

1

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

3

4

ession

5

Meeting Held in Executive S

6

7

Room 124
The Capitol
Albany, NY

8

9

January 11, 20

10

4:44 p.m.

10

11 PRESIDING:

12

Senator Eric Schneiderman
Chair, Senate Select Committee

13

PRESENT:

14

Senator Andrew J. Lanza

15

Senator Diane Savino

16

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

1 CHAIRMAN SCHNEIDERMAN: L
adies and
2 gentlemen, we're convening once
again the
3 select committee. Hopefully thi
s will be
4 our last meeting. And I appreci
ate
5 everyone's patience.
6 We've had questions raised
by various
7 members of the committee about l
egal and
8 factual issues, and we continue
to adjust
9 the report and to conduct inquir
ies and do
10 research. I think we're very cl
ose to a
11 final product at this point.
12 I do want to emphasize, bec
ause there
13 has been some discussion of this

, that we

14 steps,

15 e integrity

16 possible

17 e, as we've

18 complete

19 roceedings,

20 about these

21

22 evidentiary

23 ve session,

24 as ethics

really have taken extraordinary

unprecedented steps to ensure th

of this process and the fairest

process for this hearing. We ar

stated repeatedly, maintaining a

transcript and record of these p

so there will be nothing secret

proceedings.

We have agreed to hold the

parts of our meetings in executi

as the ethics committees do and

3

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

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

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

duct the

14 evidentiary portion of the meeti
ng.

15 All in favor.

16 (Response of "Aye.")

17 CHAIRMAN SCHNEIDERMAN: O
pposed?

18 (No response.)

19 CHAIRMAN SCHNEIDERMAN: S
o we will

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

21 will go into executive session.
And only

22 the staff members designated by
members and

23 the members of the committee wil
l remain.

24 (Pause.)

4

1
o we're back

CHAIRMAN SCHNEIDERMAN: S

2
taff and

down, I believe, to designated s
members of the committee.

4
passing out

And at this time counsel is

5
I'm

what I believe to be, as far as

6
e report.

concerned, the final draft of th

7
have been

This incorporates comments that

8
ommittee,

made by all the members of the c

9
ounsel in

work that has been done by our c

10
e counsel

cooperation with David Lewis, th

11
working

for the minority, who have been

12

together on this.

13

And this copy was sent to t

he members'

14
received a

15
s which

16
ies. And we

17
ion here

18
k at that.

19
that we've

20
alk about

21
the

22
Castro.

23
discuss the

24
in this

offices earlier. Yesterday you

red-lined version in your office

identified the specific new entr

have copies of the red-line vers

also if anyone would like to loo

The two significant entries

identified and that we want to t

today are the entries related to

interviews of Mr. Nieves and Mr.

So I'm hopeful that we will

finalization of the report later

1 I think it

2 ear a report

3 iews, since

4 o these two

5

6 t to keep in

7 into the

8 ing

9 and the

10 n may

11 ns and

12

.

meeting. But before we do that,
would be a good idea for us to h
from counsel on these two interv
it was requested that we speak t
gentlemen.

I think that it is importan
mind that our mandate is to look
facts and circumstances surround
Senator Monserrate's conviction,
activities of these two gentleme
provide -- may pose many questio
provide areas of further inquiry

13
cerned and

14
d, I don't

15
uch. It

16
of view on

17

18
hings over

19

20

21
r. Cortes is

22
erviews.

23
on,

24

I think as far as we're con

as far as our report is concerne

know that the interviews added m

certainly didn't change my point

our findings of fact.

But with that, can I turn t

to -- Lee, are you going to --

MR. CORTES: Yes.

CHAIRMAN SCHNEIDERMAN: M

going to brief us on the two int

MR. CORTES: Good afterno

Senators.

1
age is that?

SENATOR STAVISKY: What p

2
es in the

SENATOR SAVINO: What pag

3
report?

4
can turn to

MR. CORTES: Senator, you

5
first page 18, footnote 21.

6
ow, he's

CHAIRMAN SCHNEIDERMAN: N

7
have been

talking about the two areas that

8
changed.

9
ned

And would you prefer red-li

10
to the

editions? Would that be helpful

11
se we have

members of the committee? Becau

12
those. Why don't we give out --

13
y original

SENATOR SAVINO: I have m

14 draft.

15 CHAIRMAN SCHNEIDERMAN: Y
ou have your

16 red-line? Okay.

17 SENATOR STAVISKY: I don'
t. May I

18 have --

19 MR. LEWIS: Actually, it'
s probably

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

21 the prior version just said that
we expected

22 to speak with them. And this is
actually

23 the data that --

24 CHAIRMAN SCHNEIDERMAN: Y
es, that's

7

1 correct.

2 MR. LEWIS: Sorry, Lee.

3 CHAIRMAN SCHNEIDERMAN: M
r. Cortes?

4 MR. CORTES: So the first
substantive

5 change is page 18, footnote 21.
And these

6 relate to the two interviews tha
t took place

7 this Saturday, Mr. Michael Nieve
s and

8 Mr. Luis Castro, who we intervie
wed pursuant

9 to the select committee's direct
ion.

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

11 interview and Ms. Gersowitz, my
colleague,

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

13 she conducted that interview.

14
ves. He was

15
uncil from

16
signed, I

17

18
ccording to

19

20
Mr. Nieves.

21
just want

22
ust

23
t sure that

24
assume

Brief background on Mr. Nie

employed by the New York City Co

1998 until last week, when he re

believe.

CHAIRMAN SCHNEIDERMAN: A

Mr. Nieves.

MR. CORTES: According to

CHAIRMAN SCHNEIDERMAN: I

to make it clear that this all j

according to Mr. Nieves. I'm no

any of these facts -- let's not

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

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

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

13
that he had

14
or

15
, for any of

16

17
2008,

18
injured, Mr.

19
Senator

20
e the late

21
te was on

22
ieves was

23

24
incident,

in the late 1990s. He attested

never been paid, either directly

indirectly by Senator Monserrate

his services.

Following the December 19,

incident where Ms. Giraldo was i

Nieves served as a spokesman for

Monserrate. He's known him sinc

1990s, and when Senator Monserra

the New York City Council, Mr. N

assigned to work with him.

Going to the December 19th

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

himself to

14
been in

Mr. Nieves, he stated that he'd

15
contact --

16
e.

SENATOR SAVINO: Excuse m

17
That's -- so that's three people
.

18
That's a

SENATOR STEWART-COUSINS:

19
third person now.

20
only aware

SENATOR SAVINO: We were

21
edge that

of two people, we only had knowl

22
hat could

there were two people involved t

23
tor

potentially be connected to Sena

24
ree.

Monserate. Now we know it's th

10

1 SENATOR STEWART-COUSINS:
Enter

2 Irizzary.

3 MR. CORTES: Yes. Correc
t.

4 When Mr. Irizzary presented
himself to

5 Mr. Nieves, he said that he had
been in

6 contact with Ms. Giraldo followi
ng her

7 interviews by the district attor
ney and the

8 New York City Police Department,
and that it

9 was Ms. Giraldo's intention to a
ddress the

10 media and make a statement regar
ding the

11 events that had taken place earl
ier that

12 morning.

13 At that point Mr. Irizzary

drove

14
Continental

15
iting in a

16
d by her

17
anied her to

18
er 18th that

19
sly.

20
Ms. Rojas,

21
raldo.

22
red the

23
ho had been

24
t the same

Mr. Nieves to Austin Street and

Avenue, where Ms. Giraldo was wa

minivan we believe that was owne

cousin Jasmina Rojas, who accomp

the party on the night of Decemb

we have described to you previou

Waiting in the minivan was

her son, Javier Kaza, and Ms. Gi

Mr. Irizzary and Mr. Nieves ente

minivan along with Mr. Castro, w

either -- who had just arrived a

1 time or had been waiting at the
location.

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

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

4 Rojas, and Javier Kaza.

5 SENATOR SAVINO: Can I as
k a

6 question?

7 MR. CORTES: Sure.

8 SENATOR SAVINO: Why did
they pick

9 71st and Continental Avenue?

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

11 location was picked.

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

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

14 SENATOR SAVINO: Because

that's right

15 around the corner from central b
looking.

16 SENATOR STAVISKY: Down t
he block.

17 CHAIRMAN SCHNEIDERMAN: W
hy don't we

18 let them run through both, becau
se there are

19 also inconsistencies between the
two of

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

21 the table.

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

23 the occupants of the car speak S
panish and

24 that the conversation that took
place was

1 conducted in Spanish.

2 Ms. Giraldo told her story
to

3 Mr. Irizzary and Mr. Nieves, and
the two of

4 them decided that it would be --
that her

5 story was helpful and that she s
hould

6 memorialize it in an affidavit.

7 Mr. Nieves is a licensed no
tary in

8 Queens County, Kings County, and
possibly

9 Manhattan, he wasn't -- he didn'
t recall if

10 he was -- and he has been a nota
ry for

11 approximately 20 years.

12 The actual written statemen
t was

13 written, handwritten by Mr. Iriz
zary in

14
nieves, he is

English. But according to Mr. N

15

not a native Spanish speaker.

16
r. Irizzary.

CHAIRMAN SCHNEIDERMAN: M

17
is not a

MR. CORTES: Mr. Irizzary

18

native Spanish speaker.

19
ntent of the

Mr. Nieves described the co

20
ot

affidavit as "lawyer words" -- n

21
reflective

Ms. Giraldo's precise words, but

22
completion

of her story. And following the

23
re

of the affidavit, Mr. Nieves swo

24
signed the

Ms. Giraldo and Ms. Giraldo then

13

1 statement.

2 After it was completed, Mr.
Nieves said

3 that he took the signed statemen
t and

4 brought it to Senator Monserrate
's attorney.

5 That's how the statement was com
pleted.

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

7 SENATOR STAVISKY: May I
ask a

8 question about that?

9 MR. CORTES: Of course.

10 SENATOR STAVISKY: Did sh
e understand

11 what she was signing?

12 MR. CORTES: Senator, she
--

13 CHAIRMAN SCHNEIDERMAN: O
r more

14 properly, what did Mr. Nieves co
mmunicate

15 about that? Because we don't kn
ow.

16 SENATOR STAVISKY: That w
as my

17 question.

18 MR. CORTES: How Mr. Niev
es

19 communicated that it was created
was

20 Mr. Irizzary wrote it in English
. There's

21 conflict between what Mr. Irizza
ry said and

22 what Mr. Castro said, which we'l
l get to

23 momentarily.

24 Mr. Nieves said that Mr. Ir
izzary wrote

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

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

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

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

ng the

14
o, Mr.

security provided for Ms. Girald

15
in that

Nieves is attributed as a source

16
e did in

article, and he confirmed that h

17

fact give those statements.

18
he's not a

MR. LEWIS: He is also --

19
uired to

lawyer, but as a notary he's req

20
here he

keep a book recording when and w

21
en asked

takes a notarized statement. Wh

22

about his book --

23
o longer --

MR. CORTES: He said he n

24
ars ago. So

he stopped keeping it several ye

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

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

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

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

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

th 14 with the exception of Senator Ru
r 15 Hassell-Thompson, who had anothe
ore the 16 appointment. I spoke to her bef
ut her views 17 meeting and had a discussion abo
come up. 18 on the issues that are going to
re, and we 19 Her counsel, Jerry Savage, is he
meeting is 20 will follow up with her when the
21 over.
22 Thank you. I'm sorry.
23 MS. GERSOWITZ: So we con
ducted an
24 interview of Luis Castro, who as
you recall

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

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

12 So we went over his backgro
und, his

13 relationship with Senator Monser
rate.

14 Apparently he's known Senator Mo
nserrate

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

16 They continue to be in close con
tact and

17 have been in close contact throu
ghout the

18 course of their relationship, wh
ich has been

19 both professional and personal.

20 In 2001, Mr. Castro volunte
ered with

21 Senator Monserrate's City Counci
l campaign,

22 and he volunteered by introduc
ing him to

23 various members of the community
. He

24 described himself as somewhat of
a community

1 organizer.

2 And in 2002, he was hired b
y

3 Senator Monserrate as a communit
y liaison

4 when Senator Monserrate was a Ci
ty Council

5 member. So that was the first t
ime that he

6 was officially employed by Senat
or

7 Monserrate and was actually paid
a salary.

8 The work that he did on his camp
aign in

9 terms of helping organize was al
l unpaid

10 work.

11 In 2007-2009 he worked on o
ther

12 political campaigns, and then in

13 September 2009 he took a month o

ff. And it

14 was in early October 2009 that h
e was
15 offered the position as the spec
ial
16 assistant to the Consumer Protec
tion
17 Committee, which is what was rai
sed in the
18 Daily News article.

19 So he's got a long history
with
20 Senator Monserrate. He currentl
y works
21 rather closely with him. And he
reports to
22 Ed Irizzary, who's counsel to th
e Consumer
23 Protection Committee, who we jus
t discussed.

24 And he also has a relations
hip, as he

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

13 he described it, a spiritual adv
isor to

14 Ms. Giraldo and to her family.
He's never

15 had a professional relationship
with

16 Ms. Giraldo, nor has he ever bee
n

17 compensated by her for any reaso
n.

18 SENATOR SAVINO: Excuse m
e, did you

19 say spiritual advisor?

20 MS. GERSOWITZ: Yes. He
described

21 himself as her pastor or her spi
ritual

22 advisor. He is -- according to
him, he's an

23 ordained minister.

24 SENATOR SAVINO: Do we ha
ve a picture

1 of this guy?

2 CHAIRMAN SCHNEIDERMAN: I
don't know.

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

4 SENATOR SAVINO: When you
're done,

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

6 Or at least I need to see him.

7 Go ahead, I'm sorry.

8 MS. GERSOWITZ: He claims
that he

9 spent very little time with Ms.
Giraldo and

10 Senator Monserrate together as a
couple,

11 though he clearly has relationsh
ips with

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

13 occasions has he spent time with
them as a

14 couple.

15 So we discussed the notariz
ed statement

16 with him because he was part of
that

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

18 statement itself. And he descri
bed the

19 events that led up to his partic
ipation in

20 the creation of this statement.
And he said

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

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

23 him to come meet her in Forest H
ills.

24 He was aware at that time t
hat

1 Senator Monserrate had been arre
sted. When

2 he first learned about Senator M
onserrate's

3 arrest, he did not know that the
woman who

4 was alleged to have been injured
was

5 Karla Giraldo.

6 He receives this call at ap
proximately

7 6:30 or 7:00. Ms. Giraldo asks
him to come

8 meet her in Forest Hills at the
location

9 that was described earlier, and
he agrees to

10 do that.

11 He goes and meets her, and
she explains

12 to him that she's very upset abo
ut the way

13 that she's been treated. She wa

s very

14
ict attorney

15
arly focused

16
attorney.

17
ed to make a

18
as not

19
f statement

20
as a press

21
ith

22
hat type of

23
ant to make

24
ttorney to

agitated about the way the distr

had treated her and was particul

on her treatment by the district

She explained that she want

statement, although Mr. Castro w

entirely clear as to what type o

she wanted to make, whether it w

statement, a statement to help w

Senator Monserrate, or exactly w

statement it was. But she did w

a statement, and she wanted an a

1 come help her make that statemen
t.

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

3 Edward Irizzary, who was an atto
rney that

4 he'd known for approximately eig
ht years.

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

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

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

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

9 Queens.

10 So he called Mr. Irizzary.
He said he

11 did not consider the fact that M
r. Irizzary

12 had a relationship with Senator
Monserrate,

13
did have a

14
rate. He

15
ome to meet

16
consistent

17

18
izzary came

19
ro called

20
t he was

21
he appeared

22
y little

23
n't

24
ationship

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

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

1 zary. And

2 rk on the

3

4 on of the

5 ted is a bit

6 hat Mr.

7 ed the

8 ine in

9 ote that

10 the English

11 Giraldo.

12 t came up in

between Ms. Giraldo and Mr. Iriz

they pretty soon after got to wo

actual statement.

Now, Mr. Castro's descripti

way that this statement was crea

different than the description t

Nieves gave. The way he describ

process, Ms. Giraldo said each l

Spanish and then Mr. Irizzary wr

down in English and then he read

sentence back in Spanish to Ms.

And if there were any issues tha

13
ted what she

14
s. We asked

15
were; he

16
ticular.

17
ished,

18
, Mr. Nieves

19
y left soon

20
sion about

21
he

22
ware of what

23
He said he

24
with

terms of whether he had represen

told him, she raised those issue

about what some of those issues

didn't recall any of them in par

After the statement was fin

Ms. Giraldo signed the statement

notarized the statement, and the

after that. There was no discus

what was going to be done with t

statement. Mr. Castro was not a

the follow-up was going to be.

never spoke about the statement

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

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

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

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

14 he accompanied Ms. Giraldo to co
urt. We
15 asked him about that. He explai
ned that he
16 did that as -- really as a perso
nal favor.
17 She called him up a few days bef
ore she was
18 scheduled to testify, which was
19 September 30, 2009, and asked hi
m to
20 accompany her.
21 Because he had concerns abo
ut all of
22 the press that were going to be
there, he
23 called a few other individuals w
ho
24 Ms. Giraldo also knew and invite
d them to

1 come along as well. He said he
was never
2 compensated for that service, an
d he never
3 spoke with Senator Monserrate ab
out
4 providing that. Nor did he rece
ive any sort
5 of compensation from Senator Mon
serrate for
6 accompanying Ms. Giraldo on that
day.

7 He said her motivation in a
sking him to
8 come with her was in part as her
pastor or a
9 spiritual advisor and also as a
friend.

10 MR. LEWIS: Just a couple
of other
11 things. First, Nieves and Castr
o's
12 versions, the story in the Daily
News and

13 those statements don't match. B
ecause while
14 Nieves said "yes, I said that,"
and he
15 appeared to have had a conversat
ion --
16 claims to have had a conversatio
n with
17 Castro about it, I checked with
him and
18 Castro said that Nieves did it o
n his own
19 and never checked with him, that
Castro
20 claimed to have complained to Se
nator
21 Monserrate about it and Monserra
te just
22 said, "Well, it's the press, the
re's nothing
23 you can do with it."
24 How'd I do?

1
orry, I lost

2
Castro

3
the date he

4
ation with

5
ired in

6

7
ober.

8
rly October,

9
ht you

10

11
eep in mind

12
roll on the

13

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

MS. GERSOWITZ: Early Oct

MR. LEWIS: I'm sorry, ea

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

CHAIRMAN SCHNEIDERMAN: K

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

before that.

14 MR. LEWIS: And he was co
ntacted

15 prior to that date --

16 CHAIRMAN SCHNEIDERMAN: A
ccording to

17 him.

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

19 offered the job.

20 SENATOR SAVINO: Did he w
ork for him

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

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

23 community liaison.

24 SENATOR SAVINO: When did
he leave

1 the City Council?

2 MS. GERSOWITZ: Approxima
tely 2007.

3 CHAIRMAN SCHNEIDERMAN: Q
uite a while

4 before.

5 SENATOR FLANAGAN: Who is
"he"? I

6 just want to make it clear.

7 CHAIRMAN SCHNEIDERMAN: M
r. Castro.

8 Mr. Castro. Thank you.

9 MR. LEWIS: Nieves left t
he Council

10 as recently as last week.

11 SENATOR SAVINO: Right.
He was on

12 central --

13 CHAIRMAN SCHNEIDERMAN: H
e was on the

14 central staff.

15
t week he

MR. LEWIS: But as of las

16

isn't.

17
hat's what

CHAIRMAN SCHNEIDERMAN: T

18

he says, yes.

19
I guess we

SENATOR SAVINO: I mean,

20

could find out.

21
hem why

Did anybody ask either of t

22
the

Ms. Giraldo didn't simply write

23

affidavit in Spanish?

24
rding to

MR. LEWIS: No. But acco

1 Castro, she insisted that they m
eet in the

2 van.

3 MS. GERSOWITZ: She did i
nsist. And

4 Mr. Castro suggested --

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

6 a restaurant or --

7 SENATOR STAVISKY: Why di
d they meet

8 in the van?

9 CHAIRMAN SCHNEIDERMAN: I
'm sorry,

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

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

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

13 what Ms. Giraldo did or why anyo
ne did

14 anything.

15 So we have two somewhat inc
onsistent

16 versions of the story, and neith
er of them

17 purported to know why the meetin
g was in the

18 van. In fact, Castro wanted to
go to --

19 MS. GERSOWITZ: Mr. Castr
o suggested

20 going to a restaurant, going som
ewhere else.

21 But according to Mr. Castro, she
insisted

22 that she wanted to do this in th
e van.

23 SENATOR SAVINO: And at t
he time he

24 was not working for Senator Mons
errate but

1 he did have this personal relati
onship with
2 him.

3 MR. LEWIS: Who is "he"?

4 SENATOR SAVINO: Castro.

5 CHAIRMAN SCHNEIDERMAN: M
r. Castro,
6 correct.

7 MR. LEWIS: According to
him.

8 SENATOR SAVINO: And the
reason I

9 asked about what he looks like i
s in

10 November of 2008, before this in
cident

11 happened but after Election Day,
many of us

12 were down in Puerto Rico for the
Somos El

13 Futuro conference, and he had wi
th him a

14 gentleman who I don't remember -
-

15 CHAIRMAN SCHNEIDERMAN: W
ho is "he"?

16 SENATOR SAVINO: Senator
Monserrate

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

18 the gentleman's name, although h
e presented

19 himself to everyone as his spiri
tual advisor

20 whose responsibility was to hand
le negative

21 energy that surrounds the Senato
r. Now,

22 this is before the incident with

23 Ms. Giraldo.

24 He was a very strange indiv
idual, and

1 out what his

2 e was, was

3 cularly with

4 st bizarre

5 ybody, and

6 ether it's

7

8 l you that

9 d as a

10 serrate, and

11

12 e does have

13

he at great lengths discussed ab

role in Senator Monserrate's lif

to manage negative energy, parti

the press. It was one of the mo

encounters I've ever had with an

that's why I'm curious to see wh

the same person.

MS. GERSOWITZ: I can tel

we asked whether Mr. Castro acte

spiritual advisor to Senator Mon

he said that he did not.

CHAIRMAN SCHNEIDERMAN: H

a website that we'll get the inf

ormation.

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

15 this is --

16 SENATOR STAVISKY: Is he
an ordained

17 minister?

18 CHAIRMAN SCHNEIDERMAN: H
e says he

19 is.

20 MS. GERSOWITZ: He claims
to be.

21 CHAIRMAN SCHNEIDERMAN: S
o just let

22 me note -- Senator Flanagan.

23 SENATOR FLANAGAN: I have
a couple of

24 questions. I didn't catch your
name.

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

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

6 MR. CORTES: Yes.

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

10 MR. CORTES: Mr. Nieves,
yes.

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

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

15
contacted by

16
staff. He

17
e Mahlke as

18
. And he

19
errate had

20
d that he

21
ome to the

22

23
r. Nieves,

24
orney for

approximately 7:00 a.m., he was

members of Senator Monserrate's

has specifically identified Wayn

the individual who contacted him

relayed to him that Senator Mons

been in touch with Mr. Mahlke an

had requested that an attorney c

precinct where he was.

Mr. Mahlke then contacted M

and Mr. Nieves contacted the att

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

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

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

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

13 SENATOR FLANAGAN: Okay.
So

14
Cullen?

Mr. Nieves, his attorney is Mr.

15
represented

MR. CORTES: That's who r

16
question

him at the interview. I did not

17

him regarding the extent of his

18
h

attorney-client relationship wit

19

Mr. Cullen.

20
this is

SENATOR FLANAGAN: I know

21
Nieves hire

seemingly off-base, but did Mr.

22
Monserrate?

Mr. Cullen to represent Senator

23
?

Or when did Mr. Tacopina come in

24
he third

MR. LEWIS: Tacopina is t

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

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

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

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

14
Irizzary

asked him if he knew whether Mr.

15
anish, and

could either read or write in Sp

16
he could

he said he didn't know. He said

17
w if he was

speak Spanish, but he didn't kno

18

a native Spanish speaker.

19
idn't know.

SENATOR SAVINO: But he d

20
r. Nieves

CHAIRMAN SCHNEIDERMAN: M

21

did not know.

22
ot know if

SENATOR SAVINO: He did n

23
h speaker.

Mr. Irizzary was a native Spanis

24
t know if he

Not that he wasn't, but he didn'

1 was.

2 MR. CORTES: Correct. Co
rrect.

3 SENATOR ALESI: But Irizz
ary then

4 repeated back to Ms. Giraldo --

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

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

7 said he wasn't.

8 CHAIRMAN SCHNEIDERMAN: A
ccording to

9 Nieves.

10 SENATOR ALESI: He was no
t a native

11 speaker.

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

13 speaker. According to Nieves, h
is belief

14 was that he was not a native Spa

nish

15

speaker. My apologies.

16

recall

SENATOR ALESI: But if I

17

panish, he

correctly, she spoke to him in S

18

reiterated

wrote it in English, and then he

19

ad written?

back to her in Spanish what he h

20

hat Castro

SENATOR SAVINO: That's w

21

says.

22

Castro said.

MR. CORTES: That's what

23

ieves says

CHAIRMAN SCHNEIDERMAN: N

24

hat she made

it was more casual than that. T

1 up and they

2

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

3 his is

4

was

5

it. For

6

ch is really

7

facts and

8

nviction,

9

and Mr.

10

to our

11

lity of

12

do and his

But let me just note that t
something that we -- the inquiry
requested, and we followed up on
the purposes of this report, whi
supposed to be investigating the
circumstances surrounding the co
the issues raised by Mr. Castro
Nieves are really just relevant
determinations as to the credibi
Senator Monserrate and Ms. Giral

13 acceptance of responsibility.

14 So the actual changes in th
e report --

15 and these are the only two signi
ficant

16 changes that were made since the
last

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

18 was identified earlier, footnote
21, and

19 then on page 29, where we have t
he

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

21 earlier meeting -- about how the
select

22 committee was also troubled by t
he fact

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

24 individuals, based on Senator Sa
vino's

1 observation.

2 MS. GERSOWITZ: There is
a reference

3 to Mr. Irizzary that's in the te
xt

4 associated with --

5 CHAIRMAN SCHNEIDERMAN: Y
es. It's no

6 longer two.

7 SENATOR ALESI: I think t
here was

8 another concern that I had expre
ssed, and

9 that was the possibility that ma
ybe the

10 affidavit or statements in the a
ffidavit had

11 been coerced or coordinated.

12 CHAIRMAN SCHNEIDERMAN: W
ell, I think

13 what we have here is the informa
tion from

14 these two individuals. And fran
kly, you

15 know, I think that the statement
s are

16 somewhat inconsistent, but what
we have here

17 is a pretty -- to me, a pretty c
lear picture

18 that, you know, there were a gro
up of people

19 who were connected to Senator Mo
nserrate

20 sitting in a van later in the sa
me day as

21 the incident, late in the day on

22 December 19th, obtaining a state
ment from

23 Ms. Giraldo that was notarized t
hat

24 essentially framed her involveme
nt for the

1 rest of the proceeding.

2 So we know that's how the n
otarized

3 statement was produced, and that
's really

4 the focus of this inquiry. Beca
use several

5 members of the committee were co
ncerned

6 about the validity of it. And h
opefully as

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

8 page 18, that these will fairly
frame out

9 and articulate our concerns.

10 SENATOR LANZA: And the p
oint of the

11 authenticity, timing, and whethe
r or not

12 there was coercion with respect
to that

13 affidavit is made more difficult

by virtue

14 of the fact that, as everyone kn
ows,

15 Ms. Giraldo declined appearing b
efore the

16 committee.

17 CHAIRMAN SCHNEIDERMAN: A
nd it should

18 also be noted that Mr. Castro ca
ncelled

19 meetings with our counsel on --
was it three

20 occasions?

21 MR. CORTES: Three occasi
ons.

22 CHAIRMAN SCHNEIDERMAN: S
o it was not

23 so easy to get ahold of these ge
ntlemen.

24 But I think that given the
fact that

1 g that is a

2 point of our

3 ould pursue

4

we're, in my view, into somethin

little bit far afield from the p

inquiry, I don't know that we sh

this any further.

5 the

6 sn't change

7 , in my view

8 dations. I

9 one else

10

Also, I would note that for

purposes of our inquiry this doe

anything, in my view, ultimately

of the situation or the recommen

don't know if that's true of any

here.

11 point out

12 other

13

SENATOR STAVISKY: May I

one other -- or perhaps ask one

question.

14
wo weeks to

15
the Queens

16
was obtained

17
ink, on

18

19
hat's true.

20
the final

21
ations, is

22
rt up until

23
these

24
ere several

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

CHAIRMAN SCHNEIDERMAN: T

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

1 to do with

2 n of

3 nseel worked

4 rs of the

5 for edits or

6

7 g to

8 ceptable to

9

10 Yes.
11 Yes.

12 s acceptable

13 done and

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

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

SENATOR SAVINO: Yes.

SENATOR STEWART-COUSINS:

SENATOR LANZA: Well, it'

to the degree that I think we've

14 exhausted that which we could do
.

15 CHAIRMAN SCHNEIDERMAN: I
don't mean

16 the underlying conduct is accept
able, I just

17 mean as far as our draft.

18 And Mr. Savage is here on b
ehalf of

19 Senator Hassell-Thompson. Will
you confirm

20 with me that those two entries,
the two

21 entries relating to Mr. Nieves a
nd Mr.

22 Castro, are acceptable to the Se
nator?

23 MR. SAVAGE: Yes, Senator
.

24 CHAIRMAN SCHNEIDERMAN: T
hank you.

1
based on the

2
Lanza has

3
had with

4
g else in

5
all members

6
tion of the

7
ng to the

8
ation

9

10

11
n page 53.

12
ted after

13

As far as I'm aware, then,
discussions we've had -- Senator
had with his colleagues and I've
mine -- I believe that everythin
the report has been agreed to by
of the committee, with the excep
question that arose today relati
third paragraph in the recommend
section.

SENATOR LANZA: Page 53.

CHAIRMAN SCHNEIDERMAN: O

The draft that was distribu
our December 29th meeting incorp

orating a

14
nator

15
his

16
mends that

17
der, debate

18
ulsion as

19
that

20
nate should

21
esolution

22
of

23

24
ot a

suggestion made originally by Se

Stavisky stated, at the end of t

paragraph: "The committee recom

the full Senate convene to consi

and vote on a resolution for exp

soon as reasonably possible. If

resolution fails to pass, the Se

consider, debate and vote on a r

for censure with the revocation

privileges."

And Senator Lanza has now g

1 suggestion to modify that senten
ce. And
2 that's a request that he made ea
rlier today.
3 And maybe you could read th
e
4 alternative version, Senator.
5 SENATOR LANZA: Yeah. Ju
st to bring
6 you to that -- the paragraph beg
inning with
7 "accordingly," the suggestion is
that -- is
8 that the second sentence? The s
econd
9 sentence, beginning with "the co
mmittee
10 recommends," that it should be c
hanged to
11 read as follows: "The committee
recommends
12 that the full Senate convene to
consider,

13
ons as soon

14
en to strike

15
raph.

16

SENATOR SAVINO: Why?

17
- you know,

18
here,

19
else,

20
s process to

21
rounding

22
nd I'm not

23
, you know,

24
espect to

debate and vote on both resoluti

as reasonably possible." And th

the final sentence in that parag

the fact is is that each member

probably by now more than anyone

because we have been part of thi

investigate all the evidence sur

these events and the arrest -- a

going to speak for anyone -- but

may have reached opinions with r

Senate 1 what you are going to do on the
2 floor.

3 I think the charge for this
committee
4 has been -- and I think we've re
mained true
5 to that -- is to conduct a thoro
ugh
6 investigation and then report to
the Senate
7 our recommendation. I think the
8 recommendation here and the cons
ensus is is
9 that there's a recommendation fo
r sanction
10 and that the possibilities are e
xpulsion or
11 censure.

12 And there's a concern that
this
13 language, while I think technica

lly not --

14
you know, a

15
ot be, I

16
nding which

17
k that a

18
and in fact

19
mittee

20
ote on the

21

22
hat I've

23
that from

24

technically does not -- I think,

reasonable reading of it would n

think, interpreted as us recomme

one the body should take, I thin

casual reading of it would do so

might be interpreted as this com

actually recommending that the v

floor be for expulsion.

And so I think the change t

suggested would, you know, avoid

happening.

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

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

1
ever comes

2
ort is as

3
intention

4
e, leaving

5
you want

6

7
e looked at

8
you should

9
ss, because

10
second, the

11
ined by

12
o put one in

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

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

e's 13 favor of the other, the committe

14 recommendation won't matter.

15 And rather than have a situ
ation in

16 which the leaders may do somethi
ng the

17 committee has not recommended, o
r put the

18 leaders in the position where th
ey have to

19 reject what the committee has do
ne on that

20 level or in some way create a pr
oblem, the

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

22 and let the process work out.

23 SENATOR LANZA: Let me ju
st as say as

24 to the -- with respect to the or
der of

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

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

13 committee.

14 CHAIRMAN SCHNEIDERMAN: W
ell, let me

15 just make a --

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

17 Mr. Chairman.

18 CHAIRMAN SCHNEIDERMAN: G
o ahead.

19 SENATOR LANZA: And so wh
ether or not

20 we speak to the order of things,
the sheer

21 logic and mechanics of the way t
his would

22 have to unfold would dictate tha
t the one

23 would come before the other.

24 CHAIRMAN SCHNEIDERMAN: I
just want

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

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

12 I guess the concern that so
me of us

13
ok, this is

14
sus. And I

15
ard for us

16
s on that,

17
effort.

18
he committee

19
tion for

20
floor. And

21
proposed

22
uld be voted

23
that that's

24

have is we want to make it -- lo

an effort, again, to have consen

think everyone has worked very h

to achieve a bipartisan consensu

and I really do appreciate that

There are some members of t

who feel very strongly that a mo

expulsion must be brought to the

I think that the language you've

saying that both resolutions sho

on as soon as possible indicates

the case.

1 I think that one of the con
cerns that

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

3 resolutions and they both pass,
which is

4 possible, you end up having one
resolution

5 saying Senator Monserrate remain
s a Senator

6 without being stripped of his co
mmittee

7 privileges and other privileges
as we've

8 defined it, and then a second re
solution

9 saying Senator Monserrate is not
to remain

10 as a Senator. So essentially we
have two

11 conflicting resolutions that pro
duce -- if

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

13 a possibility.

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

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

1 guidance.

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

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

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

13 And perhaps to address your
point, the

14
e decouple

15
on from the

16
to the

17
. So that

18
ding or that

19
th. Because

20
never get

21
is you're

22

23
at we want

24
perception

point you've just made is that w

the both in the suggested revisi

vote, but retain it with respect

consideration and perhaps debate

it's clear that we're not preclu

we're not requiring a vote on bo

if there is a vote on one, you'd

to the second vote, I think what

saying.

But what we're saying is th

language that does not give the

1 to the body that we are recommen
ding a vote
2 on one over the other.

3 SENATOR SAVINO: But we a
re.

4 SENATOR LANZA: No, we're
not.

5 CHAIRMAN SCHNEIDERMAN: N
o, I think
6 we're just recommending an order
.

7 SENATOR LANZA: We're rec
ommending
8 that there be a sanction. We ar
e not

9 recommending -- at least I'm not
10 recommending that the members of
the body in
11 this report should vote for expu
lsion or
12 should vote for sanction.

13 SENATOR SAVINO: So that

we're

14
onsidered by

15
indings and

16
xamined,

17
e level that

18
on and/or

19

20
open for

21
reprimand

22
ating we

23
e ultimate

24
should be

recommending that it should be c

the full body. Based upon our f

all of the evidence that we've e

that this infraction rises to th

should be considered for expulsio

censure.

We're not leaving the door

anything else, we're not saying

or -- you know, we're clearly st

think that this could warrant th

penalty and, failing that, this

1 the next thing that the Senate c
onsiders.

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

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

4 understand what David also says
with respect

5 to the fact that the committees
never direct

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

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

8 resolution before the other, we'
re still not

9 directing what happens on the fl
oor, because

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

11 whether or not they're going to
accept our

12 report with our recommendations
and act on

13 it.

14 All we're doing, I think, i
s we're

15 saying we believe that this acti
on should be

16 taken. We don't have the ultima
te authority

17 to make it happen. But I think
in terms of

18 order and, you know, to prevent
some level

19 of chaos on the floor of the Sen
ate, I think

20 we should lay out what we think
makes the

21 most sense, recognizing that we
can't

22 control the final outcome anyway
.

23 CHAIRMAN SCHNEIDERMAN: D
oes anyone

24 else want to weigh in before we
--

1
ing to join

2
Lanza. And

3
ts since our

4
hink the

5

6
ion, going

7
And all we

8
lk about it,

9
ur last

10
building,

11
e report.

12
ng over what

SENATOR FLANAGAN: I'm go

my comments to those of Senator

I'm going to use the recent even

last meeting as a reason why I t

language should be more neutral.

This is clearly, in my opin

to create a perception problem.

have to do -- nobody wants to ta

but the reality is when we had o

meeting, before we even left the

all the news media had the entir

I'm still personally seethi

13 happened, because it was reprehensible.
14
15
16
17
18
19
20
21
22
23
24

Whoever was involved in that, frankly, if we find out, they should be fired or expelled, frankly, if it's one of the members.

My point is that all we need to do is look at what happened with that version of the report. There was a tremendous amount of hyperbole that was associated with what was not even a final report. There were predeterminations made, there were aspersions cast, there were all kinds of innuendo and other things coming out of

erly 1 something that had not been prop
2 finalized.

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

13 And I don't care who the me

mber is; the

14
very touchy

15
read very

16
we can do

17
most

18
gest that

19
diately.

20
could

21
-- but as I

22
ing, a true

23
d not

24
reading, I

reality is we're dealing with a

situation. I think we need to t

lightly and professionally. And

so by suggesting -- probably the

important thing we can do is sug

action be taken swiftly and imme

SENATOR LANZA: And if I

just -- I know Senator Stavisky

stated earlier, a technical read

reading of this does not -- woul

suggest the bias. But a casual

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

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

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

13 If you left the language in

tact but

14
not

15
other, but

16
n" --

17
ould that

18

19
ld that

20
If we

21
commending

22
ply the

23

24
I'm

added the sentence that "we are

recommending one penalty over an

simply the order of consideratio

CHAIRMAN SCHNEIDERMAN: W

make it better?

SENATOR STAVISKY: -- wou

remedy some of the objections?

specifically state we are not re

one penalty over another but sim

order of presentation.

SENATOR STEWART-COUSINS:

1 comfortable with that.

2 MR. LEWIS: Once you reco
mmend the

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

4 you're not, you are.

5 SENATOR STAVISKY: They d
o this all

6 the time in the court, which is
why I

7 thought of it. The courts deal
with the

8 most serious offense first, and
then they

9 proceed to the less serious.

10 MR. LEWIS: But juries ar
e instructed

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

12 able to correct things in that f
ashion.

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

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

1 CHAIRMAN SCHNEIDERMAN: Y
ou've never

2 made any of those, have you?

3 SENATOR LANZA: Yeah, no.
Never.

4 SENATOR STAVISKY: No, be
cause you're

5 ethical lawyers.

6 CHAIRMAN SCHNEIDERMAN: L
et me raise

7 a more fundamental point that I
think is

8 underlying part of this discussi
on, and

9 that's that I think there is a c
oncern among

10 some members who feel strongly t
hat they

11 want to ensure that a vote on ex
pulsion does

12 in fact get to the floor.

13 And I think, cutting throug
h it, I

14
s with the

15
nted in a

16
that the

17
end that a

18

19
t there is

20
uld be a

21
aft, we're

22
ink that's

23
yone to be

24
language is

think that is one of the concern

language, that this not be prese

way where there's any perception

committee is not going to recomm

vote on expulsion take place.

We're also recommending tha

another option and that there co

vote on that. In the current dr

recommending an order. But I th

just something I would urge ever

sensitive to, that whatever the

1 members of

2 ed to sign

3 that a vote

4 be

5 lsion take

6 he context

7

8 a short

9 h in before

10

11 to stress

12 ttee accepts

13

we choose, I know there are some
the committee who are not prepar
onto the report if they believe
on expulsion -- that we will not
recommending that a vote on expu
place, whether by itself or in t
of other votes as well.

I think we're going to take
break. Anyone else want to weig
we do that?

SENATOR ALESI: I do want
the fact that however this commi
the wording that we should not e

xclude the

14
the order

15
possibly

16
we expel,

17
e unless you

18
ve.

19
it may also

20
the desire

21
en bring up

22
rs might

23

24
we -- no

word "both." Because if in fact

turns out to be censure and then

expulsion, and then obviously if

there's no point in doing censur

just want to be totally vindicti

But if you do censure, then

eliminate in the political world

on the part of some people to ev

expulsion when many of the membe

want an expulsion.

So I would simply say that

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

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

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

12 (Brief recess taken.)

13 CHAIRMAN SCHNEIDERMAN: S
o, ladies

14 and gentlemen, we're reconvening
after a

15 brief break.

16 Let me just go over where w
e are,

17 because I do believe we're neari
ng the end

18 of our process as a committee.

19 I would like to make sure t
hat we

20 confirm that all the members of
the

21 committee -- and Senator Hassell
-Thompson's

22 counsel is here and will confer
with her and

23 then confirm -- that by the comm
encement of

24 business tomorrow morning, shall
we say, by

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

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

12 And there is a concern that
, as Senator

13 Flanagan and Senator Lanza point
ed out, a
14 casual reading as opposed to a t
echnical
15 reading might lead someone to sa
y, oh,
16 you're just saying either/or, yo
u're not
17 recommending that we ensure that
a vote on
18 expulsion go to the floor.
19 And then I think on the oth
er side some
20 members of the committee are con
cerned that
21 the language in the current draf
t appears to
22 be favoring expulsion over censu
re and the
23 stripping of privileges and have
a concern
24 that, again, a casual reading ra
ther than a

t 1 technical reading would give tha
 2 impression.

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

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

l try to

14
ternative

15
to the

16
that

17
just stick

18
e done, as

19

20

21
Sounds

22

23
orry, this

24
e stand with

come up with maybe one or two al

versions of language to suggest

committee. If we are agreed on

language, then we're prepared to

it into the report and then we'r

far as I'm concerned.

Does that sound acceptable?

SENATOR STEWART-COUSINS:

good.

CHAIRMAN SCHNEIDERMAN: S

sort of reminds me of a goal-lin

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

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

11 CHAIRMAN SCHNEIDERMAN: R
12 eferring to
13 Legislative Law Section 3?

14 SENATOR YOUNG: Yes.

15 MR. LEWIS: The full text
16 of it is in

14 the report.

15 CHAIRMAN SCHNEIDERMAN: Y
eah, we can

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

17 report.

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

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

20 to convene and deliberate. We m
ay have

21 agreement without doing that and
then may

22 just be able to have a draft tha
t is

23 circulated and signed.

24 So let us visit that issue,
and then

1 we'll be in touch with everyone
tomorrow.

2 SENATOR LANZA: That is b
ecause I

3 believe that we really have achi
eved

4 consensus in substance. It's a
matter of

5 semantics and wording in the rep
ort at this

6 point.

7 CHAIRMAN SCHNEIDERMAN: O
kay, thank

8 you all very much.

9 Senator Flanagan.

10 SENATOR FLANAGAN: One ot
her point.

11 I'd just like to make sure that
the

12 transcripts are released simulta
neously with

13 the report.

14
kay, that's

CHAIRMAN SCHNEIDERMAN: O

15 a good point.

16
get written

How long will it take us to

17
e released,

transcripts in a form that can b

18
eed hard

I guess -- not so much that we n

19
s that we

copies, but we need them on disk

20

can make available to people.

21
hing up

SENATOR FLANAGAN: Everyt

22
lieve.

until this meeting is done, I be

23
swer for the

THE REPORTER: I can't an

24
I think

previous meeting in Manhattan.

1 everything else is done.

2 CHAIRMAN SCHNEIDERMAN: A
 11 right, we

3 will check that also by the begi
 nning of the

4 day tomorrow and confirm.

5 I think that's a good sugge
 stion that

6 Senator Flanagan has made. Is i
 t the

7 consensus of the committee that
 we should

8 have the full transcripts so tha
 t we can

9 release them when we release the
 report and

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

11 transparent committee that has e
 ver met

12 here?

13 SENATOR LANZA: Yes.

1 committee no longer serves a pur
pose.

2 CHAIRMAN SCHNEIDERMAN: Y
es,

3 fortunately for us, by the speci
fic terms of

4 the resolution that created this
committee,

5 once we issue our report we go o
ut of

6 existence.

7 SENATOR STAVISKY: And ho
pe we don't

8 come back.

9 CHAIRMAN SCHNEIDERMAN: T
hey need a

10 new resolution to get us back.

11 SENATOR ALESI: It would
be worth

12 stating it.

13 CHAIRMAN SCHNEIDERMAN: I
think

14 that's another valid point.

15 Thank you very much. We wi
11 talk

16 tomorrow morning. And please ha
ve someone

17 get in touch with my office conf
irming

18 everything but this one sentence
.

19 Thank you.

20 (Whereupon, at 5:58 p.m
., the

21 committee meeting concluded.)

22

23

24

