

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

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6 Public Committee Meeting

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8 Room 124
 9 The Capitol
 10 Albany, NY

11 November 9, 2009
 12 5:06 p.m.

13 PRESIDING:

14 Senator Eric Schneiderman
 15 Chair
 16 Senate Select Committee

17 PRESENT:

18 Senator Andrew J. Lanza
 19 Senator Diane Savino
 20 Senator James S. Alesi
 21 Senator Andrea Stewart-Cousins
 22 Senator Catharine M. Young
 23 Senator John Flanagan
 24 Senator Toby Stavisky
 and
 Special Counsel Daniel Alonso

1 CHAIRMAN SCHNEIDERMAN: Good
2 afternoon. Welcome to the first meeting of
3 the Select Committee of the Senate to
4 Investigate Facts and Circumstances
5 Surrounding the Conviction of Senator Hiram
6 Monserate.

7 I'm Eric Schneiderman, and I'm chairing
8 this committee. And with me is our ranking
9 member Senator Andrew Lanza.

10 This is just an organizational meeting.
11 Today the Senate passed the resolution
12 establishing and empowering this committee.
13 And I would just like to direct the
14 committee members' attention to the -- every
15 one of you has a set of the background
16 materials which our counsel has prepared.

17 We do want to go over the resolution
18 today and talk about the scope of our
19 investigation and have a discussion of that,
20 but first I do want to introduce our
21 counsel.

22 Dan Alonso is going to serve as counsel
23 to the committee. He has a very
24 distinguished background as a prosecutor and

1 a defense lawyer, has served in many
2 capacities in the bar association, is a
3 former chief of the Criminal Division of the
4 United States Attorney's Office, and will be
5 working us throughout this investigation and
6 doing a lot of the nuts and bolts work. He
7 and his team are available to all committee
8 members at any time.

9 And I know that we also have the
10 assistance of distinguished counsel for the
11 Minority, David Lewis, whose background is
12 far too distinguished and lengthy for me to
13 go into at this time.

14 And I think that for the rest of the
15 meeting today, just to give an overview, we
16 want to talk about a couple of objections
17 that have been raised by Senator
18 Monserrate's counsel, talk about what
19 Senator Lanza and I think are some good
20 working ground rules. But this is a Senate
21 committee, so it's open for discussion and
22 commentary by any of the committee members
23 as we go forward.

24 And with that, let me turn it over to

1 Senator Lanza and then we'll go to the
2 resolution and start our work.

3

4 SENATOR LANZA: Thank you, Chairman.

5 Let me just repeat what I said on the
6 floor of the Senate today. First of all,
7 we're here, as Senator Schneiderman said,
8 because the Senate voted by resolution for
9 us to engage in this process.

10 And the task before us is not a
11 pleasant one. We understand that our client
12 here is the integrity of the Senate as well
13 as the public trust. And in order to serve
14 that interest, we must be unfettered by
15 partiality or any external pressure
16 whatsoever, including those pressures of a
17 political nature.

18 That being said, I am confident, with
19 Senator Schneiderman's leadership, and
20 knowing each and every member on this panel,
21 that we will meet that challenge. We are
22 appreciative of the sensitive nature of this
23 task as well as our responsibility.

24 CHAIRMAN SCHNEIDERMAN: Thank you.

1 We are joined today by all of the
2 members of the panel except Senator Ruth
3 Hassell-Thompson, who is out of the country,
4 will be returning. But her counsel and
5 other staff members are here, and we will
6 discuss all these matters with her when she
7 returns.

8 I'd like to start off, before we open
9 it up, by just talking a little bit about
10 the legal background to what we're doing.
11 As Senator Lanza has noted, this is a very
12 unusual proceeding, and it's a very unusual
13 proceeding for a good reason.

14 Pursuant to Legislative Law Section 3,
15 each house of the Legislature has the power
16 to take sanctions against its members,
17 including expulsion. This power has been
18 used only once in history, by the Assembly
19 back in the 1920s.

20 So the decision to pass this resolution
21 was something that I think was taken very
22 seriously by all of our colleagues who voted
23 for the resolution today.

24 The scope of the resolution is the

1 scope of our committee's mandate. And I
2 would encourage everyone to take a look at
3 the resolution, talk to counsel about it if
4 you have any questions.

5 There has been a lot of, I think,
6 discussion about these proceedings in the
7 media, and there have been a lot of people
8 who don't necessarily know what they're
9 talking about and haven't read any law or
10 looked at any evidence discussing this.

11 The mandate for this committee is to --
12 and I'm reading from the resolution -- "to
13 investigate the facts and circumstances
14 relating to the conviction against Senator
15 Monserrate and to report to the Senate with
16 our recommendations."

17 This is a committee of inquiry. At the
18 end of the day, we make a report with
19 recommendations. That's all we do. We are
20 not -- the Senate will then have to take
21 action based on our recommendations. We are
22 not taking a vote as to whether there will
23 be any sanction imposed. That's not our
24 mandate.

1 So with that, we can start our
2 business. And I think, to begin, we want to
3 introduce the members and open up the floor
4 for any other comments of an introductory
5 nature as we move ahead. We have Senator
6 Diane Savino, Senator James Alesi, Senator
7 Catharine Young, Senator Andrea
8 Stewart-Cousins, Senator John Flanagan,
9 Senator Toby Stavisky.

10 And, ladies and gentlemen, if anyone
11 has any introductory comments before we get
12 into a discussion of our plans for the
13 committee, please go ahead.

14 (No response.)

15 CHAIRMAN SCHNEIDERMAN: Okay. Very
16 different from the Codes Committee.

17 (Laughter.)

18 CHAIRMAN SCHNEIDERMAN: So I guess
19 our first order of business before
20 Mr. Alonso is going to talk to us about how
21 we probably are going to be able to proceed
22 going forward is to talk about some
23 correspondence that's taken place.

24 And I just want to make it clear that

1 whatever documents the committee receives --
2 which will be maintained by counsel and the
3 staff -- are of course available to all
4 committee members. There are going to be
5 records of Senator Monserrate's trial that
6 the counsel is going assemble. All of the
7 transcripts, all of the exhibits will be
8 available to all committee members.

9 Hopefully our counsel will be able,
10 working with me and Senator Lanza, be able
11 to select some portions of that to focus on
12 so we don't have to all review every page.
13 But every document will be available.

14 So with that in mind, I'm going to pass
15 around a series of letters that went between
16 our counsel. And the first letter was a
17 letter to the Senate's Chief Counsel,
18 Shelley Mayer, from Senator Monserrate's
19 attorneys. This correspondence raises some
20 objections to the committee's proceeding,
21 and we just want to note this and give
22 everyone a chance to review them and respond
23 to them.

24 Specifically, in a letter dated

1 November 9th which we just received this
2 morning from Senator Monserrate's counsel,
3 there are several objections raised, legal
4 objections which, you know, will be dealt
5 with at later time. But there also are
6 objections raised to some of the members of
7 the committee based on statements that
8 they -- that Senator Monserrate's counsel
9 asserts that they made, and the concern is
10 raised about the ability of this committee
11 to proceed objectively.

12 So I wanted to raise this and give the
13 members of the committee who have been
14 identified by Senator Monserrate's counsel
15 the opportunity to speak up if they want to.

16 The essential issue here is that this
17 is not a committee formed from a jury pool.
18 We all serve with Senator Monserrate. We
19 all have interactions with each other all
20 the time. And the Senators that his counsel
21 has raised a question about are Senator
22 Stewart-Cousins, Senator Savino, Senator
23 Young, and Senator Stavisky.

24 I've spoken and Senator Lanza has

1 spoken to our colleagues. But I think that
2 at this point it's important for us to just
3 ask the question and make sure that we're
4 all clear on this. That if anyone feels
5 that you cannot proceed in an objective,
6 fair manner with the work of this committee,
7 please let us know. There are some members
8 of the Senate who declined to serve on this
9 committee because of such feelings.

10 But I just want to make sure that --
11 it's my belief that everyone here
12 understands our mandate and is prepared to
13 carry it out to the best of their abilities,
14 as Senator Lanza said, putting aside any
15 sort of prejudgment. And I just want to
16 give everyone an opportunity, if there is
17 anyone who feels that they can't proceed on
18 that basis, let us know now. We will deal
19 with it.

20 And I want to give the Senators who are
21 identified in the letter the opportunity, if
22 they choose, to say something about the
23 reference to them.

24 SENATOR SAVINO: I have no problem

1 addressing the comments that were made about
2 me in this particular letter. I just want
3 to correct them, though.

4 I believe on the -- in the letter it
5 says that I threatened him on June 8th and
6 said "His world is circular, what goes
7 around comes around." Let me just correct
8 for the record. What I said was "Life is
9 circular, my friend." And it really was
10 more in reference to his political activity
11 on that day.

12 In addition, I never called him a
13 criminal. I actually participated in the
14 discussion to bring him back to the Senate.
15 I reserve the term "criminal" for another
16 member of the body who shall remain
17 nameless.

18 And finally, I don't know what the
19 alleged embarrassment he claims is, but in
20 fact we had several heated discussion during
21 the course of the Senate coup.

22 But none of those issues would have any
23 bearing on my ability to be fair and
24 objective. You know, as some of you may

1 remember, I spent years as an employee
2 representative, a grievance rep. I
3 represented a lot of people, quite frankly,
4 who were in fact guilty of the charges they
5 were brought up. And I was able to defend
6 them several times -- and you can check with
7 the city's Office of Labor Relations; I won
8 more cases than not.

9 I've never allowed my personal opinion
10 about people's guilt or innocence to affect
11 what I think is their right to due process.
12 And that is the only reason I chose to sit
13 on this committee, because I do believe in
14 due process. I think Senator Monserrate is
15 entitled to it. And I think that my
16 personal opinion about his political
17 activities would have no bearing whatsoever
18 on any decision that I would arrive at with
19 this committee.

20 CHAIRMAN SCHNEIDERMAN: Thank you.

21 SENATOR YOUNG: There's no issue with
22 me. I will be fair and deliberative. And I
23 don't see any problem with this proceeding.

24 SENATOR STEWART-COUSINS: Certainly I

1 would join my colleagues in my assertion
2 that I will be fair, deliberative, and have
3 never demonstrated otherwise.

4 The reference here was in response to a
5 reporter who asked me about someone else's
6 comments. And so my response was about
7 their comments. And to go further, it was
8 about the fact that we are clearly here to
9 do so many things, and this is a journey
10 that we are taking, frankly, off of the path
11 that we have been called to do, which was to
12 govern.

13 So any reference to appropriate or not
14 was not about my colleague but, frankly,
15 about the task at hand, which is a bigger
16 task of governing New York.

17 SENATOR STAVISKY: And I too have no
18 problem in terms of fairness or objectivity.

19 I note that he refers to my son. My
20 son -- I have no connection at all with my
21 son's business. I don't share in the
22 profits. He does his thing, and I do mine,
23 and there is a very, very strict wall we
24 have. We don't discuss legislative issues.

1 We discuss family issues.

2 And the other point that he made in the
3 letter concerned a comment I had made with
4 regard to traveling in uncharted waters. I
5 think that's the point that everybody is
6 making, that there is very little precedent
7 before us, and therefore been we have to
8 follow the mandate of the resolution and do
9 our job as best we can.

10 CHAIRMAN SCHNEIDERMAN: Thank you.

11 Well, in that vein, let me just note
12 that the background materials provide
13 whatever authority there is for this
14 proceeding. We have the constitutional and
15 statutory authority, and then the one report
16 of a prior proceeding, which was conducted
17 by the Assembly Judiciary Committee in 1920.
18 We've enclosed the decision of the Appellate
19 Division affirming the fact that the
20 Legislature in fact does have the power to
21 determine any sanction, including expulsion
22 of its members.

23 And a seminal decision from California
24 about the inherent power of the legislature

1 to take action. And then two documents that
2 really come from sort of the national
3 research on state legislatures, just to give
4 some context to the members of the committee
5 of what has happened in other states when
6 legislative bodies have considered the
7 criminal conduct of members.

8 So that's our background. As Senator
9 Stavisky pointed out, there's not a lot of
10 authority here. But the mandate that we're
11 under makes one thing very clear, and
12 several of you have mentioned it. And I
13 just want to call everyone's attention to
14 another provision in our resolution which
15 again defines our mandate. This is a
16 requirement for us. Our committee shall
17 ensure a full and fair investigation, ensure
18 fairness in the hearing process,
19 specifically providing Senator Monserrate
20 and his counsel with notice of all public
21 committee proceedings as well as ensuring
22 opportunities for Senator Monserrate to be
23 heard.

24 We will ensure that at all times

1 Senator Monserrate's counsel is advised --
2 he's been in communication with and in fact
3 has met with our counsel already -- of
4 everything the committee is doing. We will
5 provide Senator Monserrate with the
6 opportunity to submit whatever argument or
7 evidence he chooses and will in every way
8 work to ensure that this is a fair hearing.

9 The starting place for our activities
10 is going to be the record of the trial.
11 This is not a situation in which we are
12 charged with or empowered to relitigate
13 matters that were resolved or dealt with in
14 court. So the starting place is going to be
15 the trial. And I think that our proposal --
16 and this is open for discussion now, but
17 Senator Lanza and I would suggest that the
18 next meeting of the committee be an
19 opportunity for our counsel to essentially
20 walk through all of the evidence with us and
21 bring everyone up to speed and identify
22 particular sections of the transcript or
23 documents that he thinks bear on our charge.

24 I think that probably would be a

1 meeting that I would suggest that, following
2 the procedures of the Open Meeting Law, we
3 do in executive session so that we can have
4 a candid discussion and assessment of that.

5 But this is a decision that the
6 committee has to make. That's our
7 suggestion. And maybe Mr. Alonso could at
8 this time speak a little bit about what he's
9 done so far and where he thinks we should be
10 going as our next step.

11 SPECIAL COUNSEL ALONSO: Thank you,
12 Senator.

13 First, let me say that it's a distinct
14 honor to be serving as your counsel on this
15 committee with such distinguished Senators.
16 And I appreciate the opportunity.

17 And as Senator Schneiderman said, and I
18 think Senator Lanza as well, I'm available
19 to the entire committee and your staffs. So
20 I would -- I'll be happy to work with you on
21 any issues that arise.

22 What we've done so far is try to get up
23 to speed a little bit so that I could best
24 advise you folks on what the facts are and

1 what the law is. So I have advised Senator
2 Schneiderman, as he mentioned, on issues
3 relating to the legal authority of the
4 Senate to create this body and the legal
5 authority to potentially -- understanding
6 everyone has an open mind -- to potentially
7 expel a Senator. And I'm satisfied, and at
8 the appropriate time I can brief each of you
9 on the legal basis.

10 But we have the constitutional basis
11 and we have a statutory basis to have this
12 proceeding. Legislative Law Section 3 makes
13 it very clear that the Senate has the
14 authority to create this committee, which
15 must then report to the full Senate.

16 So with that in mind, and having been
17 satisfied of that, we have opened up a
18 dialogue with the district attorney of
19 Queens County, Judge Brown, and with lead
20 counsel for Senator Monserrate, Joseph
21 Tacopina. Both of them and their partners,
22 assistants, and staff have been professional
23 and courteous, and I've had what have thus
24 far been productive meetings with both

1 sides. You'll see in the correspondence
2 that we haven't always agreed with Senator
3 Monserrate's counsel at this point, but
4 we'll continue to work towards resolving
5 whatever issues we have.

6 I have gathered from the district
7 attorney's office the transcript of the
8 trial and all of the exhibits that were
9 offered into evidence. I've also gathered
10 some of the materials, though not all of the
11 materials, that turned over to the defense
12 pursuant to the various rules of criminal
13 proceedings -- things like prior statements
14 of witnesses and exculpatory materials.

15 I've asked Senator Monserrate's counsel
16 to give us additional materials, and we're
17 working that out. As you can see from the
18 letters, we're at a little bit of an
19 impasse, but we'll continue to work that.

20 The materials that are the trial record
21 I'd like to be able to get to the members of
22 the committee and their staffs right away.
23 So unless you would prefer something
24 different, I'm having my staff burn DVDs

1 that contain that information, and I can
2 send that over to everybody. I think
3 without further request, I'll just send it
4 to everybody so that you will all have it
5 available to you and you can begin to
6 review, if you choose.

7 As Senator Schneiderman stated, I think
8 that I have a little bit of a head start.
9 And there may be things that I'd like to
10 point out to the members you might want to
11 especially focus on. And so I'd like an
12 opportunity to brief you in executive
13 session, in accordance with the Open
14 Meetings Law, about the trial, what
15 happened, what the issues were, what the
16 arguments were.

17 And as I've assured Senator
18 Monserrate's counsel and the DA, I have a
19 completely open mind, just like the members
20 of this committee do. And I will endeavor
21 to, when I brief you initially, to
22 absolutely give you both sides of the
23 arguments that were presented at the trial
24 and how the judge ultimately came out.

1 As you know, he was convicted of one
2 misdemeanor count, acquitted of three felony
3 counts, and there were two additional felony
4 counts that he was originally charged with
5 that did not make it to a verdict, they were
6 dismissed earlier in the case.

7 So I look forward to working with you
8 and with your staffs, I look forward to
9 giving you the information right away. As
10 soon as we're able to schedule our next
11 meeting, I will be happy too brief you in
12 detail on what happened at the trial.

13 CHAIRMAN SCHNEIDERMAN: Thank you.

14 So our proposal is to have the next
15 meeting cover the trial materials. We will
16 then be in a position to schedule a meeting
17 at which Senator Monserrate's counsel can
18 present whatever they want. And then we can
19 reconvene to discuss what, if anything --
20 what additional information or evidence the
21 committee members feel that we should obtain
22 before writing the report.

23 But that's our outline for the
24 proceedings, if anyone has any comments or

1 suggestions or questions.

2 SENATOR LANZA: Chairman, that is the
3 appropriate next step, I agree. Much of
4 what we have to do here is to gather the
5 facts. And in that light, while we need the
6 advice of our counsel, we also need all the
7 facts that go into those judgments.

8 So as a housekeeping measure, from this
9 point on, now that we've been empaneled, I
10 think all information should be provided
11 forthwith to each member here --
12 correspondences and any other evidence that
13 is being reviewed by counsel in this
14 committee.

15 CHAIRMAN SCHNEIDERMAN: I think
16 that's a good point. We have -- the most
17 important person is not here, Chris Breton,
18 who works for me. Oh, this is Chris, who's
19 going to handle all the scheduling and
20 logistical matters for the committee.

21 If each of you would just provide
22 whatever the appropriate contact information
23 is and a staff member to interact with, the
24 committee will make sure that everything is

1 passed on to you as it is received. And
2 from time to time, you know, there will be
3 communications from counsel. But once
4 again, Mr. Alonso will give you his
5 information. He's available at all times to
6 all the members of the committee for any
7 other questions or issues.

8 But I think that's a fair point, and
9 we'll make sure that we have a good system
10 of communication.

11 One cautionary note. I would strongly
12 advise -- and everyone here is an
13 independently elected official. But I would
14 strongly advise that as we go forward,
15 inquiries about the substance of the work of
16 this committee -- I'm not talking about
17 scheduling or anything else, but the
18 substance of the inquiry and the
19 investigation -- I think it would be much
20 better if those were directed to counsel.

21 And I would also suggest that we would
22 all be better off if we avoid communication
23 on the substance of the inquiry with any of
24 the interested parties to the underlying

1 trial.

2 I know that, you know, we all have
3 interactions with Senator Monserrate and his
4 staff and with the Queens district
5 attorney -- some of us represent Queens.
6 But that doesn't mean we have to discuss
7 with them the substance of this inquiry.

8 And I think we're better off, until the
9 report is finished and the vote is taken by
10 the Senate, directing inquiries about the
11 substance to our counsel. He has already
12 established a good level of
13 counsel-to-counsel communication, and I
14 think that that protects all concerned as
15 much as we can protect them.

16 We will deal with issues as they come
17 up relating to confidentiality. But this is
18 a legislative proceeding, it is not a
19 judicial proceeding. And I think that's
20 just important to bear in mind. I think
21 there is a commitment, to the degree that it
22 is possible, to openness here that we will
23 also try to honor.

24 Anything else? Any other comments,

1 questions, objections?

2 Okay, then I think the next step would
3 probably be for Chris to work with you all
4 to schedule our next meeting. Mr. Alonso
5 will provide information and documents. And
6 at that time we'll review the records of the
7 proceeding and then schedule a meeting at
8 which time Senator Monserrate's counsel can
9 present whatever additional information they
10 wish to present.

11 So thank you all for agreeing to serve
12 and for coming, and --

13 SPECIAL COUNSEL ALONSO: Is there
14 anything about time frame, in general?

15 CHAIRMAN SCHNEIDERMAN: Well, yeah,
16 that's a good point.

17 Our goal is to finish this as quickly
18 as possible, certainly before the end of
19 this year. So hopefully we can get through
20 these first two meetings in the next three
21 weeks and then be in a position to discuss
22 how we're going forward to work on a report.
23 That's our hope.

24 Oh, let me ask -- this is a more

1 delicate question. The question has been
2 raised are we going to have all the meetings
3 in Albany. We could. Or some members of
4 the committee have suggested perhaps we
5 could have some of the meetings in New York
6 City. I know that is further away for a few
7 of our committee members. But a great place
8 to visit during the holiday season.

9 So that's something we can discuss as
10 we're going forward, but Chris is going to
11 be working with you on the schedule.

12 Thank you very much.

13 (Whereupon, at 5:37 p.m., the
14 committee meeting concluded.)

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