  
14          essentially his whole defense.

15          MR. LEWIS:                She's the only one.

16          SENATOR STAVINSKY:       The only one we  
17          have got.

18          SENATOR STEWART-COUSINS:   She's the  
19          only reason we are here.

20          If there was no Ms. Giraldo, we  
21          wouldn't be here.

22          SENATOR STAVINSKY:       We wouldn't be  
23          here.

24          SENATOR STEWART-COUSINS:   So I mean

1 we can't ignore her.

2 SENATOR SCHNEIDERMAN: But I do think  
3 that Senator Stewart-Cousins and others have  
4 both mentioned this, and I think they are  
5 right, the resolution creating this  
6 committee does specifically refer to address  
7 domestic violence, and the charges that were  
8 related to domestic violence, and I think  
9 that it is something that we should in our  
10 report note that this is a factor in our  
11 consideration, there is no secret to the  
12 public, but this is part of why this  
13 committee is here, and this is something  
14 that the law is evolving in this area, but  
15 it's clear what people's views on domestic  
16 violence issues were 20 years ago are very  
17 different than they are today, and hopefully  
18 it will continue to evolve, but that's  
19 something I think we should note, and I  
20 think, Senator Flanagan, your point is well  
21 taken, I think we get over the hurdle of her  
22 story then we are down to, as what Mr. Lewis  
23 said, what we can see in all the other  
24 evidence that we have to look at.

1           I think that that enables us to make a  
2           determination as to whether or not we think  
3           the totality of his conduct leads us to  
4           recommend to the Senate that there be some  
5           sanction, without even getting to the issue  
6           of what the sanction is.

7           SENATOR HASSELL-THOMPSON:     I think  
8           the strength of this too is, as I had  
9           recommended to you, that if in our  
10          recommendations we write a provision on  
11          domestic violence and single out the  
12          uniqueness of the facts toward public policy  
13          is where we really ought to end up, because  
14          that will also help us as we go forward in  
15          saying the uniqueness of this case is  
16          predicated on this set of facts.

17          SENATOR SAVINO:        Um-hum, I agree.

18          SENATOR STEWART-COUSINS:    Yes.

19          SENATOR SCHNEIDERMAN:    Our counsel  
20          then is directed to go through the evidence,  
21          note the inconsistencies, it seems that we  
22          are not -- we are concluding that, however  
23          we couch it, that we are not inclined to  
24          believe her later version of events, and the

1           totality of all the circumstances leads us  
2           to make the following recommendation.

3           So our -- and this doesn't have to be  
4           final, final, but I would like to get the  
5           sense from the committee as to whether or  
6           not there is a consensus as to whether or  
7           not we should recommend some form of  
8           sanction without getting to the issue of  
9           what the sanction would be.

10           SENATOR HASSELL-THOMPSON:     Yes.

11           SENATOR SAVINO:            Yes.

12           SENATOR STAVINSKY:        Yes.

13           SENATOR STEWART-COUSINS:    I am  
14           waiting for the male voice.

15           SENATOR LANZA:            Is the question  
16           whether or not we should, whether or not we  
17           are at that juncture, or each of us --

18           SENATOR SCHNEIDERMAN:     If people  
19           haven't made up their minds, I guess they  
20           haven't made up their minds, but we have to  
21           for them to write the report have to say --  
22           we can say we don't think the Senate should  
23           do anything, that's one of our options, we  
24           recommend no action, or we could say -- or



1 we recommend something.

2 MR. LEWIS: The question you put to  
3 the committee was should there be a sanction  
4 or no sanction, is that what you said?

5 SENATOR SCHNEIDERMAN: Yes, that's  
6 the threshold thing which at some point we  
7 are going to have to decide this so that  
8 counsel can write the report.

9 SENATOR ALESI: Did you say we are  
10 having another meeting?

11 SENATOR SCHNEIDERMAN: We are  
12 attempting to have another meeting, but  
13 that's after a lot of the drafting has been  
14 done.

15 SENATOR STEWART-COUSINS: That's kind  
16 of to review.

17 SENATOR ALESI: What's been drafted.

18 SENATOR STEWART-COUSINS: Is there  
19 anybody around the table that thinks there  
20 should be no action?

21 Maybe you should ask if there is anyone  
22 who thinks there should be no action.

23 MR. ALONSO: To recommendation of  
24 sanction.

1           SENATOR SCHNEIDERMAN:     A

2           recommendation for no sanction.

3           SENATOR STEWART-COUSINS:    Yes.

4           SENATOR HASSELL-THOMPSON:   Is there  
5           anybody who thinks that?

6           SENATOR SCHNEIDERMAN:     Again, as I  
7           have said, it would be nice to have a  
8           consensus report, but it is always possible  
9           for us to have a majority and minority  
10          report.

11          So --

12          SENATOR HASSELL-THOMPSON:   Unless  
13          there is such a wide deviance in the thought  
14          processes, I wouldn't see that we would need  
15          but one report.

16          SENATOR SAVINO:            Why two reports?

17          SENATOR SCHNEIDERMAN:     Only if we  
18          disagree on this fundamental issue, if some  
19          of us think there should be no sanction and  
20          some of us think there should be a sanction,  
21          I'm just putting that out there as a  
22          possibility.

23          MR. ALONSO:                Just for the record,  
24          when you asked if there was anyone who

1 thought there should be a recommendation of  
2 no sanction, nobody raised their hand.

3 SENATOR SCHNEIDERMAN: That's true,  
4 although we sort of --

5 MR. ALONSO: We are waiting.

6 SENATOR SCHNEIDERMAN: We are waiting  
7 to see.

8 MR. LEWIS: More of a pregnant pause.

9 SENATOR LANZA: We may have a slow  
10 roll.

11 SENATOR SAVINO: Do it.

12 SENATOR HASSELL-THOMPSON: Pregnant  
13 pause; that's why the women spoke up, right?

14 MR. ALONSO: Senator Alesi, my view  
15 would be that we can draft something real  
16 quickly, we can try to come up, we can try  
17 to incorporate the discussion, try to do it  
18 as subtly as possible, and take into  
19 consideration the totality and the fact that  
20 this has no precedential effect, and all  
21 that, and the reasonable inferences that I  
22 have heard around the table, and send that  
23 around relatively soon so that we can all  
24 discuss, you can all send suggestions,

1           rejections, whatever you want, and then  
2           hopefully if Schneiderman convenes a meeting  
3           on the 29th, we can discuss that in detail.

4           SENATOR ALESI:     That's fine.  Senator  
5           Schneiderman, I didn't respond for one  
6           simple reason, and this ties in with what  
7           Senator Flanagan had asked, I still would  
8           like to avail myself of the opportunity to  
9           see those public interviews.

10          I could almost say, without speaking  
11          for myself, I could almost surmise that the  
12          fact we are having this committee put in  
13          place to hear this situation almost opened  
14          the door from the beginning that there would  
15          be some kind of consideration for sanction,  
16          regardless of whether they were serious or  
17          moderate or whatever.

18          I would just simply like to see that  
19          interview.

20          So that if I were to say yes, there  
21          should be sanctions, I would feel  
22          comfortable in feeling strongly about that,  
23          or just saying yes, because oh, we -- all we  
24          really have to do is make a recommendation

1 to the body, and that's what we have to come  
2 back to at the end of the day, to use your  
3 term, at the end of the day we are simply  
4 here to make a recommendation.

5 We are really not here to say anything  
6 beyond that.

7 But I would like to see, if we can get  
8 the link, I would like to see that, and --  
9 to me, it seems to me that just the fact  
10 that the committee exists without being  
11 biased against the Senator, that we already  
12 opened the door for some sort of sanction.

13 MR. ALONSO: May I respond?

14 SENATOR LANZA: Let me just first,  
15 please.

16 Senator Schneiderman and I have  
17 discussed this, and I think everyone, you  
18 know, as far as a slow roll and let the  
19 chips fall where they may, I think because  
20 of the very sensitive and difficult nature  
21 of what it is that we have been charged to  
22 do here, that while you can't mandate  
23 anyone's vote, I think we need to do  
24 everything we can to work toward a consensus

1 in this committee.

2 SENATOR STEWART-COUSINS: I agree.

3 SENATOR LANZA: That's very  
4 important.

5 SENATOR HASSELL-THOMPSON: I think  
6 so, too.

7 SENATOR LANZA: Given the nature of  
8 the circumstances, I think the point is if  
9 anyone has reservations with respect to  
10 making a decision today, that we need to do  
11 all we can to come together here, if that is  
12 possible.

13 I think from everything I have heard  
14 that it is and we need to be there, that's  
15 what I think.

16 I think there is very great value to  
17 that.

18 SENATOR HASSELL-THOMPSON: Senator  
19 Lanza, when you were talking before and I  
20 said fit to serve, when I came on the  
21 committee that's what was given, I wasn't  
22 comfortable with it any more than you are,  
23 but that was the premise under which I was  
24 told we were going to be looking to look at

1 was he fit to serve.

2 SENATOR SCHNEIDERMAN: Yes, I think  
3 people have said that colloquially, I don't  
4 think any of the actual cases that we have  
5 cited --

6 MR. LEWIS: It's not a standard from  
7 anywhere.

8 SENATOR HASSELL-THOMPSON: Good, I am  
9 glad to hear that. I wasn't any more  
10 comfortable than you.

11 SENATOR SCHNEIDERMAN: It's a  
12 colloquial expression. I agree with Senator  
13 Lanza, I think we should try to work towards  
14 a consensus.

15 I think that to the extent there are  
16 members who have other questions or want to  
17 review anything else, I would suggest that  
18 just out of -- and I think I'm comfortable  
19 that -- and, look, I think this is the  
20 committee has given this very careful  
21 consideration, people are obviously very  
22 hesitant, as we should be, to impose a  
23 sanction, because ultimately this is a  
24 matter of -- to suggest -- well, the Senate

1           should be reluctant to impose a sanction and  
2           therefore the committee should be cautious  
3           about recommending one.

4           I do think to me the totality of the  
5           circumstances indicate that in my view a  
6           sanction is appropriate, but I would like to  
7           have a consensus on what we do if it's at  
8           all possible.

9           I would like to suggest that we try to  
10          get whatever additional information members  
11          need to them quickly and then not wait to  
12          the next meeting to hear back from people,  
13          but get their communication to counsel as to  
14          how they feel so counsel can get to work on  
15          drafting this.

16          SENATOR LANZA:     I would also point  
17          out we are short one member.

18          SENATOR SCHNEIDERMAN:     Yes, there is  
19          another member.

20          SENATOR LANZA:     Clearly this should  
21          not wait until the next meeting.

22          Senator Flanagan.

23          SENATOR FLANAGAN:     I wanted to raise  
24          a point about Senator Young, I think her



1 input would be valuable and what Senator  
2 Alesi said about the newscast.

3 To one degree, I don't think that we  
4 have the luxury of just offering a report.

5 I think we are going to be viewed as,  
6 to a degree, being a subset of the body as a  
7 whole, and it is very unlikely if we move  
8 forward, we as the entire Senate and take  
9 some action, whatever that may be, that the  
10 rest of the membership will be as intimately  
11 knowledgeable as the nine members on this  
12 committee.

13 SENATOR HASSELL-THOMPSON: I said  
14 that, that's what I said to you.

15 SENATOR STEWART-COUSINS: Yes.

16 SENATOR FLANAGAN: And I think, which  
17 almost argues for taking another step back  
18 to be as judicious as possible.

19 To your specific question, am I  
20 comfortable with the idea of a sanction?  
21 Yes, but with some reservation, because I  
22 think we are going to have a broader  
23 discussion about what that may be.

24 And I would hate to have something

1           misinterpreted, I think any one of us who  
2           says yes, we can embrace the notion of some  
3           type of sanction, we all sort of do so with  
4           a -- by taking a deep breath first,  
5           acknowledging that we are taking a big leap  
6           forward, frankly, in an area where none of  
7           us have ever been involved.

8                   I'm not sure where we are ultimately  
9           going to come out on that in terms of what a  
10          sanction may be, because it can run the  
11          gamut.

12                   If you look, look at what happened at  
13          the sentencing.

14                   Now, some people will focus on the fact  
15          that Senator Monserrate got no jail time.

16                   Although I think he got three years  
17          probation, he got fined, he got 250 hours of  
18          community service, he has to go into a  
19          program for a year, some type of counseling,  
20          there is an order of protection that's  
21          continued.

22                   So I look at that and think those are  
23          sort of the breadth of options that may be  
24          part of our own condemnation.

1           So to the idea of a sanction, yes, but  
2           with a very judicious approach in terms of  
3           how we ultimately get there.

4           MR. ALONSO:     May I address that.

5           SENATOR LANZA:    The details of the  
6           report are extremely important, for any  
7           member to vote in favor of a sanction I  
8           think it's important to make sure that all  
9           the reasons that support each individual's  
10          decision, because we can all get to the same  
11          place but for different reasons, and I think  
12          it's important that each -- that everyone is  
13          comfortable that the reason why they are in  
14          favor of a sanction or not is reflected in  
15          the report, too, so I don't want to -- I  
16          think that's important to flush out as well.

17          SENATOR SCHNEIDERMAN:    I think it is  
18          important for us to note all of the  
19          different things that we consider as matters  
20          of evidence and inconsistencies and  
21          omissions, failure to appear all of that.

22          And then, I think, note that different  
23          members of the committee place greater  
24          weight on different parts of the evidence

1           that we have listed.

2                     But that we have come to this  
3           conclusion.

4                     But I think Senator Flanagan's broader  
5           point is very important, I think we have to  
6           have -- that's why we should have a very  
7           thorough review of the evidence and have an  
8           explanation of, which is, I think, the point  
9           you were making last time, we explain why we  
10          look at this evidence in some way, shape or  
11          form and say what we think that it is or  
12          isn't something that causes us to recommend  
13          that the Senate, keep in mind that all we  
14          are recommending also is we are recommending  
15          that the Senate vote on imposing a sanction,  
16          the ultimate authority still rests with the  
17          Senate, each of us will have one vote, we do  
18          not have the power to impose anything in  
19          this committee.

20                    So we are making a recommendation for a  
21          vote and that's really all we can do.

22                    MR. LEWIS:     Fundamentally if we  
23          decide there should be a sanction, all we  
24          are really doing is, in effect, referring a

1 resolution or two out of this committee, so  
2 it's very -- we have a very limited scope,  
3 we have very limited procedural areas under  
4 the rules and we have no capacity to do more  
5 than that, because even though we are a  
6 select special committee, we are still a  
7 committee of the house, it's limited.

8 MR. ALONSO: I still need to clarify  
9 Senator Alesi' statement about just as your  
10 counsel in terms of you should not infer  
11 from the fact of the resolution that you  
12 have any kind of obligation or requirement  
13 to recommend a sanction.

14 The resolution simply created the  
15 committee, the decision whether or not to  
16 recommend sanction or make a particular  
17 finding is obviously the sound discretion of  
18 this committee.

19 So I wouldn't want you to infer that  
20 just from the fact that there was a  
21 resolution that exists.

22 SENATOR ALESI: Let me be clear, I'm  
23 not reluctant to recommend a sanction, I am  
24 simply saying that there is no one

1 significant piece of information that has  
2 come to light for me, which is the video,  
3 which is our only opportunity to hear  
4 anything from him, and that's important to  
5 me personally so that if I were to make any  
6 kind of recommendation, I can say I have  
7 been as diligent as possible, that's all.

8 I would not be reluctant to make any  
9 recommendation.

10 SENATOR SAVINO: I have a question  
11 that might be silly, I don't know, but after  
12 we prepare this report with whatever the  
13 recommendation is, who drafts the resolution  
14 for the Senate to vote on?

15 SENATOR SCHNEIDERMAN: We could  
16 approach it one of two ways, we could have  
17 our counsel draft proposed resolution, again  
18 it's just proposed.

19 SENATOR LANZA: We could or they  
20 could.

21 SENATOR SCHNEIDERMAN: We could draft  
22 a proposed resolution, we say we recommend  
23 you do A or B, and here are resolutions is  
24 what we recommend you should put on them, or

1 we can leave it open-ended.

2 MR. LEWIS: In the Lipshitz case they  
3 actually, the Ethics Committee actually  
4 drafted the resolution and as part of their  
5 report drafted the resolution and put the  
6 resolution in the report, so there is a  
7 prototype for that type of resolution.

8 SENATOR SAVINO: Second silly  
9 question, if we make a recommendation for a  
10 particular sanction and the Senate votes it  
11 down, could somebody substitute a separate  
12 resolution with a different sanction, once  
13 the work of the committee is done pursuant  
14 to the original resolution?

15 MR. LEWIS: Under the current rules  
16 --

17 SENATOR SCHNEIDERMAN: That's an  
18 interesting question, I don't see why not.

19 MR. LEWIS: A resolution can come up  
20 of any sort any time under the rules, it's a  
21 question of privilege and 24 hours notice.

22 SENATOR SCHNEIDERMAN: You have to  
23 argue the requirement under legislative law,  
24 under Section 3 the committee has met and

1 issued a report is met, particularly I think  
2 there is no preclusion from introducing an  
3 alternative resolution.

4 MR. ALONSO: Legislative Law Number 3  
5 recommends if the recommendation is  
6 expulsion.

7 SENATOR SCHNEIDERMAN: Someone can  
8 always put up a resolution for something  
9 else.

10 MR. LEWIS: Or amend or seek to amend  
11 an existing resolution.

12 SENATOR ALESI: Doesn't the body  
13 always have the opportunity to vote on it?

14 SENATOR SCHNEIDERMAN: Yes.

15 MR. LEWIS: There is no double  
16 jeopardy or anything like that in our end of  
17 the world that says you can't consider  
18 something again.

19 SENATOR SCHNEIDERMAN: So let me  
20 suggest this, we will get the information  
21 out to the members of the committee, counsel  
22 will get in communication with Senator Young  
23 and bring her, go over all the details of  
24 everything that has happened, we will get



1 the links or the DVDs, or however you do it,  
2 of Senator Monserrate's appearances, and  
3 then to the extent that counsel will start  
4 drafting up a report in accordance with the  
5 outline, we still have obviously not  
6 addressed the issue of what specific  
7 recommendation we will make, which we can  
8 leave to the end, I wanted to get through  
9 some of the factual issues and get over the  
10 hurdle of sort of the credibility issue.

11 Which I think we have done. And may I  
12 request that anyone who has further  
13 thoughts, whether we should -- we have a  
14 consensus on imposing a sanction or not  
15 imposing a sanction, should communicate to  
16 either me or to Senator Lanza as soon as you  
17 can in the next week, if you feel  
18 comfortable about that, we will try and  
19 provide ongoing comments, because we want to  
20 be able to get back a draft report in a  
21 timely enough manner for us all to have a  
22 chance to view it and comment on it in a way  
23 that we can certainly meet our deadline.

24 Anything else?

1                   SENATOR LANZA:     No.

2                   SENATOR SCHNEIDERMAN:     Okay.  Thank  
3                   you all very much, and we will talk between  
4                   now and then, I would like to move to  
5                   adjourn the committee at this time.

6                   SENATOR HASSELL-THOMPSON:     So moved.

7                   SENATOR FLANAGAN:     So moved.

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