

NEW YORK STATE SENATE  
SELECT COMMITTEE

-----x

Subject:

To Investigate the Facts and Circumstances  
Surrounding the conviction of Senator  
Hiram Monserrate

-----x

250 Broadway  
New York, New York

December 29, 2009  
11:35 a.m.

B e f o r e:

SENATOR ERIC T. SCHNEIDERMAN  
Chairman

---

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

For the Senate:

Senator John Flanagan

Senator Diane Savino

Senator Andrew Lanza

Senator Andrea Stewart-Cousins

Senator James Alesi

Senator Toby Ann Stavisky

Senator Catherine M. Young

Also Present:

David Lewis, Esq.

Daniel Alonso, Esq.

---

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

SENATOR SCHNEIDERMAN: Ladies and gentlemen.

We are convening the next meeting of the Select Committee.

And as we have done in past meetings, we are going to go into Executive Session when we deal with the substance of the matters before us.

I do want to note that we have, in accordance with the decision we made at the first Committee meeting, we are keeping a record of our proceedings even when we go into Executive Session.

Today, our reporter has an emergency and will have to be leaving after the public session closes. But we are going to be taping the proceedings. They will be transcribed and reviewed later.

So we hope that the emergency, everything is resolved for all concerned.

But we are going to discuss the Draft

---

Report which was distributed to the Members of the Committee for their feedback yesterday evening and go through the substance in Executive Session as we have.

Again, for the members of the press, at the conclusion of the Committee's activities all of the transcripts will be released so that there will be no question about what went on in the sessions.

So with that, I would like to move that the Select Committee go into Executive Session as authorized by Public Officers Law, Section 105.

SENATOR SAVINO: Second.

SENATOR FLANAGAN: Second.

SENATOR SCHNEIDERMAN: All in favor, say "aye."

(Chorus of "ayes.")

SENATOR SCHNEIDERMAN: I propose now that the Select Committee will now go into Executive Session.

(The public meeting of the Select Committee was adjourned and an Executive Session of the Select Committee was convened.)

SENATOR SCHNEIDERMAN: All right, ladies and gentlemen. Sorry for the delay, but we are ready

---

to go back on the record.

We're here now in Executive Session, Members of the Committee and those very specifically designated staff members.

So today we have some housekeeping to deal with it and then we want to spend the substance of our time having Mr. Alonso and Mr. Lewis go through the draft which we all received yesterday.

We did not receive yesterday this additional addendum, which is only two pages long, which is a draft, proposed draft, of the recommendations section which I think we can -- something, obviously, that is tremendously important for us to focus on and get everyone's input about it. I think we'll get to that after we walk through the rest of the report.

I do want to note that, as of the end of day on Thursday, Mr. Alonso will be leaving us. And he's going back into public service, which we're very grateful, and we're certainly grateful for his time on the Committee.

His law firm, Kaye Scholer, will continue to represent the Committee and will be working with us on finalizing the report and any other matters that

---

we have to address.

And I would also particularly like to convey my thanks because he did volunteer his time and has done an extraordinary job. So thank you for that and good luck in your new venture.

As to the other housekeeping matters, this is my suggestion. And we've talked about this and certainly this is not -- this is nothing but a suggestion, is that we walk through some of the elements of the draft today.

Certainly we want to make sure everyone has a chance to read it completely and provide feedback back to our respective counsels.

We then will be able to incorporate feedback and make changes, answer questions, and we should have a final product hopefully by the beginning of the coming week, subject to discussion of the Committee, and if there are other matters that the Committee feels that we need to address before finalizing the report.

We're shooting for the end of the calendar year. I think we're going to come very close to that in spite of the fact that we were in Albany a lot more than we thought we were going to be in the latter part of

---

this year.

So, Senator Lanza.

SENATOR LANZA: Yes.

And I think what we want to encourage today is --

A SENATOR: Speak up.

SENATOR SCHNEIDERMAN: You got to speak up.

SENATOR LANZA: I'm sorry.

What we would like to encourage today is, you know, if there are any questions with respect to the draft report, if there is anything there that troubles anyone here, that they don't believe is consistent with what we've investigated, that shouldn't be there, or, in the alternative, if there is anything missing that is important to anyone on this Committee, that we should do that.

The process doesn't end today, but that we should have a discussion today with respect, at least initially, whether or not we think that this report reflects, you know, the intentions of this Committee.

SENATOR SCHNEIDERMAN: Thank you.

So I guess I would -- let's open it up

---

for any general comments that Members have and then we can go to Mr. Alonso who can walk us through the elements of the report as drafted.

And then we can begin the discussion that we will continue by phone and through other means in the days ahead.

MR. ALONSO: All right.

So what we tried to do here in drafting the report and the recommendation was to capture a lot of the very thoughtful discussions that we've had over the last six weeks or so since we've been meeting.

And, obviously, when you've got a -- when you're shooting for a consensus or you have to take into consideration a lot of different points of view, and we've -- and I've done that in the past in other matters -- we've tried to do that in this case.

In particular, I worked very, very closely with David Lewis on this and I thank him for his extraordinary input and his deep concern for the institution and the precedential value of this report.

And so it's very -- we've tried to make it as carefully tailored as possible.

Obviously, we welcome any additional

---



suggestions, tweets, et cetera. But I think you'll find it fairly captures what we have been talking about all along.

And I know that some Senators have focused on some issues and other Senators have focused on other issues. And that's the nature of a consensus report.

So what I would like to do just very briefly, if you could turn to the Table of Contents, which is the little "i" one at the front, and just walk you through it real quickly.

The Executive Summary I think is probably worth having in there. We haven't drafted that at all. I want to make sure the report is pretty close to final before we do that. It's a good idea always to have a nice little summary for anyone who doesn't feel like reading the sixty-five page single-space report.

The procedural history is simply the history of this Committee and the specific resolution.

We describe our investigation in Part III including the legal authority to investigate which is not a controversial legal matter at all. Like I mentioned in the past, the authority of a Senate Committee to investigate is well-established.

---

Then we talked about the facts and we tried to present the facts in Section 4 (a) and (b) very much like I presented them to you on the first day I made the presentation with the long PowerPoint. I really tried to make it as neutral as possible. I think we succeeded. But if you have any suggestions for how I could make it better, please tell me.

The idea was to dispassionately present what the arguments were at trial and what the arguments continue to be from both sides.

Then we talked about the additional evidence that the Select Committee reviewed. And that's laid out there as the Grand Jury testimony of Ms. Giraldo, her written statement, the analysis of the routes to Long Island Jewish, the analysis of telephone records, which has some interesting stuff in there, not particularly, you know, conclusive of any particular inference, although I will point out that, if you read the section, you'll see that Senator Monserrate appears to have used Ms. Giraldo's phone and the hospital phone rather than his own phone.

I don't know -- I don't want to ascribe any particular motive to that without knowing more, but that's what the records show.

---

There is a call during the apartment time to Ms. Giraldo's ex-husband from Ms. Giraldo's phone. And there are two calls kind of late in the evening and the morning, around 5:00 in the morning, to a Senate counsel for Senator Monserrate.

But it doesn't show anything, you know, that I come here and say gives us a "ah-hah" moment. But it is interesting.

And then we --

MR. LEWIS: Excuse me.

MR. ALONSO: Yes, sir.

MR. LEWIS: I don't believe it was to a Senate counsel at the time.

MR. ALONSO: I understand that Mr. Diaz is Senator Monserrate's Senate counsel.

MR. LEWIS: Currently. I don't believe he was at the time.

MR. ALONSO: Oh, at the time. That's right. That's right. Senator Monserrate wasn't a Senator. But he's currently Senate counsel.

And the last thing we considered, and this was something that the Members wanted us to focus on and wanted -- I trust you've all had a chance to look at

---

the videos of Senator Monserrate's interviews. And so we considered that as well, the two interviews with News4 New York.

So the section that I guess is the most important, other than the recommendation section, which is in a separate addendum, is Section V, Roman Numeral V, the Findings of the Select Committee.

And in talking about the Findings -- I think it's on page twenty-four -- we talk about how what we initially determined relatively quickly was to figure out why the misdemeanor assault happened and the two possible inferences.

One, of course, is that the Senator had been too exuberant in trying to get her to the hospital to help her.

Or, as the judge suggested, that he had assaulted her because he cared more about the damage to his political career than about the health of the lady.

Yes, Senator.

SENATOR YOUNG: Yes.

I do have a question about that because I didn't actually -- I actually underlined that because you got to bring me back to where he suggested that Senator

---

Monserate assaulted Ms. Giraldo because he cared more about -- I never heard that he assaulted her because he cared more about.

MR. ALONSO: In that sense we're using -- we're using a term of art, which is the reckless assault, the conviction that he's convicted of. So he assaulted her. We're taking that --

SENATOR YOUNG: Okay.

MR. ALONSO: -- as accepted. The Committee's sense was that we accept the verdict that he's guilty of a reckless assault.

SENATOR YOUNG: Okay.

MR. ALONSO: And so what I'm referring to there is that --

SENATOR YOUNG: I went back to --

MR. ALONSO: -- very last --

SENATOR YOUNG: -- 17. Is that where --

MR. ALONSO: Yes.

SENATOR YOUNG: Yes, where the quote is. It would certainly appear not unreasonable that there was another concern, and that is to get her away from the house, to get her away from the neighborhood where the defendant --

---

Is that what you're referring to?

MR. ALONSO: That's what I'm referring to. And that's why we chose the word "suggested," because he doesn't say those exact words.

SENATOR YOUNG: Okay.

MR. ALONSO: But he does suggest it. And it is what I think was the sense of the Committee that we should really focus on own efforts on it.

SENATOR YOUNG: Okay.

MR. ALONSO: Yes. That's what I'm referring to.

If you think that there is a way to make that language, you know, tone it down or make it a little different, absolutely we'll be happy to hear that.

SENATOR YOUNG: Well, you know, I mean it's just -- of everything that I've read -- and I really commend all of you, both of you, all of you, for having captured, as you said, the concerns and the flavor.

It was those -- that was the only thing. And that might be because I think the initial assault that you think of, that we talked about, is the laceration on the face.

---

And the actual conviction was another assault.

MR. ALONSO: Two assaults.

SENATOR YOUNG: So I think it's very, very hard to determine which one you're talking about.

And so maybe if we could just make it clearer.

MR. LEWIS: It's also complicated by the fact that the judge, what he says appears to merge the two --

SENATOR YOUNG: Right.

MR. LEWIS: -- in his comment although he's punishing for the one --

SENATOR YOUNG: Exactly.

MR. LEWIS: So our problem is we're trying to capture what the judge says and either way we're going to stumble --

SENATOR YOUNG: Right.

MR. LEWIS: -- because we're stuck with his text. And that may be part of the problem that you're picking up.

MR. ALONSO: You should note on this issue, Senator, you should note that when we actually --

---

I was going to go to the Findings section next.

But when we note on page thirty-one, if you'll turn there, we actually suggest that we refrain from making a finding explicitly that what he really was concerned about is his political future. We focused more on the context.

So if we look at -- where are we? -- yes, the second to last paragraph at the bottom of page thirty-one - it starts with "The Select Committee considered many factors..., " --

SENATOR YOUNG: Right.

MR. ALONSO: -- if you look at the very last sentence of that paragraph, it reads: "Whether the Senator was worried for his political future or not, the evidence demonstrates both recklessness and callousness."

So that's kind of the answer to the question we pose --

SENATOR YOUNG: That you just offered.

MR. ALONSO: That's right.

And that's thanks to Mr. Lewis who I think really crystallized that for us.

SENATOR STEWART-COUSINS: Okay.

---



SENATOR LANZA: And on page thirty-one, Senator Flanagan just pointed out to me, the first full paragraph, last sentence, it says: "While Senator Monserrate's version relies on lying medical personnel...", " it doesn't rely on lying medical personnel.

His version is a claim that medical personnel had lied --

SENATOR YOUNG: Right, right.

MR. ALONSO: Relies on the assertion.

The sentence is a bit tongue-and-cheek.

SENATOR YOUNG: Right. Exactly.

MR. ALONSO: Maybe a little sarcastic, but perhaps in black and white it doesn't read, you know, as well as it could.

SENATOR SCHNEIDERMAN: It relies on the dishonesty of medical personnel.

MR. LEWIS: I think, as you read it through, you are capturing what we may think occurred but I don't think it is as clear as his claims. So we might want to rewrite this.

MR. ALONSO: That point is

---

well-taken. That point is well-taken.

And what it's meant to assert is kind of, you know, kind of the idea that you have to make so many backflips and inferences and illogical leaps to believe that version versus the incredibly straightforward version that's corroborated by the video.

And that's the point we're trying to make. And I think it can be made maybe less sarcastic.

SENATOR STAVISKY: And you're also attributing motives to medical personnel who immediately became -- immediately became biased against an injured woman when they found out her boy- --

MR. ALONSO: That's the point. That's his claim --

SENATOR STAVISKY: That's his claim.

MR. ALONSO: -- and her claim. And so

--

SENATOR LANZA: The reason this is problematic is we're not adopting that.

MR. ALONSO: We're not adopting that.

SENATOR STAVISKY: That's my point.

MR. ALONSO: That's right.

SENATOR LANZA: That's why it's got to

---

be --

MR. ALONSO: So we'll make it more clear.

SENATOR STAVISKY: That's my point. I think it should be a little more --

MR. ALONSO: We'll make it more clear. We're clearly not adopting it.

SENATOR YOUNG: It's his version rather than -- yeah.

MR. ALONSO: It's his version.

Okay.

So let me go back to the Table of Contents and just finish walking you through the report.

So what we in the Findings section, first we talked about the mandate. And then we went through all the things that we talked about last time, perhaps one or two more, about the reasons why Ms. Giraldo's version of events is unreliable.

We don't though come right out and make a finding that she's lying. That's -- I don't think that's really our role. But we reject her assertions.

And then we talk about the Senator's failure to cooperate with the Committee, which is -- we

---

don't know if -- I mean you all know the facts of that.

We are going to include all of the correspondence between Mr. Tacopina and my firm as exhibits to the report. And that will just all be, all be public record; his, you know, the semantical backflips that he has urged on us, that the words "expect to cooperate fully" doesn't mean actually cooperate fully is underlined in the report.

MR. LEWIS: Two things on that.

MR. ALONSO: Sure.

MR. LEWIS: One of them is that we should be very clear that Tacopina and Seigel are representing -- have represented Senator Monserrate with regard to this inquiry as well. It's not just the thing we're his criminal lawyers, rather they permanently said that they are a part of defending him. So they are his agents for all purposes overtly.

MR. ALONSO: We'll put that in the first footnote where we mention the letter, the first letter between us.

MR. LEWIS: And the second thing is -- I'm going to jump on you and I'm sorry, Dan, on page two of your Recommendations, number three says "Senator

---

Monserate has refused to accept responsibility."

We've tried to use the word "fail" in every aspect reported to not impute intent to him but to describe it.

And I think when we go back to the Recommendations, you should characterize it as a failure rather than --

MR. ALONSO: And I do believe that. It probably was my word and so I take responsibility. And I think you're correct. I think failure is --

MR. LEWIS: I wasn't going to cast blame and I wasn't going to reveal what I knew.

SENATOR ALESI: Senator, I don't know if this is -- David mentioned the recommendation to draft, in his last comment.

I think, I'd also like it, from my point of view, under the first section of Recommendations that it relates to his ability to run for re-election in November of 2010.

And I would just like to point out that in the event that this Committee might choose to expel him, there would be a special election and there would be nothing barring him from running in that election.

---

So I think it should be reflected that that's a possibility as well.

MR. ALONSO: I think that's a fair point.

As far as I'm aware, he is -- Senator Monserrate has stated that he intends to run for re-election in the Fall. I don't think he's had anything to say about a special election.

We can clarify that that is a possibility.

SENATOR ALESI: Would you like as a footnote the various possibilities of --

SENATOR SCHNEIDERMAN: I think it is, Jim, because, you know, for all intents and purposes, if he is removed from the Senate, you know, and within thirty-five days he could actually be right back in again.

SENATOR FLANAGAN: You could just say where he plans to run for re-election.

SENATOR SAVINO: Or you could say that this -- no action taken by us would bar him from any future elections, whether they be a special election or a primary or general election.

SENATOR ALESI: I think we should

---

footnote it.

MR. LEWIS: And there's a case, Israel Maurice (phonetic), he's a Senator, but I don't remember the name of the case, but his name is in it.

SENATOR ALESI: My view is that we're mindful -- as a Committee we're mindful that -- again, I'm not saying that we will or should, but if he were to be removed by the body, that he could be back in the body within --

MR. LEWIS: Forty-five --

SENATOR ALESI: -- two months time, --

MR. LEWIS: Forty-five days.

SENATOR ALESI: -- November.

MR. LEWIS: And we should also footnote the statute that says it's forty-five days for a special election just so it's clear what we're talking about.

SENATOR STAVISKY: Isn't thirty to forty-five?

MR. LEWIS: No, there's forty-five days to call a special election.

SENATOR SAVINO: Up to.

SENATOR STAVISKY: Up to. Up to.

---

SENATOR SAVINO: No less than thirty,  
no more than --

SENATOR STAVISKY: No less than  
thirty.

SENATOR SAVINO: Up to forty-five.

MR. ALONSO: Could we -- maybe we  
should, just to keep in order -- David jumped ahead to the  
Recommendations.

Maybe we should walk through the rest  
of the draft and then get to the Recommendations.

MR. LEWIS: Yeah. I'm sorry.

MR. ALONSO: Okay.

So we have the failure to cooperate.  
Your point is well taken, David. Thank you.

And then the additional Findings are,  
first, the discussion of why the two version of events  
can't both be true, then our rejection of -- we're calling  
it Senator Monserrate's version because even though Ms.  
Giraldo is the witness, it's very much adopted by his  
agents both at trial and currently.

SENATOR SCHNEIDERMAN: And repeated  
by him in his interviews.

MR. ALONSO: And repeated by him in

---



his interviews.

And then, again, the lack of acceptance of responsibility. And there we go over his, frankly, hollow statements at trial to accept responsibility for what happened versus his more pointed statements in his interviews, you know, saying essentially that he didn't do anything wrong and he expects to be vindicated.

It's more nuanced and more detailed than what I just said. So obviously you have it there.

And then we go through a legal section which is, which I have to commend my associate, Stan O'Laughlin, was his exhaustive review of the precedents going back to New York in 1779. A lot of the statements that have been made in the press by Senator Monserrate's lawyers and even people who work for the Senate that this is unprecedented simply isn't true.

There are precedents. They're different, of course. And it's been a long time, but it's not like this has never happened.

And then we go over the discussion of the law that I've already been through with you folks.

We also talk about other possible sanctions. We talked about that last time. And as you'll

---

see in a moment and as you all know, since the Recommendation is in the alternative of a Resolution for Expulsion and a Resolution for Censure, we do talk about the precedent and the idea of censure and withdrawal of privileges as a possibility.

So before we turn to Recommendations, any questions on that, noting that certainly anyone can make any comments today or later if you would like.

SENATOR FLANAGAN: A couple of questions on --

MR. ALONSO: Sure, Senator.

SENATOR FLANAGAN: -- page twenty-two, on the telephone records, the last paragraph. There's a question about a phone call being made to Nyler Rosario (phonetic).

MR. ALONSO: Right.

SENATOR FLANAGAN: And also there's a reference to Nestor Diaz as an associate to Senator Monserrate.

I would like that there be clarification on what relationship, if any, existed then and now.

Is it a loose characterization of Mr.

---

Diaz being an associate if he were his friend or whatever at that point but is now a Senator employee? I think it's important that we note that.

MR. ALONSO: Or if he were a Council employee.

SENATOR FLANAGAN: Or a Council employee.

MR. ALONSO: I think that's a fair point for clarification.

SENATOR FLANAGAN: And the same for Ms. Rosario.

MR. ALONSO: And as you can see there, we made a note for ourselves --

SENATOR FLANAGAN: Right.

MR. ALONSO: -- to check that up, to check up on that.

Yes, those are fair points and I think we'll be more crisp on the -- we'll add to that.

As I understand it, Mr. Diaz at the time was not a Senator lawyer as Mr. Lewis pointed out. We'll find out whether he was a Council lawyer.

As I understand it, he's definitely a Senate lawyer today. So we'll clarify that.

---

SENATOR FLANAGAN: Eric, just by way of general reference, you had spoken about this before.

We got this last night. I didn't see this until this morning. And I understand life being what it is, that's how the way things work sometimes. So --

There's a tremendous amount of work product in here.

I have a comment and a question.

My comment is if we leave here today, our business is not quite wrapped up. I don't want anyone to -- I wouldn't want to give the impression to anyone who is going to be looking at this after the fact that somehow we had complete closure.

I think we have to make it clear that any of us, individually and/or collectively, if we want to add further thoughts, that it's important that people understand that we're going to do that.

And from a practical standpoint, I don't know how this would work inasmuch as we have endeavored to make sure that this will at some point will be available for the public.

If we are going to offer other comments on content or something else, I'm not sure how we cover

---

that.

Are we going to do it by e-mails or is it -- I just think it's something that we may have to discuss.

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

We have not, obviously while we're working on the record of the Committee proceedings, Members of the Committee have conversations that are not part of the Committee proceeding.

SENATOR FLANAGAN: I just meant as to content.

I'm not talking about -- you know, people have private conversations. That's understandable.

But if there are things that we want to nuance, how do we properly communicate that so that we have consistency.

MR. ALONSO: The Open Meetings Law wouldn't be violated by your having a conversation with me or Mr. Lewis or my staff, and if it's a question of drafting.

But if it's a major question of

---

substance and you would like us to kind of insert it into the record of these proceedings, I don't think there's any problem in doing that.

But I think if it's a question of drafting or tweats or suggestions, I don't think there's anything inconsistent with the law for you to, or any of the Senators, to make suggestions to us.

I don't want to limit you from being something that's a matter of the record. So we could keep the records of these proceedings and we can make whatever you want public.

But, of course, you know, I think a lot of the substance we can do today. We can do more in the future if you would want.

And then -- that's my thought.

SENATOR SCHNEIDERMAN: And I do think that's an important distinction.

I think that if anyone has a substantial point to make, saying, listen, we should have a separate section about X, Y, Z, you know, another item, I think that's something that we probably would be better off having in its written form.

I think as far as saying, my suggestion

---

would be that the Republican members of the Committee communicate with Mr. Lewis, the Democratic members with Mr. Alonso.

If it's submitting a difference between "refused" and "fail," it's editing issues, I think that's legitimate just to do on that basis.

MR. LEWIS: I think it should be treated as we do when we talk about amending proposed bills. There's not a public meeting on every amendment or every textual determination.

I also think that we -- I should speak for me.

I'm going to re-read this. There are some minor things that are annoying me that I'll share with Dan. Dan and I have been back and forth about some of the language.

We've worked not just cooperatively but efficiently in doing that. Where we disagree, we actually get on the phone and talk it through with each other. And while one or the other may not be convinced, at least it's resolved to our satisfaction.

Certainly if any of my members have anything that should be communicated or be part of this,

---

I would expect they reach out to me. And I could say almost everybody, everybody has at one point or another through this process.

So we should continue to do that.

And I expect that Dan and his people are going to continue to work on the text of this as we go forward because there are some questions that he and I still have about certain issues, like Nestor Diaz. I'm concerned about that.

And some of these were answered already in this report.

And the other thing is is I believe that with one or two exceptions there are only -- there's maybe one other section that has to be written.

MR. ALONSO: One tiny section which is going to be --

MR. LEWIS: That's all that's left.

If there's anything else, tell us because we're trying to put this to bed for you folks as fast as possible.

MR. ALONSO: So if we could turn to the Recommendations, which is a separate document.

Sorry, Senator Alesi. Go ahead.

---



SENATOR ALESI: Just as I've been thinking about this, we haven't had the advantage of talking with Senator Monserrate or Ms. Giraldo.

But a lot of the confusion and inconsistencies that we recognize and are acknowledged in here relate to an affidavit that she signed and was drafted apparently by an associate of Senator Monserrate.

And my concern is, you know, who directed him to produce this affidavit. Was it Senator Monserrate? If he did it on his own, how's it possible that anybody could just, you know, dream up the idea that there should be an affidavit and that it should be presented to the victim for her to sign?

And that the contents of that affidavit are clearly in conflict with so much of what was produced by the prosecution.

So it ties in also with the fact, I believe the fact that there was also another associate of Senator Monserrate that apparently was either escorting the victim or shepherding her at certain times immediately afterwards.

My concern is this and I don't know if there is any way to ascertain whether or not these two

---

associates were given directions or given orders in the one case to produce an affidavit, in the other case to be a regular or a temp companion to the victim.

And since the story changed from the early version in the hospital room, et cetera, to what we saw in this handwritten affidavit, I'm just concerned that there may have been, or at least it appears to me, that there may have been someone directing the process, not only of drafting and presenting this affidavit to the victim, but also that someone was accompanying her.

It gives to me the appearance that that might have been a conduit for information or directions or other communication.

I don't know if there's a way for us to ascertain that, but it concerns me greatly.

SENATOR SCHNEIDERMAN: I think that's a fair question. And I think it is worth us trying to make that further inquiry into the circumstances surrounding the affidavit, which is, I think all of you agree, is a significant piece of evidence.

And then we can have, direct counsel to undertake to -- I'm not sure how much more information we'll get, but I think that's a fair point that we should

---

pursue.

MR. ALONSO: Certainly the facts surrounding both the timing and origin of that affidavit is something -- the question has been raised and has been of concern to this Committee.

And so I think, you know, as Senator Schneiderman just said, he's agreed to make further inquiries to see whether or not we can ascertain further facts.

And whatever it is that we are able to ascertain should be reflected in this report.

MR. LEWIS: The Committee has also raised the issue by the fact that it's the English language and the nature of some of the phrases in the affidavit that give rise to concern in an earlier discussion.

SENATOR SCHNEIDERMAN: Sorry, Senator.

SENATOR SAVINO: I actually had -- in discussions I had with Senator Schneiderman and Senator Lanza, I raised that very issue.

Obviously, the use of might be evidence, who was not a Senate employee at the time, but was a City Council employee, to collect that affidavit

---

from her.

And the fact that it was written in a way by someone who has a clear understanding of the English language, not, you know, a somewhat garbled approach to the English language as Ms. Giraldo has indicated at various times. She either speaks English or she doesn't; she either can read or write or she can't. She's fluent or she isn't.

But this affidavit was clearly written by somebody who speaks English as well as any of the rest of us here.

I have some concern about that.

I also have concern about the other employee who may or may not have been escorting her to different places.

Especially because we should not lose sight of the fact that this is a domestic violence case. And domestic violence cases or situations are all about control. It's not about anything other than the control of the individual.

And what better way to control somebody than to assign someone to keep an eye on them: one, to encourage them to change their story. And that also is not

---

uncommon with victims of domestic violence.

Having been a caseworker, I worked with many of them. Many of the victims take on the responsibility of the perpetrator. Somehow or other they caused this; if I had not done this, I would not have provoked him. And now look at what will happen to him because of my actions.

And I think all of those things played into her decision to give conflicting testimony first to the medical personnel, then to the DA the next day, then to the Family Service Center, then to, you know, his associates. And we just see this consistently going on.

She has absorbed the responsibility for what happened to her. Now she's trying to correct the implication for him.

I don't think we should lose sight of that.

SENATOR ALESI: Well -- and all of that I embrace. And it's consistent with what I was saying about I would add the element that it had to start with something or someone siting these events into place.

Who prompted the initial action of drafting the affidavit and presenting it to her? Was it

---

done simply by the author out of his own creative free will or did somebody say you got to get over there and get this into her hands right away?

These are -- this is the nature of my concern notwithstanding what you just said.

SENATOR SAVINO: I totally agree with you.

SENATOR SCHNEIDERMAN: Let me just, first of all, note that it's not clear who the author was because you have -- simply it was a notary attesting to the signature on it.

But I think that it sounds as though there's a consensus that we should at least attempt to find out more about the circumstances of that affidavit.

Now, there's no obligation on Mr. Nieves's part to cooperate, but we certainly can make an inquiry.

I think we should probably discuss the best way to proceed on that, mindful of offhand a -- under the resolution of, you know, what the scope of our inquiry is supposed to be.

But I think that that's, because of the prominence of that particular piece of evidence, I think

---

that that's a worthwhile suggestion.

MR. LEWIS: The other thing we spoke, I think, about possibly following up on is the Senate employee, not so much what his date of service began, but when the paperwork went in in relation to the day of conviction and sentence -- conviction, I'm sorry.

SENATOR FLANAGAN: Somewhat off topic, I see there are a number of open cites for exhibits.

I suggest that we attach each and every exhibit that has been presented to this Committee for review, including the actual affidavit.

As well as I believe it would be I think helpful to the members of the body the initial presentation by you, Mr. Alonso, the PowerPoint, perhaps even the, you know, the CDs that we have.

I think it's important that our report be accompanied by each and every piece of evidence, including letters that were -- went back and forth to Senator Monserrate's counsel as well.

MR. ALONSO: I agree.

SENATOR FLANAGAN: And to the extent that we can or are permitted - I apologize - but even those portions of the Grand Jury testimony, again to the extent

---

that it is permissible.

I think that is important that every piece of evidence, all the exhibits, be part of the permanent record here going forward.

MR. ALONSO: I think with the exception of the Grand Jury minutes, I agree wholeheartedly.

I wouldn't want to run afoul. Again, it's not in the Order, but I think it's the spirit of the Judge's desire that we not release the Grand Jury minutes, other than to the extent that we quoted in here, which is fair game.

But I don't think that we can release it.

I also think that we might as well release what's already supposedly a public record, which is the trial exhibits which you all have, and there's nothing wrong with putting them also -- making them also available to the public, with the exception of the defense exhibits that the defense has refused to give us which we can only do what we can do.

So I think that's a good idea. I guess we could talk offline about what the logistic, what the

---



best way to do it is.

The ideal, from my point of view, is to put it up on the web. But I don't what the Senate's IT capabilities are.

I think we have to --

MR. LEWIS: I think you have to do two types of -- you have to do a paper volume which is deposited as a report, and we should have CDs as part of it as exhibits so that the entire thing is a well-integrated batch of material.

What we put up on the web is -- really there are no rules other than the idea that the Committee's got to do a report that has to be filed and publicly available. The web is just one other way of doing it.

But the CDs should be part of the report.

We -- in prior occasions exhibits are attached to the report. You don't have as usual such a large volume, but sometimes through committees' due reports they recommend legislation. They have the legislation attached to that report too.

So I think we are going to have -- we should have all the exhibits in whatever form for deposit

---

and for circulation.

Whatever we do is going to have to eventually go to the Senate as a body. And so it should be prepared as if it were a report to the body.

MR. ALONSO: That's fine.

I don't want -- I wouldn't want it to be attached to this nice, elegant little package. We'll put it as a separate, as a separate, you know, volume.

SENATOR SCHNEIDERMAN: The exhibits?

MR. ALONSO: As opposed to physically attaching it.

I think that would be impractical to attach all of it.

MR. LEWIS: Yeah. I don't mean do multiple volumes.

MR. ALONSO: Yeah. I think that's --

MR. LEWIS: I think small ones.

MR. ALONSO: -- that's fair and that's what I think everyone seeks.

SENATOR SCHNEIDERMAN: And, again, just to clarify of the role of the Committee, our responsibility is to issue a report and to make a recommendation.

---

It then goes to the Senate. We'll convey it to Senator Sampson and Senator Skelos. And it's then up to them to determine how to act on our recommendations.

Our work ends there.

Obviously we have to ensure that all of the information is available to all of the Members of the Senate should there be a vote on our recommendation or on some other recommendation.

But I think that's all fair, a fair suggestion.

SENATOR STAVISKY: May I ask a question?

Which will include as part of the report copies of the video surveillance tape?

MR. LEWIS: That's what I meant by the CDs.

SENATOR SCHNEIDERMAN: That's an interesting question.

SENATOR STAVISKY: Okay.

SENATOR SCHNEIDERMAN: A little beyond my tech- -- I think it would be very important for the Members of the Senate --

---

SENATOR STAVISKY: I think so too.

SENATOR SCHNEIDERMAN: -- to see --

SENATOR STAVISKY: That's why I asked  
the question.

SENATOR SCHNEIDERMAN: -- to make  
sure that everyone has seen the video surveillance tape.

I know my technological knowledge is  
sort of limited in this area. But --

MR. ALONSO: One recommendation  
that's not in the draft recommendations but has been  
floated is the recommendation that the full Senate either  
together, if that's practical, or at their leisure, view  
the same video that you folks have seen of the events  
inside the apartment building, also the hospital if they  
want. But the apartment building is the more significant  
one.

And that could be a recommendation that  
this body, this Committee, explicitly makes.

SENATOR FLANAGAN: And just to  
reiterate what it is that I was suggesting, I think that  
the CD as well as every single piece of evidence, whether  
written or not, that has been presented and reviewed by  
this Committee ought to be made part of a permanent record.

---

SENATOR STAVISKY: I would include the hospital tapes as well as the surveillance tape.

MR. ALONSO: For technological reasons the PowerPoint has to be web-based. There is no other way to do it because it includes video.

SENATOR FLANAGAN: Well, you know, I'm not sure. I think it could be web-based, but I think it's also important, to the extent that it is possible, to have a bound -- together with this report to have bound all the exhibits which should, I think, include, if not -- if it's not possible to put in paper form, a copy of a CD.

MR. ALONSO: DVD.

That can be done.

SENATOR SAVINO: Just the way we got it, wasn't it? I think originally we got --

MR. ALONSO: Yes.

SENATOR SAVINO: -- the transcripts and we got a DVD that --

MR. ALONSO: That contained the PowerPoint --

SENATOR SAVINO: -- had the PowerPoint as well as the videos.

SENATOR FLANAGAN: That's what I

---

meant.

SENATOR STEWART-COUSINS: In addition, if you want to include every exhibit, you would have to include the interviews with the two television stations.

MR. ALONSO: I sent around transcripts to everybody.

SENATOR SCHNEIDERMAN: Yes.

SENATOR ALESI: Yes.

MR. ALONSO: That can easily be included.

In fact, I think it's referred to as exhibits in here.

MR. LEWIS: They were referred to both by the web designation and transcript.

The only thing -- let's be very clear. The only thing that's not going to be reproduced in its original form is the Grand Jury testimony because of a problem of representing to the Judge who was going to see it as part of our application.

And the record should also reflect there is additional material that Mr. Lanza and I have reviewed but has not been released to the Committee in the

---

nature of what's called "rosario," which is prior statements of witnesses turned over not because they're supported as being truthful, but rather they're just something that had been said on a prior occasion available for use as cross examination.

They were not used during the trial. So once they're not used during the trial, they're really of no particular benefit or --

MR. ALONSO: It also --

MR. LEWIS: -- the truthful value --

MR. ALONSO: It also would have opened this Committee up to the objection that, just because some police officer says that a witness said something on such and such a day, you know, we haven't talked to that officer, we haven't talked to that witness. It would have opened us up to charges that we should have done a lot more.

So Mr. Lewis is right.

MR. LEWIS: And the other piece of it is, is that even in the context of the Committee and the Committee's determination, not only is it, are the documents themselves hearsay, but they're double hearsay.

So their reliability and our ability to

---

rely on them -- even Mr. Alonso and I reviewing them decided to not rely on anything in any of it for what's in this report.

So while we've not shared it with you, it's also not been used for any purpose whatsoever in order to ensure that what you have before you for deliberative purposes was not double/triple hearsay and was -- would withstand the fact, a question about the evidence.

SENATOR ALESI: If we are going to provide the video to the full body, to the Senate, for them to view, however we do it, either in one sitting or individually, would we be providing our own observations that the Committee, this Committee, has come up with; in other words, noticed that she is not staggering, or should we leave it up to --

MR. ALONSO: I believe that this Committee's observations will be transmitted in this report and should not be -- other than in your usual role as Senators in the deliberative process - you can obviously say whatever you would like - but I don't think that -- first of all, once we deliver this report, this Committee ceases to exist.

So I think that you then become -- and

---



please correct me if I'm wrong -- but you then revert to one of sixty-two members of the Senate.

SENATOR ALESI: Just to help me with my own recollection, did we ever note when we were looking at the videos, that -- with regard to the control issue, that this isn't just a passionate man and involved a situation controlling the victim, but this is a man who was trained in controlling people as a policeman?

So he's using his expertise to his advantage as well.

MR. ALONSO: I don't believe that we've noted that yet. That is certainly -- you know, we haven't conducted inquiry into the exact nature of his training. But the observation that he was a police officer and presumably had some experience or training in that gives him --

MR. LEWIS: Senator Hassell-Thompson raised it at the last meeting. It was raised but not voted on. We hadn't actually voted on very much except what we had authorized.

The other thing that came up I believe was a question about -- that we didn't actually resolve -- raised by, I believe, Senator Stavisky, about when he's

---

walking down the sidewalk, is he holding on to her because he cares for her or was he trying to hold on to her for control. We didn't vote or resolve that.

MR. ALONSO: And it's not in here as resolved.

SENATOR ALESI: It's worth taking into consideration.

MR. LEWIS: But we didn't resolve it.

SENATOR SCHNEIDERMAN: And I do think -- let me just note that because our obligation is to issue a report and recommendations, if we provide the exhibits - and I think it's clear that we're directing counsel to assemble all of the information and make sure that that's available, all that we considered, and attach everything except the Grand Jury minutes, to a certain extent, when it comes to videos, I think it may be more prudent for us just to allow our colleagues to make their own determinations rather than for each of us to opine about how we interpret fairly nuanced movements.

SENATOR STAVISKY: Following up on what -- excuse me -- what Senator Alesi just said, I had raised the question in the past along similar lines, that his training as a police officer it seems to me not only

---

is involved with the question of control, but also his training in terms of first aid and did he attempt to help her after she was cut.

And yet we raise these issues. And whether we can consider his prior experience as a police officer and the question of his leaving the police force, and I think it was determined that we cannot.

MR. ALONSO: Those are questions we might have asked had he testified.

SENATOR SAVINO: Right.

MR. ALONSO: There's a whole bunch of things, like the rosario material, --

SENATOR STAVISKY: Like why didn't you try to stop --

MR. ALONSO: The rosario material would have obviously been inquired into. It's fair game when Ms. Giraldo testified, et cetera.

But there are certain things that -- I mean the one police officer area where I think is pretty relevant -- I think we have enough on that already -- is every police officer knows what happens when you call 911.

You know, there are just a series of automatic forms that will be generated and that will be

---

out there for, you know, fifty different people to be able to know about it.

So that's one area. We don't really harp on that. You know, I'm not even sure it's --

MR. LEWIS: It's not in the report.

MR. ALONSO: Yes. It's not in there anymore.

But of all the police officer things that have arisen, I think that's the only one that's a fair inference from the evidence.

The rest is too speculative. We don't know exactly why he left the force. We don't know --

SENATOR STAVISKY: No. But he has training in first aid presumably, and did he --

MR. ALONSO: But we don't know what happened.

SENATOR STAVISKY: -- try -- we don't know what happened.

MR. ALONSO: We don't know what happened.

And we also don't know the nature of the training. So we're assuming.

I think it's just important to

---

recognize that our obligation is to conduct an inquiry. Obviously every member of the Committee should be comfortable that the inquiry has been thorough enough for us to make the recommendations that we're making.

But there obviously are questions that all of us have that could have been answered had either Mr. Monserrate or Ms. Giraldo cooperated with us.

SENATOR FLANAGAN: And I think this leads to another point which is that there are a lot of questions that we have been unable, due to lack of evidence, to answer.

And I agree with Senator Schneiderman that, even in cases where we could draw conclusions, that perhaps we should not do that.

But I think it might be appropriate to at least guide the potential reader of this document as to what those questions are and where they might look to evidence which may help, you know, answer those questions.

And even to go further, perhaps even having an exhibit here with a list of questions, whether they were answered or not, but some of the central questions that came up in this Committee as sort of a roadmap for anyone who -- you know, for primarily our

---

colleagues in the Senate who are going to look at this evidence, at least to provide a roadmap through some of the questions that we had irrespective of whether or not we had answers for them.

MR. LEWIS: We tried to do that just so

--

MR. ALONSO: And I think that's what the report does.

SENATOR YOUNG: I was trying to -- yeah, I was trying to say that --

MR. ALONSO: It really does.

SENATOR YOUNG: -- it does.

I mean the question about --

MR. ALONSO: There are a couple of --

SENATOR YOUNG: -- first aid --

MR. ALONSO: -- these issues maybe we can --

SENATOR YOUNG: -- and so on and so forth.

I mean we don't need to know necessarily what his training as a police officer was vis-a-vis first aid. But when you look at the fact that the woman was trying herself, you know, with her towel to

---

mitigate the -- and yet the towel fell away and there was no attempt to even retrieve the towel to stop the bleeding, you know, those kinds of things are in the report.

And I think that, you know, to the extent that they can be highlighted, and even with, you know, in terms of police training, what they did, what they didn't do, what police know, you don't want to, to me, open this door about what police think and do.

But when we go back to this control issue as it relates to domestic violence, as we know that domestic violence is about power and control and there are certain assumptions that go along with that I think are very much highlighted in the way he is depicted, you know, throughout this report.

So to the extent that we can consider that they're highlighted in a certain area or whatever to at least say this is what we're seeing, this is what we're seeing on the tape, the hospital tape, where we talk about whether she's drunk or not drunk, and you see this long procession down various halls in a straight line, you know it helps people.

MR. ALONSO: That part about not staggering in a long procession I think is fairly in there.

---

SENATOR YOUNG: Yeah. That's what I'm saying. All of these things are very important.

SENATOR SAVINO: But I think the reason why, if we list out the questions that we don't have answers to, --

SENATOR YOUNG: Right.

SENATOR SAVINO: -- it kind of reflects some of the things that we actually talked about and we brought up in the Committee and couldn't get answers to.

And the reason why we can't get them is because Senator Monserrate and Carla have refused to cooperate with us.

Because other members of the Senate are probably going to view the evidence and the exhibits and they're going to come up with some of the same questions that we did.

And I think it's instructive to them to realize that, one, we thought of it, two, we wanted answers to those questions, but his failure to cooperate put us in this position.

MR. ALONSO: That might be worth noting in the section where we talk about the refusal to

---



cooperate.

SENATOR STAVISKY: Are you planning to include the transcriptions of our conversations as part of the record?

SENATOR SCHNEIDERMAN: I don't know that that would be attached to the report. It certainly would be available to the public as a separate document.

MR. LEWIS: And every Senate member has access to any Committee hearing once we're done with Executive Session.

SENATOR SCHNEIDERMAN: I want to caution --

SENATOR STAVISKY: We are presumably in closed session. Are these -- would these discussions in closed session be part of the public record?

SENATOR FLANAGAN: I think we've indicated they would be.

MR. LEWIS: You've indicated they would be.

SENATOR STAVISKY: Good.

SENATOR YOUNG: Everything is in closed session.

SENATOR STAVISKY: That's good.

---

That's the way it ought to be.

SENATOR SCHNEIDERMAN: Well, this is an unusual move that we've made. Closed sessions are not always recorded this way. This an extra step towards openness and we have made the commitment that after the proceedings are completed, this would be released to prevent obviously speculation and issues from being addressed by the press piece by piece as one item comes up in a meeting and it's not addressed until the next meeting.

So once the proceedings are completed, we made a commitment to make this publicly available.

SENATOR STAVISKY: Good.

SENATOR SCHNEIDERMAN: But let me also just note, again, there are unanswered questions here. There are some issues that I think it is important for us to refer to.

But our mandate is to conduct an inquiry and make recommendations. And the critical element of us finishing this report in my view is to ensure that all the Members of the Committee are confident that to the extent that there are unanswered questions, the failure to get those answers do not compromise our ability

---

to make recommendations. And I think that that's a very important point to make.

Our mandate under the resolution is not to uncover every possible matter that we can inquire into. It's to conduct an inquiry and make the recommendation to the Senate, which, again, once we complete our report and submit this, it goes to the Senate.

And the law is not clear on what has to happen after that. It's really up to the Senate and each of us as individual Senators along with our colleagues to determine what steps are taken after that.

Obviously we want to have -- provide a substantial basis, which I think we'll be able to do in support of our recommendations.

But that is the extent of our obligation.

SENATOR FLANAGAN: Senator, may I make just one point.

I agree with that. I think this Committee has done an excellent job in identifying the central issues and asking the right questions.

And I just want to make sure that we provide a -- you know, that that is reflected in the report

---

as a guide so that this report has the greatest value that it could afford the members who will be viewing it.

That's why I think even some questions which may not have been answered, the questions themselves, in and of themselves, I think, you know, point to what the central issues are here.

MR. ALONSO: I'd like to just make a point in light of the fact that these sessions are being recorded even though they are in Executive Session and they will be released.

You know, my -- I have viewed every Member of this Committee now obviously have come to this task with the thought that they are going to do the right thing and they are going to put -- you know, you've all said you are going to check at the door whatever preconceived notions you had before and you were going to deliberate fairly and deliberately.

From everything I've seen that's exactly what everyone of you has done.

There are members of the Senate who have made up their mind, and I'm particularly talking about the people who no matter what would never vote to sanction Senator Monserrate.

---

And I would like to caution that many, many, many words have been said at these Committee meetings. And the idea was that everyone would be able to contribute to the discussion, ask questions, throw out ideas, many of them ultimately abandoned or rejected.

And there is a danger that somebody who might wish to see that Senator Monserrate is not censured, a legitimate point of view, and that may well be what happens, but there is a danger that people may take out of context, hey, at meeting two Senator Stavisky said X. That's completely in contradiction to what's in the report. And that may well be and that's fine. That's exactly what this process --

SENATOR STAVISKY: And I have an answer for that.

MR. ALONSO: And that's exactly what this process is about.

SENATOR STAVISKY: That's the way it should be.

MR. ALONSO: I just want to make sure that everybody sort of has that in mind because you may well be faced with your prior words.

I think it's unfair for you to be faced

---

with your prior words. Your words that count are the words that you ultimately agree on in the report.

But --

SENATOR STAVISKY: I think that proves your point, that we did not come in with preconceived notions.

MR. ALONSO: I think it does as well. And if you're asked after the Committee

--

SENATOR FLANAGAN: That's basically the thoroughness of this --

MR. ALONSO: That's right.

SENATOR STAVISKY: Yes.

MR. ALONSO: And if you're asked after the Committee expires, that's a good way to answer it.

On the other hand, we all know, you know, the nature of these kind of things is that things will be taken out of context.

So I just wanted to put that on the record so that's also there.

MR. LEWIS: And you should be comfortable that what's going to appear in public is your

---

deliberations as opposed to your determinations or your conclusions.

The conclusions and determinations are the report. The record reflects the deliberations and the attempt to come to an understanding not just of what happened but to explore all possibilities so that Senator Monserrate gets the fairest of hearings by this Committee before a report is issued.

And while some people can use a transcript to try and harm the speaker, we know what we were doing in the course of this process and you know what you were doing not only as you said it but with the work that you did in reviewing everything not at this table but on your own making sure that you were fully informed, and not just fully informed, but able to ask the questions that come up.

SENATOR FLANAGAN: Senator Schneiderman, just a couple of points.

I'm going to respectfully disagree with Mr. Alonso on one thing.

What we do say in my opinion is extremely important, and on a parallel with the recommendation in our report, I think people's ability to

---

see whatever the deliberations were helps provide a better context. So I think that's important.

The second thing is on page thirty -- this is, I'm not asking that anything be changed, I'm just making a reference -- talking about procedure, making a distinction between criminal and civil, a factfinder in a civil proceeding is free to draw an adverse inference against an individual who asserts the Fifth Amendment in that civil proceeding.

And I use that as an instance to point out that a lot of those questions, some rhetorical, some unanswered, we have a lot more flexibility. This is not a criminal inquiry. This is much more, if it were akin to something, it's much more of a civil type proceeding. And I think that it is criminal in nature.

But I want to go back to Senator Alesi's comments from before. And I don't think this was raised -- at least for me personally it's important to put this in context. There were questions about the affidavit, about Mr. Nieves and what role certain people played.

I didn't hear anyone say this but the one thing that I gleaned from reading this material was that Ms. Giraldo did not write that statement. I didn't

---



hear anyone say that. And I just want to make that point because I think that's important.

There was reference to the fact that it was in the English language, but part of the inquiry I think stems from the fact that she's not the one that wrote it. And I want to repeat that.

The second thing is we spoke of two individuals but only referenced one by name, a gentleman who is, I believe, still a New York City Council employee. The other person is a Senator. I didn't hear anyone mention the person's name. So I think that for purposes of the record I'm just going to say it's --

MR. LEWIS: Luis Castro.

SENATOR FLANAGAN: Mr. Castro.

MR. ALONSO: Yes.

SENATOR FLANAGAN: So as we discuss that, I think we should just make a direct reference.

MR. ALONSO: And we've noted the requests for an inquiry about the affidavit which relates to Mr. Nieves and also a request for an inquiry into the paperwork and other matters concerning Mr. Castro.

So those are both things that the Committee will undertake as a result of this discussion.

---

SENATOR FLANAGAN: Thanks.

MR. LEWIS: I just want to reflect on one thing.

When we talk about all of the open questions, we need to be careful that we don't have as many open questions as there may be that are outside our mandate.

And what I mean by that is the closer we get to the events in the apartment, such as whatever medical treatment was given to Ms. Giraldo, really in the apartment it's sort of outside of our mandate.

And so we need to make sure that our questions stay focused within our mandate because there are always going to be millions of open questions, many where there are two versions, and there are two versions, and objective evidence doesn't match sometimes those versions.

So I'm just cautioning us that we have our questions as narrow as we're speaking about.

SENATOR STAVISKY: I agree with you.

But the reason I raised the issue was not because of what took place in the apartment, but what took place outside the apartment.

---

And you see her very clearly holding the towel to her face, he's pulling her towards the door, she drops the towel, and you wonder, if she's still bleeding, why doesn't he try to help control the bleeding.

I mean that was the question that I raised.

MR. ALONSO: I think that's fairly, that's fairly in the --

MR. LEWIS: That piece is in.

SENATOR STAVISKY: And that seems to me is within our purview.

SENATOR SCHNEIDERMAN: And I think that goes to the --

SENATOR STAVISKY: You know, once the door closes to that apartment, with all due respect that does not necessarily concern us.

SENATOR SCHNEIDERMAN: And I think that goes into the finding of recklessness.

SENATOR STAVISKY: Yes.

MR. ALONSO: There are three recommendations here that we should go over.

SENATOR SCHNEIDERMAN: Yes.

Let me -- so where we're leaving this,

---

we had a specific request, which we've noted, that counsel will follow up on.

Further editing comments we suggest that the Republican members of the Committee communicate to Mr. Lewis and Mr. Lanza, Democratic, Mr. Alonso and myself -- both, we'll attempt to get Mr. Lanza on his cellphone.

But having said that, I do think the most important thing, and this was not included in the copy of the draft report that was distributed yesterday, is the two-page section on recommendations.

Obviously, this is a tremendously important aspect of our work and I think it's worth us spending time on that together rather than just waiting for people to have input because this is tremendously important.

Again, this is a draft. And I think that the recommendations reflect the Committee's determination at our last meeting, the specific recommendations.

The notation of the three areas of inquiry that the Committee gave substantial weight to in making these recommendations is new and we have to reach

---

agreement on that or modify it.

And then, finally, the very last point is really just something that was added on at the end, and I note in the final paragraph that it may well go beyond our mandate. But it was something that was suggested by several people that we may want to propose an amendment to the Public Officers Law in light of our inquiry.

But that's something -- this is all open to discussion.

Let me -- I do believe that our staff has gotten some food for us because the Committee meeting has lasted longer than we anticipated.

SENATOR SAVINO: You can bring it in if you want to.

SENATOR SCHNEIDERMAN: Yes. Why don't you bring that in while we're going for it.

MR. LEWIS: We made one change, Mr. Alonso and I, took a look at the second line where it says one of two punishments, censure and revocation of privileges --

SENATOR FLANAGAN: I'm sorry. The second line of what?

MR. LEWIS: Of the second paragraph.

---

SENATOR SCHNEIDERMAN: Of the second paragraph.

MR. LEWIS: Under recommendations. Censure with revocation of privileges.

MR. ALONSO: Censure "with" rather than "and." That's clear I guess.

SENATOR FLANAGAN: Senator Schneiderman, can we take a two-minute break?

SENATOR SCHNEIDERMAN: Absolutely. (There was a brief recess in the proceedings.)

SENATOR SCHNEIDERMAN: Reconvening after our two-minute break, we were discussing the recommendations.

And I think, based on prior meetings of the Committee and what we essentially voted on and agreed to over the last two sessions, the heart of the recommendation is a finding that the Committee concludes that the conduct at issue deserves a sanction and that we propose two possible sanctions and recommend that the Senate vote on both of these possibilities - censure with revocation of privileges and expulsion.

And then we have a very brief

---

discussion of items which the Committee gave substantial weight in making this recommendation.

But before we get to those, is everyone still comfortable with that as our final recommendation as per our discussion at the last meeting?

SENATOR ALESI: I have one question.

SENATOR SCHNEIDERMAN: Senator Alesi.

SENATOR ALESI: And it relates to the time limit of any action we take against a member.

I'm assuming that nothing can go beyond the 2009 legislative session as far as any sanctions that we take, whether it's a revocation of privileges or --

MR. LEWIS: 2009?

SENATOR ALESI: I'm sorry. The 2010.

SENATOR SCHNEIDERMAN: Well, I mean that's an interesting question.

All we're recommending to the Senate -- again, once we make our recommendation and we go out of business, it's up to the Senate as a whole to decide what to do.

Expulsion is under Legislative Law Section 3 I believe is simply expulsion. It doesn't mean

---

you can't come back in, and, as you pointed out, either by a special election or by a regular election.

So expulsion just means you're removed. It doesn't mean you're barred forever from coming back.

SENATOR ALESI: So that my question would be that if we -- if the body, ultimately if some sanctions were imposed against him, my question is could they extend beyond 2010.

And my instinct would tell me no.

SENATOR SCHNEIDERMAN: I think -- I would not think so. That would not relate so much to expulsion, which is a one time event, but as to the restrictions of privileges because the Senate is reconstituted --

SENATOR ALESI: Right.

MR. ALONSO: -- every two years, presumably that would require a new resolution of the new Senate.

MR. ALONSO: The resolution could also make it clear that he would be censured and lose privileges for the remainder of his term.

SENATOR ALESI: So anything we do will

---



be contained within the 2009-2010 legislative session.

SENATOR SCHNEIDERMAN: Anything the Senate would do based on our recommendation I believe would be limited to that.

SENATOR ALESI: We meaning the Senate.

SENATOR SAVINO: And would we define what those privileges, if we were going to go down that route, or would we allow the Leader of the Senate to determine what that would be?

SENATOR SCHNEIDERMAN: I think that's a good question.

There are -- I think it probably is worth us providing some definition.

I'll tell you what I had in mind was stripping of privileges that affect the Senator but not anything that would punish --

SENATOR STEWART-COUSINS: The district.

SENATOR SCHNEIDERMAN: -- the people in the district.

So I think that restriction from being a chair or ranker of a committee or having a leadership post and, therefore, receiving an additional stipend, was

---

really what I had in mind.

But I don't know if other members have anything else.

SENATOR SAVINO: I would agree with that.

SENATOR SCHNEIDERMAN: Privileges of seniority to the extent --

SENATOR SAVINO: Anything other than -- you know, if anyone were to suggest the idea of withholding member items or --

SENATOR SCHNEIDERMAN: Cutting staff or anything like that.

SENATOR SAVINO: -- cutting allocations or staff.

SENATOR YOUNG: That doesn't hurt the district, that only hurts him.

SENATOR SAVINO: It doesn't punish him. We would be punishing the people of the 13th District.

SENATOR SCHNEIDERMAN: It would be interesting if seniority was -- it would be an interesting one too.

Would that last for the end of the session and then go back, or does that put him at the bottom

---

and start him over again?

SENATOR YOUNG: The truth is it really doesn't matter much since he is one of the most junior members of the Senate anyway.

SENATOR SCHNEIDERMAN: Also I'm not sure what our privileges of seniority are. I mean --

SENATOR YOUNG: Your license plate.

SENATOR SCHNEIDERMAN: Your license plate.

SENATOR ALESI: I can tell you from where I sit they don't mean much right now and I've been here twenty years.

SENATOR SAVINO: But I don't really think that's much of a problem since he's got, you know, just a year under his belt anyway.

SENATOR STAVISKY: May I ask a question?

You talk about the two alternatives of either sanction or expulsion --

SENATOR SCHNEIDERMAN: Censure.

SENATOR STAVISKY: Censure rather with its various subdivisions or expulsion.

It seems to me that the order becomes

---

importance and the order in which it's taken up before the Senate body is important.

SENATOR SCHNEIDERMAN: I guess it doesn't make any sense to vote on censure if he's been expelled.

SENATOR STAVISKY: That's my point.

SENATOR SCHNEIDERMAN: So I guess the recommendation should be that you vote on expulsion first.

SENATOR STAVISKY: Should we be voting on the most significant one -- shouldn't we do the most significant one first?

SENATOR FLANAGAN: I mean just as a matter of logic --

SENATOR SCHNEIDERMAN: Otherwise, we would be wasting your time.

SENATOR FLANAGAN: But I don't want to tilt the --

SENATOR STAVISKY: No. I don't want --

MR. LEWIS: If it passes, you never get to censure; and if it fails, you would get to censure.

MR. ALONSO: I think it's worth noting that if the ultimate sanction were expulsion --

SENATOR STAVISKY: It's not the death

---

penalty.

MR. ALONSO: -- that there would be a financial impact to him by way of his time lost for pension.

SENATOR YOUNG: Well, he's got -- he's already receiving a pension as a retired police officer. And he must have seven years -- no, seven years in the New York City pension system. I'm not sure he's transferred over his time, but he's vested in the pension system, which means that when he's otherwise eligible to retire, he can collect a pension for the time he served as an elected official for both City Council and Senate.

SENATOR ALESI: True. But he would lose the time.

SENATOR YOUNG: He wouldn't lose -- he would just stop, assuming he didn't get another job in the public sector somewhere or he didn't run for re-election.

SENATOR ALESI: He'd lose the accrual is what I'm --

SENATOR YOUNG: Well, he could. But if he were to get re-elected later on, he could buy back the time if necessary or we could always do a cure bill to correct that. I was just kidding.

---

He could probably buy back the time for the few months that he would be out.

SENATOR STEWART-COUSINS: Mr. Chairman, --

SENATOR ALESI: That might be one of the things that we can consider, that we would restrict him from buying the time back.

SENATOR YOUNG: I don't think we can.

SENATOR SCHNEIDERMAN: I'm not sure that --

MR. LEWIS: I think it violates Federal law.

SENATOR STEWART-COUSINS: Thank you, Mr. Chairman.

I just have a procedural question.

We are going to vote as a body today on those two options as far as censure or expulsion.

What about Senator Hassell-Thompson? She's not here. How will her vote be recorded? Will it just not be recorded?

MR. ALONSO: No.

SENATOR STEWART-COUSINS: Or will we follow up with her?

---

SENATOR SCHNEIDERMAN: Excellent question. Excellent question.

I've spoken -- Senator Hassell-Thompson told us that she would be unavailable today. She's out-of-town.

I spoke with her by phone before she left. She confirmed as per the last meeting the recommendation of sanction with these two possibilities of sanction, was still acceptable to her. Her counsel, Jerry Savage, is here and he will be speaking with her, and she will have another opportunity to opine on the issues.

So we will get her input before we finalize the report.

Is there -- so subject to Senator Stavisky's modification about order, which I think is well taken, as far as the recommendations themselves go --

Well, there was -- let me mention, I was going to say is there anything else anyone wants to add.

We did discuss the idea of also recommending to the Senate that they watch the surveillance video before voting.

Is that something that the members of

---

the Committee want to recommend or not?

SENATOR STEWART-COUSINS: Yes, I think they should.

SENATOR STAVISKY: I think they should too.

SENATOR SAVINO: We should recommend it. Whether they do it or not is --

SENATOR SCHNEIDERMAN: These are only recommendations. The leaders of the Senate can --

SENATOR STAVISKY: And they're going to have available to them the full body of evidence that will include the surveillance tape.

SENATOR SCHNEIDERMAN: One at a time, please.

SENATOR ALESI: We should recommend that they review all of it.

SENATOR STAVISKY: Yes. Exactly.

SENATOR FLANAGAN: Yes. I agree.

I'm not even sure we need to recommend anything.

We're assuming almost a parental role for the rest of our members. I have a feeling that, given the notoriety of what's transpired here and in other

---



venues, that people are going to be diligent enough to look at everything possible.

SENATOR SCHNEIDERMAN: Yes. Thank you, Senator Flanagan.

MR. ALONSO: So should we add a recommendation that they view the video?

SENATOR SCHNEIDERMAN: It sounds as though the recommendation is to review all the evidence.

MR. ALONSO: Review all the evidence.

SENATOR SCHNEIDERMAN: Okay.

So that's -- any other additions to the section on recommendations?

SENATOR FLANAGAN: Yes. A question.

Suggest that we are drafting proposed resolutions.

SENATOR SCHNEIDERMAN: Yes. And that is something we discussed previously. It has been done in the past that we would attach as exhibits two proposed resolutions by way of clarifying what our recommendations are.

We do not have to do that. We can just say that the Senate should introduce resolutions, but this would provide some additional clarity.

---

MR. ALONSO: And I view the -- this is going to be drafted by in-house Senate counsel, but I view them as simply tracking what we're saying here. In other words, resolved that he be censured and lose his privileges and resolved that he be expelled, very short and sweet.

MR. LEWIS: I think --

SENATOR FLANAGAN: Let me just interject.

Because I'm looking at this, if it says, I'm assuming that that would be done by you or Kaye Scholer or a representative of the firm.

MR. ALONSO: Along with Mr. Lewis.

SENATOR FLANAGAN: Understand.

But if we're making a distinction now that it will be drafted by in-house Senate counsel --

MR. ALONSO: There are two major reasons why I make that distinction.

Number one is that there is no particular expertise on the part of -- well, one is that I'm not going to be around.

But two is that there is no particular expertise on the part of my associates to do that.

---

And I think that resolutions are something that are done with some more regularity by Senate counsel than by lawyers.

And at the end of the day I don't think it matters who drafts it as long as you all agree with it.

SENATOR SCHNEIDERMAN: Obviously we would have to review them and agree that they be attached to the report.

But, again, whether we recommend that the Senate vote on such resolutions or we attach them, that we're making essentially the same recommendations, just that we would provide some additional clarity.

For example, on the issue of what are the privileges that he is being stripped of, it really just provides clarity.

MR. LEWIS: The theory would be that we would draft resolutions for the Committee's consideration as an exhibit to this document. That's the working theory.

The only reason I balked at what he said was that you can't just -- you need a lot of "whereas's."

MR. ALONSO: You objected to the short and sweet part of the statement.

SENATOR SCHNEIDERMAN: Well, the

---

"Now, therefore, it's resolved" part, though was the relevant issue.

MR. LEWIS: Right. That's the simple part.

SENATOR SAVINO: But we will draft the resolution as opposed to us just completing the report with the recommendations and handing it in.

Because if we did it that way, it's possible nobody would draft a resolution and introduce it.

MR. LEWIS: Well, it's possible nobody will introduce the resolutions we draft.

SENATOR SCHNEIDERMAN: These are just recommendations and they may or may not be introduced.

But I think it would be better for us to draft a resolution just to avoid any confusion or ambiguity in our language about what it is we are recommending.

SENATOR SAVINO: So to David's point, it's true that they may not -- someone might decide not to introduce the resolution, but pursuant to the new Senate rules, all it would take is thirty-eight members to motion to petition that resolution to the floor. But

---

it has to be in print first.

MR. LEWIS: Actually the problem is even if it's in print, it has to be introduced before a Committee and that's a place where it may run aground even under the new rules.

SENATOR SCHNEIDERMAN: Well, this is our recommendation to the Senate and how things proceed after this is beyond the scope of our mandate essentially.

MR. LEWIS: That's correct.

SENATOR ALESI: Today we have eight people. Proposing a theoretical situation that we have an even divide on what to do, we have a ninth member that's not here, who would have the advantage of knowing that -- you know, I'm not disparaging Senator Hassell-Thompson. We all know she has the highest integrity.

But does that have an impact on this Committee if someone votes after the rest of us vote?

SENATOR SCHNEIDERMAN: Well, I think the members of the Committee will be advised of it. This is not --

Obviously, we are giving instructions to counsel to follow up on several matters that will require us to be in communication after this meeting I

---

suspect. And we haven't discussed this yet, but we may have to reconvene one more time after these other matters are resolved.

Senator Lanza is not referring to a higher power, he's just suggesting --

SENATOR SAVINO: Has Senator Hassell-Thompson gotten a copy of the draft report, do we know?

MR. ALONSO: The same as you folks last night.

SENATOR SCHNEIDERMAN: It was sent to her office. Whether -- I don't know that it's been passed along to her, but, again, her counsel is here and has copies and we'll be communicating with her and we'll get her input.

It is certainly my hope that we will be able to come to agreement on the recommendations as I thought we more or less had at the last meeting.

So I hope we will not have to deal with the issue of a divided vote.

So let me pass the recommendations sections. If the recommendations of the two resolutions are still agreeable to everyone here, we can then discuss

---

the sections about -- the additional section about items as to which the Committee gave substantial weight.

Is there anyone who objects to or does not concur in the decision to proceed with the recommendations as we have discussed?

MR. LEWIS: Can I raise one issue for your consideration?

The section of recommendations about Senator Monserrate's role in sponsoring legislation raises speech and debate issues which, although he's not technically answering for what he's done in another forum, this is not something that is saying that this is in his favor.

We create an exception to that privilege at our own peril and it makes us vulnerable in some ways as a body that on an occasion we have used somebody's particular legislative program this way.

SENATOR SCHNEIDERMAN: I think --

MR. LEWIS: I raise it for your consideration only and I think it's really the members who have to make the decision. I don't think --

MR. ALONSO: Where -- what paragraph are you referring to?

---

MR. LEWIS: During his tenure as a member he co-sponsored, as a Senator who voted affirmative on at least six pieces of legislation.

Now, the vote itself is not necessarily in violation of speech and debate.

To cite his vote does not violate the Constitution.

But you need to know in writing this in here, you raise the issue. And I raise it.

SENATOR SCHNEIDERMAN: I think all we say is that he co-sponsored bills and voted on them, the resolutions, neither of which really, because that's public record, raise issues as to speech and debate I don't think.

MR. LEWIS: Even if it's public record, it still raises the issue. In the absence of a bribery charge on legislation, you rarely can use particular legislation unless -- unless it's not part of the speech and debate situation.

You need to just decide for yourselves aware of that. You may decide to do it anyway, which is the prerogative of the Committee, but you need to know that from our own institutional point of view that that issue

---



is in that paragraph.

SENATOR SCHNEIDERMAN: Well, let me just comment on this.

SENATOR SAVINO: You want to explain the issue of speech and debate to those of us who are not attorneys.

SENATOR STAVISKY: It's an interesting point.

MR. LEWIS: The Constitution in Article III, Section 6 I believe it is provides that a member of the legislature need not answer in any other place except for the house for any action of that member as a member. It's along with the idea that you're privileged from civil arrest during the time that you're actually in session.

The significance of it is is that it's designed -- it goes back to Colonial times. It goes back to Parliament to protect Parliament from the King. That anything you say on the floor is not something that you can then be prosecuted for, usually it was treason or libel or something like that.

In the modern age it has been used to say, the most case is - you'll excuse me - but Rivera

---

against Espada in which the Bronx Democratic Party sought to use Senator Espada's actions on the floor against him to strip him of his party affiliation. The Court of Appeals said you cannot do that. You can strip him of his party affiliation on everything else, but you may not use that for any purpose.

Ostensibly, in a civil case it's less. And after Rivera v Espada, it extended that privilege not just to the house but also to conference matters.

SENATOR SCHNEIDERMAN: The distinction I would make here is that we are not making any reference to any statements by Senator Monserrate, simply to the fact that he voted on these matters.

MR. LEWIS: Answer for his vote, which is the same sort of thing.

SENATOR SAVINO: You're saying that the vote is speech.

MR. LEWIS: It is.

The question --

SENATOR FLANAGAN: Why not take out the last three lines and just keep it as --

MR. LEWIS: Let's not do anything, because the members have to make the decision because this

---

really goes to their privilege and to their waiving of that privilege, waive the possibility which creates a precedent of such waiver.

I raise it only because someone should, not because I have an opinion.

SENATOR SCHNEIDERMAN: Well, let me just -- first of all, this is not -- I don't think this constitutes any sort of waiver.

This is an observation that -- the paragraph even starts with "It is worth noting that by a committee meeting," and I do -- the notation that we have voted on something I don't really see how that could be interpreted as waiving a privilege.

I think the point of it -- let me just clarify. Because if this is of concern to other members of the Committee, we'll certainly address that concern.

The point of this whole section is to indicate that one of the factors that we found significant in making our recommendations is that this is a crime of domestic violence, and that as the Legislature has repeatedly found, domestic violence crimes are really of a different nature than other crimes, that the issue of control as well as violence is a factor.

---

And the point of this paragraph I think was quite simply to point out that Senator Monserrate is well aware of this distinction and, in fact, has voted on legislation relating to this.

So that's the point of the paragraph.

But if anyone has a problem with a concern about waiving a privilege, I think we should deal with it.

SENATOR LANZA: Well, as a suggestion, why not then say that as opposed to this almost sort of sarcastic --

SENATOR STAVISKY: Conversely, --

SENATOR LANZA: -- tit for tat paragraph where we would say that, given Senator Monserrate's experience as an elected official in the Senate and in the City Council and as a former police officer, he has had access or has been exposed to the knowledge, extensive knowledge, concerning the seriousness and corrosive nature of domestic violence.

Just state it that way as a conclusion based on his experience as opposed to --

SENATOR STAVISKY: I happen to agree with you.

---

And I wonder -- you've already talked about domestic violence in the preceding paragraphs. Why do you need this last paragraph in its existing format?

To me it's irrelevant. It's extraneous because you've already set the stage in the previous paragraphs in discussing -- and said, if we did what Senator Lanza suggests, I think you're arriving at the same conclusion without taking into account his personal --

MR. LEWIS: I would recommend that either we say every Senator has considered this issue or use Senator Lanza's formulation, not singling out one person's --

SENATOR STAVISKY: It doesn't -- this way we're not giving -- we're not sticking our chin out and saying hit me.

SENATOR SCHNEIDERMAN: Okay.

I think that we could take this paragraph out.

I mean the point that --

SENATOR STAVISKY: And I would substitute some of Andrew's language.

SENATOR SCHNEIDERMAN: My only

---

concern with that would be that it's a generalized statement without a specific -- providing the backup.

I mean I think you could take it out entirely.

SENATOR STAVISKY: Just take out the paragraph completely.

MR. ALONSO: Okay.

SENATOR STAVISKY: Because you've already set the stage with the preceding paragraphs.

MR. ALONSO: No one's going to argue that he didn't know this.

SENATOR STAVISKY: Exactly.

SENATOR ALESI: Can I offer just one possible scenario, that rather than take this entire paragraph out, you can say that the Legislature -- like as we did earlier with the legislative findings, that the Legislature has passed, has passed, has passed, has passed?

SENATOR STAVISKY: Yeah.

MR. LEWIS: I would leave the paragraph that says, in total, the Legislature has passed --

SENATOR STAVISKY: Yes. Exactly.

---

MR. ALONSO: Yes. Okay. We'll do it that way.

SENATOR SCHNEIDERMAN: And we attach them as exhibits so the documentation is there.

SENATOR STAVISKY: That's right. You set the stage.

SENATOR ALESI: We're establishing a pattern of the body's behavior and what's expected of members.

SENATOR SCHNEIDERMAN: Any other -- and we have several edits that have already been made to these in the course of our dissection, in the course of our discussion.

I note that it says December 9 thru the 20th, 2009. That should be 2008 in Item 2. We've already changed the word "refuse" to "fail" in Item 3.

So is there anything else that any member would like to add to these provisions about the items which we imported?

Obviously counsel will continue to be reviewing this and editing this as we go forward.

And, once again, the fact that we're meeting here today after distributing the draft yesterday

---

afternoon no way precludes members from making additional comments.

Again, a suggestion that was made by Senator Flanagan, I think, was well taken that if there is some matter of substance, opening up a new area of inquiry or something, I think that's something we should address in writing on the record.

If it's a matter of substituting "fail" for "refused" or some other editing comments or correcting the date, that's not something that I think we are required to put on the record.

MR. ALONSO: So I had a request during the break to provide the rosario material that Mr. Lewis referred to to all the members of the Committee.

I will send that over to you shortly, to every member of the Committee, and I urge you -- well, you'll do whatever you will.

SENATOR SCHNEIDERMAN: And any issues relating to the nuances, complexities and substantial caseload relating to the rosario material, I would suggest that you direct to counsel.

Any other additional comments?

We obviously have some more editing

---



work.

And I would note that we have directed counsel to proceed in two specific areas, in addition to the general editing and revisions that were suggested.

One is to contact Mr. Nieves about the circumstances of the affidavit.

And the other is to make an inquiry of Mr. Castro's employment circumstances and activities in connection with this proceeding.

MR. ALONSO: And I will be sending a letter tomorrow to Ms. Giraldo's lawyer finally confirming that she's not coming in. I mean he made some noises -- we had a couple of conversations of that she might be willing to answer written questions.

And that's, for reasons I don't need to go into now unless anyone is interested, not a particularly preferable way --

SENATOR STAVISKY: Mr. Nieves --

MR. ALONSO: -- to proceed.

But I did engage in some dialogue, asked him some questions. Turns out that she was in the country the whole time according to the lawyer but was apparently not responding to him, according to him,

---

because she was not at her apartment, because the press was camped out at her house.

I find it unlikely that they've been camped out all this time.

But in any event I said didn't you call her on the cellphone. Isn't that what you said?

And he said, yeah.

I said, okay. So presumably not relevant where she's living. She just didn't call you back.

He said: right.

So he finally spoke to her once. She is not inclined to speak to us at all. Might be inclined to answer written questions.

And since then has not, she hasn't called him back.

So I'm going to send a letter just saying, look, we thank you very much. We take that as a, you know, failure to conform to our request.

SENATOR SCHNEIDERMAN: Now, let me make one final point.

Obviously we now have much more substantial written product here. And I think we have to

---

exercise whatever care we're capable of to maintain the confidentiality of this. It's what I think would be peripheral to the process to have drafts circulating before we are able to finalize a product that we all can agree to and vote on.

I think we have a consensus as to where we're going, but I do believe that -- I think similar instructions were given out actually by George Washington at the Constitutional Convention, that everyone was to take all their notes with them and not leave them lying around.

Not to overstate the grandiosity of our effort, but I think it's important not to have partial drafts or drafts that haven't been finalized get out into the public because it could just create confusion and problems.

MR. ALONSO: Likewise, you've been given a number of copies of the recommendations sections. Please don't re-copy them. Keep your one copy for reference, but please don't recopy them.

SENATOR SCHNEIDERMAN: Senator Lanza.

SENATOR LANZA: No.

---

Except to say no one -- you said from the beginning no one wanted to be here. And it is I think with a heavy heart that we come to the conclusion that we have, but I just want to commend the Chairman, Senator Schneiderman, and every member of this Committee.

Everyone came here and acted very thoughtfully and deliberately and thoroughly with respect to this responsibility that we've had.

And I think we've done a service and we've got a product here that will allow our colleagues in the Senate to vote their conscience in a way that is informed by I think a very exhaustive review of the evidence.

So I just want to thank you, Chairman, and thank you, Members of the Committee.

MR. ALONSO: Thank you and all our colleagues.

This is a thoughtful, bipartisan effort and for having Mr. Lewis with me.

SENATOR SCHNEIDERMAN: Thank you.

And we'll continue this process. And as Senator Lanza indicated, we probably will have one more meeting in Albany just to finalize it.

---

(At 2:27 p.m. the proceedings were  
concluded.)

---