

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

5 -----

6 Meeting Held in Executive Session

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8 Room 124
9 The Capitol
10 Albany, NY

11 November 23, 2009
12 5:17 p.m.

13 PRESIDING:

14 Senator Eric Schneiderman
15 Chair, Senate Select Committee

16 PRESENT:

17 Senator Andrew J. Lanza

18 Senator Diane Savino

19 Senator James S. Alesi

20 Senator Andrea Stewart-Cousins

21 Senator Catharine M. Young

22 Senator John Flanagan

23 Senator Toby Stavisky

24 Senator Ruth Hassell-Thompson

Special Counsel Daniel Alonso

Minority Counsel David Lewis

1 CHAIRMAN SCHNEIDERMAN: Ladies and
2 gentlemen, welcome to the second meeting of
3 our special committee.

4 We are going to, as we discussed at the
5 last committee meeting, go into executive
6 session for this portion of the meeting.
7 And we are, however, keeping the reporter so
8 that we will have a transcript that can be
9 released after the committee's work is done
10 so that all of this ultimately will be
11 reviewable by the public.

12 And it was the sense of the committee,
13 however, that we should conduct the sessions
14 where we're going be working our way through
15 evidence in an executive session, just to
16 enable things to go more smoothly.

17 So at this time I would like to move
18 the select committee go into executive
19 session, as authorized by Public Officers
20 Law Section 105, and ask that all in favor
21 of that motion please say aye.

22 (Response of "aye.")

23 CHAIRMAN SCHNEIDERMAN: No?

24 (No response.)

1 CHAIRMAN SCHNEIDERMAN: The select
2 committee will now go into executive
3 session.

4 Under the Open Meetings Law, that means
5 the members of the committee and those
6 designated by the committee are permitted to
7 stay for the executive session. We asked
8 members to designate staff members who we
9 could include here, and we have Simone
10 Levine, Justin Berhaupt, Maureen DeRosa
11 here, Jerry Williams and Gerry Savage. Our
12 counsels, obviously, are included in.
13 Jessica and Kimberly, both here. And that,
14 I think, is -- oh, James. And then I think
15 that's it. That's all anyone designated.
16 John Turoski is not here, okay, but was
17 designated.

18 And then the counsel staff. We are
19 joined by Dan Alonso and David Lewis as well
20 as several other counsels from Mr. Alonso's
21 office.

22 Okay, this is going to take, we
23 estimate, about two hours. But this is
24 going to be the only real treatment that we

1 hope you're going to need of the evidence in
2 the trial, and it's going to be quite
3 thorough. We are hoping -- and counsel
4 spoke to Senator Monserrate's counsel today
5 and have been in communication with them.
6 The next stage of the proceeding is we have
7 offered to them and we'll try and come up
8 with a date, working with all of you --
9 probably the week of December 7th -- for a
10 time for them to come in and present what
11 they want to present.

12 At the very least, they probably will
13 come in for some oral argument. They may
14 choose just to make some issues in writing;
15 we don't know. So that meeting may or may
16 not be taking place, but we'll be working
17 with you to try to meet and the week of the
18 7th.

19 After that, depending on what they
20 offer, we will convene again, decide if the
21 members of the committee feel that we need
22 to go out after any more evidence. And if
23 we do, we will do that. If not, we will
24 discuss the report and the conclusions.

1 And we requested of counsel that they
2 provide us with some information to help
3 guide us -- discussions of the standards
4 that have been used, the considerations that
5 have been brought to bear when other
6 legislative bodies have had similar cases
7 before them to inform our judgment.

8 Senator Lanza.

9 SENATOR LANZA: We're in executive
10 session?

11 CHAIRMAN SCHNEIDERMAN: We are.

12 SENATOR LANZA: Well, we have
13 evidence to see, let's go to it.

14 CHAIRMAN SCHNEIDERMAN: Any other
15 committee members have points,
16 counterpoints, complaints about the
17 governor?

18 SENATOR SAVINO: Are we taking him up
19 here too?

20 CHAIRMAN SCHNEIDERMAN: No.

21 So we're ready to go, Mr. Alonso.

22 SPECIAL COUNSEL ALONSO: Thanks,
23 Mr. Chairman. I'm going to try to do a lot
24 in our limited time tonight.

1 Good evening, everybody. It's good to
2 be back. We are -- what we're trying to do
3 tonight is to present to you -- what I've
4 tried to do in presenting this PowerPoint is
5 to present a dispassionate and balanced view
6 of the evidence presented at Senator
7 Monserate's criminal trial that concluded
8 last month.

9 You all have the entire record in your
10 possessions, and now my associate is going
11 to hand out to you the last piece that we've
12 that we have. We sent each of you, I don't
13 know if it was a CD or DVD containing all
14 the transcripts and all of the prosecution
15 exhibits. The defense exhibits,
16 unfortunately, that Senator Monserate's
17 lawyers are -- they have made it very clear
18 they are not cooperating with us in the
19 slightest, including they are not giving us
20 the public record defense exhibits which are
21 in their custody. The court puts them in
22 their custody.

23 So what we have is the not-as-good
24 copies that the district attorney's office

1 gave us, which you have that's being handed
2 out to each of the Senators. Those are hard
3 copies of the best we could do with the
4 defense exhibits.

5 Now, in the interests of time, I don't
6 plan to go to the court to ask for an order
7 ordering defense counsel to turn over the
8 defense exhibits to us. I think we would
9 win that motion, but I think we don't need
10 the time or expense. If they want to
11 present something to us here, they'll have
12 the opportunity to do that.

13 So what I'd like to just caution you is
14 that everything I'm going to say tonight,
15 which is being recorded by the stenographer,
16 is of course just a summary. I'm doing my
17 best to be balanced here. I really want to
18 present to you the evidence as it was
19 presented to Judge Erlbaum, who was the
20 trier of fact. But at the end of the day,
21 I'm just giving you my best summary.

22 You have the actual record, and I urge
23 each of you to read the actual record
24 yourselves so that you can evaluate the

1 testimony.

2 We've also handed out the exact pages
3 of the testimony of each of the witnesses
4 and a brief description of who each of the
5 witnesses is. At the end I'll tell you who
6 I think the four or five must-read witnesses
7 are, and I think you'll get a picture of
8 that from this presentation.

9 Before I get to the presentation, I
10 just want to say one last thing. Remember
11 that this was a criminal trial with a burden
12 of proof beyond a reasonable doubt, which
13 was very different from what we're doing
14 here. This is no longer -- this is obvious,
15 I apologize -- but no longer a criminal
16 proceeding and none of this applies to us,
17 but it will inform the presentation today.
18 Judge Erlbaum was deciding whether the
19 evidence met the very high criminal burden
20 of proof beyond a reasonable doubt.

21 We'll have plenty of time for the
22 committee to discuss the standards by which
23 it wants to proceed here, but suffice it to
24 say that the criminal standards are very,

1 very different.

2 So what I'd like to do is I'm going to
3 actually put up on the screen so that each
4 and every one of you can be sure to read the
5 words of Judge Erlbaum when he found Senator
6 Monserate guilty of misdemeanor assault.
7 And I think it's important for us all to be
8 on the same page.

9 I'm not a big fan of long slides with
10 lots of text on them. The first four or
11 five slides are going to be exactly that,
12 because they're going to tell you all of the
13 words Judge Erlbaum used when he convicted
14 Senator Monserate.

15 I'm going to tell you about our
16 investigative steps we've taken, summarize
17 the criminal proceeding, give you a
18 timeline, summarize the trial evidence, and
19 then give you a brief analysis of the
20 verdict.

21 So I believe you all know this, but so
22 we're on the same page, the conviction was
23 October 15th. It was a misdemeanor, not a
24 felony. It was based on the allegation that

1 he forcibly dragged Ms. Giraldo through the
2 apartment building.

3 And the physical actions that form the
4 basis of the assault misdemeanor, the
5 misdemeanor conviction, are largely recorded
6 on video surveillance from the buildings.
7 You'll be seeing that tonight. In fact,
8 you'll be seeing that right now. Lee, can
9 you play that?

10 (Video shown.)

11 SPECIAL COUNSEL ALONSO: Now, that
12 went by very fast. It's going to become
13 very clear, as we see this again, that
14 context is going to be very important. I'll
15 talk about that in a minute, but first I
16 want to show you the first-floor-hallway
17 video in slow motion so you can see exactly
18 what happened a little bit better.

19 Lee?

20 (Video shown.)

21 SPECIAL COUNSEL ALONSO: Just to give
22 you some context of what you're looking at,
23 Senator Monserrate lives on the second floor
24 of the building. At the foot of the steps

1 is Carolyn Louden's apartment. She is the
2 neighbor who testified. I'll go over that
3 later. Ms. Giraldo, the evidence showed,
4 rang on her doorbell when she hurried down
5 the stairs there at the end.

6 And the white object that is left at
7 the foot of the stairs is a bloody towel she
8 had next to her face which dropped when she
9 was led out into the vestibule. And in the
10 vestibule there's also some more video,
11 which you can see happens there.

12 (Video shown.)

13 SPECIAL COUNSEL ALONSO: We have that
14 in slow motion as well.

15 (Video shown.)

16 SPECIAL COUNSEL ALONSO: And just to
17 preview real briefly, the holding on that
18 she's doing, the prosecution theory was that
19 she wanted to stay and have 911 called so an
20 ambulance could come. And the defense
21 theory was that she was afraid to go to the
22 hospital because she was afraid of needles.
23 And so the senator was using force, though
24 not violence, appropriate force to take her

1 to the hospital for her own good.

2 So as I said, we're going to read the
3 verdict. I hope you'll bear with me. It's
4 very important to understand what, after a
5 relatively long trial for a case of relative
6 simplicity, a judge who heard all the
7 evidence found beyond a reasonable doubt.

8 One note. He's not required to do any
9 of this. All he could have done was say
10 guilty or not guilty, but he decided to make
11 these findings on the record. I'm going to
12 read them.

13 He quotes from the indictment, and he
14 then says that "Karla Giraldo was called as
15 a witness by the state. And I have
16 complimented both lawyers, both sets of
17 lawyers, for the very able way they
18 presented the case, very effective and
19 zealous advocates. I adhere to that. I
20 especially want to make reference to the
21 fact that the District Attorney Brown, I
22 thought, took the high ground by calling
23 Ms. Giraldo as a witness. And I found her
24 testimony very helpful.

1 "For example, she testified that when
2 she got to the premises that night -- that
3 is, to the defendant's apartment -- she was
4 not physically injured. She had no physical
5 injuries. It appears, although this is not
6 dispositive, that after she suffered
7 injuries in the apartment, not proven to be
8 assaultive beyond a reasonable doubt, but
9 suffered injuries nonetheless, very serious
10 ones, that she wanted to go by ambulance."

11 Let me stop for a minute. He is
12 referring to the fact that he has just
13 acquitted Senator Monserrate of the injuries
14 that happened in the apartment, the felony
15 injuries that happened in the apartment.

16 "And she acceded to the defendant's
17 decision that, no, I'll take you to a
18 hospital.

19 "I also note that the defendant took
20 her to a hospital in a very remote location,
21 one abutting a different county, Nassau
22 County, at the very outer limits of Queens
23 County. The injuries here, due to that in
24 my view, the state has clearly proven the

1 defendant's guilt beyond a reasonable doubt
2 as to the sixth count that the defendant did
3 indeed cause reckless injury to Karla
4 Giraldo.

5 "I examined the law very carefully, and
6 I think the elements are clearly made out
7 and beyond a reasonable doubt. Having come
8 to the apartment without physical injury,
9 the surveillance tape indicates not a
10 friendly nonviolent interaction, but a
11 violent and very forceful dragging of the
12 complainant -- of the, I'll call her the
13 injured person, Karla Giraldo. Pulling her,
14 pushing her, she is fighting to stay in the
15 premises. And she is a woman of slight
16 frame compared to that of the defendant.
17 And forcefully taking her from the premises
18 where 911 could have readily been called.

19 "Elmhurst Hospital was just down the
20 block and on Baxter, a few blocks further.
21 One could have walked there in seven or
22 eight minutes. An ambulance could have been
23 there in a minute or two, and she could have
24 been given care right away.

1 "In my view she was very -- she was
2 indeed injured, palpably so."

3 Let me stop there. The injury that the
4 state proved, that the People proved in this
5 case is not the face injury, it is the
6 injury on her arm. There were contusions,
7 there was a slight skin tear on her arm.
8 That's the injury we're talking about here.

9 "She is screaming, apparently in pain,
10 and crying and fighting to stay in the
11 premises, and that one can physically see
12 from the surveillance tape. As one can see
13 from the video surveillance, that she is
14 forcefully being pulled and pushed. She is
15 injured. There is bruising, there is
16 discoloration, black and blue marks. She
17 seems to be in substantial pain. There is
18 skin tearing. She is already in a weakened
19 state due to severe facial injuries right up
20 in the area of the eye, a horizontal injury
21 and a vertical injury, and a lot of blood.
22 One can see the bloody towels and other
23 blood areas in the apartment itself, a lot
24 of bleeding. As she is leaving, on the

1 surveillance tape she is holding a towel to
2 her head.

3 "She is dragged, and so forcefully that
4 the towel flies from her hand, as her leg
5 flies upward, and ends up in that hallway,
6 that she is using to try to stanch the
7 blood. She is emotionally fragile at the
8 time. She is vulnerable. She is panicky.
9 She is scared for her looks. She is scared
10 for her well-being. And indeed, she is
11 taken quite a distance over several minutes
12 to the vehicle, and over quite a distance
13 from the apartment. She is pulled away from
14 a neighbor's apartment. And she rang a bell
15 several times apparently seeking help. All
16 of the signs are that she wished to -- that
17 she wished to remain at the premises and not
18 to accompany the defendant.

19 "She was also -- injury was further
20 inflicted by an exacerbation of what had
21 happened earlier, because bleeding, for a
22 37-minute trip to a hospital abutting
23 another county, in a very sensitive area of
24 the head where perhaps sight was at risk,

1 whether she could know that or not -- she is
2 not a medical person, it was right by the
3 eye with lots and lots of bleeding. And
4 signs of the bleeding, that could have been
5 stanching within just a few minutes, for 37
6 minutes continued while she is taken to a
7 hospital abutting Nassau County.

8 "And accordingly, the defendant is
9 found guilty under Count 6."

10 I just wanted to make sure that we all
11 knew exactly what the judge had found.
12 Context is everything. We can see what's on
13 the videotape, and different people can draw
14 different conclusions. So it's going to be
15 important to take a look at the events that
16 happened before and after events depicted in
17 the video, including things the senator was
18 acquitted of.

19 That doesn't mean we're relitigating
20 charges of criminal conduct. We're not.
21 This is not a courtroom. But you can't
22 understand what was in the senator's mind,
23 what was in Ms. Giraldo's mind, what was
24 motivating these actions without knowing

1 about next steps, I will relay to you what
2 they have asked me to tell the committee
3 today about what they see the next steps as
4 being.

5 SENATOR FLANAGAN: Can I ask a
6 question?

7 SPECIAL COUNSEL ALONSO: Yes,
8 Senator.

9 SENATOR FLANAGAN: You said they're
10 absolutely not cooperating. I think I'm
11 understanding the distinction: They've met
12 with you and spoken with you verbally, but
13 they have been recalcitrant, to say the
14 least, in supplying documents.

15 SPECIAL COUNSEL ALONSO: Yes,
16 absolutely.

17 And I think cooperation, in the
18 criminal defense/prosecution world, is a
19 term of art. Cooperation means more than
20 just what the law requires you to do. You
21 have to actually give information when
22 asked, and they have not done that. They've
23 been very professional, and they did sit and
24 meet with us, but that's it.

1 MR. LEWIS: You just spoke to them a
2 little while ago, both of us did, in an
3 attempt to try to get some sense of what
4 they will participate in and how, and pretty
5 much we were stonewalled, is how I would put
6 it.

7 SPECIAL COUNSEL ALONSO: They believe
8 two things. One, this committee should
9 immediately disband. And second, if it's
10 going to continue to exist anyway, you
11 should only limit your conclusions to the
12 trial record and nothing else.

13 And I'm going to suggest that perhaps
14 there might be some other areas of evidence
15 we might want to seek.

16 I did mention in our first meeting the
17 grand jury minutes. I didn't send it
18 around, but I did send it to counsel for the
19 minority about issuing a subpoena to the
20 district attorney's office. I'm sorry, I
21 haven't been able to tell the whole
22 committee till now, but Senator Schneiderman
23 issued a subpoena, I was in a consultation
24 with Mr. Lewis to the DA's office for the

1 grand jury materials.

2 And we are looking for testimony, and
3 we're looking for materials that they
4 subpoenaed in the grand jury that did not
5 make it into the public record. We are --
6 the judge is not willing to turn those over
7 just on the DA's application, so we have
8 made a motion to get those minutes and
9 materials, and that is going to be heard.
10 Unfortunately, on the same day as Senator
11 Monserrate's sentencing before the same
12 judge. That was our distant second choice.
13 We asked for a different day.

14 CHAIRMAN SCHNEIDERMAN: Let me just
15 note that there is a good written record of
16 the correspondence that you've all received
17 of our counsel's efforts to obtain documents
18 from Senator Monserrate's lawyers. And we
19 will continue to try and get -- we've issued
20 them a formal request to participate, an
21 offer to participate. I anticipate they
22 will respond in writing.

23 So we're not relying just on phone
24 calls, we want to make sure that everything

1 is carefully documented. The committee will
2 get all of that.

3 We discussed at the last meeting that
4 we wanted to get the grand jury testimony.
5 One of the things that I hope we will be
6 able to do at the conclusion of today's
7 meeting, and certainly in more detail after
8 we've heard from Senator Monserrate, is to
9 have a discussion amongst ourselves of what
10 other evidence the committee thinks we might
11 want to pursue, whether there would be a
12 need for counsel to talk to any of the
13 witnesses, whether there would be a need for
14 the committee to issue any other subpoenas.

15 So other than the grand jury testimony,
16 which really is necessary just to evaluate
17 what happened at the trial, and our request
18 to Senator Monserrate's attorneys to provide
19 us with information, we have not really
20 pursued any other documents or evidence at
21 this time.

22 I think that our thinking was that
23 we'll go through the trial materials today,
24 Senator Monserrate has his opportunity, and

1 then the committee will decide what else
2 we're going to do.

3 SENATOR LANZA: I'm just wondering
4 how we wanted to proceed today as we go
5 through this presentation. Do you want to
6 discuss each piece of evidence as we are
7 presented, or do we want to wait to the end
8 of this presentation and then discuss it?

9 SPECIAL COUNSEL ALONSO: Senator, I
10 recommend that you hear out the whole
11 presentation and maybe not even discuss the
12 actual evidence today, but have a chance to
13 reflect on it and read the portions of the
14 record that each senator believes to be
15 necessary, and then discuss whatever we need
16 to discuss at our next meeting or two
17 meetings from now.

18 SENATOR LANZA: How long is this
19 presentation?

20 SPECIAL COUNSEL ALONSO: We
21 anticipate it taking the allotted time,
22 which is we have budgeted 5:00 to 7:00.

23 SENATOR LANZA: So we've got to be
24 very copious with our notes when we see

1 video, as has just been presented, for us to
2 be able to discuss it in substance, given
3 that the more time that goes by, the more
4 difficult it becomes.

5 CHAIRMAN SCHNEIDERMAN: This is an
6 initial review. We're going to request that
7 certainly the verdict and other things that
8 are written out be distributed to the
9 members of the committee, and we will have
10 an opportunity to look at this again when
11 we're actually doing our consideration of
12 what to issue in our report.

13 This is not the last time we'll get a
14 chance to see the evidence and discuss it.
15 This is just the preliminary presentation of
16 evidence followed by Senator Monserrate's
17 presentation to the committee. But we're
18 certainly going to have a lengthy session to
19 discuss what we all think of the evidence,
20 and we'll have a chance to look at any
21 evidence we care to.

22 SENATOR LANZA: Any member could call
23 for a piece of evidence to be presented?

24 CHAIRMAN SCHNEIDERMAN: Absolutely.

1 SENATOR LANZA: That works very well.

2 MR. LEWIS: Just for your own
3 information, on the CD there is some of the
4 written evidence -- there are People's
5 exhibits in there, including crime-scene
6 photos in color, which are much easier to
7 read than what we've just seen. There is
8 also the video, although I had trouble
9 opening it. Maybe you'll be able to have
10 more success with the video than I did.

11 It may be helpful also for this
12 presentation to be given to us so that,
13 rather than writing notes as we go from
14 what's already on the screen, we can have
15 this at hand and take our notes from there.
16 I don't see any reason not to give that out
17 to members.

18 CHAIRMAN SCHNEIDERMAN: I think
19 that's fair.

20 We will also discuss our strong desire
21 for all of this to remain within the
22 committee until we are releasing all of the
23 information. And we will provide,
24 obviously, Senator Monserrate's counsel --

1 we'll give them the opportunity to respond.

2 But just as we're requesting that the
3 members of the committee direct press
4 inquiries about the substance of what we're
5 discussing -- not necessarily the procedures
6 or the context, but the substance of what
7 we're discussing today, those inquiries
8 should go to Mr. Alonso -- we are going to
9 request that we keep these materials that
10 are prepared by counsel just within the
11 committee for now until we complete our
12 work.

13 SENATOR LANZA: That's a very
14 important point. Thank you.

15 MR. LEWIS: And they would be covered
16 by your senatorial privileges, so that you
17 can refuse to give them over as protection
18 as well.

19 CHAIRMAN SCHNEIDERMAN: Yes, but you
20 will be careful not to waive the privileges
21 for all the rest of us by releasing the
22 information.

23 MR. LEWIS: Please.

24 SPECIAL COUNSEL ALONSO: All right.

1 So the criminal proceedings.

2 He was indicted in March of this year
3 on three felony and three misdemeanor
4 assault counts. The allegation was that he
5 intentionally and recklessly caused physical
6 injuries to both the eye and the arm, as I
7 mentioned. Counts 1 through 5 related to
8 the apartment, and Count 6 related to the
9 vestibule and the hallways.

10 The trial lasted about three weeks.
11 You know about the conviction.

12 So the charge is assault in the third
13 degree. It basically says that you're
14 guilty of it if you recklessly cause
15 physical injury to another person.

16 And there's the indictment. And the
17 theory was that he forcibly dragged her by
18 the arm. That's the snippet of the
19 indictment that he was charged on.

20 The judge dismissed two of the counts
21 for not enough evidence. And just very,
22 very briefly, they were reckless assaults
23 relating to the glass in the face.

24 The ones that survived all the way to

1 what would have been the jury, but in this
2 case was the judge, were intentional. The
3 judge said there wasn't enough evidence for
4 someone to reasonably conclude that he
5 recklessly caused her injuries with the
6 glass, only enough that he intentionally
7 caused her injuries with the glass. And
8 then he found that it wasn't proved beyond a
9 reasonable doubt.

10 He was acquitted on those counts; two
11 were felonies, one was a misdemeanor. The
12 judge found that there was not evidence to
13 convince him beyond a reasonable doubt of
14 all the elements.

15 Basically, the issue was intent. And
16 Senator Monserrate never denied that he had
17 actually been in the apartment and the glass
18 that he brought her caused her injuries.
19 The issue was, was it an accident or was it
20 an intentional act by Senator Monserrate.

21 Sentencing is scheduled for
22 December 4th. The judge's options are
23 prison for no -- jail, rather; it says
24 "prison" incorrectly -- no more than a year.

1 The judge may impose a three-year
2 probationary period, or he could impose
3 something less, like a conditional
4 discharge, community service, things like
5 that. We've been told --

6 MR. LEWIS: He could give him a split
7 sentence on the misdemeanor.

8 SPECIAL COUNSEL ALONSO: That's true,
9 he could give him some period of time in a
10 local jail and a three-year probationary
11 period.

12 MR. LEWIS: Three months.

13 SPECIAL COUNSEL ALONSO: They have
14 told us in no uncertain terms that they
15 intend to appeal promptly. And the main
16 argument is that the injuries on
17 Ms. Giraldo's arm, the bruises and the skin
18 tear, are not sufficient under the law to
19 rise to the level of the definition of
20 physical injury, which under penal law means
21 impairment of physical condition or
22 substantial pain. That's the definition.

23 And it's a legal question whether there
24 was enough evidence presented. The judge,

1 as you saw in the verdict, believed that
2 there was enough. The defense is going to
3 argue to the appellate court that there
4 wasn't.

5 CHAIRMAN SCHNEIDERMAN: And the judge
6 had the second theory of the extra time
7 taken. It appeared that he was -- in
8 addition to the arm, he was making a point
9 about the extra travel time with her face
10 bleeding. I don't know that that has
11 explicitly been identified as another
12 finding of injury.

13 SPECIAL COUNSEL ALONSO: He did make
14 that point. It's a good question whether he
15 has an appellate issue on that.

16 MR. LEWIS: It's received substantial
17 talk about the length of time until he got
18 to the hospital, she continued to bleed, and
19 the nature of the injury. So I read the
20 verdict and understood that to go into a
21 substantial, because that's really what the
22 challenge -- because the theory into trial
23 and summation argued that the skin tear
24 wasn't and the bruise weren't substantial,

1 and so the pain goes from the moment of,
2 until.

3 SPECIAL COUNSEL ALONSO: Right. She
4 never testified she was in substantial pain.
5 What the judge was referring to
6 substantially was from all these facts and
7 circumstances -- you saw her face in the
8 vestibule -- he is saying she is, at some
9 point in that, in substantial pain beyond a
10 reasonable doubt.

11 And what Mr. Lewis I think is saying is
12 that the fact that he's sort of waiting to
13 go to the further hospital may well have
14 added to that pain.

15 MR. LEWIS: Another argument they
16 made at trial was that the pain on her face
17 was from the cut near her eye, not from the
18 grabbing of her arm.

19 SPECIAL COUNSEL ALONSO: It's an
20 issue, It's something to be argued for the
21 appellate court.

22 So let me draw your attention to the
23 timeline of the events. As I said, it's a
24 relatively simple case, but it's well worth

1 understanding the --

2 SENATOR STEWART-COUSINS: It's 2008.

3 SENATOR STAVISKY: It's 2008, not
4 2009.

5 SPECIAL COUNSEL ALONSO: That's
6 correct, it's wrong. It's 2008. Appreciate
7 it. Sorry about that.

8 So 2008, December 18. The incident of
9 course takes place from December 18th to
10 December 19th. Starting at 9 o'clock,
11 Ms. Giraldo had been to a party at her
12 friend's, Jesus Pena, who is an attorney.
13 She was driven there by her cousin, Jasmina
14 Rojas.

15 Between 11:30 and 12:00, Mr. Pena tells
16 us that he told her not to drive home
17 because she was too inebriated. Now,
18 Ms. Giraldo had not driven there to begin
19 with, so she wasn't going to drive home.
20 But nevertheless, that's the timeline.

21 As midnight turns, we now have the
22 cousin driving Ms. Giraldo directly to
23 Senator Monserrate's apartment. And they
24 arrive shortly after 1 a.m.

1 Now, the reason that we have -- I'm
2 going to talk to you about the PBA card in a
3 second. But the reason that we have an
4 exact time, 12:54 a.m., for the disposal of
5 the PBA card, but we only have shortly after
6 1 a.m. for the arrival at Monserrate's
7 apartment is because the police did not ask
8 the superintendent to preserve that portion
9 of the video.

10 And the defense actually made quite a
11 big argument about that at the trial, saying
12 if we only had that piece of the video we
13 would have been able to see just how drunk
14 she was, because she was stumbling.

15 And the superintendent said he saw that
16 piece of the video and she was in fact
17 stumbling into the building and that the
18 police officer did not ask him to record
19 that part. He didn't say he told him not
20 to, but he didn't ask him to record it.

21 SENATOR SAVINO: She couldn't have
22 gotten there after 1 a.m., though, if the
23 video of him disposing of her card says --
24 unless she wasn't there when he found the

1 card? It has to be shortly before 1 a.m.

2 MR. CORTES: That's the cousin's
3 recollection.

4 SPECIAL COUNSEL ALONSO: The cousin's
5 recollection, yeah.

6 So what we're doing here -- you're
7 right. Logically, that's correct. What
8 we're doing here is we're basing it only on
9 the trial evidence. Okay? So the cousin
10 says "We got there just after 1 a.m."

11 The numbers in the brackets represent
12 the page of the transcript where that piece
13 of evidence is located.

14 MR. LEWIS: We know it's 12:54 with
15 the PBA card because there is a surveillance
16 video of him doing it, and that's
17 time-stamped. But to confuse matters, the
18 time-stamp is off about four or five
19 minutes.

20 SPECIAL COUNSEL ALONSO: It's off 13
21 minutes. So the video, the uncropped
22 version -- this is cropped just to make it
23 easier to see -- did say 12:41 a.m., but the
24 reality is it was 12:54 a.m.

1 MR. LEWIS: And the significant thing
2 is the testimony is approximation by the
3 witness. The video is actual time, so --

4 SENATOR STAVISKY: So the witness is
5 incorrect.

6 MR. LEWIS: They just don't match.
7 It's not incorrect; they just don't --

8 SENATOR STAVISKY: The witness is
9 incorrect.

10 MR. LEWIS: It's the witness's
11 estimate.

12 SENATOR SAVINO: It's the witness's
13 recollection that it was sometime after
14 1:00, but it couldn't have been.

15 SPECIAL COUNSEL ALONSO: That's
16 right. That's exactly correct.

17 And just very quickly, the PBA card was
18 the district attorney's theory of motive,
19 that the senator found -- and I'll show you
20 a picture of it -- the senator found a PBA
21 card belonging to a different officer inside
22 Ms. Giraldo's purse and he became jealous
23 and threw it away down the garbage chute.

24 SENATOR SAVINO: Was it ever

1 discussed how he found it?

2 SPECIAL COUNSEL ALONSO: It was in
3 her purse. I think she said it was in her
4 purse.

5 SENATOR SAVINO: But what prompted
6 him to look in her purse?

7 SPECIAL COUNSEL ALONSO: There was
8 argument by the defense, I don't remember if
9 it was evidence, but he had -- it was the
10 time of year when the new PBA cards are
11 issued, and he was trying to replace the old
12 one that he had given to her with a new one.

13 SENATOR SAVINO: And he went into her
14 purse.

15 CHAIRMAN SCHNEIDERMAN: We have to be
16 very careful here, because we are proceeding
17 to review the record of the trial. And when
18 Mr. Alonso says this was a defense argument,
19 or when we show that a witness testified to
20 something, we're not -- no one here is
21 making a judgement on whether it is true or
22 false.

23 There are going to be inconsistencies.
24 And just because the defense makes an

1 argument, it may or may not be true. What
2 we're doing today is reviewing the evidence
3 at the trial. And as with any trial, there
4 are inconsistencies and arguments that
5 conflict.

6 SENATOR LANZA: These are points that
7 we may again want to revisit when we go
8 into, for lack of a better term,
9 deliberation.

10 SPECIAL COUNSEL ALONSO: Absolutely.

11 So to understand the events as they
12 will be described in later slides, this is
13 the senator's apartment. The bedroom is on
14 the right. The bedroom is on the right,
15 right there. The kitchen is over there, the
16 sink is right there, the doorway is right
17 there (indicating). And there is the door
18 to the bedroom from the hall.

19 Now, if you will quickly look, the
20 doorway right there is not visible on the
21 video, right there (indicating). The
22 bottom -- it's indicated on the bottom of
23 the screen as Slide 34.

24 SENATOR STAVISKY: Is there an

1 elevator, or is this a walkup?

2 SPECIAL COUNSEL ALONSO: I think it's
3 an elevator building. There's what looks
4 like an elevator door (indicating). But
5 it's not relevant to the trial. It wasn't
6 part of the evidence.

7 Go ahead, Lee.

8 (Video shown.)

9 SPECIAL COUNSEL ALONSO: So this is
10 the PBA card incident we're watching.
11 There's a trash chute right there on the
12 right.

13 So we just saw the fast-motion version.
14 I'm asking my associate to turn the lights
15 down a little bit so we can see, because
16 I'll ask you to take a good look at the
17 senator, who in the next version of this, he
18 takes two things and throws them down the
19 chute. And both are going to be relevant to
20 the trial evidence. The first is a plastic
21 trash liner, and the second is the PBA card.

22 Slow motion, go ahead.

23 (Video shown.)

24 SPECIAL COUNSEL ALONSO: And it was

1 pretty well agreed at the trial that what
2 happened there was he threw the PBA card
3 down the chute after showing it to her
4 briefly, and that she pushed him on her way
5 to the chute, looked in the chute, and then
6 came running back into the apartment.

7 That's the card. It's not -- what it
8 looks like is not particularly relevant to
9 our issues, but it has her name on it and
10 the name of the officer who gave it to her.
11 Who is not Senator Monserrate, of course.

12 MR. LEWIS: And the phone number is
13 on the side. There are written phone
14 numbers that seem to be the officer's
15 numbers.

16 SPECIAL COUNSEL ALONSO: Right.
17 Right.

18 Okay, so after the -- we're still doing
19 the timeline. We're not delving deeply into
20 the evidence yet of the disposal of the PBA
21 card.

22 The next event that sort of can be
23 pinpointed to some reasonable accuracy is
24 that the neighbor testifies, Ms. Loudon,

1 that shortly before 3 a.m. she heard a body
2 hit the floor and then a scream, and then
3 she heard Senator Monserrate say something
4 to Ms. Giraldo, which was "Listen to me.
5 Listen to me."

6 So here's the sink in the kitchen.
7 Here's what the kitchen looks like in the
8 crime-scene photo. That is an intact glass
9 from the set that everyone agrees that the
10 glass that broke came from.

11 Now, the defense, one thing that they
12 did that was cooperative is when I was in
13 their office they had one of them, and they
14 let me hold it.

15 The prosecution was not able to release
16 it to us because of court rulings, but I
17 wanted to actually bring it with me today.
18 I asked if I could do that, and the DA was
19 perfectly willing, but they're not allowed
20 to do that.

21 So I held it in my hand. It's a very
22 solid, heavy liquor glass.

23 That's the path from the sink to the
24 bed, which becomes relevant because of some

1 versions of statements attributed to the
2 senator and to Ms. Giraldo, as the committee
3 will see.

4 This is as the police found the bed,
5 the bloody towel. The broken glass was
6 mostly on the bed except for one piece. The
7 bathroom was quite bloody, full of more
8 bloody towels, and blood on the sink and
9 blood on the toilet.

10 And then we have another pinpointed
11 time: 2:50 a.m. real time is when they left
12 the apartment, ten to 3:00. So the neighbor
13 testifies that it's sometime before --
14 shortly before 3:00 a.m. she hears the body
15 hit the floor, and then they leave at around
16 ten to 3:00. Roughly the same time, maybe
17 10 minutes before.

18 CHAIRMAN SCHNEIDERMAN: Is this the
19 same neighbor whose doorbell was rung?

20 SPECIAL COUNSEL ALONSO: Yes.

21 CHAIRMAN SCHNEIDERMAN: So did the
22 neighbor testify or estimate how much time
23 went by between hearing the scream and the
24 body hit the floor and then the time the

1 doorbell rang?

2 SPECIAL COUNSEL ALONSO: About
3 10 minutes.

4 SENATOR ALESI: Could you quickly go
5 back to the diagram of the apartment and the
6 pathway following through there?

7 SPECIAL COUNSEL ALONSO: Sure.

8 SENATOR ALESI: Theoretically, she's
9 on the left side of the bed.

10 SPECIAL COUNSEL ALONSO: I mean, we
11 don't have -- remember, she was not
12 questioned about -- well, I'll point out
13 that she was not questioned about what
14 happened inside the apartment when the DA
15 called her at trial.

16 SENATOR ALESI: Is that diagram
17 showing broken glass -- or is the diagram
18 the same as the ensuing picture showing
19 that?

20 SPECIAL COUNSEL ALONSO: The diagram
21 was made by the police. The red lines are
22 made by us just to show the relevant parts.

23 MR. LEWIS: You want to know what the
24 items in the circle are, what the circles

1 represent?

2 SENATOR ALESI: No, I don't. I'm
3 looking to see if the diagram was
4 corresponding with the picture in terms of
5 where she is supposedly laying when --

6 SPECIAL COUNSEL ALONSO: I think that
7 the picture is hard to see. It looks a
8 little bit skewed.

9 I see your point. But you see the
10 radiator right there; I think it corresponds
11 to what you see in the picture. So the door
12 would be right off to the side.

13 SENATOR ALESI: To me, the diagram is
14 showing something different from what the
15 photo is showing.

16 MR. LEWIS: The position --

17 CHAIRMAN SCHNEIDERMAN: In terms of
18 what side of the bed?

19 SENATOR ALESI: Yes. To me, all of
20 the activity is happening on the radiator
21 side of the bed. And if you go to the
22 photo --

23 CHAIRMAN SCHNEIDERMAN: It's the
24 other side of the bed.

1 SENATOR STAVISKY: It's the other
2 side of the bed.

3 SPECIAL COUNSEL ALONSO: Yeah, I
4 think that's misleading. Because if you
5 look, there are three pieces of evidence
6 that were recovered on the other side of the
7 bed --

8 SENATOR ALESI: Could you go to the
9 photo, please?

10 SPECIAL COUNSEL ALONSO: Yeah.

11 SENATOR ALESI: So on the radiator
12 side of the bed it doesn't look like anybody
13 even could --

14 SENATOR SAVINO: Look, the glass, the
15 broken glass is on that side of the bed,
16 right there. You see it? Right there, on
17 the radiator side. See the broken glass?
18 Right there, alongside the pillow, that's on
19 the radiator side of the bed. The only
20 thing on the other side is the towel.

21 SENATOR ALESI: Satisfy my curiosity,
22 what is --

23 SPECIAL COUNSEL ALONSO: Senator, we
24 have not presented every crime-scene photo.

1 You have them all. But I will be happy to
2 give them all a real good look and give you
3 the answer.

4 SENATOR ALESI: It just appears that
5 the diagram at least indicates that she
6 would be laying on one side, and the photo
7 indicates that she would be on the opposite
8 side. And obviously the photo is the real
9 live version.

10 SPECIAL COUNSEL ALONSO: That's the
11 glass right there (indicating).

12 CHAIRMAN SCHNEIDERMAN: Let me just
13 ask you a question. Was there testimony or
14 agreement or stipulation as to which side of
15 the bed she was on, or does that issue come
16 up?

17 MR. LEWIS: There was -- he said he
18 brought the glass to her and she sat up.
19 And he didn't say whichever side of the bed
20 she was on.

21 SPECIAL COUNSEL ALONSO: Also --
22 also, the only evidence that he went to the
23 kitchen to get a glass is his statement to a
24 doctor at the hospital. So he never

1 testified -- which he's not required to,
2 obviously. But the statement is the only --

3 MR. LEWIS: Kort, she tells Dr. Kort
4 that he comes with a glass and says "Here's
5 your water. Here's your water."

6 SPECIAL COUNSEL ALONSO: But that's a
7 different story. That's a different story.
8 But we're going to get to both of them.

9 SENATOR STAVISKY: Can I ask
10 something? Is there room between the
11 radiator and the wall? Is the perspective
12 off on that?

13 SPECIAL COUNSEL ALONSO: The
14 perspective is off on that. There is room.

15 SENATOR SAVINO: That's what I was
16 going to ask. Does the diagram that the
17 police drew, does it reflect all the
18 furniture that's in there? Like I see
19 that's obviously the dresser. And there's
20 no other obstructions coming around, so it
21 would be a straight walk around from the
22 kitchen to the bedroom?

23 SPECIAL COUNSEL ALONSO: Except for
24 what it doesn't reflect is what she talks

1 about with her shoes being on the floor,
2 which he tripped over. She says he tripped
3 over her shoes.

4 MR. LEWIS: There are other
5 crime-scene photos that are more helpful for
6 the questions you're asking. There's 26 of
7 them, I believe, or 24 of them. Including
8 one from the perspective Senator Alesi is
9 asking about, and another one from the
10 perspective Senator Stavisky is asking
11 about.

12 SENATOR ALESI: Just one more time on
13 that bed, if you don't mind.

14 SPECIAL COUNSEL ALONSO: Not at all.

15 SENATOR ALESI: That right there,
16 right there. And the reason I was asking is
17 what Senator Stavisky asked. It does not
18 seem, from this photo, that there's a lot of
19 room for anybody to walk through.

20 SPECIAL COUNSEL ALONSO: Remember,
21 also, the perspective is off. This is an
22 illusion. The diagram is accurate.

23 Remember, also, there's nothing to say
24 that those pillows were piled that way when

1 she was sleeping or that the comforter was
2 in that position when she was sleeping.
3 This may well give us the illusion that
4 somebody popped out of the right side of the
5 bed, but that may not be the case.

6 MR. LEWIS: She could have been on
7 either side when the towels landed where
8 they are.

9 SENATOR ALESI: Mm-hmm. Thank you.

10 SPECIAL COUNSEL ALONSO: So this is
11 the next -- the exact time we have is 2:50
12 of when they leave the apartment, and here's
13 the video of when they leave.

14 (Video shown.)

15 SPECIAL COUNSEL ALONSO: Now she has
16 changed her clothes, obviously, she's got a
17 towel to her face, and he is behind her.

18 I'm not going to show that in slow
19 motion, but I'll show the first floor -- as
20 they get down the stairs, I'll show that one
21 in slow motion again.

22 She's got the towel. There's where she
23 is at the neighbor's. Then the towel stays
24 behind. She holds the banister. Then they

1 go into the vestibule.

2 SENATOR STAVISKY: What is he
3 carrying in his hand?

4 SPECIAL COUNSEL ALONSO: Her bag.

5 MR. LEWIS: You also see her hold
6 onto the door frame at the top of that.

7 SENATOR STAVISKY: Yes.

8 SENATOR LANZA: Does she drop another
9 white object by the vestibule?

10 SPECIAL COUNSEL ALONSO: She only
11 drops the towel.

12 SENATOR LANZA: So it's a light
13 effect?

14 MR. LEWIS: It's a light effect.

15 SPECIAL COUNSEL ALONSO: There were
16 two witnesses who testified to recovering
17 the towel.

18 SENATOR STAVISKY: She's got the
19 towel right here.

20 SENATOR SAVINO: No, it's a bag.

21 SPECIAL COUNSEL ALONSO: It's a
22 plastic bag. Want to see that again,
23 Senator?

24 Play that one again, Lee.

1 (Video shown.)

2 SENATOR LANZA: Can you go back to
3 the one before that one, as they're leaving?
4 Oh, there it is. So it's a light effect.
5 I'm sorry.

6 SPECIAL COUNSEL ALONSO: The towel
7 ends up here, and one cop and one neighbor
8 testified that they saw it there.

9 So here's outside the apartment. We
10 haven't seen this one yet. There is the
11 next available camera on 6.

12 (Video shown.)

13 SPECIAL COUNSEL ALONSO: Now we'll
14 see that in slow motion. And here's the
15 next available one.

16 (Video shown.)

17 SPECIAL COUNSEL ALONSO: Then again
18 in slow motion. Slide 47.

19 SENATOR HASSELL-THOMPSON: That's the
20 walkway from the door to the front steps?

21 SPECIAL COUNSEL ALONSO: That's the
22 walkway to the sidewalk. You'll see in the
23 next one.

24 CHAIRMAN SCHNEIDERMAN: That's

1 outside.

2 SENATOR HASSELL-THOMPSON: I
3 understand outside.

4 SPECIAL COUNSEL ALONSO: Yes, outside
5 the building. They took a left there, and
6 they're coming out here. And there's the
7 street.

8 SENATOR HASSELL-THOMPSON: Something
9 seemed to be wrong with the sequence. The
10 first one looked like they were already
11 outside.

12 SPECIAL COUNSEL ALONSO: The very
13 first one? Let's make sure we're on the
14 same page. So that's the first outside.

15 SENATOR HASSELL-THOMPSON: Right.
16 Now, what is that?

17 SPECIAL COUNSEL ALONSO: That's the
18 entrance to the building. Right here is
19 where the steps are (indicating). You go
20 right here, that's the front door. They
21 take a right, I believe.

22 Play that, Lee.

23 (Video shown.)

24 SENATOR HASSELL-THOMPSON: That's

1 immediately outside the door?

2 SPECIAL COUNSEL ALONSO: Correct.

3 SENATOR HASSELL-THOMPSON: And what
4 we see in this one --

5 SPECIAL COUNSEL ALONSO: And that was
6 the next available piece that we see. I
7 believe it's the same walk. I haven't
8 actually been out there, but it looks like
9 the same walk.

10 And then they walk down that walk and
11 take a left, and there is where they're
12 walking down. And you notice he puts his
13 arm around her here.

14 SENATOR SAVINO: It looks like she's
15 trying to get -- like she was trying to
16 break away and then he pulled her in again.

17 SPECIAL COUNSEL ALONSO: You
18 definitely see movement, lateral movement.
19 You see him put his arm around her. The
20 defense characterized it as a loving gesture
21 to take her to the hospital. The
22 prosecution characterized it as a
23 half-nelson.

24 SENATOR SAVINO: Could you back up to

1 that again?

2 SPECIAL COUNSEL ALONSO: Sure.

3 Lee, do that again.

4 (Video shown.)

5 SENATOR SAVINO: See, like right
6 there, like she starts to pull away and then
7 he grabs her.

8 SPECIAL COUNSEL ALONSO: And they
9 walk a little faster.

10 SENATOR SAVINO: He grabs her by the
11 one arm and then wraps the other arm around
12 her.

13 SPECIAL COUNSEL ALONSO: That's it
14 for the video at the apartment.

15 Now, at 3 o'clock Ms. Giraldo
16 telephones her -- aesthetologist?

17 CHAIRMAN SCHNEIDERMAN: Aesthetician.

18 SPECIAL COUNSEL ALONSO: Aesthetician
19 .And we'll get into what they talked about,
20 but that is just timeline evidence.
21 Ms. Toro testified there was a 3:00 a.m.
22 phone call.

23 So the events continue. They arrived
24 at LIJ 37 minutes after they left. And you

1 saw in the verdict that the judge considered
2 that significant. The distance is about a
3 little more than 12 miles, at 3:00 in the
4 morning.

5 SENATOR HASSELL-THOMPSON: Okay, now
6 slow down a minute. At 2:50 they leave the
7 apartment. Ten minutes later, she calls
8 Ms. Toro.

9 SPECIAL COUNSEL ALONSO: Roughly
10 10 minutes later. Because Ms. Toro was
11 approximate.

12 SENATOR HASSELL-THOMPSON: Where are
13 they when she makes that call?

14 SPECIAL COUNSEL ALONSO: Presumably
15 in the car. Ms. Toro testifies -- it's
16 here, you'll see it, but Ms. Toro
17 essentially testifies that Ms. Giraldo
18 called her asking what could be done to
19 prevent scarring from a facial cut, and told
20 her that there had been an accident. So
21 Ms. Toro was called as a defense witness.

22 SENATOR HASSELL-THOMPSON: And she
23 told her there had been an accident?

24 SPECIAL COUNSEL ALONSO: Yes, that

1 there had been an accident. And you'll see
2 the quote from her testimony.

3 CHAIRMAN SCHNEIDERMAN: I take it we
4 do not have the phone records yet. Is that
5 something that's possible to obtain? Does
6 the prosecution have them?

7 SPECIAL COUNSEL ALONSO: The
8 prosecution I believe has them, but they
9 can't tell me because it's grand jury
10 material.

11 CHAIRMAN SCHNEIDERMAN: So if you get
12 that, that would enable you to get the
13 records of whatever phone calls were made?

14 SPECIAL COUNSEL ALONSO: I believe
15 so, but I can't tell until --

16 SENATOR SAVINO: Ms. Toro was a
17 witness for the defense?

18 SPECIAL COUNSEL ALONSO: Yes.

19 SENATOR SAVINO: She was not called
20 by the prosecution?

21 SPECIAL COUNSEL ALONSO: Oh, I'm
22 sorry, she was called by the prosecution.

23 SENATOR SAVINO: Yes.

24 SENATOR ALESI: I'm sorry, I want to

1 be clear on who she is.

2 SPECIAL COUNSEL ALONSO: An
3 aesthetician.

4 SENATOR SAVINO: Beauty consultant.

5 SENATOR ALESI: So she has to have
6 had a fairly close relationship with her to
7 be able to reach her at 3:00 in the morning.

8 MR. LEWIS: The evidence is she had
9 her card and called her at 3:00 in the
10 morning. It was an unusual call. And they
11 maintain they weren't friends at all. She
12 was just calling, reaching out for
13 information about how to protect, keep her
14 face from scarring.

15 SENATOR HASSELL-THOMPSON: She took a
16 3 o'clock call from a stranger?

17 SPECIAL COUNSEL ALONSO: They weren't
18 strangers, but they weren't friends. The
19 testimony was that she had only done her
20 face a couple of times.

21 MR. LEWIS: When you say she had
22 "done" her face --

23 SPECIAL COUNSEL ALONSO: She had
24 worked on her face.

1 SENATOR SAVINO: A facial.

2 MR. LEWIS: She was a facialist,
3 whatever that is. The male members of the
4 team can -- that's all I know. I was told,
5 by asking further, that it's sort of like
6 you get facials and it youthens your skin
7 and things like that.

8 SENATOR SAVINO: Chemical peels, like
9 glycolic peels. There's a whole host of
10 things you can do.

11 SPECIAL COUNSEL ALONSO: All right,
12 so 37 minutes later --

13 SENATOR HASSELL-THOMPSON: This is a
14 professional person that she was not friends
15 with, but the woman took a 3 o'clock call?

16 SPECIAL COUNSEL ALONSO: Yes.

17 MR. LEWIS: That's what the evidence
18 says, yes.

19 SENATOR HASSELL-THOMPSON: Okay. All
20 right.

21 SPECIAL COUNSEL ALONSO: So 37
22 minutes later they arrive at Long Island
23 Jewish, which is right near Nassau County.

24 SENATOR STAVISKY: Technically, it's

1 in Queens County, but it's right on the
2 border.

3 SPECIAL COUNSEL ALONSO: Right
4 near -- as close as you can get to Nassau
5 County without --

6 SENATOR SAVINO: Did anybody question
7 them? Because LIJ is not that far. It
8 shouldn't have taken 37 minutes to get
9 12 miles in the middle of the night.

10 SENATOR STAVISKY: That's right.

11 MR. LEWIS: That's one of the reasons
12 why we're interested in the phone records.

13 SPECIAL COUNSEL ALONSO: I'm going to
14 recommend to the committee that one of the
15 very few things that we should look at in
16 addition is what happened in those 37
17 minutes, what phone calls were they making.
18 And if we question at some point
19 Ms. Giraldo, we would want to ask her what
20 happened during these 37 minutes.

21 SENATOR SAVINO: Right. I mean, did
22 they discuss the route that they took?

23 MR. LEWIS: Yes, they also -- there's
24 evidence about how they got there. It isn't

1 evidence from either him or her, it's just
2 discussions about means to go from his
3 apartment to LIJ.

4 There's also an exhibit in the packet
5 somewhere that you have that shows all the
6 hospitals between his apartment and LIJ.

7 SPECIAL COUNSEL ALONSO: We're going
8 to see that now.

9 SENATOR SAVINO: But so did they say
10 the route that they took?

11 MR. LEWIS: No. Because neither one
12 of them testified.

13 SPECIAL COUNSEL ALONSO: Neither of
14 them testified.

15 Now, I believe that further evidence
16 could tell us which route that they took. I
17 also can tell you that you'll see a video
18 that he's holding a can of soda as they walk
19 into LIJ which he didn't have when --

20 SENATOR SAVINO: Meaning they stopped
21 somewhere.

22 SPECIAL COUNSEL ALONSO: Well, it
23 either means they stopped somewhere or that
24 the can of soda was somewhere other than in

1 his hands when he walked out of the
2 apartment.

3 CHAIRMAN SCHNEIDERMAN: Or in the
4 car.

5 SPECIAL COUNSEL ALONSO: Or it was in
6 the car.

7 SENATOR SAVINO: Let's assume he took
8 the longest way there. Which would be, say,
9 Northern Boulevard, 25A, which goes straight
10 out to LIJ.

11 SENATOR STAVISKY: It's quite a --

12 SENATOR SAVINO: But that would have
13 been the longest possible way. Because then
14 he could have jumped on the Grand Central
15 within blocks of his apartment, he could
16 have gone down and gotten on the Van Wyck in
17 another 10 blocks, he could have gotten onto
18 the Long Island Expressway relatively
19 quickly, There are several ways to get
20 there.

21 If it took 37 minutes, he had to have
22 driven locally or stopped. And if he drove
23 locally, he went past Memorial Hospital,
24 which is in Queens, New York; he went past

1 Flushing Hospital -- I mean, there's any
2 number of places that he could have stopped.
3 He didn't have to go all the way to LIJ.

4 SENATOR HASSELL-THOMPSON: What was
5 his explanation for taking her to that
6 particular hospital?

7 MR. LEWIS: The defense put in as
8 part of their case Senator Monserrate's
9 medical records from LIJ from an admission
10 of about a year before. And the argument
11 was that having been treated there in the
12 emergency room, he felt that he was --

13 SENATOR HASSELL-THOMPSON: Hospital
14 of choice?

15 MR. LEWIS: Right. Although there
16 are some problems in that argument, inherent
17 in it, including the fact that he doesn't go
18 to the emergency room, he drives up -- I'm
19 stealing Mr. Alonso's thunder, so I'll stop.

20 CHAIRMAN SCHNEIDERMAN: We do have an
21 exhibit which shows the location of the
22 hospital in relation to --

23 SPECIAL COUNSEL ALONSO: Yes, we have
24 that. And I'll show it to you shortly.

1 So here's the video from the hospital.
2 Which I think is not as crucial as the other
3 video, but it's somewhat informative.
4 Before I play it --

5 SENATOR HASSELL-THOMPSON: Look at
6 the timeline.

7 SPECIAL COUNSEL ALONSO: The hospital
8 video is also off by --

9 SENATOR HASSELL-THOMPSON: Yeah, it's
10 3:27.

11 SPECIAL COUNSEL ALONSO: But that's
12 established at the trial that it was 3:27,
13 not 3:23. So all these videos -- Mr. Lewis
14 and I are both familiar, and I know some of
15 you others are as well, like Senator Lanza,
16 that the videos are never correctly stamped
17 when you use them as evidence, so the first
18 thing you establish at trial is what was the
19 real time, how far off on it. So this one
20 was four minutes off.

21 You should know that there is an
22 emergency entrance for Long Island Jewish,
23 as everyone knows all hospitals have. They
24 did not go to that emergency entrance or to

1 the emergency dropoff, but instead Senator
2 Monserate parked on the street near the
3 main entrance of the hospital. As you're
4 going to see in this next series of videos,
5 they travel through the length of the
6 hospital to get to the emergency room in the
7 company of a security guard who's escorting
8 them.

9 SENATOR HASSELL-THOMPSON: All right.
10 You're showing this entrance --

11 SPECIAL COUNSEL ALONSO: I'm showing
12 it partly for timeline, which is what I'm
13 doing here, but also to show you the
14 evidence that was presented at trial.

15 SENATOR HASSELL-THOMPSON: Okay.
16 Now, is this -- what is this entrance? It
17 says first floor.

18 SPECIAL COUNSEL ALONSO: This is the
19 main entrance. Or the near entrance to --

20 SENATOR HASSELL-THOMPSON: Through
21 which they will appear in a moment.

22 SPECIAL COUNSEL ALONSO: Correct.

23 SENATOR HASSELL-THOMPSON: Okay. As
24 opposed to the emergency room.

1 SPECIAL COUNSEL ALONSO: It's
2 definitely not the emergency room.

3 SENATOR HASSELL-THOMPSON: Okay. I'm
4 sorry. Please continue.

5 SENATOR STAVISKY: One of the
6 problems is parking, they charge for parking
7 in the parking lot. And it is a ways away
8 from the emergency and from the main
9 entrance as well.

10 SPECIAL COUNSEL ALONSO: Right.
11 Okay, you can play it, Lee.

12 (Video shown.)

13 SPECIAL COUNSEL ALONSO: That's the
14 guard, and then the two of them.

15 SENATOR STEWART-COUSINS: Do they
16 know the security guard?

17 SPECIAL COUNSEL ALONSO: He's
18 escorting them.

19 SENATOR HASSELL-THOMPSON: Because of
20 the hour?

21 SPECIAL COUNSEL ALONSO: I believe
22 so. I don't think there's anything sinister
23 about it.

24 MR. LEWIS: He didn't testify.

1 SPECIAL COUNSEL ALONSO: He did not
2 testify.

3 SENATOR ALESI: At this point, no arm
4 around her or contact.

5 SPECIAL COUNSEL ALONSO: Right.

6 SENATOR STAVISKY: Where is her
7 towel?

8 SENATOR SAVINO: She dropped it in
9 the hallway.

10 SENATOR HASSELL-THOMPSON: She's
11 carrying a plastic bag.

12 SPECIAL COUNSEL ALONSO: She may be
13 holding something else against her eye.

14 SENATOR HASSELL-THOMPSON: She's
15 carrying the bag.

16 I have a question. There was something
17 about her being drunk and weaving and
18 whatever. And in none of these -- I've seen
19 no evidence of that.

20 SPECIAL COUNSEL ALONSO: The issue of
21 whether she was intoxicated at the time that
22 she was speaking to the doctors, which is
23 where a lot of the evidence came from,
24 became a very big issue at the trial. She

1 testified at the trial that she was drunk,
2 she was stumbling, and --

3 SENATOR HASSELL-THOMPSON: Do you see
4 any evidence of that on the tape?

5 SPECIAL COUNSEL ALONSO: -- and so
6 did the cousin.

7 We do not see any evidence of stumbling
8 here. But the testimony of the cousin that
9 we talked about was earlier in the evening.

10 The defense theory on drunkenness is
11 essentially threefold. You know, one is
12 that she was so drunk she didn't know what
13 she was doing down in the apartment, so she
14 didn't realize that it was for her own good
15 to go to the hospital; that's why she fought
16 against him.

17 Also that she was so drunk that she was
18 unable to really accurately perceive what
19 happened, which is why she made the
20 statements to the doctors that I will tell
21 you in a few minutes she did.

22 And the third is that she was still
23 drunk at the hospital and didn't really know
24 what she was saying.

1 SENATOR HASSELL-THOMPSON: Okay. All
2 of that may be true, but we've seen her
3 follow him in the hall for the PBA card --
4 there's no evidence of staggering or
5 anything there when she goes behind him or
6 goes back into the apartment. She has
7 walked down this entire corridor unassisted.
8 There's nothing that indicates that she's
9 even slightly inebriated; certainly not
10 drunk.

11 SPECIAL COUNSEL ALONSO: She also
12 testified before the grand jury -- and this
13 is in evidence in the trial -- that she
14 wasn't drunk, that she was okay, and that
15 she only had two drinks the whole evening.

16 It was only at trial that she said that
17 she was very drunk and some of the things I
18 just said. You'll see that in a minute.

19 SENATOR LANZA: Can we see this last
20 one again?

21 SPECIAL COUNSEL ALONSO: We're going
22 to back up. Lee, are you able to back up
23 just the last two? Are you able to
24 fast-forward?

1 MR. CORTES: No.

2 SPECIAL COUNSEL ALONSO: Okay, we've
3 got to watch it all again. Sorry about
4 that.

5 SENATOR LANZA: Because a lot went on
6 during that discussion.

7 (Video shown.)

8 SPECIAL COUNSEL ALONSO: Is this one
9 slowed down, Lee, or is it just the same one
10 we just saw?

11 MR. CORTES: The same.

12 SENATOR STAVISKY: She's walking a
13 straight line.

14 MR. LEWIS: She also walked a
15 straight line down the steps in the
16 apartment when they left.

17 SENATOR STAVISKY: Yeah, that's what
18 I saw.

19 SENATOR ALESI: Was it the host of
20 the party that said "You shouldn't drive
21 home"?

22 SPECIAL COUNSEL ALONSO: Yes. But
23 remember, she hadn't driven there.

24 SENATOR ALESI: Why would he suggest

1 that she shouldn't drive?

2 SPECIAL COUNSEL ALONSO: That was his
3 way of adding color to -- I don't want to
4 put motivation into his head, but during his
5 testimony he's asked whether she was drunk
6 or not, and he says, "Yes, in fact I told
7 her she shouldn't drive home," something
8 like that.

9 MR. LEWIS: They claim that she was
10 dancing with a lot of different people and
11 acting rowdy so she had to go home.

12 CHAIRMAN SCHNEIDERMAN: She does have
13 something she's placing on her eye.

14 And just for the members of the
15 committee, counsel is presenting evidence.
16 And when we talk in day-to-day speech,
17 evidence is usually treated as something
18 that is a fact. Evidence just means
19 something somebody said. It doesn't mean
20 it's a fact. So evidence at the trial, what
21 this person said he told her, that may or
22 may not be true.

23 SENATOR STAVISKY: She's walking
24 straight.

1 SPECIAL COUNSEL ALONSO: Right.

2 SENATOR SAVINO: It's pretty amazing.
3 She should have been in shock with the
4 amount of blood loss.

5 SENATOR HASSELL-THOMPSON: That's
6 what I'm saying. I'm really confused,
7 because --

8 SPECIAL COUNSEL ALONSO: Okay. So
9 there's a little bit more surveillance video
10 of the senator in the waiting room at LIJ,
11 which is 23 minutes after they arrive, when
12 she's presumably being treated.

13 Go ahead, Lee.

14 MR. CORTES: These are all slides.

15 SPECIAL COUNSEL ALONSO: Right. They
16 were 20-minute-long snippets, so we've just
17 got a few slides.

18 MR. LEWIS: This is 24 minutes after
19 they arrived.

20 SPECIAL COUNSEL ALONSO: Right. So
21 you can see he's on the phone.

22 SENATOR STAVISKY: Who's he calling?

23 SPECIAL COUNSEL ALONSO: I don't
24 know.

1 That's Dr. Frogel, who is escorting the
2 senator, as far as we can tell from the
3 record, to see Ms. Giraldo during her
4 treatment. And I believe she asked for --

5 MR. LEWIS: It was at her request.

6 SPECIAL COUNSEL ALONSO: There he is
7 a little bit later, two minutes later.

8 SENATOR STAVISKY: Is that her
9 pocketbook in his hand?

10 SPECIAL COUNSEL ALONSO: It's hard to
11 tell.

12 He's on the phone again. He must have
13 made several phone calls, but I'm sort of
14 speculating just because the phone is in his
15 hand. So I'd like to see what the records
16 are.

17 SENATOR SAVINO: But he also is
18 making a pay-phone call. And he has a
19 cellphone to his ear.

20 SPECIAL COUNSEL ALONSO: Yup. Yup.

21 SENATOR ALESI: At some point doesn't
22 he have her cellphone? Did he have
23 possession of her cellphone?

24 SPECIAL COUNSEL ALONSO: If he had

1 her purse, he must have.

2 And ordinary practice would indicate
3 that the DA would have subpoenaed the
4 records of all the phones. But again, since
5 it's grand jury material, they haven't been
6 able to tell me.

7 MR. LEWIS: Most emergency rooms
8 won't let you bring a cellphone in when
9 you're treated.

10 SPECIAL COUNSEL ALONSO: So that's
11 what we just saw. At 4:21, Dr. Frogel
12 brings the senator to see Ms. Giraldo.

13 (Video shown.)

14 SPECIAL COUNSEL ALONSO: Now, this I
15 believe is not in evidence. And I meant to
16 take it out, because I really wanted to keep
17 this to just the evidence. But apparently
18 NYPD was called at 4:50. And the testimony
19 is who called them was Dr. Kort, who was the
20 Spanish-speaking doctor who treated
21 Ms. Giraldo, as you'll see from the
22 evidence.

23 But in any event, this was in a police
24 report. It was never actually put into

1 evidence.

2 SENATOR HASSELL-THOMPSON: She was
3 treated by two doctors?

4 SPECIAL COUNSEL ALONSO: She was
5 treated by an initial emergency room doctor,
6 somebody who didn't speak Spanish, and later
7 on she was sewn up by a plastic surgeon,
8 Dr. Sasson. He testified.

9 MR. LEWIS: There's an initial
10 discussion with a triage nurse who takes a
11 statement from her. And then there's
12 another doctor who tries to talk to her but
13 who clearly doesn't understand Spanish, who
14 brings in Dr. Kort, who has a Spanish
15 background and talks to her and takes
16 statements.

17 Dr. Frogel talks to her briefly but
18 really deals with the senator.

19 And then Sasson is the plastic surgeon
20 who comes in and does the actual fixing of
21 her face.

22 SPECIAL COUNSEL ALONSO: So it's
23 really two doctors and one nurse. And Dr.
24 Frogel, who you've seen in the video, mainly

1 dealt with the senator.

2 SENATOR SAVINO: Was it the triage
3 nurse who first saw her?

4 SPECIAL COUNSEL ALONSO: Yes.

5 SENATOR SAVINO: And in her statement
6 she said that the patient speaks English
7 well. Do you remember that?

8 SPECIAL COUNSEL ALONSO: She actually
9 wrote in her triage notes that there was --
10 that they spoke in English but there was a
11 language issue. You'll see that.

12 SENATOR LANZA: What was Dr. Kort's
13 involvement vis-a-vis the complaining
14 witness?

15 MR. LEWIS: Dr. Kort is the doctor
16 that speaks Spanish.

17 SENATOR LANZA: But does he treat her
18 at all?

19 SPECIAL COUNSEL ALONSO: She treated
20 her. She's the one who does the initial
21 what you would think of as ER record, and
22 also what the --

23 SENATOR LANZA: She cleans the
24 injuries?

1 SPECIAL COUNSEL ALONSO: Right. But
2 doesn't sew her up.

3 MR. LEWIS: She calls the plastic
4 surgeon.

5 SPECIAL COUNSEL ALONSO: Right.

6 CHAIRMAN SCHNEIDERMAN: Where is
7 this?

8 SPECIAL COUNSEL ALONSO: This is in
9 the ER, outside the room where she's being
10 treated.

11 The point of these videos -- and I
12 believe they're representative -- is that
13 there is a lot of time that he spends on the
14 phone. Now, there's nothing wrong with that
15 by itself. We just don't know who he
16 called.

17 SENATOR ALESI: Could you just back
18 it up halfway?

19 SPECIAL COUNSEL ALONSO: We're
20 talking about Slide 66.

21 SENATOR ALESI: Does he have two
22 cellphones?

23 SPECIAL COUNSEL ALONSO: Sorry, Lee.

24 SENATOR ALESI: It looks like he has

1 a cellphone and pulls one out of his pocket.

2 SPECIAL COUNSEL ALONSO: Could be.

3 But it's not conclusive. It could easily
4 be, Senator, that there are two phones,
5 because he's looking at both of them in a
6 way that suggests that they might be phones.
7 But it's impossible to tell for sure.

8 SENATOR SAVINO: It could be a
9 Blackberry and a regular phone.

10 SENATOR ALESI: Or he had her phone
11 and was checking her phone also. Who knows?

12 SPECIAL COUNSEL ALONSO: Okay, so
13 that was the timeline.

14 SENATOR HASSELL-THOMPSON: The triage
15 nurse said that she requested that the phone
16 be given back to her.

17 MR. LEWIS: There's some evidence in
18 the record that she had a red cellphone, and
19 he's holding something red. And I don't
20 know if that's her cellphone.

21 SENATOR HASSELL-THOMPSON: Well, the
22 triage nurse says that she requested -- "I
23 overheard her requesting someone to retrieve
24 her phone from her male companion."

1 CHAIRMAN SCHNEIDERMAN: Where are
2 you, Senator Hassell-Thompson?

3 SENATOR HASSELL-THOMPSON: Section G.

4 SPECIAL COUNSEL ALONSO: Defense
5 Exhibit G, which is the written statement of
6 Nurse Cabibbo, who is the triage nurse.

7 SENATOR SAVINO: And that's where she
8 says he wanted to translate. The patient
9 spoke English well, so she asked him to
10 leave the area.

11 SPECIAL COUNSEL ALONSO: That's
12 right.

13 SENATOR SAVINO: And in the statement
14 she says "I began the triage, and I recall
15 her stating, 'He's crazy, he's crazy.'" And
16 then she talks about the abrasions.

17 SPECIAL COUNSEL ALONSO: I haven't
18 gotten to that point yet, but it's worth
19 mentioning, since you brought it up, that
20 the language barrier was an issue that the
21 defense raised at the trial. They're
22 claiming that Cabibbo got it partially wrong
23 because she doesn't speak Spanish and that
24 Dr. Kort, who is fluent in Spanish, got it

1 wrong because she doesn't speak Ecuadorian
2 Spanish. So that's too oversimplified, but
3 that's part of the claim.

4 By the way, I'm presenting the
5 prosecution evidence first and then the
6 defense. Please don't read anything into
7 the fact that I've taken the prosecution
8 first. That's just who went first. And the
9 defense makes more sense if you know what
10 happened before.

11 So the key points that the prosecution
12 made is that because of jealousy over the
13 PBA issue, Senator Monserrate intentionally
14 assaulted Ms. Giraldo. And the evidence of
15 her injuries are -- come from the triage
16 note that Nurse Cabibbo wrote, which is that
17 she was stating 'this is essentially what
18 happened to her. If you want to know how
19 was she injured, here it is.'

20 She sustained -- this is Prosecution
21 Exhibit 9. She sustained multiple
22 lacerations to her lateral eye area -- a
23 1-inch vertical cut, another one above the
24 left eyebrow, left maxillary area, with

1 three smaller cuts, and then brownish
2 ecchymosis, which is bruising.

3 This is on the arm, a circular 1-inch
4 noted on left forearm and also a skin tear
5 on the left inner forearm.

6 So this is the triage nurse writing
7 down in the hospital records exactly what
8 she saw and got from the patient in terms of
9 the injuries. Now, she will be criticized
10 and the defense will criticize that some of
11 the statements that Ms. Giraldo supposedly
12 made to Ms. Cabibbo are not in these
13 records. They don't appear until a couple
14 of weeks later when Ms. Cabibbo memorializes
15 her recollection of what happened.

16 Now, remember that there was the PBA
17 incident and then they leave at around ten
18 to 3:00 in the morning. That's about a
19 two-hour period where the prosecution opines
20 or argues that it was a two-hour continuous
21 argument. And they have some support for
22 this in the record, as you'll see.

23 This is a single slide. This is her
24 coming out of the apartment right after he's

1 liner, and so the trash can was presumably
2 empty. So the inference is that the shirt,
3 which was ripped and not bloody, must have
4 been ripped after the PBA card incident but
5 before the blood and glass incident. Which
6 the prosecution uses to argue that was there
7 was a continuous argument and this is solid
8 evidence of that.

9 The neighbor testifies she heard a body
10 hit the floor, just boom, right after she
11 heard crying from a female. And then she
12 heard Monserrate say "Listen to me." And
13 then, with a lot of authority in his voice,
14 "Listen to me."

15 The prosecution also said that he
16 attempted to control the situation, which is
17 what led to the second downstairs reckless
18 misdemeanor assault that he was convicted
19 of.

20 This is the downstairs neighbor talking
21 about the noise again. She says she has a
22 yardstick and she bumped on the ceiling one,
23 two, three. And what the prosecution argued
24 here -- this is not evidence, this is their

1 argument -- is that the defendant knows that
2 somebody is awake and he needs to control
3 the situation.

4 He says that -- I'm sorry, I lost my
5 place. David, are you following this?

6 MR. LEWIS: I don't know what you're
7 doing, so I'm a little --

8 SPECIAL COUNSEL ALONSO: This was
9 their argument about control. And what the
10 prosecutor argues is that once he heard the
11 thump, she took the yardstick, at that point
12 the senator knows that somebody is aware of
13 what's going on and so he -- you know, what
14 he says, according to Loudon, is "Listen to
15 me. Listen to me."

16 I'm actually forgetting why I put this
17 in, so let's ignore it until I remember it.
18 Sorry about that.

19 Go ahead, Senator.

20 SENATOR HASSELL-THOMPSON: What the
21 language says is -- or seems to infer to me
22 is that because he recognizes that somebody
23 is listening or is aware or awake, that he's
24 saying "Oh, I slipped, are you okay?" Which

1 may or may not be a fabrication.

2 SPECIAL COUNSEL ALONSO: He didn't --

3 SENATOR STEWART-COUSINS: He didn't
4 say that. That was the point, that he
5 didn't.

6 CHAIRMAN SCHNEIDERMAN: Everyone
7 with --

8 SENATOR HASSELL-THOMPSON: I'm
9 talking about what's written.

10 CHAIRMAN SCHNEIDERMAN: Excuse me.
11 The stenographer can't record if we talk
12 over each other. So let's just try to do it
13 one at a time.

14 MR. LEWIS: The transcript says the
15 argument is -- when he says "Listen to me,
16 listen to me," it shows more of his dominion
17 and control. That's why I understood this
18 section was up.

19 SPECIAL COUNSEL ALONSO: He would
20 have said -- this is right after the thump
21 on the floor. And she hears him say "Listen
22 to me, listen to me." Not "Oh, my God, are
23 you okay? I slipped," the kind of thing
24 which the prosecution argues a reasonable

1 person would say.

2 I think it's not the strongest argument
3 in the world, but it is the prosecution's
4 argument of control.

5 MR. LEWIS: And all through the
6 prosecution argument, summation especially,
7 he says what Monserrate should have said if
8 what he said is true was true. But as Dan
9 says, it's sort of a weak argument now
10 you're saying "which is what you should have
11 said."

12 CHAIRMAN SCHNEIDERMAN: Again, this
13 is just evidence and argument, and we'll
14 have a chance to see --

15 SENATOR SAVINO: I have a question,
16 though. The downstairs neighbor who heard
17 the noise, she heard the continuous arguing
18 or mad energy, as she described it, for
19 about two hours prior to this loud thump, a
20 body hitting the floor, and then she heard
21 him say "Listen to me. Listen to me." Now,
22 he had -- she said she heard him say those
23 words.

24 SPECIAL COUNSEL ALONSO: Like he was

1 reasoning with her, yes.

2 SENATOR SAVINO: Okay, so now --
3 stop. This is downstairs, in a building
4 with concrete between the two floors. It
5 must have been fairly loud for her to have
6 heard him audibly enough. I mean, it's
7 not -- you know, these old prewar buildings,
8 you can't hear your next-door neighbors
9 having a conversation.

10 SPECIAL COUNSEL ALONSO: I don't
11 think we can necessarily make that
12 inference, just because of the fact she said
13 she's been after him to get rugs. So she
14 can hear noise upstairs.

15 Now, whether you can hear words through
16 the walls, you know, there was no evidence
17 from anyone other than her about that, so --

18 SENATOR STAVISKY: Was that all she
19 heard?

20 SPECIAL COUNSEL ALONSO: It's the
21 only words she heard.

22 SENATOR STAVISKY: It's the only
23 words, Even though she's testified that an
24 argument --

1 SPECIAL COUNSEL ALONSO: Earlier she
2 heard --

3 MR. LEWIS: She heard what she called
4 mad energy during that two-hour period of
5 time. She heard noises; she thought it was
6 the television. But those were the only
7 words she heard after the thump that she
8 could identify.

9 SENATOR SAVINO: Does she speak
10 Spanish?

11 SPECIAL COUNSEL ALONSO: No.

12 MR. LEWIS: No.

13 SENATOR SAVINO: So in a moment of
14 crisis, he spoke to Karla in English, not in
15 Spanish.

16 MR. LEWIS: There's evidence in the
17 record that at various times Karla spoke
18 English in what would probably be
19 demonstrating a bilingual capacity, let's
20 say.

21 SENATOR STAVISKY: But Senator
22 Monserate spoke in English. At a time of
23 stress when you would assume he would revert
24 to his first language.

1 SENATOR SAVINO: Particularly if her
2 English wasn't -- they're saying her English
3 was not as good as --

4 MR. LEWIS: Only she says her English
5 was not that good.

6 CHAIRMAN SCHNEIDERMAN: But the
7 evidence is that the downstairs neighbor
8 said she heard him say "Listen to me.
9 Listen to me." And Senator Savino's point
10 is it must have been said fairly forcibly
11 for her to make it out.

12 SENATOR SAVINO: Right, for it to be
13 audible.

14 CHAIRMAN SCHNEIDERMAN: Was there any
15 attack on her credibility as far as --

16 SPECIAL COUNSEL ALONSO: Yes. Only
17 in the sense that she was exaggerating, that
18 she was a bit odd, a bit of an odd duck. As
19 comes through through the testimony when she
20 talked about the scream that she heard, and
21 she apparently screamed so loud that it just
22 seemed ridiculous it would have been that
23 loud.

24 MR. LEWIS: They asked her to do it,

1 and she screamed, and apparently court
2 officers came running from other parts of
3 the building.

4 SENATOR ALESI: But this is the same
5 neighbor that Ms. Giraldo went to or tried
6 to go to for help?

7 SPECIAL COUNSEL ALONSO: Yes.

8 SENATOR LANZA: Is there evidence
9 that the complainant and the neighbor knew
10 each other before this night?

11 MR. LEWIS: No, there's no evidence
12 they knew each other at all.

13 SENATOR LANZA: If you think back to
14 the first video, they exit the apartment
15 seemingly in a calm way together. And then
16 as soon as she breaks from that apartment
17 door, that's when he grabs her. So I'm just
18 wondering if she was knocking at the first
19 door she saw or whether or not, based on
20 some prior --

21 SPECIAL COUNSEL ALONSO: Ms. Giraldo
22 testified that -- and she said "he" -- "I
23 thought he could help me."

24 SENATOR LANZA: So it's just

1 coincidental that it's the same neighbor
2 that heard all the --

3 SPECIAL COUNSEL ALONSO: Yes.

4 MR. LEWIS: It's the first apartment
5 that she gets to.

6 SENATOR HASSELL-THOMPSON: It seems
7 like the same apartment below her.

8 SPECIAL COUNSEL ALONSO: Another key
9 prosecution point is that nobody called 911.
10 And this argument that the prosecutor makes
11 was relatively central in the trial, and the
12 judge picks up on it, as I'll show you
13 later.

14 He says the problem is that with 911 a
15 lot of things can happen, because they start
16 bringing in officers, possibly forms that
17 the police may fill out. And obviously 911
18 would mean that he has concern for her and
19 not for himself, because clearly at this
20 point in time he doesn't call 911 for a
21 reason.

22 The inference that the DA is asking the
23 judge to draw is that he is driving her to
24 the hospital not primarily out of concern

1 for her well-being but out of concern for
2 keeping this incident quiet.

3 SENATOR SAVINO: And driving her to a
4 hospital outside of the City of New York.

5 SPECIAL COUNSEL ALONSO: Walking her
6 into a hospital in some other neighborhood
7 where he can claim it's an accident, he can
8 interpret for her, she can be treated, and
9 they can go home. That's the inference that
10 the prosecutor is asking the judge to draw.

11 MR. LEWIS: With 911 also it's in
12 police documents, EMT documents, all of this
13 information. That doesn't happen when you
14 just walk into a hospital. A hospital has a
15 reporting obligation, but only under certain
16 circumstances, depending upon what their
17 perception is.

18 SENATOR ALESI: At this point or some
19 other relevant point about 911 did they
20 mention or discuss his training as a police
21 officer?

22 SPECIAL COUNSEL ALONSO: It's in the
23 record that he was a police officer. That's
24 about as far as it went.

1 SENATOR ALESI: So it's in the record
2 but the prosecution never emphasized it?

3 MR. LEWIS: They didn't argue it at
4 all.

5 SPECIAL COUNSEL ALONSO: Right.
6 Although I think that certainly if you're
7 asking me if that's something that you're
8 able to consider, I can't imagine why not
9 here. Sure, he's a police officer. He
10 presumably would know the kind of things
11 that happen when you have an incident.

12 I mean, look, we -- you can take notice
13 of the fact that when you call 911, a tape
14 recording is made. Then police and EMS are
15 dispatched. Then the police have to fill
16 out a report and the ambulance driver has to
17 fill out a report. The police talk to each
18 other over the radio. That is
19 tape-recorded. And then, you know, the
20 police would have arrived to a place full of
21 blood and bloody towels and a gash on
22 someone's face.

23 And so that's the point I think that
24 the DA was trying to make there.

1 SENATOR ALESI: But the point that I
2 was making is that they didn't drive home
3 the fact that you have former police
4 officer, whose first instinct should have to
5 call 911, aside from an average citizen
6 would probably call 911.

7 SENATOR LANZA: I think the
8 prosecution's inference is that it's
9 reasonable to assume in New York City that
10 any police officer, criminal defense
11 attorney or prosecutor would know that
12 calling 911 triggers this series of events
13 that are recorded and documented.

14 SENATOR ALESI: Okay. As a law
15 person, because we have a judge rather than
16 a judge and a jury. I mean, I'm assuming
17 that's why they didn't drive it home. Okay.

18 MR. LEWIS: The other thing is the
19 only way it got into evidence actually was
20 through a witness that gave it to the
21 prosecution rather than the defense. So it
22 just sort of came out, and that was the end
23 of it.

24 SPECIAL COUNSEL ALONSO: Okay. The

1 prosecution's key point is that she tried to
2 escape from him. And of course that's the
3 point in the video where that happens. And
4 Loudon testifies that the ringings of the
5 doorbell "were frantic, it was absolutely a
6 frantic, bonkers, somebody ringing my
7 doorbell bonkers."

8 And the question is "After the three
9 bells that were rung, what was the very next
10 thing you heard? Answer: "A scream." And
11 he asked about the audibility, and she
12 says: "It was very loud. I got the sense
13 she was being pulled out of the building."
14 She says she went to the peephole and saw a
15 bloody towel. So she didn't see what we saw
16 on the video.

17 Giraldo testifies -- she's asked if she
18 recalls why she went to the neighbor's door,
19 and she says "Not because the neighbor could
20 help me get to the hospital, but I was
21 nervous, I was panicky."

22 Now, here the prosecutor impeaches her
23 with her prior grand jury testimony. What
24 he -- I mean, impeachment is a term of art.

1 It's not technically allowed. What he's
2 trying to do is to refresh her recollection.
3 What he says is "Well, didn't you tell the
4 grand jury 'I thought maybe he could help me
5 get to the hospital'?" And she says, "As I
6 remember it today, I don't remember if I
7 knocked."

8 And this went on for several pages of
9 the transcript, which I'm not going to put
10 up here. But it was very clear that today's
11 testimony, or last month's, was "I don't
12 remember even ringing the doorbell, let
13 alone why I was ringing the doorbell," yet
14 in the grand jury she said "I thought maybe
15 he could help me get to the hospital."

16 SENATOR SAVINO: But what I'm curious
17 is did anybody ask her, either in the grand
18 jury or during the trial itself, why she
19 thought she needed somebody else to get her
20 to the hospital if it was obvious he was
21 taking her to the hospital?

22 SPECIAL COUNSEL ALONSO: Well,
23 remember, the grand jury, we don't have the
24 testimony. We just have this part. So at

1 the trial they were very circumscribed in
2 what they asked.

3 She repeatedly says at the trial,
4 whether she's asked or not, several things.
5 She says "it was an accident, it was an
6 accident, it was an accident," "At the
7 hospital they called the police because my
8 boyfriend's a politician," and "thank God he
9 took me to the hospital, because I didn't
10 want to go because I'm afraid of needles."
11 That's my very quick summary of her
12 testimony.

13 CHAIRMAN SCHNEIDERMAN: Dan, could
14 you just explain -- because this is some
15 strange stuff to laymen -- about the issue
16 of the prosecution calling her as a witness
17 but then limiting her inquiry because --

18 SPECIAL COUNSEL ALONSO: It's worth
19 talking about for 30 seconds at least.

20 The DA doesn't believe her, what she's
21 saying today. But the law doesn't allow the
22 DA to call a witness just to impeach them.
23 They didn't want to call her at all, but the
24 judge kind of pressured them. And so they

1 called her.

2 As long as they were calling her, they
3 weren't going to go anywhere near what
4 happened in the apartment, because they
5 don't believe her. They don't want the
6 evidence in the record. And they don't want
7 to be accused of suborning perjury, because
8 they think she's lying.

9 So they didn't even ask her what
10 happened in the apartment. They asked a few
11 circumscribed things that had to do with
12 testimony they already had her on in the
13 grand jury, which is that she thought the
14 neighbor could help get her to the hospital,
15 that she only had two drinks that night,
16 that she wasn't drunk. Things that she had
17 already said to the grand jury that were
18 under oath, so they were allowed to bring
19 that up.

20 But they didn't want to call her at
21 all. But as long as they did, they asked
22 her those questions. But it was not unusual
23 at all that they didn't sit and have a long,
24 full set of questions -- like, for example,

1 we might do if that's what the committee
2 wants to do.

3 MR. LEWIS: As a consequence, we do
4 not have either her version of what happened
5 in the apartment or his in front of us. And
6 neither did the judge. Which prevented him,
7 really, from rendering a guilty verdict
8 beyond a reasonable doubt, because he didn't
9 have enough.

10 There's tremendous colloquy in the
11 transcript all over the place in which they
12 are discussing how careful they are not to
13 open the door. And so even when they get
14 close to the events in the apartment, they
15 back off. Because the prosecution can't
16 propound her testimony, and the defense
17 can't use her either for their witness
18 without running the risk that she can then
19 be cross-examined by the prosecution. So
20 that chunk of information is missing from
21 the record.

22 SPECIAL COUNSEL ALONSO: It's a very
23 important point. The record does not have a
24 full account from either of the two people

1 who know the most about this.

2 SENATOR SAVINO: I don't remember,
3 but when she testified before the grand
4 jury -- and hopefully we'll get the minutes
5 of the grand jury and we can find this
6 out -- did she take the position then that
7 this was an accident?

8 SPECIAL COUNSEL ALONSO: Yes.

9 SENATOR SAVINO: So she always held
10 that position.

11 SPECIAL COUNSEL ALONSO: Well, not
12 always. I mean, it depends if you believe
13 the doctor and the nurse.

14 SENATOR SAVINO: But I just find that
15 comment that she made to the grand jury that
16 they reference -- and then what she says in
17 the trial about why she knocked on the
18 neighbor's door.

19 SPECIAL COUNSEL ALONSO: At the trial
20 she claimed not to remember knocking at all.
21 So she doesn't say why or why not.

22 In the grand jury she says yeah, I
23 knocked on the neighbor's door, I thought he
24 could take me to the hospital.

1 SENATOR SAVINO: Why would she need
2 someone else to take her? Unless she wanted
3 to get away from him.

4 MR. LEWIS: Well, I think, with all
5 due respect, we may be jumping the gun,
6 because there's an awful lot else you still
7 have to see and digest before you get to see
8 those two as the only two alternatives.

9 SPECIAL COUNSEL ALONSO: I agree.
10 And I do caution you against jumping the gun
11 until you've seen everything that we have --

12 CHAIRMAN SCHNEIDERMAN: And we still
13 haven't seen the defense evidence, keep that
14 in mind, and reviewed all the evidence
15 carefully. We will have another opportunity
16 to review this and discuss this at our later
17 meeting.

18 SENATOR STAVISKY: Are you going to
19 give us this PowerPoint presentation in
20 written form?

21 SPECIAL COUNSEL ALONSO: Yes. Yes,
22 on a disc, so you can play the video if you
23 want.

24 So here are a couple of slides right

1 after the ringing the doorbell. These are
2 stills.

3 And again, this is more of the
4 prosecution's summation about what a
5 reasonable person would have done. A
6 reasonable person in the senator's position
7 would have called 911, would have talked to
8 her for a few seconds when she was at the
9 door, would have consoled her for a second
10 and not just kept going. In other words,
11 the idea is she's ringing the doorbell, you
12 stop, console her: "Honey, what are you
13 doing?" That's the argument the prosecution
14 is making. Not grab her by the arm and pull
15 her out of the building.

16 Here's the point about not going to the
17 closest hospital. Here are the maps we told
18 you about. This is a localized map of the
19 neighborhood. There is where Elmhurst
20 General Hospital is, in Queens. And there
21 is Senator Monserrate's apartment just a few
22 blocks away indicating). It's, you know,
23 minutes away, less than a 10-minute walk and
24 a two-minute car ride.

1 Here the prosecution -- it's a terrible
2 map, I apologize for it, but it's -- they
3 highlighted all the other hospitals that
4 were closer to Senator Monserrate's
5 apartment than Elmhurst. And so here is
6 Elmhurst Hospital Center, right there in
7 Queens. Just for perspective, there's
8 Manhattan. Here's Elmhurst. And I'm going
9 to light up the hospitals one by one.

10 Lee, can you read those off for us?

11 So the second one that lights up over
12 on the far right is Long Island Jewish.

13 MR. CORTES: Right.

14 SPECIAL COUNSEL ALONSO: And you see
15 how far that is. They're about 12 miles
16 apart.

17 MR. CORTES: Mt. Sinai Hospital of
18 Queens.

19 SPECIAL COUNSEL ALONSO: Okay. The
20 fourth one is?

21 MR. CORTES: Forest Hills Hospital.

22 SPECIAL COUNSEL ALONSO: And the
23 fifth one?

24 MR. CORTES: Wyckoff Heights Medical

1 Center.

2 SPECIAL COUNSEL ALONSO: And again,
3 remember, here's Elmhurst. Then?

4 MR. CORTES: Flushing Hospital
5 Medical Center. New York Hospital Medical
6 Center of Queens. Queens Hospital Center.
7 Jamaica Hospital Center.

8 SPECIAL COUNSEL ALONSO: And I
9 ignored these two outliers down at the
10 bottom, just because arguably they're far.

11 But there are -- by this count, there
12 are seven hospitals in Queens that are
13 closer to the senator's apartment than Long
14 Island Jewish.

15 SENATOR YOUNG: Eight hospitals.

16 SPECIAL COUNSEL ALONSO: Here's the
17 point about the emergency room. Lee, could
18 you do these over? I don't know one which
19 one is a better picture.

20 This is what happens when they get to
21 the hospital. And we know this because of
22 both her testimony and where the senator's
23 car was parked. But what I can show you is
24 the emergency room entrance -- is it there,

1 Lee, or there? Which one says ER? It's
2 right there. So on the slide, the emergency
3 room is right there (indicating).

4 So you've got to come in through the
5 entrance sign, and you've got to drive
6 around here, this building, through the
7 security booth, and here's the ER drop-off.
8 There's a parking garage near the entrance.

9 And this is where Senator Monserrate
10 parked (indicating). He parked on the
11 street. And they had to walk up these
12 stairs to go to the main entrance of the
13 hospital. And then they walked through the
14 hospital, as you saw in the video, to where
15 the ER is.

16 And there are parking lots -- they're
17 hard to see on the pictures, but there are
18 parking lots here and here (indicating),
19 near the ER, or at least a lot closer to the
20 ER than there. Plus there's a drop-off,
21 there's a place where cars drop off people
22 in the ER.

23 And the inference the prosecution
24 asks -- here's where the car was parked,

1 approximately. Just right on the street,
2 regular parking. And the inference the
3 prosecution asks the judge to draw is it's
4 3:30 in the morning, there's parking lots,
5 there's an emergency room where you can
6 drive right up with this person who is
7 bleeding. Instead, you park 200, 300 yards
8 away on the street. The inference he's
9 trying to draw is he's trying to draw
10 attention away from himself and he's trying
11 to control the situation by not letting the
12 patient go to the emergency room by herself.
13 That's the inference the prosecution asks
14 the judge to draw.

15 And the prosecution says that the
16 medical records are inconsistent with it
17 having been just an accident. This, again,
18 being the incident with the glass. And
19 remember, that's acquitted conduct. We're
20 not relitigating it, but for context it's
21 important to know what the prosecution
22 theories are.

23 So here are the medical records. What
24 the triage note from Nurse Cabibbo says is

1 that about 40 minutes ago -- so just before
2 they left -- she was involved in an
3 altercation. A very vague word, but it
4 generally means some sort of a fight. Forty
5 minutes ago, not two hours ago, is what the
6 prosecution points out. And the patient
7 refused the police to be called is the other
8 significant point there.

9 So Dr. Kort, who is the doctor who
10 treats her before the plastic surgeon --
11 this is the one that speaks Spanish. Dr.
12 Kort, by the way, is -- Spanish is not her
13 first language, but she has one parent who's
14 Panamanian and one who's Puerto Rican, and
15 she lived abroad in Spain. So she does
16 speak Spanish fluently.

17 What she writes is "As per she was
18 involved in an altercation with boyfriend.
19 During the altercation, the patient struck
20 in face with broken glass." Those are
21 bracketed words.

22 Again, the defense, as you'll see,
23 makes much of the fact that all this other
24 stuff about how he took the glass and shoved

1 it in her face isn't there in the initial
2 notes, just that it was an altercation with
3 the boyfriend. But significantly, the
4 prosecution says, during the altercation.
5 So they were fighting. It wasn't an
6 accident, it was during the altercation the
7 patient was struck in the face with the
8 glass.

9 MR. LEWIS: Just one thing about the
10 slides, I'm sorry. In the slide the word
11 "with" is actually the nurse's symbol for
12 the word "with." The word itself is not
13 there, it's an abbreviation.

14 SPECIAL COUNSEL ALONSO: It's an
15 abbreviated "with."

16 MR. LEWIS: What nurses sign for the
17 word.

18 SPECIAL COUNSEL ALONSO: That's
19 right. And also they made much of the fact
20 that it's "as per." As per who? The
21 defense tried to imply that maybe somebody
22 else said that this is what happened, that
23 maybe Nurse Cabibbo was -- that it was
24 related to her but that's not what Ms.

1 Giraldo told her.

2 SENATOR LANZA: Now, as a reminder,
3 she prepared this statement
4 contemporaneously with her interview with
5 the patient, as opposed to it being done
6 later.

7 SPECIAL COUNSEL ALONSO: That's
8 right. And when we get to the defense case,
9 they make a very big point about the fact
10 that there are all sorts of things not said
11 here, and this is a contemporaneous record
12 while meeting with the patient.

13 We have more records. Post altercation
14 with boyfriend, 30 minutes to an hour, NYPD
15 was called -- and this is by Dr. Kort -- for
16 a suspicious wound.

17 This is -- I believe this is Sasson's.
18 Yeah, this is the plastic surgeon. He says
19 "status post severe assault with broken
20 glass," but that's misleading. I would not
21 read too much into that, because he
22 testifies that he didn't really get to
23 interview her about what happened, he just
24 got this from the other doctors. So he's

1 not an independent witness to her
2 statements.

3 MR. LEWIS: But he also thought that
4 it was severe. His opinion was it was
5 severe because one of the cuts went down
6 right to the ligament and the bone. So he
7 wasn't quoting her, he was saying what he
8 believed.

9 SPECIAL COUNSEL ALONSO: I think
10 that's accurate.

11 I also will caution you, and you'll see
12 this later, that he agrees with the defense,
13 that he can't say that the injuries were
14 inconsistent with it being an accident. The
15 injuries are equally consistent with it
16 being an accident or being an intentional
17 assault.

18 Now, this is Nurse Cabibbo. You've got
19 these in your materials. This is a defense
20 exhibit. And she says: "I began the
21 triage, and I recall her stating 'He's
22 crazy, he's crazy.'"

23 Dr. Kort tells us that the statement
24 that she makes is: "I can't believe he did

1 this to me. My face, my face. I can't
2 believe my face."

3 And then she's asked to elaborate, and
4 Dr. Kort says that Ms. Giraldo said "We were
5 fighting, I asked for a glass of water, and
6 he said, 'You want the water? You want the
7 water? Here's the water.'" While saying
8 this, the patient reenacted the scene
9 holding her hand out as if she was holding a
10 glass and shoving the glass against her
11 face.

12 So the claim is that when Ms. Giraldo
13 was being treated by a doctor for the very
14 first time that night, that morning, and
15 she's asked what happened, she says "We were
16 in the middle of a fight, he had a glass in
17 his hand, he shoved it against my face."
18 Which is inconsistent with what he and she
19 later said.

20 And again, Dr. Kort tells us that on
21 that night the patient became very upset and
22 repeated many times "It wasn't an accident,
23 we were fighting and he cut my face." Now,
24 this is, significantly, a statement that she

1 makes in response when Dr. Frogel, who had
2 spoken to Senator Monserrate, walked in and
3 said "The boyfriend says it was an
4 accident." This is me paraphrasing, but
5 that's roughly what it was.

6 And then Dr. Kort says that's when she
7 became very upset and repeated many times
8 "It wasn't an accident, we were fighting and
9 he cut my face. We were fighting, we were
10 fighting and he broke the glass, took a
11 piece and cut my face."

12 Now, note that Dr. Kort's statement
13 about what Ms. Giraldo said is internally
14 inconsistent. There were two different
15 versions of what happened stated by the
16 complainant. She agrees with that when she
17 testifies at the trial, and she chalks it up
18 to Ms. Giraldo was actually giving multiple
19 versions of what happened.

20 The defense says -- and you'll see more
21 of this -- you know, that means that neither
22 of these happened and you can't trust
23 anything Dr. Kort says.

24 CHAIRMAN SCHNEIDERMAN: This was a

1 contemporaneous record?

2 SPECIAL COUNSEL ALONSO: No. You
3 hear that in the defense case. The defense
4 makes much of the fact that two weeks passed
5 before Dr. Kort memorialized this statement.

6 MR. LEWIS: And what the defense
7 does, as you can see, is to blend the
8 January 6th statement with the earlier
9 statement to try and make it seem that they
10 were all not contemporaneous, when there are
11 contemporaneous statements by Dr. Kort.

12 So in thinking about this, you have to
13 keep at least aware of what was said when,
14 because Dr. Kort did in fact say that
15 Giraldo's statements that night to her were
16 themselves inconsistent. So that would
17 support, in part, what we're looking at as
18 actually what may have happened.

19 SPECIAL COUNSEL ALONSO: And by the
20 way, the district attorney does not today
21 believe that he broke a glass, took a piece
22 and slashed her face. That's not the theory
23 that the DA has put forward at the trial.
24 The DA believes the shoving the glass in the

1 face, that the breaking of it was possibly
2 in his hand just before, possibly in the
3 face.

4 SENATOR SAVINO: Did he have any cuts
5 on him?

6 SPECIAL COUNSEL ALONSO: Yes, he had
7 one cut on his hand.

8 MR. LEWIS: One cut on his hand.

9 SENATOR YOUNG: Can you go back to
10 the previous slide?

11 SPECIAL COUNSEL ALONSO: Sure.

12 This is Dr. Kort telling us about when
13 she wanted to call the police, Dr. Kort
14 wanted to call the police. She was telling
15 the patient she needed to hear the truth.
16 "What's the truth? Unless I know the truth,
17 we're going to call the police." That's
18 when Ms. Giraldo became hysterical. She
19 says, "You can't call the police. He's a
20 senator, and I don't want to cause any
21 trouble."

22 Now, the prosecution, the position
23 about that statement is the answer is not
24 "don't call the police, it was an accident";

1 she's more concerned about getting her
2 boyfriend in trouble. He then says, look,
3 these statements are corroborated by all the
4 other evidence, and that's how you know it's
5 credible.

6 I don't think they're corroborated by
7 all the other evidence. It's very much an
8 arguable question whether this was an
9 intentional act or not. There's enough
10 evidence for a reasonable fact finder to
11 conclude that it was intentional, but it's
12 certainly not unreasonable for the judge to
13 conclude that the People did not prove the
14 case beyond a reasonable doubt.

15 MR. LEWIS: And this argument, like a
16 lot of other arguments, it's easy to see why
17 juries are charged over and over again that
18 lawyers' arguments aren't evidence, because
19 they're usually stronger than one would
20 necessarily conclude.

21 SPECIAL COUNSEL ALONSO: The
22 prosecution comes out and says she wasn't
23 being truthful with the court, she lacks
24 credibility. When she says it's an

1 accident, she also says in her testimony
2 that either she didn't recall saying those
3 statements to the doctor or she didn't make
4 those statements to the doctor. So she
5 contradicts the doctors.

6 And the prosecution says that's just
7 not credible. There's no reason why these
8 doctors would make up such detailed
9 statements and come into court.

10 The defense theory on that is
11 essentially that the doctor is predisposed
12 to believe in a domestic violence situation.
13 And there's some evidence they put forward
14 on that.

15 The location of the wounds. You know,
16 I think this is a weak argument. The
17 prosecution makes much of the fact that he
18 hits her in the eye and it was intentional.
19 I think that's a weak argument. He could
20 have hit her in the chin, hit her in the
21 nose. It doesn't mean one thing or another.

22 MR. LEWIS: He doesn't have any
23 evidence to support it at all.

24 SPECIAL COUNSEL ALONSO: Correct.

1 They're just guessing.

2 And by the way, there's no requirement
3 that every argument you put forward be
4 strong. I'm just pointing out what the
5 arguments are.

6 Okay, so the defense case --

7 SENATOR LANZA: Can we go back for a
8 second? Dr. Kort calls the police while the
9 complainant is still in the emergency room.

10 SPECIAL COUNSEL ALONSO: Yes.

11 SENATOR LANZA: And she claims she
12 was concerned about her safety.

13 SPECIAL COUNSEL ALONSO: A doctor in
14 that case has a requirement to call the
15 police.

16 SENATOR LANZA: When a person is
17 arguably safe while they're still in the
18 hospital, was she suggesting she wanted to
19 sort of call the police right away because
20 she was concerned about her future safety?
21 And that's not really clear from the record.
22 It's something we'll have to talk about
23 later.

24 MR. LEWIS: There's evidence in the

1 record of the issue of a safety discharge.
2 And that is often in domestic violence cases
3 and in other cases, when someone brings
4 someone into a hospital who they believe
5 caused the injury or actually caused the
6 problem, they can't safely discharge them.

7 SENATOR LANZA: It's kind of early,
8 according to normal practice --

9 SPECIAL COUNSEL ALONSO: She
10 testified she didn't think this was a safe
11 discharge, that it was a possible stabbing.

12 MR. LEWIS: Also, the problem is
13 everything is inconsistent. Her statements
14 are inconsistent, and the senator and the
15 victim's statements are inconsistent. So
16 for purposes of a safety discharge, once
17 those statements are all over the place,
18 they've got to make a decision.

19 And the other thing is there are
20 reporting requirements for a stabbing. So
21 once someone is stabbed, it has to be
22 reported. Eventually this was going to be a
23 police call; it's just a matter of when.

24 SPECIAL COUNSEL ALONSO: Okay. So

1 the incident in the apartment was an
2 accident is obviously the key point of the
3 defense. They both said it, and both those
4 statements are in the record. She testified
5 to it, and Senator Monserrate told Dr.
6 Frogel and that's in evidence.

7 Here's her testimony. "This was an
8 accident, and I am only telling the truth."
9 She repeated that many, many times during
10 the testimony, things like this. "I'm only
11 telling the truth," she says a lot.

12 "Did you tell the doctor who maybe you
13 thought was a nurse and spoke about that 'it
14 wasn't an accident, we were fighting'?" "I
15 don't recall saying that. But that my beau
16 was involved in an accident with me, yes."

17 SENATOR SAVINO: She used the word
18 "beau"?

19 SPECIAL COUNSEL ALONSO: Yes. She's
20 speaking through an interpreter, so it's
21 stilted English.

22 "Did you tell her it wasn't an
23 accident?" "I said that it was an
24 accident." So she's directly putting the

1 lie to Dr. Kort's testimony.

2 So this is Dr. Frogel. He testified by
3 stipulation. That just means an agreement
4 by both sides that we don't need to actually
5 call this man and inconvenience him. If he
6 were called to testify, this is what he
7 would have said.

8 And this is Dr. Frogel telling us what
9 Senator Monserrate told him. He went to get
10 her something to drink. As he was handing
11 her the glass, he tripped, or he said he
12 slipped, and consequently the glass
13 shattered. There was glass everywhere, he
14 said. It cut the patient. And he said the
15 glass cut him, as he was pointing toward his
16 palm.

17 By the way, Dr. Frogel did not
18 memorialize the previous statement until
19 January 2, 2009. You'll see they make much
20 of the fact that Nurse Cabibbo and Dr. Kort
21 didn't memorialize them either until early
22 January. That, they say, is a reason to
23 believe they're not telling the truth.
24 However, they rely heavily on Dr. Frogel's

1 stipulation, despite the fact that he does
2 the same thing.

3 At the end of the day, just because you
4 wrote it down two weeks later doesn't mean
5 necessarily that you're not telling the
6 truth.

7 SENATOR SAVINO: Isn't it odd,
8 though, that he would report they had sex
9 before they had an argument? You didn't
10 highlight that part, but --

11 SPECIAL COUNSEL ALONSO: I didn't
12 highlight the sex part.

13 SENATOR SAVINO: Why would somebody
14 report that?

15 MR. LEWIS: To try to remove motive.
16 The idea being "we weren't fighting."

17 SENATOR SAVINO: No, he admits they
18 had an argument and then the accident
19 occurred. But why the need to reveal
20 something that doesn't appear to really be
21 related?

22 MR. LEWIS: Because it may not be
23 true.

24 SPECIAL COUNSEL ALONSO: Here's the

1 aesthetician. She's called to relay the
2 same statements, or at least she's asked to
3 relay the same statements. "She said she
4 had an accident," "she said she had an
5 accident," "she had an accident." So the
6 aesthetician definitely made that clear,
7 that that's what Ms. Giraldo told her.

8 The language issue is here. Nurse
9 Cabibbo was asked "You're not fluent in
10 Spanish, are you?" Answer: "No."

11 Nurse Cabibbo wrote down -- somebody
12 asked about this earlier -- she wrote down
13 "competent in English but reinforced by
14 Spanish." So she's saying she could
15 understand and be understood but, you know,
16 it had to be reinforced by a Spanish
17 speaker. I'm not sure who that was.

18 "We didn't understand each other
19 because of the language" is what Giraldo
20 says. She says the nurse and she could not
21 understand each other because of the
22 language. So Ms. Giraldo is basically
23 saying there that she doesn't understand
24 English well enough to be able to speak to

1 the nurse.

2 The stipulation, there was a language
3 barrier between Dr. Frogel and Karla Giraldo
4 which prompted him to get Dr. Kort. "Karla
5 Giraldo spoke broken English." This is
6 Dr. Kort --

7 SENATOR FLANAGAN: With Dr. Frogel,
8 you keep referencing this as a stipulation.

9 SPECIAL COUNSEL ALONSO: Yes.

10 CHAIRMAN SCHNEIDERMAN: It just means
11 the prosecution and the defense stipulated
12 to his admission.

13 MR. LEWIS: Dr. Frogel --

14 CHAIRMAN SCHNEIDERMAN: Just for that
15 one.

16 MR. LEWIS: Dr. Frogel testified not
17 in person but by stipulation.

18 SENATOR FLANAGAN: Thank you.

19 SPECIAL COUNSEL ALONSO: It just
20 means they both agreed as to what he would
21 say if he were called. It's so as to do
22 away with the inconvenience of having him
23 appear in person.

24 This is Dr. Kort. "You switched

1 between English and Spanish as you spoke
2 with her?" Dr. Kort says: "As she did,
3 yes." "You went back and forth?" "Yes."
4 "Spanish isn't your first language, is it,
5 Dr. Kort?" Answer: "No, that's true."

6 Except as I told you, Dr. Kort spoke
7 Spanish at home with her Panamanian and her
8 Puerto Rican parent and studied in Spain,
9 but she did not in fact study Spanish in
10 Ecuador. And also she conceded that European
11 Spanish is a little different than
12 Ecuadorian Spanish.

13 SENATOR SAVINO: It's a lot closer
14 than Puerto Rican Spanish.

15 MR. LEWIS: By the way, the facialist
16 is not Ecuadorian, but she was able to
17 understand her Spanish. And there's some
18 evidence about some of the party-goers who
19 also understood Ms. Giraldo's Spanish
20 weren't Ecuadorian. That's in the record
21 buried in other places, but it's there.

22 SPECIAL COUNSEL ALONSO: "Giraldo
23 said she had difficulty speaking to a doctor
24 who was a female doctor who spoke Spanish,

1 yes or no?" Yes, she had difficulty
2 speaking to Dr. Kort.

3 Okay, so that's the language issue.
4 Here's the part about Dr. Kort was
5 predisposed to conclude that this was a
6 domestic violence issue.

7 Dr. Frogel told Dr. Kort before Dr.
8 Kort spoke to Ms. Giraldo that there was
9 potential domestic violence. And that is a
10 defense exhibit from the trial -- not an
11 exhibit, it's a slide and a summation that
12 they used. It's hard to read, but -- Lee,
13 can you read that?

14 "Patient was then continuously pressed.
15 'He broke the glass, then took a piece and
16 cut my face.'"

17 Now, what happens here is Dr. Kort sits
18 down on January 6th and she writes down her
19 recollection of what happened over four
20 pages. She then inserts two additional
21 pages. She also crosses things out. So,
22 for example, there she crossed out the word
23 "threatened." It says "I then threatened
24 the patient." Instead, she writes: "I then

1 was honest with the patient." And she
2 explains that she didn't agree with her
3 original choice of words. This is her
4 sitting there by herself writing her own
5 statement; she didn't agree with her
6 original choice of words. She crossed it
7 out, she then wrote "I was honest with the
8 patient."

9 The reason this was typed and this was
10 handwritten is that it was later typed up.
11 But both of them were in evidence. And this
12 is the defense side on summation saying,
13 hey, she didn't say "threatened." And of
14 course the inference is she threatened
15 Ms. Giraldo, which caused Ms. Giraldo maybe
16 to say something that wasn't true.

17 CHAIRMAN SCHNEIDERMAN: I'm sorry.
18 What was the theory of what she was
19 threatening her with? She was treating a
20 patient.

21 SPECIAL COUNSEL ALONSO: It doesn't
22 say. She just used the word "threatened,"
23 and the defense latched onto that word. You
24 know, what Dr. Kort actually in fact says is

1 she told her that she could be honest with
2 her.

3 SENATOR STAVISKY: When Ms. Giraldo
4 testified in court, did she speak in English
5 or in Spanish?

6 SPECIAL COUNSEL ALONSO: Spanish.

7 And Ms. Giraldo testifies here that she
8 was pressuring her. And I think she had
9 already even called the police. So the
10 defense latches onto the "threatened" that
11 was crossed out and Ms. Giraldo's testimony
12 that she was pressured and makes the
13 argument that, you know, nothing she said,
14 supposedly, to Dr. Kort is reliable because
15 it was the result of coercion.

16 MR. LEWIS: If you read the next
17 sentence on that exhibit, there's a
18 reference to calling the police. So you can
19 infer that she threatened to call the police
20 and then thought better about it and didn't
21 actually threaten to call the police. If
22 you read the exhibit line by line.

23 SENATOR FLANAGAN: How old is
24 Ms. Giraldo?

1 SPECIAL COUNSEL ALONSO: 31.

2 SENATOR FLANAGAN: How long has she
3 been in New York?

4 SPECIAL COUNSEL ALONSO: Seven years.

5 MR. LEWIS: She'd been writing for a
6 Spanish and English newspaper as part of her
7 job. That's in the record as well.

8 SPECIAL COUNSEL ALONSO: Her job was
9 sales and marketing for a newspaper called
10 El Mensajero {sp}, in Queens, and she was
11 paid off the books to do sales.

12 SENATOR FLANAGAN: So she came from
13 Ecuador at age 24, or did she come from
14 somewhere else?

15 SPECIAL COUNSEL ALONSO: As far as we
16 can tell from the record, she came here from
17 Ecuador from age 24.

18 SENATOR STAVISKY: There's a lot of
19 Ecuadorians in the Jackson Heights area.

20 SENATOR ALESI: How long did she work
21 for the paper, or has she worked for the
22 paper?

23 SPECIAL COUNSEL ALONSO: She didn't
24 say. She said she'd been unemployed for

1 four or five months at the time she
2 testified.

3 MR. LEWIS: The prosecution tried to
4 suggest that she and one of the other
5 witnesses had worked together at the
6 newspaper. But there's no timeline at all
7 for that.

8 SPECIAL COUNSEL ALONSO: And when the
9 prosecution asked her -- I don't know why --
10 if she got paid in cash, she said yes.

11 SENATOR SAVINO: Did she have
12 problems speaking with Senator Monserrate?

13 SPECIAL COUNSEL ALONSO: I don't
14 think that's in the record.

15 MR. LEWIS: There's nothing about
16 that in the record.

17 SENATOR SAVINO: He's not Ecuadorian,
18 he's Puerto Rican.

19 SPECIAL COUNSEL ALONSO: He wanted to
20 interpret for her, so the inference is they
21 speak Spanish together. As I understand it,
22 he's Puerto Rican.

23 SENATOR SAVINO: Yes. And the
24 translator in court, do we know where that

1 translator comes from, which Latin American
2 country?

3 SPECIAL COUNSEL ALONSO: No.

4 MR. LEWIS: There was some colloquy,
5 when they got to the business about "the
6 beau," about the use of different words in
7 Ecuador and different Spanish-speaking
8 countries. But there wasn't any evidence
9 about where she had come from, and the judge
10 said she'd been in his court all the time
11 and there had never been a problem no matter
12 who the witness was.

13 SPECIAL COUNSEL ALONSO: So here's
14 the part about delay in preparation of the
15 statements. This is an exhibit prepared by
16 the defense. The incident happened on
17 December 19th, and Dr. Kort didn't write her
18 statement until January 6th. Now, of course
19 this is during the Christmas and New Year's
20 holiday. But nevertheless, that's the
21 timeline.

22 She also is pressed on
23 cross-examination, and she says doesn't
24 recall exact statements but she's doing her

1 best to recollect what was said back in
2 December of '08.

3 SENATOR ALESI: Did they ever ask how
4 many situations like this she would
5 encounter in the course of a week or a
6 month?

7 SPECIAL COUNSEL ALONSO: Yes, they
8 went through how many patients she had seen
9 between December 19th and January 6th, and
10 the answer was something like 75 to 100.
11 Then the prosecution came back and said how
12 many of those led you to call the police,
13 and the answer was one.

14 SENATOR ALESI: So only in one
15 instance would she have to make a
16 memorializing report.

17 SPECIAL COUNSEL ALONSO: That's
18 probably right. But the point is not that
19 she only had to memorialize it once, the
20 point is how could she possibly remember
21 after two weeks or two and a half weeks,
22 when she saw a hundred other patients
23 between Giraldo and then. And, you know --

24 SENATOR ALESI: Those other patients

1 weren't necessarily suspected domestic
2 violence situations.

3 MR. LEWIS: No, they would be ER
4 patients.

5 SPECIAL COUNSEL ALONSO: They were ER
6 patients.

7 CHAIRMAN SCHNEIDERMAN: Was there any
8 testimony or suggestion that someone
9 suggested they write it down at a later
10 date, or was it just in the --

11 SPECIAL COUNSEL ALONSO: It wasn't.
12 I feel comfortable going outside the record
13 and telling you that the DA said to write
14 down these statements. The DA said write
15 down everything you remember. But that's
16 not the record.

17 SENATOR STEWART-COUSINS: So in other
18 words, they wouldn't normally have written
19 anything other than what the normal course
20 of treatment was. So it's not like this was
21 late or whatever, it was just for --

22 SPECIAL COUNSEL ALONSO: Absolutely.

23 CHAIRMAN SCHNEIDERMAN: So there's no
24 issue of suspicion as to why they waited so

1 long, the question is just the challenge of
2 recollecting it a few weeks later, so that
3 maybe the recollection was --

4 SPECIAL COUNSEL ALONSO: I can tell
5 you it's good practice for a prosecutor to
6 ask witnesses to write down their
7 recollection so that they avoid the argument
8 at trial "it never happened, because you
9 never wrote it down."

10 MR. LEWIS: And for a defense lawyer,
11 this gap is sometimes all you've got.

12 SPECIAL COUNSEL ALONSO: Right.

13 SENATOR STAVISKY: Is Dr. Kort a
14 resident, or is she on staff?

15 SPECIAL COUNSEL ALONSO: Dr. Kort was
16 a resident. For the record, Dr. Frogel was
17 the chief of ER.

18 This is the Long Island Jewish domestic
19 violence policy, which the defense put into
20 evidence. You've got it in your packet.
21 And it requires doctors and nurses in
22 domestic violence incidents to quote the
23 informant, slash, patient as much as
24 possible.

1 And the argument of the defense was you
2 didn't do that, there's all sorts of areas
3 where you violated policy and you didn't
4 quote the patient.

5 MR. LEWIS: And the interesting thing
6 is once they called the police, the policy
7 falls out of the conversation. Because the
8 whole idea of the policy is to memorialize
9 that information for the cops. And she
10 called the police at the same time that they
11 were present in the ER.

12 So when you look at the policy, you
13 need to look at it in light of what else is
14 going on.

15 SPECIAL COUNSEL ALONSO: And one last
16 thing to remember is that the argument is in
17 that two-week period, it wasn't just
18 Christmas and New Year's, it was a time when
19 the newspapers were all writing stories
20 about how Senator Monserrate had assaulted
21 his girlfriend. So there is, you know, an
22 issue there at least.

23 SENATOR FLANAGAN: I don't want to
24 split hairs, but since we are creating a

1 transcript here, you did just say it's the
2 Long Island Jewish domestic violence policy.
3 I just want to clarify that. It's the North
4 Shore LIJ Health System.

5 SPECIAL COUNSEL ALONSO: Okay. I
6 stand corrected.

7 SENATOR FLANAGAN: It could be just
8 termed a different way.

9 SPECIAL COUNSEL ALONSO: Yeah, okay,
10 right. It's the corporation's policy as
11 opposed to -- all right.

12 SENATOR STAVISKY: They have a
13 network of, you know, how many --

14 SENATOR FLANAGAN: I know, but if
15 someone is not familiar with that, they
16 could misread that.

17 SPECIAL COUNSEL ALONSO: Oh, that it
18 referred to the religion as opposed to the
19 name of the hospital?

20 SENATOR FLANAGAN: Yes.

21 SPECIAL COUNSEL ALONSO: I was
22 referring to the hospital. Thank you,
23 Senator.

24 Nurse Cabibbo also took three weeks to

1 write her statement. And that's a defense
2 slide. "Three weeks later you decided to
3 start quoting?" "Yes."

4 Dr. Frogel does not remember hearing
5 Ms. Giraldo say it was not an accident. He
6 doesn't say it didn't happen, he just didn't
7 hear it.

8 At no point did he hear her say "He's
9 crazy, he's crazy," like Nurse Cabibbo did.

10 And the point about the room being dark
11 is an important one. The defense believes
12 that there's forensic evidence, and they
13 have a good argument, that the lights were
14 off in the room at the time of -- at least
15 at the time the police arrived. Now -- I'm
16 sorry, no, no. At the time of the incident.
17 Because there's blood on the light switch in
18 a position that would indicate that it was
19 off at the time of the incident, and
20 somebody turned it on. So there was blood
21 on the top of the light switch.

22 And here is the testimony of the
23 detective: Blood on their hands, bloody
24 print on the light, consistent with the room

1 being dark. The prosecution did not rebut
2 this evidence, so it's a reasonable
3 inference that the room was dark.

4 MR. LEWIS: It's hard to tell what
5 position the dimmer was in.

6 SENATOR STAVISKY: Was it a switch or
7 a dimmer?

8 MR. LEWIS: The prosecutor said it
9 was a dimmer without objection. And
10 honestly, you can't really tell.

11 SPECIAL COUNSEL ALONSO: I thought it
12 was a real switch, but . . .

13 This is testimony about intoxication
14 from Mr. Pena, the guy that had the party.
15 The super I told you earlier saw the video
16 and said she was stumbling when she walked
17 in. So there is testimony about some level
18 of intoxication. The medical record shows
19 that she had alcohol on her breath, that's
20 clear.

21 And this is the superintendent saying
22 that the police officer suggested that maybe
23 he'd sell the video for \$500.

24 SENATOR HASSELL-THOMPSON: What?

1 SPECIAL COUNSEL ALONSO: The defense
2 is trying to bloody up the police officers,
3 saying that they didn't ask the super to
4 record the part where Ms. Giraldo is
5 stumbling in drunk, but they did suggest to
6 the super that maybe he could make \$500 by
7 selling the tape. So they don't really care
8 about justice, they care about publicity.

9 MR. LEWIS: Both cops testified, and
10 they didn't confront them with that.

11 CHAIRMAN SCHNEIDERMAN: The
12 suggestion, though, was it was covering up
13 evidence, really.

14 SPECIAL COUNSEL ALONSO: The
15 suggestion of covering up is not recording.
16 The \$500 is gratuitous.

17 CHAIRMAN SCHNEIDERMAN: Right.

18 SPECIAL COUNSEL ALONSO: So I'm going
19 to try to speed through this, because we are
20 getting a little bit late.

21 This is a medical record showing that
22 there is alcohol on her breath. That's what
23 ETOH signifies.

24 This is in terms of "I didn't feel she

1 was intoxicated." That's what Dr. Kort
2 testified. And she says that that's her lay
3 opinion that she was not drunk; she didn't
4 analyze her blood for alcohol content.

5 The same thing with the cousin here
6 says that she did appear to become drunk at
7 the party. She couldn't go upstairs by
8 herself, she was in no position -- this is
9 the cousin's testimony. And in the grand
10 jury, though, as I mentioned before, she's
11 asked: "At the time you entered the
12 apartment, did you feel you were drunk at
13 all due to the drinks you had, or were you
14 okay?" Answer: "No." Question: "You were
15 okay?" Answer: "Yes."

16 She's also asked: "Did you have
17 anything to drink at the party?" Answer:
18 "I had two glasses of wine." Question: "Is
19 that the extent of the drinks you had that
20 evening?" Answer: "Yes, sir."

21 So the defense also makes something
22 about the two-hour period between the PBA
23 card and the glass, that shows there were --
24 they say there was a cool-off period, that

1 there's really no good evidence of a
2 continuous argument, that it was really two
3 hours later.

4 SENATOR SAVINO: That's why he made
5 the comment about that they had sex.

6 SPECIAL COUNSEL ALONSO: They were
7 not fighting, they were having sex.

8 SENATOR SAVINO: Now I understand.

9 SPECIAL COUNSEL ALONSO: Yes, I think
10 that's the idea.

11 She said that the noise -- that she
12 didn't hear any screaming at all before the
13 thump, that there was not a lot in between
14 that two-hour period. This is the neighbor.

15 The injuries they say are not
16 conclusive. Again, Dr. Sasson couldn't say
17 whether it was consistent with an accident
18 or an intentional act.

19 They stipulated, by the way, and the DA
20 told me this as well, that they actually
21 tested the glass by a glass expert to
22 determine the circumstances surrounding its
23 breakage to see whether you could actually
24 break a glass in somebody's face

1 accidentally or it had to be the product of
2 enough force.

3 And the problem was -- this was only
4 the stipulation; the DA gave me a little
5 more flavor -- without knowing the angle,
6 the acceleration, the velocity, the force
7 that was used, you just can't tell. I mean,
8 I think the answer is you can break a glass
9 in somebody's face on purpose or
10 accidentally.

11 SENATOR LANZA: I don't remember from
12 the medical evidence, was there any evidence
13 of contusions?

14 SENATOR SAVINO: That's what I was
15 going to ask.

16 SENATOR YOUNG: Yes.

17 MR. LEWIS: No.

18 SENATOR YOUNG: Wasn't there?

19 MR. LEWIS: On her face one of the
20 lacerations goes into her face down to the
21 bone and one touches the ligament just above
22 the bone.

23 CHAIRMAN SCHNEIDERMAN: I think that
24 suggests that it was just a piece of glass

1 going in.

2 SENATOR YOUNG: It suggests that
3 there was --

4 MR. LEWIS: -- I'm loath to suggest
5 anything.

6 SPECIAL COUNSEL ALONSO: And finally,
7 their point was that the senator has no
8 history of domestic violence.

9 Now, none of this is in evidence; they
10 just said it. But that's very common in
11 criminal cases where a defense lawyer will
12 just say things about their client and it's
13 not necessarily evidence.

14 All of this is public record anyway.
15 Honors graduate of CUNY, two years of
16 service with the NYPD. Is that right? I
17 thought it was longer than that. So that's
18 a mistake.

19 He was a founding member of the Latino
20 Officers Association of the Police
21 Department and the first and only police
22 officer in New York City to serve on the
23 board of directors of the New York Civil
24 Liberties Union.

1 It's 12 years with the NYPD, not two.

2 Sorry about that.

3 He was also the first Hispanic elected
4 to government office in Queens.

5 SENATOR YOUNG: Do we know, when he
6 served as a police officer, what his beat
7 was?

8 SPECIAL COUNSEL ALONSO: I know
9 that -- outside of the record -- it was in
10 Queens, a relatively low-crime area.

11 SENATOR SAVINO: It wasn't Jackson
12 Heights, in the 113?

13 SPECIAL COUNSEL ALONSO: I don't
14 think so. The DA and I had a discussion
15 about where it was. I don't believe it was
16 there. It was a low-crime area, that's what
17 I was --

18 SENATOR SAVINO: The 112?

19 SPECIAL COUNSEL ALONSO: I can find
20 out if you want.

21 SENATOR FLANAGAN: Going back to the
22 prior slide, you reference points made by
23 defense counsel.

24 SPECIAL COUNSEL ALONSO: Yes.

1 SENATOR FLANAGAN: So these are
2 offered into the record?

3 SPECIAL COUNSEL ALONSO: They're not
4 evidence, they're simply things that they
5 said about him.

6 MR. LEWIS: Things from the opening
7 usually indicate you're not going to call
8 the client. You get them in front of the
9 fact finder, and you just never back them
10 up.

11 SPECIAL COUNSEL ALONSO: It would not
12 be proper for the fact finder to even
13 consider any of these things. However, it's
14 public record, this is a colleague from the
15 Senate. And since it is what it is, I
16 thought I would let you know what I --

17 SENATOR FLANAGAN: In relation to a
18 prior incident, I thought I recall reading
19 that Senator Monserrate was arrested but not
20 charged.

21 SPECIAL COUNSEL ALONSO: That
22 definitely was not part of the record in the
23 trial. And I don't believe -- to the extent
24 that it may or may not have happened, I

1 don't believe it to be part of the Senate
2 resolution that created this committee,
3 although I can just advise you.

4 CHAIRMAN SCHNEIDERMAN: Well, we are
5 supposed to be inquiring into the facts and
6 circumstances relating to the conviction.
7 So to the extent -- if that's something
8 that, Senator Flanagan, you think is
9 important --

10 SENATOR FLANAGAN: I don't know -- I
11 hope I'm not the only one who recalls seeing
12 something to that effect. I'm only asking
13 it in relation to seeing it asserted.

14 MR. LEWIS: You're not the only one
15 who recalls seeing it. I can say that from
16 my own perception.

17 CHAIRMAN SCHNEIDERMAN: Oh, I'm
18 sorry, you mean arrested but not charged in
19 a different incident.

20 SENATOR FLANAGAN: Yes.

21 MR. LEWIS: Right. And I think when
22 they took the position there's no history of
23 violence, they really took the position of
24 no history of domestic violence. And they

1 seemed to confine it also to Ms. Giraldo.
2 So I think we probably ought to leave it
3 there until we come to some other --

4 CHAIRMAN SCHNEIDERMAN: This does
5 raise another interesting point. What
6 information will we have access to produced
7 in connection with the sentencing?

8 SPECIAL COUNSEL ALONSO: Unfortunate
9 ly, the sentencing memoranda are under seal
10 by operation of the CPL, so we're -- unless
11 something was said on the record on the day
12 of sentencing, we will not have access to
13 it.

14 MR. LEWIS: And were we to apply for
15 it, we would likely not get access to that.
16 As opposed to the grand jury minutes, which
17 we have a standing request for that. But if
18 the committee wants to ask for the
19 application, you can try and decide that
20 now.

21 It should just be noted that that may
22 not necessarily be in a New York State
23 presentence report. In presentence reports,
24 not everything goes in. If something was

1 sealed somewhere along the line, it won't be
2 available in that presentencing report.

3 SENATOR STAVISKY: May I ask two
4 questions? Go back one second. What do you
5 mean by no criminal record or history of
6 violence?

7 SPECIAL COUNSEL ALONSO: That really
8 should be no history of domestic violence,
9 as Mr. Lewis pointed out. And that's just,
10 again, statements made by his lawyers to the
11 judge, not evidence.

12 CHAIRMAN SCHNEIDERMAN: Argument, not
13 evidence. This is what his lawyer said.

14 SENATOR STAVISKY: There were
15 newspaper accounts of an Election Day
16 incident a number of years ago.

17 SPECIAL COUNSEL ALONSO: And I
18 believe that's what Senator Flanagan was
19 referring to. I believe it actually -- the
20 incident happened, you know, on September
21 11th of 2001 --

22 MR. LEWIS: Primary Day.

23 SENATOR LANZA: Keep in mind,
24 everyone, that in the context of a criminal

1 trial that would not be evidence of
2 anything. And so I think, you know, they
3 could arguably say that.

4 SPECIAL COUNSEL ALONSO: And in fact,
5 it happens all the time in criminal cases
6 that a defense lawyer will say "This is my
7 client's first arrest," when in fact it's
8 happened half a dozen times but it's just
9 been sealed.

10 MR. LEWIS: Not all of us do that.

11 SPECIAL COUNSEL ALONSO: All right.
12 But in any event, I would ask you not to
13 infer anything from that, because we don't
14 know anything about it.

15 CHAIRMAN SCHNEIDERMAN: And again,
16 we're going to have a chance to discuss all
17 this when we're considering our report. And
18 at that time we'll be careful to draw the
19 distinction between evidence and argument.

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

22 SENATOR ALESI: Senator Schneiderman,
23 before we get to that point or it looks like
24 we're starting to close here, I still would

1 like to know if there is a way that we could
2 pursue more information on their whereabouts
3 during that 37 minutes. Not knowing the
4 geography as well as some of my colleagues
5 here, if there's something other than
6 checking with OnStar or something like that
7 that we could find out what might have
8 occurred, or at least inquire or surmise.

9 CHAIRMAN SCHNEIDERMAN: Certainly the
10 phone records are going to tell us something
11 about what they were doing during that
12 period as far as who they were calling.

13 Does the prosecution have a theory as
14 far as the route taken?

15 SPECIAL COUNSEL ALONSO: They have a
16 theory, but every time I ask the question
17 they say it's grand jury information. So I
18 have high hopes that there will be some
19 useful evidence in the grand jury materials
20 other than the testimony.

21 SENATOR STAVISKY: Will the telephone
22 records show where the calls were made from
23 precisely?

24 MR. LEWIS: No.

1 SPECIAL COUNSEL ALONSO: If they have
2 a cell site location, then they show
3 approximate location. So I don't know if
4 those records have -- if they do, they could
5 tell you the tower that that was radiating
6 from. The cellphone -- you can't pinpoint,
7 but you can tell which tower. So if the car
8 is moving, you can tell which tower it's
9 moving from. So in theory, we can do that.

10 I can also just use -- I mean, Senator
11 Alesi, you were joking about OnStar, but I
12 would be happy to use Google Maps or
13 MapQuest and figure out a few alternate
14 routes and how long it's supposed to take in
15 a car driving the speed limit.

16 SENATOR STAVISKY: At 3 a.m., Google
17 will not tell you.

18 SPECIAL COUNSEL ALONSO: But it will
19 tell you with traffic and without. So I
20 will be happy to --

21 CHAIRMAN SCHNEIDERMAN: I would
22 request that counsel do whatever they can do
23 to get us all the information about what
24 happened during that 37 minutes and the

1 possible route they took. It is an
2 interesting question, and I think it is
3 significant in terms of what we --

4 SENATOR STEWART-COUSINS: If I
5 remember, you were mentioning something
6 about a soda can. Did he have one when he
7 left the building and then came in the
8 hospital with a can, is that it?

9 SPECIAL COUNSEL ALONSO: There's no
10 visual evidence of a soda can when he left
11 the building. It doesn't mean it wasn't in
12 the car with his jacket, but it wasn't in
13 his hand.

14 SENATOR SAVINO: He had a plastic bag
15 in his hand along with -- so maybe in the
16 shopping bag. Maybe he took it with him
17 thinking it was going to be a long ride. I
18 don't know.

19 SENATOR STEWART-COUSINS: And in the
20 phone call to the aesthetician, Ms. Toro
21 told her about what to do with this scar?

22 MR. LEWIS: The testimony is that she
23 basically said "Go to the hospital."

24 The bag is her bag that he's carrying.

1 SENATOR SAVINO: But there's also a
2 shopping bag.

3 MR. LEWIS: According to the
4 testimony, that's hers too.

5 SENATOR SAVINO: And her handbag too.

6 CHAIRMAN SCHNEIDERMAN: There's two
7 bags.

8 MR. LEWIS: The evidence is that
9 there's a shopping bag as well.

10 SPECIAL COUNSEL ALONSO: Okay. So
11 continuing, at the end the defense argument
12 is that Giraldo did not want to call the
13 police. Now, I suggest we just accept that
14 she asked the police not to be called. But
15 that doesn't necessarily mean one thing or
16 another about what really happened.

17 And this is a very key point in the
18 defense summation, which is force, not
19 violence. In other words, it was he was
20 using force to take somebody who was
21 refusing to go to the hospital who clearly
22 needed medical attention. He was using
23 force to get her there, because that was the
24 appropriate thing to do. But it was not

1 violent and it was not a crime, it was not
2 reckless, et cetera.

3 So here is what Giraldo says: "He was
4 not dragging me, he never hurt me or do
5 anything to me, he was just pulling me to
6 take me to the hospital for my own good.
7 And thanks to him, I am all right and my
8 face is all right."

9 CHAIRMAN SCHNEIDERMAN: Was there
10 ever any discussion of what the theory is
11 what she wanted to do? She just wanted to
12 sit in the apartment with the blood?

13 SPECIAL COUNSEL ALONSO: The theory
14 is that she was afraid of needles and afraid
15 of hospitals and was hysterical and
16 irrational and didn't want to go to the
17 hospital.

18 SENATOR STEWART-COUSINS: But she
19 knocked on the door of a neighbor who might
20 take her there.

21 SPECIAL COUNSEL ALONSO: She doesn't
22 remember doing that.

23 MR. LEWIS: Or she says she was
24 panicking and called the facialist

1 supposedly to avoid going to the hospital,
2 to try to get some alternative treatment.

3 SPECIAL COUNSEL ALONSO: So here's a
4 series of slides that were created by the
5 defense for their summation PowerPoint. And
6 what they do is they outline in white some
7 still pictures of individuals. And they
8 have their argument written there, and I
9 think it's important for you to have this.

10 Here, at 1:55, this is the -- I don't
11 know why it says 1:55. That's not the right
12 time. Oh, that's the elapsed time on the
13 video. So ignore that.

14 It says that Ms. Giraldo walks ahead of
15 Mr. Monserrate, she walks, she does not run.
16 Then she unexpectedly starts buzzing the
17 door. But no pushing, no violence. And
18 Monserrate then leads Ms. Giraldo toward the
19 exit. His settled determination is to get
20 her to the hospital. He reaches towards
21 her, there's no pushing, no violence. He
22 doesn't hit her. Force, not violence.

23 He pulls her towards the building, no
24 pushing, no violence. He doesn't hit her.

1 Force, not violence. She holds the rail.

2 He doesn't push her, there's no violence.

3 He doesn't hit her. Force, not violence.

4 They're at the door now. He's taking

5 her to the hospital. He doesn't hit her.

6 Now they're in the vestibule, he's taking

7 her to the hospital. He doesn't hit her, he

8 uses force, not violence.

9 SENATOR YOUNG: Does Senator

10 Monserrate know that there's a surveillance

11 camera in the building?

12 SPECIAL COUNSEL ALONSO: The record

13 is silent on that, but it would be hard

14 to --

15 MR. LEWIS: At the time of the

16 events, or now, or at the time of trial?

17 SENATOR YOUNG: At the time of the

18 events.

19 MR. LEWIS: There's no evidence one

20 way or the other that he knows about them,

21 none whatsoever.

22 SENATOR ALESI: Is there any

23 suggestion that he might not have been sober

24 or that he might have been drinking himself?

1 that there were differing interpretations of
2 that. The defense calls it a comforting
3 contact; the prosecution calls it more
4 evidence of his control of her.

5 SENATOR ALESI: During their walk
6 through the hospital, there's no contact
7 whatsoever.

8 SPECIAL COUNSEL ALONSO: Right.

9 Okay, so I think it's my last piece on
10 the defense case. The reason they want to
11 LIJ, so far away on the other side of the
12 county, is because LIJ is the best hospital
13 in Queens and, you know, he wanted to take
14 her to the best hospital. I'll leave that
15 to the Queens senators to tell me whether
16 that's right or not.

17 But in any event, the prosecution would
18 counter that when somebody is bleeding like
19 that you take them to the nearest hospital,
20 not necessarily the best.

21 This person is the guy who made the
22 map. He was just asked: "Did you determine
23 the ratings of these various hospitals on
24 the big hospital map?" And he says no.

1 MR. LEWIS: He was a prosecution
2 witness.

3 SPECIAL COUNSEL ALONSO: So I don't
4 think I need to analyze the verdict any
5 further than we already have. I mean, we've
6 already talked about these.

7 These are the factors supporting
8 acquittal on Slide 183. The reason that he
9 does not convict the senator is because the
10 two eyewitnesses both said it was an
11 accident, and that's the evidence. That the
12 downstairs neighbor, on the issue of whether
13 it was intentional, was equivocal.

14 And the experts couldn't rule out an
15 accident. All the stuff -- and the judge
16 gave less weight to the statements from the
17 hospital personnel because they don't have
18 any personal knowledge of what happened,
19 they were just relaying what she said.

20 So that's why he acquitted the
21 defendant. And I think it's -- my own view
22 of this, and the advice I give you, it's not
23 an unreasonable verdict. I think the
24 evidence supported either verdict, but I

1 don't think anyone could say this was an
2 unreasonable verdict. If Mr. Lewis
3 agrees --

4 MR. LEWIS: I would come out the same
5 way. Having read the record, as opposed to
6 everything I heard.

7 SENATOR LANZA: Clearly, from the
8 prosecution point of view, the only two
9 witnesses who know what happened in the
10 apartment, they both said it happened.

11 MR. LEWIS: Neither one of them
12 actually testified as to events. They
13 merely characterized the episode. And so
14 with that beyond-a-reasonable-doubt
15 statement, you really are stuck, because you
16 can't render a guilty verdict. And if you
17 can't, you have to acquit.

18 SENATOR YOUNG: Senator Schneiderman,
19 I believe Mr. Alonso said at the beginning
20 of today that if there are other areas or
21 evidentiary things that you want to take a
22 look at, you were thinking about trying to
23 get some input from us as to what those
24 ideas may be.

1 CHAIRMAN SCHNEIDERMAN: Yes, we do
2 want to. Certainly if the members of the
3 committee -- is this more or less the end of
4 the slides?

5 SPECIAL COUNSEL ALONSO: Just a
6 couple more.

7 CHAIRMAN SCHNEIDERMAN: I was going
8 to ask --

9 SENATOR YOUNG: Oh, I'm sorry. I'll
10 ask the question then after.

11 CHAIRMAN SCHNEIDERMAN: -- if you
12 feel we should be looking at more
13 information.

14 SENATOR YOUNG: I'll wait until after
15 the conclusion of his presentation and then
16 we can talk about it.

17 SPECIAL COUNSEL ALONSO: This is the
18 analysis of the conviction on Count 6 that
19 we already went through word for word. But
20 he makes a finding that this was a violent
21 and forceful dragging and not a friendly and
22 nonviolent interaction.

23 He talks about all the factors that
24 we've been talking about. And he says,

1 interestingly, that her facial injuries were
2 made worse by the 37-minute drive to LIJ.

3 Okay, so this is the part that I wanted
4 to make sure that you saw. This is after
5 the verdict. You haven't seen this yet.
6 Justice Erlbaum said, on the record, "It
7 would certainly appear not unreasonable that
8 there was another concern, and that is to
9 get her away from the house and to get her
10 away from a neighborhood where the defendant
11 had roots and was likely well known in that
12 community, to get her to a place of low
13 visibility and enter in a manner of low
14 visibility."

15 He says Elmhurst would have been hotter
16 than a pistol, and he wanted to keep things
17 under the radar. He doesn't make a finding,
18 but he says circumstances suggest that he
19 was trying to keep things under the radar.

20 And that's the presentation.

21 CHAIRMAN SCHNEIDERMAN: And thank you
22 very much. Thanks to counsel, thanks to
23 Mr. Alonso and his team.

24 And we are -- as I indicated, we are

1 planning for our next meeting to be the
2 opportunity for Senator Monserrate's counsel
3 to present whatever they want to present to
4 us. But as Senator Young just raised, I do
5 want to open it up so that if there is any
6 other information which any member of the
7 committee feels is important, that we have a
8 chance to discuss that now and see if
9 there's some information we can get.
10 There's some we can't get. But this is
11 certainly something that everyone should
12 feel free to speak up about.

13 Senator.

14 SENATOR YOUNG: I believe that I read
15 somewhere after the trial was concluded that
16 there was a person who supposedly was close
17 to Senator Monserrate who was escorting
18 Ms. Giraldo back and forth to court. And it
19 would be interesting to look at whether that
20 was true or not, what the relationship was
21 between Senator Monserrate and this person
22 and also Ms. Giraldo and that person.

23 And also it should be considered, I
24 believe, because of the discrepancies

1 between the grand jury testimony of
2 Ms. Giraldo and the trial testimony and the
3 fact that the prosecution had to impeach her
4 at least twice, I believe, based on the
5 PowerPoint presentation.

6 So I just think that there seemed to be
7 a changing of the story, quite possibly,
8 between the grand jury -- and we'll have
9 more information when they get that
10 testimony -- and the trial. And I just
11 think that person may be relevant.

12 CHAIRMAN SCHNEIDERMAN: That raises a
13 sort of a broader issue. There's the issue
14 of the order of protection, and maybe
15 counsel could find out and report to the
16 committee on what happened as far as contact
17 between Senator Monserrate and the witness
18 and if we can find anything out about other
19 parties who may have been around.

20 SENATOR YOUNG: That's my point, is
21 whether there was inappropriate contact
22 despite the order of protection.

23 SPECIAL COUNSEL ALONSO: One way to
24 get at that which is kind of economical for

1 our time is if the committee wants to
2 authorize us to seek to interview
3 Ms. Giraldo, we can ask her about that and
4 see whether that bears any fruit that might
5 be worth following up on. Because I think
6 that certainly she has many, many things
7 that are germane to your inquiry. So
8 talking to her about where is this fellow,
9 whoever he is, is one.

10 So I'd rather not decide tonight that
11 we're going to go into an investigation of
12 what kind of undue influence might have been
13 placed on a witness before we actually seek
14 to try to talk to the person who has the
15 perhaps the top two of knowledge of about
16 what happened here.

17 So I would suggest that we at least try
18 to speak to her, and there are a variety of
19 procedures we can use to do that. And I
20 will only take my guidance from the
21 committee. But it would be not unhelpful to
22 see what she would say in a setting where
23 nobody is afraid to ask her questions. In
24 the trial, both sides were afraid to ask the

1 one question too many that might lead to an
2 answer that hurt their side. We wouldn't
3 be. We'll just ask.

4 CHAIRMAN SCHNEIDERMAN: Let me
5 suggest that -- we have certainly thought
6 about this; Senator Lanza and I have
7 discussed it. I think I'd like to defer
8 that decision until after we see what
9 Senator Monserrate produces. He may come in
10 and talk; he may produce her to talk. We
11 don't know what he's going to produce.

12 At that point I think we can make a
13 determination. And we want to hear from
14 everybody in the committee what other
15 information or evidence we need to get.

16 It is possible for our counsel to
17 interview someone. It's possible to take a
18 deposition of someone. It's possible to
19 invite someone in for a full meeting. So we
20 have a lot of different options. But my
21 suggestion, and Senator Lanza and I concur
22 on this, is we really should see what
23 Senator Monserrate is submitting first and
24 then make a decision about what information,

1 if any, we feel that we need and then
2 proceed from there.

3 SENATOR ALESI: Would any of the
4 information we need regarding telephone
5 records take a very long time, with regard
6 to your suggestion that we wait?

7 I ask that because I think it would be
8 probably be helpful in conjunction with
9 understanding not just that night, but
10 perhaps if there's an ongoing series of
11 phone calls between either the senator and
12 Giraldo or some other people and in fact
13 maybe even international phone calls while
14 she was in South America.

15 CHAIRMAN SCHNEIDERMAN: The issue
16 with the phone records is that that's
17 something we will obtain if we get the grand
18 jury information. And we won't know about
19 that until after the judge rules on December
20 4th, so we're at a slight disadvantage. I
21 agree, I think we all agree that that's
22 information we want to get as soon as
23 possible, but we're subject to the court's
24 order on that.

1 SENATOR SAVINO: And in the grand
2 jury, is that where they discuss the route
3 that was used to get to the hospital?

4 MR. LEWIS: Possibly. Possibly.

5 SPECIAL COUNSEL ALONSO: Possibly,
6 yeah.

7 I'd like to be able to represent to the
8 judge -- he may ask me why all the material
9 is relevant, and I'd like to be able to
10 represent to the judge that this committee
11 is considering some of the questions that
12 weren't raised in the trial but he raised in
13 his verdict as to whether the senator was
14 putting his own interests -- the possibility
15 of negative publicity and the like -- ahead
16 of the interests of this injured woman.

17 And it strikes me that it's the
18 position of the committee that this is at
19 least part of our inquiry if not the central
20 part of our inquiry. And so, with
21 permission, I will tell that to the judge
22 and hopefully he will then see how really
23 important this material is to that inquiry.

24 CHAIRMAN SCHNEIDERMAN: I think that

1 certainly reflects my sense of the
2 committee.

3 Anyone else?

4 MR. LEWIS: The grand jury collects a
5 lot of information that doesn't go into the
6 minutes but is still evidence before the
7 grand jury. So we may end up with a lot of
8 the things we're asking about here actually
9 in our hands.

10 CHAIRMAN SCHNEIDERMAN: So thank you
11 all. This just took longer than we
12 anticipated, but I think you appreciate how
13 important it was. I certainly do. And I
14 thank counsel for their good work.

15 We are going to try and -- subject to
16 what Senator Monserrate's counsel tells us,
17 we are going to try to schedule something
18 for December 7th or 8th.

19 SENATOR SAVINO: I told you guys I'll
20 be in Puerto Rico from the 4th to the 9th.

21 CHAIRMAN SCHNEIDERMAN: So you're not
22 back until the 10th?

23 SENATOR SAVINO: Yes.

24 CHAIRMAN SCHNEIDERMAN: Anyone else

1 have anything scheduled --

2 SENATOR STAVISKY: I was supposed to
3 leave, I think, on the 10th.

4 CHAIRMAN SCHNEIDERMAN: We can't
5 have -- I would like to have everyone
6 present at all times, but if we have a
7 quorum and staff, we can proceed for some of
8 this. And everyone is going to have a full
9 transcript of what happens at each of the
10 meetings.

11 Senator Hassell-Thompson will also be
12 out until the 10th. And you're leaving on
13 the 10th?

14 SENATOR STAVISKY: I'm supposed to
15 leave on the 10th and return on the 13th.

16 CHAIRMAN SCHNEIDERMAN: "Supposed to"
17 is -- okay, well, we'll try and -- obviously
18 we're somewhat -- this is the one meeting
19 that is not completely within our control.
20 We have to work this out with Senator
21 Monserrate and his lawyer, particularly in
22 planning to produce any witness that we have
23 to --

24 SENATOR SAVINO: Why do you want to

1 wait until the 7th of December? Why not
2 beforehand?

3 MR. LEWIS: We don't have the grand
4 jury minutes even if we win the application
5 on the 4th.

6 SPECIAL COUNSEL ALONSO: The judge
7 won't hear us until the 4th, which is also
8 the day of sentencing.

9 SENATOR SAVINO: I understand that.
10 But since Senator Monserrate is going to be
11 the next subject of this committee where he
12 is going to come in -- or not -- why
13 couldn't he come in before we get the grand
14 jury minutes and then we do that afterwards?

15 MR. LEWIS: Because until he's
16 sentenced, he's still protected by the Fifth
17 Amendment and the conviction isn't final.

18 SENATOR SAVINO: So we don't want him
19 to present anything to us until after the
20 sentencing date, and that's December 4th.

21 CHAIRMAN SCHNEIDERMAN: The
22 sentencing date is also when we get the
23 response to our request for the grand jury
24 minutes, and that is next week.

1 SENATOR SAVINO: What do we do if for
2 some reason the judge decides to delay
3 sentencing? Which happens often in --

4 CHAIRMAN SCHNEIDERMAN: We can
5 continue to go forward with our meetings.
6 The only request we've had is that we don't
7 issue a report until after the sentencing.

8 SENATOR SAVINO: Who made that
9 request?

10 CHAIRMAN SCHNEIDERMAN: Is that
11 correct? That was my recollection; it may
12 be incorrect. But I believe that defense
13 counsel did express concern about us taking
14 any action before the sentencing. So we
15 will check on our source on that.

16 But there is no -- we can ask if
17 Senator Monserrate's counsel would produce
18 him prior to the 4th. My sense is that they
19 would not.

20 SENATOR LANZA: And I think it's
21 important to wait until we know what's going
22 to happen with the grand jury minutes. If
23 we were to get them, it would be most
24 helpful to this process to have them before

1 any of that occurs.

2 SPECIAL COUNSEL ALONSO: I also am
3 getting the strong sense that this judge is
4 not going to put the sentencing off. He
5 scheduled us, he scheduled NBC -- which has
6 a motion to videotape the proceedings -- and
7 the sentencing for the same morning, despite
8 requests to do it other days. He said no,
9 we're doing everything that morning.

10 SENATOR LANZA: Just a reminder,
11 compliance with the Open Meetings Law would
12 arguably if not certainly require that
13 nothing that occurs here is published or
14 that the DVD or any of the things discussed
15 here are discussed with anyone who was not
16 here during this meeting, any other staff
17 members or anyone.

18 CHAIRMAN SCHNEIDERMAN: I think it's
19 important not to show -- once counsel makes
20 the PowerPoint presentation available to
21 members of the committee, that's for your
22 use alone. You shouldn't be showing it to
23 anyone who is not in this meeting.

24 I also repeat our request that press

1 inquiries about the subject of this meeting
2 be directed to Mr. Alonso. About things
3 like the schedule and procedures, certainly
4 everyone can use their own judgment about
5 that. But substance about the evidence
6 discussed here it is strongly, strongly
7 urged not be discussed except with counsel.

8 SENATOR LANZA: And prior to making
9 any response with press, that we talk about
10 that.

11 SPECIAL COUNSEL ALONSO: And I'm
12 going to send you all a copy of the
13 PowerPoint. Of course that's very, very
14 sensitive at this point. Eventually it will
15 be released, but at this point it's very
16 sensitive.

17 Also, I certainly do not have any
18 intention to issue additional subpoenas and
19 wouldn't do so without conferring with both
20 the chair and the ranking member and
21 Mr. Lewis.

22 Oh, and I promised Senator Monserrate's
23 counsel that I will put forth his position
24 as he told us just before, which is that

1 this body not consider anything outside of
2 the trial record. So that's their position,
3 and I've put it forward.

4 SENATOR LANZA: Just to clarify my
5 last point, before we make statements to the
6 press, members of this committee ought to
7 consult counsel.

8 MR. LEWIS: I'm also going to go with
9 Dan to the court hearing in Queens, but
10 we're also, under the Open Meetings Law,
11 limited to what we can say about what we've
12 done. But we can certainly indicate the
13 sense of the committee and lay out a factual
14 and legal basis for obtaining those grand
15 jury minutes. So you may see at some point
16 some press coverage from that event. We
17 need to know that we've got to make a
18 showing.

19 We could ask to have the matter held in
20 camera -- in other words, in the chambers
21 with the judge -- without anybody there but
22 Senator Monserrate and his lawyer, in order
23 to protect the grand jury. It's really up
24 to the judge whether he'll do that or not.

1 The odds are pretty good he'll make us do it
2 all in public. So just be ready to see
3 something that's not in our control.

4 CHAIRMAN SCHNEIDERMAN: Thank you
5 all.

6 (Whereupon, the proceedings of the
7 Senate select committee concluded at
8 8:00 p.m.)

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