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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JOHN DOES 222-I-15, 206-I-16, 77-I-16 and
329-I-17.

17-0881

-----X

TAKEN ON: August 1, 2018

BEFORE: TERM 7 2018
JUNE-JULY
GRAND JURY

P R E S E N T:

HONORABLE ERIC A. NELSON
SPECIAL DISTRICT ATTORNEY

FRANCESCA BUSH
GRAND JURY STENOGRAPHER

Proceedings

1 (Whereupon, Grand Jury Exhibit Number 8 was
2 marked for identification only.)

3 MR. NELSON: Good morning, again, ladies and
4 gentlemen. Permit me to introduce myself again. I'm Eric
5 Nelson. I'm the special district attorney appointed in this
6 matter.

7 You were charged on Monday by the judge and by
8 myself. We heard evidence from Michael Ryan and Councilman
9 Joseph Borelli on Monday. We will proceed with a few
10 witnesses this morning and then some witnesses this
11 afternoon.

12 In the interim, I've introduced into evidence
13 some exhibits, so at a natural break, perhaps with the
14 witnesses, we'll start passing the exhibits around so the
15 Members of the Jury can have an idea what we're talking
16 about, what we're discussing, and get a feel for some of the
17 documents again that have been introduced into evidence.

18 Before I call the first witness, I do want to
19 introduce into evidence as Grand Jury Exhibit Number 8.
20 It's a statement and return report for certification for the
21 primary election of September 12th, 2017 that involves the
22 democratic primary of the city council in the 49th Council
23 District.

24 Mr. Ryan, from -- the executive director of the
25 Board of Elections, testified about his familiarity with

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1 three races that we discussed last Monday, that we started
2 taking testimony on.

3 He also indicated that when he produced a
4 document, which was number six in evidence, it was the
5 result of the general election on November 7, 2017, and he
6 indicated that he would supply and provide the Grand Jury
7 with a certified copy of the results from the primary
8 election between Miss Rose and Miss Hanks.

9 So at this time I'm going to offer this into
10 evidence as Grand Jury Exhibit Number 8.

11 Okay. At this time I'm going to call Sergeant
12 John Foley.

13 Sergeant, approach the witness stand. Remain
14 standing. Place your hand on the bible and face the
15 foreperson of the Grand Jury.

16 SGT. J O H N F O L E Y, shield number 4570, 120 Precinct,
17 New York City Police Department, called as a witness, having
18 been first duly sworn/affirmed by the Foreperson of the
19 Grand Jury, was examined and testified as follows:

20 GRAND JURY FOREPERSON: You can sit.

21 MR. NELSON: Sergeant, thank you. Before we
22 begin, just state your name, shield number, and command,
23 please.

24 THE WITNESS: My name is John Foley. My shield
25 number is 4570. My command is the 1-2-0.

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1 DIRECT EXAMINATION

2 BY MR. NELSON:

3 Q. And, Sergeant, I want to direct your attention to the
4 time period of September, September of 2017. What was your
5 assignment?

6 A. I was the desk officer.

7 Q. At what precinct?

8 A. The 1-2-0.

9 Q. And the 1-2-0 Precinct is located in St. George on the
10 north shore of Staten Island?

11 A. Yes, it is.

12 Q. And, Sergeant, what are the responsibilities of the
13 desk officer?

14 A. Desk officer's responsibilities are to basically run
15 the command. We write in the command logs, make sure cops take
16 reports, and assist people who walk into the stationhouse.

17 Q. Sergeant, can you just relate to the Grand Jury the
18 various means by which a complaint report can be reported to the
19 police department?

20 A. Two ways. They can walk into the stationhouse and
21 they can make one at the stationhouse, or they can call 911 and
22 the cops will respond to their location and take a report.

23 Q. And, Sergeant, in particular I had asked you about a
24 complaint report that was filed on September 11th, 2011. Excuse
25 me, 2017. My apologies.

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1 Did you have an opportunity to review that document?

2 A. Yes.

3 MR. NELSON: May I have this marked for
4 identification, please, as Grand Jury Exhibit Number 9.

5 (Whereupon, Grand Jury Exhibit 9 was marked for
6 identification only.)

7 Q. Sergeant, I'm going to hand you what's been marked for
8 identification as Grand Jury Exhibit Number 9. Please read it
9 to yourself and do not testify about any contents of that
10 document, please.

11 (Pause in proceedings.)

12 Q. Sergeant, looking at that document, first, do you have
13 any independent recollection of the person either coming to the
14 precinct or calling in or having a police department sector car
15 respond to a location to take a report?

16 A. No, I don't.

17 Q. And is your name on that complaint report?

18 A. Yes, it is.

19 Q. And, Sergeant, on September 11th, 2017, did an
20 individual, if you recall, come into the precinct or call it in
21 by phone to file a complaint for computer hacking?

22 A. Yes.

23 Q. As part of the information that's obtained by the
24 police officer who does the interviewing on a complaint report,
25 is the person's home address taken to put on the complaint

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1 report?

2 A. Yes.

3 Q. Is the person's telephone number -- whether it be a
4 landline number or a cellular number -- put down on the
5 complaint report?

6 A. Yes.

7 Q. And, additionally, Sergeant, is a narrative of what
8 allegedly occurred put down on the complaint report?

9 A. Yes.

10 MR. NELSON: Ladies and gentlemen, I have no
11 further questions of Sgt. Foley subject to being recalled.

12 Thank you at this time, Sergeant.

13 (Witness excused.)

14 MR. NELSON: Ladies and gentlemen, I call Ronald
15 Castorina.

16 Sir, just approach the witness chair. Remain
17 standing. Place your left hand on the bible. Raise your
18 right hand and face the foreperson of the Grand Jury.

19 R O N A L D C A S T O R I N A, called as a witness, having
20 been first duly sworn/affirmed by the Foreperson of the
21 Grand Jury, was examined and testified as follows:

22 GRAND JURY FOREPERSON: You can sit down.

23 MR. NELSON: Have a seat, sir.

24 DIRECT EXAMINATION

25 BY MR. NELSON:

1 Q. Mr. Castorina, are you currently the assemblyman for
2 the 62nd Assembly District in Richmond County?

3 A. Yes, I am.

4 Q. And are you a resident of Staten Island?

5 A. Yes, I am.

6 Q. Are you also a practicing attorney?

7 A. I am.

8 Q. And how long have you been an attorney for?

9 A. I've been an attorney since my admission in 2006.

10 Q. Very generally, can you relate to the grand jurors
11 both your -- the history of your legal career and your
12 educational career, very briefly, for the jury?

13 A. Okay. I graduated from law school. I --

14 Q. What law school?

15 A. I went to SUNY at Buffalo School of Law. Before that
16 I went to St. Francis College in Brooklyn.

17 I got my first job working for a judge as a law clerk
18 right here in Staten Island, and then I moved from that position
19 to another judge in Brooklyn in Criminal Court.

20 And then after that I moved to a judge in Supreme
21 Court, Kings County, civil term. I worked there for about a
22 year, and then I decided to go into private practice and I
23 opened up my own law practice in Brooklyn where I grew up, in
24 the Bensonhurst area of Brooklyn, and was there for about five
25 or six years.

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1 And then I -- no, I'm sorry. I was there for about
2 three or four years, and then I opened up my practice on Staten
3 Island, in the Sunnyside area of Staten Island, on Clove Road.

4 Predominantly practice in the areas of wills, trusts
5 and estates, matrimonial/divorce work, family law, some personal
6 injury; the general practice of law.

7 At some point after that I became the Commissioner of
8 the New York City Board of Elections for Richmond County, and
9 then I saw there was an opening to run for the state assembly,
10 and I ran for that in 2016 in a special election.

11 It was April -- I believe it was April 19th was the
12 date of the special election where I was unopposed, and I won,
13 of course.

14 And then there was a primary in September and then a
15 general election in November. All three of those races I was
16 successful in, and I've been serving in the New York State
17 Assembly and I have a private law practice with other attorneys
18 that work for me when I'm in Albany and taking care of my
19 legislative duties.

20 Q. Now, sir, in terms of your initial foray, F-O-R-A-Y,
21 into public official politics, was there a time when you met
22 Councilman Joseph Borelli?

23 A. Yes. I've known Joe Borelli -- gee, I would say
24 probably from about 2004 or so. I had come in contact with him.
25 I knew that he worked for Councilman Ignizio, and then at some

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1 later time I became more intimately friendly with him when I got
2 involved in representing some folks in an action against the
3 mayor and the chancellor when the city took away school bus
4 service, yellow school bus service from seventh and eighth
5 graders on Staten Island and in some parts of Queens.

6 And so I decided on a pro bono basis -- meaning I
7 didn't charge a fee. I was -- I felt so terrible that the
8 seventh and eighth graders on Staten Island were unable to get
9 to and from school with yellow bus services when on Staten
10 Island, as you know, we don't have sidewalks in some areas.
11 It's very difficult for -- for children to travel the streets.

12 So I brought this action on behalf of the democrat and
13 republican members of the City Council, as well as the borough
14 president, against the mayor and the chancellor, and we were
15 successful in getting -- I was successful in getting the school
16 bus service restored for seventh and eighth graders on Staten
17 Island.

18 Q. And this pertains to your district, to your or Mr.
19 Borelli's district, the south shore of Staten Island, is that
20 correct?

21 A. The entirety of Staten Island as well. There was a
22 long-standing variance that had been provided by the city to
23 Staten Island in the 1960s, and Mayor Bloomberg at the time
24 decided that he was going to take that variance away because it
25 was costing the city money.

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1 And so this variance affected, in particular, the
2 entirety of Staten Island, plus areas of Queens such as Breezy
3 Point and the Rockaways.

4 Q. And did you file this lawsuit in conjunction with
5 another city council person or member from Queens?

6 A. I believe Eric Aldridge (ph) joined as -- as an
7 intervenor, and he was represented by Tom Ognibene, and Tom
8 Ognibene second sat me on the case, meaning he was next to me.

9 I -- I pretty much handled all of the witnesses and
10 all of the testimony. I cross-examined witnesses and so on, and
11 Mr. Ognibene was -- was there with me as an intervenor in that
12 matter on behalf of the people from Breezy Point in Queens and
13 the Rockaways.

14 Q. Now, sir, after this particular case was filed and
15 being successful, did you become more actively involved in -- in
16 public official service and politics?

17 A. Well, that wasn't my initial foray into politics. I
18 had been involved politically going back to probably 1995 or
19 1996 when I was living in Brooklyn.

20 I would volunteer in local campaigns, local elections,
21 and then of course, later on, with the Staten Island Republican
22 Party when I moved to Staten Island.

23 So I had been involved, which is why I think, you
24 know, people sought me out at times during my career to assist
25 on public-interest-style lawsuits.

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1 But I did become more familiar with Councilman Ignizio
2 and Borough President Oddo and Joe Borelli, who was chief of
3 staff at the time to Councilman Ignizio, and then at some point
4 after that Councilman Ignizio asked if I would be willing to
5 serve as his counsel, and I did.

6 Q. And as a result of all this, Assemblyman, you've
7 become more familiar with the demographics of not only the
8 entire island, but in particular to the 62nd Assembly District,
9 which is -- which is part of the island?

10 A. That's correct.

11 Q. Now, sir, you mentioned your first election, and then
12 you indicated that there was a primary in September or a primary
13 date in September of 2016?

14 A. Yes.

15 Q. Who was your opponent in the Republican party in that
16 primary?

17 A. A woman by the name of Janine Materna.

18 Q. Now, during this time period you continued your
19 practice of law, is that correct?

20 A. Yes, I have -- I have consistently run a law practice
21 from December of 2006, and I currently do to the present day.

22 Q. And -- and you've had conversations both -- with other
23 attorneys both in person and over social media, is that correct?

24 A. Absolutely.

25 Q. And, in particular, with regard to the social media

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1 aspect of it, did you have communications with an individual
2 named Richard Luthmann?

3 A. I did.

4 Q. And how do you know Mr. Luthmann?

5 A. Mr. Luthmann is, I believe currently and was, a member
6 of the New York State bar. He was an attorney, and so I knew of
7 him from just appearing in the courts; you know, going to bar
8 association functions where he would regularly be.

9 He was hard to -- to miss and hard to not -- he was
10 hard to miss because he was always very -- a very boisterous
11 guy, a very big personality, and so he was somebody that I would
12 typically like to avoid.

13 Q. When you say "big personality," you mean someone who's
14 loud or -- or, for example, if you were in a room that person
15 could be the loudest person in the room?

16 A. Loud, obnoxious, boisterous. I could go on.

17 Q. And do you know, if you know, based upon the
18 communications that you had with Mr. Luthmann in person and over
19 social media, can you describe what, if you know, his -- his
20 political ideology or political bent was in terms of, you know,
21 either a Democrat or Republican or an Independent, for example?

22 A. Mr. Luthmann was a member of the Democrat party.
23 Mr. Luthmann later become a member of the Reformed party. But
24 at the time that I met him, he was a member of the Democrat
25 party, and I believe that -- yeah, he would attend Democrat

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1 functions. You would see all this and, you know, in social
2 media and so on.

3 But any communications that he had with me were
4 unwanted communications, and as an elected official, at times
5 people contact you that probably you don't want them to, but you
6 have to kind of placate them.

7 And we have crazy people that contact me. There are
8 people that are just, you know, complainers. There are all
9 kinds of people when you're in the public eye. They will
10 gravitate to you for whatever reason and they will seek you out.

11 He was one of those such people, but, in addition to
12 that, he was also an adversary representing people on the other
13 side of certain cases that I had, and in particular --

14 Q. Just don't --

15 A. Yes.

16 Q. Leave it at that. Not go into any detail about any
17 particular cases.

18 A. Yes.

19 Q. Can you describe for the jury your impression of what
20 was sent to you by Mr. Luthmann and, in particular, I'm speaking
21 about now your opponent, Miss Materna --

22 A. Yes.

23 Q. -- and the whole process of the --

24 A. Yes.

25 Q. -- of the Republican primary in September of 2016.

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1 A. So, Mr. Luthmann, from what I had seen, liked to put
2 himself -- get involved in a variety of political races on
3 Staten Island. And what I mean by getting involved is he'd be
4 kind of a pot stirrer.

5 He'd be somebody that was looking to create problems,
6 issues. He -- he kind of enjoyed this type of situation.

7 Q. Can you give us some examples as to your opinion as to
8 how he enjoyed this?

9 A. Well, because he found it -- he found it funny. In
10 his -- in his commentary he would send disgusting, lewd,
11 Photoshopped pictures of people; not just of Miss Materna, but
12 others.

13 Q. And, for example, did that include the mayor?

14 A. I believe so, yes.

15 Q. And did it also include, for example, members of the
16 Democratic party?

17 A. Yes, it did.

18 Q. And did it also, for example, involve -- I'll rephrase
19 the question. Who is the chairman --

20 A. And the Republican party as well.

21 Q. I'm going to ask you who is the chairman of the
22 Democratic party. Who was it in 2016 and who is it presently?

23 A. I believe it was John Gulino in 2016, and I believe
24 that John Gulino is still the chairman of the Democratic party
25 to this day.

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1 Q. And what, if anything, did you observe about the --
2 the posts -- let's just call them the posts or the pictures that
3 took place from your observations on social media?

4 A. I just want to be very clear there are private
5 messages that were not public. So you have Facebook. You know
6 that there's private messenger and then you have what people
7 post publicly.

8 He was posting publicly terrible things about
9 Mr. Gulino that was clear -- I think everybody saw it. He was
10 calling him a lizard; just such -- it was juvenile, ridiculous
11 stuff.

12 And I also recall him posting pictures of him posing
13 with a cardboard cutout of Mr. Gulino as well.

14 And then on the private messenger side that wasn't
15 public, he would send all kinds of lewd, really disgusting
16 pornographic-in-nature-at-times, racially-biased-at-times images
17 that, you know, I would just kind of ignore or placate in some
18 way, and, you know, just to -- to get this person away.

19 I don't want to deal with this person, I don't want to
20 talk to this person, I want nothing do with this person, but
21 this person just keeps coming back.

22 Q. In terms of the -- the race itself with Miss Materna
23 and the days or the months leading up to the September 12th --
24 September -- excuse me.

25 A. I think it was September 12.

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1 Q. September 13th?

2 A. Thirteen.

3 Q. September 13th, 2016 primary, would you describe
4 the -- the race in terms of the communications as a -- as a --
5 as a smooth or a contentious race?

6 A. It was the most acrimonious and contentious race that
7 I think we've ever seen on Staten Island.

8 Q. Well, just in terms of your -- your impression and --
9 and you seeing it in terms of your particular --

10 A. It was an acrimonious and awful race.

11 Q. And -- and, in fact, sir, didn't, during the course of
12 either the primary season, the months leading up to it or some
13 time before that, an individual had been arrested by the police
14 department and the District Attorney's Office and prosecuted for
15 issues dealing with communications to either you or your family?

16 A. A campaign volunteer of Miss Materna was arrested for
17 sending packages with cryptic messages to my parents in a
18 retirement 55-and-over community in New Jersey, to a summer home
19 that I have, and to my personal residence as well.

20 Q. Was -- was an arrest made by the police department?

21 A. An arrest was made and she was charged and
22 prosecuted -- and was -- in the process of being prosecuted.

23 Q. Prosecuted?

24 A. Yes.

25 Q. Okay. And, to the best of your knowledge, based

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1 upon -- withdrawn. From what you saw from the messages that
2 went back and forth, did Mr. Luthmann at all make any reference
3 to that event in terms of the arrest of this lady regarding the
4 phone calls or the letters or the messages that were sent to
5 both yourself and your family and your various homes?

6 A. He may have. You know, he would send -- he would send
7 messages that were somewhat topical based on what was going on
8 in the news at a particular time. That was kind of the way he
9 proceeded. So it's -- it's very possible.

10 I don't have an independent recollection of a
11 particular statement, but it totally would make sense that --
12 that he -- he would.

13 Q. And in terms of this private communication or
14 messenger, to the best of your knowledge was Councilman Borelli
15 part of the -- the group as part of his private messengers or
16 messages that were received?

17 A. Well, I wouldn't know independently whether or not
18 Luthmann was talking to any other individual because I wouldn't
19 be able to see that. I would only be able to see that he was
20 contacting me, and he was contacting me.

21 Q. Well, you say he was contacting you. How do you know
22 it was him? Is there any indication on the messages?

23 A. Yes.

24 Q. Please --

25 A. On Facebook it says when you get a private message who

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1 the individual is, their name, and it usually shows their --
2 their profile picture. So I knew that it was him or I believed
3 that it was him.

4 Q. And the name Richard, R-I-C-H-A-R-D, was on top of the
5 page?

6 A. Richard A. Luthmann.

7 Q. And other times, in terms of the private messenger --
8 and I'll show you some documents in a few moments -- but did it
9 also indicate "Richard" on top? If you recall.

10 A. I -- I know that it had his name on it, I mean,
11 because I knew that it was a communication coming from somebody
12 purportedly as Richard Luthmann. I assumed it was him. I
13 believe it was him.

14 Q. Assemblyman, did you have any back communications with
15 him regarding some of the messages that you've described for the
16 grand jurors here today?

17 A. I told him -- I told him to stop. I told him not to
18 communicate this type of stuff to me. That's for sure.

19 Q. And I want to show you now what's been marked into
20 evidence as exhibit number seven, and this has been a document
21 that was introduced into evidence on Monday through Councilman
22 Borelli, and just to take a look at that particular document.

23 I asked you a few moments ago about the name on the
24 top of the page.

25 A. This is the first time I'm seeing this. I see

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1 "Richard" on top, and I see "Joe Borelli" underneath it.

2 It looks like it's a screenshot of messages from
3 Facebook messenger between Richard and Joe Borelli. That's what
4 it looks like, but you can tell it's a screenshot.

5 Q. Just -- just take a look at that and, if you can, just
6 very, very briefly tell the jury what that was about. And also,
7 in particular, if Mr. Borelli got involved in terms of the back
8 and forth that went on in terms of the messaging.

9 A. Well, it looks like the -- the stuff in blue would be
10 something coming from Richard, and then the stuff in gray on the
11 left would be coming from Joe Borelli.

12 And it looks like they're talking about a picture of
13 Janine Materna with Eric Holder and a person who I believe is
14 Janine Materna's sister.

15 And I think the relevance of that was, if I could
16 speculate --

17 Q. No, don't speculate but just review --

18 A. Well, there was a Republican primary, and Eric Holder
19 is a Democrat figure in the Obama administration, and Janine
20 Materna had previously been a Democrat for many years and she
21 had just switched parties, I believe, just to run in the
22 Republican primary.

23 Q. Let's just say she switched parties.

24 A. Yes.

25 Q. So was that message -- withdrawn. Do you recall ever

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1 seeing that on your own private messaging between yourself and
2 Mr. Luthmann, that particular picture --

3 A. Yes.

4 Q. -- of the Attorney General, Miss Materna, and her
5 sister?

6 A. I believe that I have seen -- I have seen that picture
7 before, yes.

8 Q. And --

9 A. That picture was published not in private messages
10 or -- not only in private messages, but I believe that this
11 picture was also published on public messages, and I think it
12 may have even been published by Joe Borelli because Joe Borelli
13 was campaigning against Miss Materna, against the fact that she
14 was claiming to be a Republican, and he used the photograph to
15 show that she had all of these deep Democrat affiliations and
16 how could she possibly be a Republican, and that the fact that
17 she was running as a Republican in this primary was kind of a
18 charade.

19 Q. We've had some discussion in terms of the back and
20 forth with regard to politics and opposition parties.

21 A. Yes.

22 Q. But I just want to focus in on that particular set of
23 photographs or set of messages, I should say. Is there a
24 discussion from what you recall that Mr. Borelli had with
25 Mr. Luthmann about low voter turnout and the possibility of the

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1 appearance of bullying?

2 A. Okay. I mean, I'm -- I'm reading this. I'm reading
3 that there's something here about bullying.

4 Q. No, but just from your recollection, if you have a
5 recollection.

6 A. Well, I've never seen this conversation.

7 Q. No, but from your own recollection at the time of the
8 events, Assemblyman, from your recollection in terms of what was
9 going on politically or -- or in public at the time and in
10 private based upon those messages, was there some discussion
11 about a fear of -- of yourself or your campaign coming across as
12 bullying and that could have a negative impact?

13 A. Not my campaign, but I can tell you what the -- I
14 think there was kind of this notion and belief that Luthmann had
15 created a fake Facebook page and that he was using that to
16 attack Miss Materna.

17 Now, he never indicated that he was going to create a
18 page or that nobody asked him to do anything like that, because
19 he was also doing this kind of stuff on his -- on his public
20 page, but I believe that I had a discussion with Joe about how
21 it might be Luthmann who's doing this, I hope he stops because I
22 don't want people to think that I'm supportive of or that I'm
23 behind this type of behavior, which I couldn't prove.

24 He never admitted to me at the time. He admitted
25 later on that it was him, but I believed that, if anybody, it

1 was probably him.

2 Q. When you say "he admitted," Luthmann admitted?

3 A. Luthmann.

4 Q. What did he say and what did he say -- what context?

5 A. Luthmann admitted in a public message last August that
6 he created a page in the image and likeness of Miss Materna, and
7 he alleged that in this public post -- it was a very lengthy
8 post.

9 He indicated that he was the only person that had
10 anything do with this post, with this page; that he has the
11 ability to engage in dirty tricks because that's his First
12 Amendment right; and that this is all part of politics, and, you
13 know, basically it was -- he wasn't apologetic about it.

14 In fact, he was boastful and proud to have created
15 such a page and -- and that was pretty much it. I mean, there
16 was -- he was bragging about it, about what he had done.

17 Q. Okay.

18 MR. NELSON: All right. What we're going do,
19 ladies and gentlemen, now, is take a five-minute break just
20 to stretch your legs, and we'll reconvene maybe ten after
21 11:00.

22 Again, until we complete the testimony, all the
23 testimony, please do not discuss the case amongst yourself.

24 The various admonitions I gave you last time, do
25 not read about it, do not check the Internet about any facts

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1 or allegations of this particular investigation.

2 Thank you. Enjoy your break.

3 (Whereupon, a brief recess was taken.)

4 (Whereupon, Grand Jury Exhibit Number 8 was
5 physically marked into evidence and Grand Jury Exhibit
6 Number 10, 11, and 12 were marked for identification only.)

7 MR. NELSON: Okay. Are we ready?

8 Good morning again, ladies and gentlemen. We
9 will proceed in a moment, but during the break I was asked
10 by a particular grand juror about his review of items that
11 may have been in the -- the Internet or the Staten Island
12 Advance concerning Mr. Luthmann over the past several
13 months.

14 Whether or not you saw that article or read that
15 article, keep in mind that when certain items are put into a
16 public media, it's not necessarily grounded in fact; meaning
17 that there may be -- they may be allegations that --
18 allegations that may not have been proven in a court of law.

19 So the fact that you read about or may have read
20 about certain things, I would ask you to keep an open mind,
21 to be fair, to listen to all the evidence in this case.

22 As I indicated to you in my charge on Monday, if
23 criminal charges should be presented to you, you would still
24 have to vote on it, and you would still have to determine
25 whether or not there was reasonable cause to believe that a

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1 crime or an offense was committed. It's still the same
2 standard.

3 And the fact that people may have read about
4 certain things involving Mr. Luthmann, whose name obviously
5 has been brought up several times now during the course of
6 this presentation, I would ask you to -- to put that aside,
7 do not draw any conclusions over it, do not draw any
8 conclusions over the fact that it was in the newspaper, and
9 if I could have all your assurances that you will keep an
10 open mind throughout.

11 Let the record reflect that all the grand jurors
12 have affirmatively nodded and we're ready to proceed again
13 with Mr. Castorina.

14 (Whereupon, the witness, Assemblyman Ronald
15 Castorina, resumed the witness stand.)

16 MR. NELSON: Sir, please have a seat. I just
17 want to remind you you are still under oath.

18 THE WITNESS: Yes.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. NELSON:

21 Q. Before the break you had mentioned during the course
22 of your testimony about certain statements that were made
23 regarding the Janine Materna Facebook account.

24 I want to show you what's been marked for
25 identification, these three exhibits, as Grand Jury Exhibits

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1 Number 10, 11, and 12.

2 (Handing to the witness.)

3 Q. Please review them to yourself and I will followup
4 with some questions in a few moments.

5 (Pause in proceedings.)

6 A. Yes.

7 Q. I want to show you now what's been marked for
8 identification as Grand Jury Exhibit Number 10. First of all,
9 sir, do you recognize this particular document?

10 A. It looks like screenshots of Mr. Luthmann's posts on
11 Facebook, public posts on Facebook.

12 Q. And pertaining to that subject of discussion that you
13 already testified about this morning, sir?

14 A. It appears to be his post involving his culpability
15 for creating a Facebook page about Janine Materna during the
16 course of the primary election in 2016.

17 Q. When you say "creating a Facebook post," was this a
18 post, if you know, that was created with the consent of
19 Miss Materna or was done by Mr. Luthmann on his own?

20 A. This post or a page?

21 Q. The -- the creation of the account I should say.

22 A. Oh, I have no idea of any communication between him
23 and Miss Materna, but I -- I mean I could surmise that --

24 Q. Don't surmise.

25 A. -- based upon his post he did this on his own.

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1 Q. Okay. And does it fairly and accurately represent the
2 discussion that he had over his public Facebook posts
3 regarding --

4 A. Right.

5 Q. -- the creation of the Materna account?

6 A. Well, just to be clear, this is not -- this is not a
7 discussion. This is a -- a public statement thing, a post that
8 he put out on Facebook, and in it he talks about --

9 Q. Well, just -- does it fairly and accurately represent
10 the post that he put out about --

11 A. Yes.

12 Q. -- the Materna page around the time period that you
13 described it before we took the break? I believe it was in and
14 around September of 2017.

15 A. Yeah. Yes, it does.

16 MR. NELSON: At this time I will offer that into
17 evidence as Grand Jury Exhibit Number 10.

18 Q. I'm going to ask you to take a look at number 11,
19 please. And, sir, what do you recognize that document to be?

20 A. Looks like another public Facebook post by
21 Mr. Luthmann regarding Miss Materna and what -- I guess a fake
22 Facebook page and calling her Bitter Janine Materna.

23 Q. Does it fairly and accurately represent the content of
24 the communication that you observed over the public Facebook
25 page?

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1 A. Yes, this does fairly and accurately appear to be a
2 public post that Mr. Luthmann made on Facebook.

3 Q. And Number 12 for identification, please. Please
4 relate to the grand jurors what that exhibit is.

5 A. Again, this looks like another public post on Facebook
6 by Mr. Luthmann on the subject matter that we've been
7 discussing.

8 Q. And does it fairly and accurately represent a public
9 Facebook post concerning the subject matter of one aspect of the
10 investigation before the grand jury?

11 A. It does.

12 Q. Okay.

13 MR. NELSON: At this time I will offer that into
14 evidence as Grand Jury Exhibit Number 12.

15 Q. Now, I'm going to read certain portions to you, and
16 I'm going to ask you to comment on certain portions of what was
17 put into this post as to the truthfulness or, from your
18 knowledge, or the inaccuracies of certain things.

19 A. Sure.

20 Q. First it starts -- and I'm reading from Grand Jury
21 Exhibit Number 10: With respect to the recent
22 #BitterJanineMaterna Facebook issues, colon, I state
23 unequivocally and for the record these facts, colon.

24 First, I have asserted the attorney-client privilege.
25 In the vast majority of cases I must ensure that any

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1 communications I've had with my clients are absolutely
2 protected, whether they are on Facebook or any other medium.

3 Mr. Castorina, in terms of the attorney-client
4 privilege, in this document number ten he refers to you as his
5 lawyer.

6 Were you ever counsel to Mr. Luthmann in any matter
7 civil or criminal?

8 A. I have never been Mr. Luthmann's attorney and
9 Mr. Luthmann has never been my attorney.

10 Q. So, therefore, any reference to you and the term
11 "attorney-client privilege" is not accurate, is that correct?

12 A. It's completely ludicrous.

13 Q. Attorney-client privilege, does that protect
14 communications between an attorney and a client?

15 A. Yes, it does, and the holder of that privilege is the
16 client.

17 Q. And the reason is it protects the client from having
18 the attorney come in and testify against him as to anything that
19 the client may have told the attorney during the course of their
20 legal conversations?

21 A. And it creates a sacred bond and relationship between
22 an attorney and their client, almost like a priest and penitent.

23 Q. And New York State recognizes by law, by statute, the
24 attorney-client privilege, is that correct?

25 A. It does.

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1 Q. In it, paragraph first it states: In the vast
2 majority of cases I must ensure that any communications that
3 I've had with my clients are absolutely protected, whether they
4 are on Facebook or any other medium.

5 In terms of the attorney-client privilege, if
6 something is put into a public medium by either the -- by the
7 client, for example, does that waive the attorney-client
8 privilege?

9 A. It breaks the privilege one hundred percent. There's
10 no question about that.

11 Q. Because it's disclosed to third persons?

12 A. Correct.

13 Q. And it also states, and I quote: Attorneys from --
14 for my law firm are working with IT professionals and Facebook
15 security to collect evidence that I will present to the Cyber
16 Crimes Unit at the 1-2-0 Precinct upon my return to New York
17 City. And he wrote in parentheses: I'm away at a convention.

18 Is that accurate --

19 A. From --

20 Q. -- from what it says?

21 A. From my recollection, yes. From what my recollection,
22 yes.

23 Q. Well, from what it says on this document?

24 A. Yes. Yes.

25 Q. Second --

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1 A. I mean, I haven't memorized it, but you just showed it
2 to me and, you know, so --

3 Q. For the record, I'm reading from the document:

4 Second, the case of Ron Castorina is different.
5 Ron is my lawyer. Ron is my colleague. Ron is my friend.
6 I consult his attorney expertise (sic), particularly on
7 election law matters.

8 With regard to those three sentences, what's accurate and
9 what's not accurate in terms of the various characterizations
10 that he has of you as (a), a lawyer; (b), a colleague; and (c),
11 as a friend?

12 A. Mr. Luthmann would from time to time contact me and
13 ask me questions about election law, recalling that I had been
14 the Commissioner of the New York City Board of Elections.

15 And this is not unusual amongst lawyers that one
16 lawyer would call another lawyer. They have a question about a
17 legal issue in which that other lawyer might have a particular
18 area of expertise or wider breadth of knowledge of the area, so,
19 I mean, it's commonly done.

20 So I guess he's referring to instances where he would
21 reach out to my office to ask me a question about some section
22 of the election law.

23 Q. The next sentence I'm not going to ask you comment,
24 but he talks about yourself being an accomplished attorney and
25 public servant.

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1 But in the sentence after that he states in this
2 document number 10: The privilege -- the privilege asserted is
3 mine because Ron is my lawyer.

4 Is that statement accurate or not, sir?

5 A. It is inaccurate.

6 Q. Okay.

7 A. Not accurate.

8 Q. Then in paragraph four it says: Ron had nothing to do
9 with the #BitterJanineMaterna Facebook page. I created it
10 myself after I saw how upset Ron's mother became when harassing
11 mail arrived at her house sent by a #BitterJanineMaterna
12 campaign operative.

13 Sir, is this what you were referring to in terms of
14 the prosecution of a campaign worker earlier in your testimony
15 this morning?

16 A. There was a campaign worker for Miss Materna that was
17 prosecuted for sending harassing packages to my parents' home
18 and to my home.

19 To the best of my knowledge, my mother does not know
20 Mr. Luthmann. She may have seen him at an event or a fundraiser
21 where Mr. Luthmann may have popped up, as he frequently would,
22 whether it be for a Republican or Democrat.

23 But Mr. Luthmann does not have any communication with
24 my mother -- with my mother.

25 Q. Okay. And then it states, quote, the statement -- the

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1 next statement by -- by him, quote:

2 I was pissed about this #BitterJanineMaterna
3 trick and decided, unilaterally and acting alone, that I
4 would devise a real dirty trick and school the
5 #BitterJanineMaterna campaign as to a real #DirtyTrick.

6 Is that what it states on the second page in the fourth
7 paragraph of this document?

8 A. I believe so. And that whole notion of dirty trick is
9 some -- it's some political -- political thing that he refers
10 to, I believe, that has something to do with Roger Stone and
11 this notion of dirty tricks or some -- that -- that anything
12 goes in the political arena, that -- that there's no morals or
13 ethics. That's what I believe he's referring to.

14 Q. And in the fifth paragraph, in the last sentence, it
15 states quote:

16 Ron -- referring to yourself -- showed restraint.
17 If it were my mom, I'd be doing a bid in Sing Sing right
18 now.

19 A. Again, this is the type of bizarre, to put it mildly,
20 commentary and -- and conduct that I think I expect from
21 Mr. Luthmann.

22 Q. Now, in the beginning of your testimony when you
23 talked about some constituents, you talked about some
24 constituents in the sense of needing to deal with them for the
25 sake of dealing with them, but your personal preference, if I'm

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1 correct, would be not to deal with them because of some issue
2 that they may have?

3 A. There are certain people that you don't want to deal
4 with, you don't want to talk to, you want to stay away from, but
5 because you're in the public eye you have to deal with them in a
6 way to kind of move things along, pacify them a little bit and
7 just move on so that you don't have to deal with them or so that
8 they don't become an enemy and they don't start attacking you
9 personally and creating all kinds of issues like maybe they do
10 for other people.

11 So you pacify them and you kind of: Okay. That's
12 funny. That's great. Okay. Or you -- or you ignore them.

13 And this is the kind of thing that I had to do with
14 Mr. Luthmann on a regular basis.

15 Q. And then in the sixth paragraph he states, quote:

16 I am the guilty party. I'm guilty of being a
17 prick and I'm guilty of being a friend. Anyone who knows me
18 I am overzealous at both. At times I am also vulgar and
19 crass.

20 But Ron Castorina is a better person than I am.
21 And he is a good friend. He could have thrown me under the
22 bus and even I told him to but he wouldn't. Ron is loyal
23 and a man of principle.

24 Is that what it states in this document, Mr. Castorina?

25 A. I believe so.

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1 Q. Well, just take another look at it to make sure.

2 (Handing to the witness.)

3 A. Yes, it does.

4 Q. Thank you.

5 (Handing to counsel.)

6 MR. NELSON: Thank you.

7 A. I guess Mr. Luthmann can be right sometimes. You
8 know, I am loyal. I am a man of principle.

9 Q. Well, the jury will assess all that in terms of the
10 credibility at the end of the case.

11 During the course of these private messages, did he
12 also state disparaging or conduct in a way disparaging about
13 other public officials both within the Democratic and Republican
14 parties?

15 A. Yes. He kind of modeled himself as some type of a
16 commentator on anything political, and he would make crass,
17 lewd, or lascivious commentary about other elected officials or
18 appointed officials serving in a variety of areas of government.

19 Q. And, for example, would he show up, for example, at
20 political events where yourself and other members of the
21 Republican party, you know, such as the -- the elected officials
22 or candidates who are running for public office would be at a
23 certain forum or certain event?

24 A. Mr. Luthmann was like a bad penny in the church
25 collection basket. He would show up uninvited at a variety of

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1 events as a Democrat to Republican events, or to Independent --
2 I guess independent parties; events all over the spectrum.

3 He would infuse himself and be present.

4 Q. And, in fact, at certain events involving
5 Assemblywoman Malliotakis, did he show up at certain events?

6 A. I don't recall because frankly I don't recall being at
7 any events particularly for Miss Malliotakis in or about 2016,
8 but it might be true.

9 Q. Did he indicate at anytime about -- about a -- using a
10 water pistol against her?

11 A. He may have in -- in some commentary that he may have
12 sent over to me, but, frankly, you know, any -- if not all of
13 what he had to say in any message to me I kind of took with a
14 grain of salt and placated him so that I didn't have to deal
15 with him.

16 Q. And, finally, with regard to number 10 he states:

17 Eighth, I am off the island until next week, at
18 which time I will file my criminal complaint and civil
19 action. The offending parties have a choice. They can call
20 Ron and apologize and submit to his judgment or else they
21 can roll the dice.

22 A. Well --

23 Q. Hold on.

24 Personally, I'm looking forward -- and then it goes
25 into the paragraph ninth. Is this what was stated in this post?

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1 A. It is, and I think he's referring to his Facebook page
2 getting hacked and -- and I think he's talking about the people
3 that he believes hacked his Facebook page and provided this
4 information to the press.

5 That's -- that's what I believe he's talking about and
6 that's why he's talking about the Cyber Crimes Unit because he
7 believes he's a victim of having been hacked.

8 Q. To the best of your knowledge, was there a civil suit
9 filed against individuals who were alleged to quote, unquote
10 hack his account?

11 A. I believe so. I don't know to whom -- who he sued in
12 particular. I couldn't tell you because I don't have an
13 independent recollection.

14 But Mr. Luthmann sued many people for all kinds of
15 reasons, political reasons. So I -- it's probably true.

16 But I was not a party to -- I was not listed as a
17 party in that lawsuit so I don't remember.

18 Q. In number 11, it states, quote:

19 One man's dirty trick is another man's civic
20 participation. #Bitter Janine Materna and her cronies
21 should be happy that her comatose political career is now
22 off life support for the time being.

23 Was that indicated?

24 A. I believe so. Normal people don't speak like that, so
25 this is just typical.

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1 Q. Well, just -- you know, I caution just don't describe
2 "normal" or "abnormal" --

3 A. Yes.

4 Q. -- on this. I'm just going to ask you if what was
5 said, please.

6 A. Okay.

7 Q. Over the last few years, Mr. Castorina -- and you've
8 been involved and been around campaigns and -- and other elected
9 officials who have run for office.

10 Have you noticed and observed an increase in the use
11 of social media for various reasons during the course of a
12 campaign?

13 A. Well, yes, and I think it's because social media just
14 kind of became a mainstream part of life.

15 I mean, everybody is on social media, whether it's
16 Twitter or Facebook or Instagram, so it's become part of
17 everyday life whether you're showing pictures of your children
18 or you're campaigning. It's everywhere. It's a part of -- it's
19 a part of our life now.

20 So naturally it's a part of campaigning, whether it's
21 at the federal level or at the local level.

22 MR. NELSON: Just one moment, please.

23 (Whereupon, Grand Jury Exhibits Number 10 and 12
24 were physically marked in evidence and Grand Jury Exhibits
25 13-A through 13-J were marked for identification only.)

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1 MR. NELSON: First I want to introduce --
2 formally introduce 11 into evidence based upon
3 Mr. Castorina's testimony.

4 (Whereupon, Grand Jury Exhibit 11 was marked into
5 evidence.)

6 Q. I want to show you what's been marked as 13, letters
7 -- Exhibit A through J -- and just peruse those documents.

8 A. Yes.

9 Q. Looking at those documents, 13 -- Grand Jury
10 Exhibit 13-A through J for identification, you recognize those
11 items, sir?

12 A. Yes. They appear to be public posts that were made by
13 Mr. Luthmann on Facebook.

14 Q. And did you happen to see those posts at the time that
15 they were posted or have you seen them subsequent?

16 A. I believe I did see them. I believe they appeared in
17 my newsfeed on Facebook.

18 Q. And do they fairly and accurately represent, those
19 particular exhibits, 13-A through J, various posts regarding
20 your -- your opponent Miss Materna in the campaign?

21 A. They appear to be an accurate depiction of the posts
22 that I saw by Mr. Luthmann on a Facebook newsfeed, yes.

23 MR. NELSON: At this time I would offer it into
24 evidence as Exhibit 13-A through J, please.

25 What I would like to do is I want to question

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1 Mr. Castorina about some of these posts. I want to
2 publish -- conclude his testimony for this morning, have you
3 examine some of these exhibits for the next 10, 15 minutes
4 afterwards, and then I'm going to call two witnesses, and
5 then we will take our luncheon recess.

6 BY MR. NELSON:

7 Q. Okay. The first one, 13-A. It has the hashtag --
8 Happy Birthday#BitterJanineMatern, and then the next line says,
9 I hope all your dreams stay dreams.

10 Is that what it says?

11 A. Yes.

12 Q. And then the next one it indicates with the name
13 Richard A. Luthmann and a bar on top. This is his photo next to
14 his name, sir, in Number B?

15 A. It appears to be.

16 Q. It says, NY1 -- which is New York One, the cable
17 station --

18 A. I would assume so.

19 Q. -- has pulled one of their #fakenewsstories about me
20 and #BitterJanineMaterna falsely fed to Amanda Farinacci
21 Gonzalez by #TreacherousLeticiaRemauro.

22 This is what I believe you referred to earlier in
23 terms of a -- a civil suit regarding the disclosure of the
24 private messages?

25 A. I referred to his alleged victimization or feeling a

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1 victim of having had his Facebook page hacked, if you will, and
2 then you indicated that there was a civil suit.

3 Q. Well, I'm asking you if you have knowledge of that?

4 A. I don't have any independent knowledge of a civil
5 suit, only what I saw in the press.

6 Q. Okay. Why don't we just move on from that aspect with
7 any civil suit.

8 MR. NELSON: You may hear more testimony later on
9 today about that.

10 Q. But in terms of this, Amanda Farinacci is a reporter,
11 if you know, for NY1?

12 A. I believe so. Spectrum, yes.

13 Q. And Leticia Remauro used to be the chairwoman of the
14 Republican party in Staten Island, is that correct?

15 A. Many years ago Miss Remauro was the chair -- one of
16 the chair people of the Republican party. She currently runs a
17 public relations firm known as the Von Agency; V-O-N agency.

18 Q. And the next one, sir, is Richard A. Luthmann, and I
19 believe there's a photograph next to the name?

20 A. That looks like a profile photo of him. It's -- in a
21 little box there.

22 Q. Okay. And it -- and: It's AShame#BitterJanineMaterna
23 did all this work to go to law school. If she keeps it up, I
24 will be at the Character and Fitness Board with incontrovertible
25 evidence, #GirlYouJustDon'tWantToGothere.

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1 As an attorney, the Character and Fitness Board, is
2 that the -- a group of lawyers who determine your qualifications
3 and your fitness to be admitted to the New York bar?

4 A. After one takes the bar exam and passes the bar exam,
5 they go before the Character and Fitness Committee of the
6 department in which they're to be admitted.

7 Here in New York in -- in Staten Island it would be
8 the second department. And they go before a screening
9 committee, and then they have an appointment with an attorney
10 who makes a recommendation as to whether or not that individual
11 is fit or not fit in their opinion to practice law.

12 Q. In letter "E" of this exhibit, again, it's from
13 Mr. Luthmann, Richard A. Luthmann on top?

14 A. That's what it says.

15 Q. And it also in the box itself appears to be a
16 photograph of an individual?

17 A. In the upper left-hand box, yes.

18 Q. Does that appear to be him?

19 A. It does.

20 Q. And from your knowledge of Facebook, when -- when a
21 message is sent out, whether it's in a private or public
22 context, is there an option on Facebook where you can include
23 your picture or a symbol or your favorite sports team, for
24 example?

25 A. It's called a profile picture, and you can change them

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1 as often as you like. And typically it shows up in a box right
2 next to your name indicating that it's your profile picture.

3 Q. And does it indicate that:

4 #BitterJanineMaterna would have us believe she's
5 the Edelweiss, E-D-E-L-W-E-I-S-S, small and white, clean and
6 bright, when in reality she and her kabal are much more like
7 the Nazi battalion that rolls in at the end of the movie.
8 And -- and put #TheSoundOfBullshit.

9 So is this, in your opinion, reference to the Sound of
10 Music?

11 A. Yes. I am familiar with the movie the Sound of Music.
12 I watched it when I was a kid, and I think he's referring to
13 Edelweiss, which was a song that was sung in the movie. And so,
14 yes, there's a Sound of Music reference.

15 Q. Okay.

16 MR. NELSON: Okay. At this time why don't we
17 conclude your testimony for this morning. We'll resume at
18 two o'clock.

19 Up until that time, please do not discuss your
20 testimony with anybody. You are still under oath.

21 THE WITNESS: Yes, sir.

22 MR. NELSON: And thank you.

23 THE WITNESS: Thank you.

24 MR. NELSON: Thank you, sir.

25 THE WITNESS: Thank you, Mr. Nelson.

Proceedings

1 (Witness excused.)

2 (Whereupon, Grand Jury Exhibits 13-A through 13-J
3 were physically marked into evidence.)

4 MR. NELSON: Members of the Grand Jury, at this
5 juncture what I would like to do is to hand out the exhibits
6 in different parts.

7 One group will get one part, another group will
8 get another part, and another group will get another part.
9 And then I just ask you all to, after you review them, pass
10 them onto the next row.

11 When you look at these exhibits, please do not
12 comment on them. Please be dispassionate, unemotional in
13 terms of your response.

14 Again, we're not concluded with the case yet. So
15 as with a regular jury when a jury looks at exhibits, they
16 have to do so dispassionately and without emotion.

17 Okay. So I'm going to pass the exhibits through.
18 I'm going to line-up the next witnesses, and then we'll
19 convene with testimony again at probably 10 after 12:00 to
20 give you an opportunity to review everything.

21 (Whereupon, the exhibits were distributed to the
22 grand jurors.)

23 MR. NELSON: Okay. It's now 20 after 12:00. The
24 grand jurors have had an opportunity to review several
25 pieces of evidence, mainly Facebook post messages, the

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1 diagram, the election results, and now we're going to have
2 the following schedule:

3 What we'll do is we'll take testimony from two
4 witnesses, which we should finish maybe around a quarter to
5 1:00. We're going to take a luncheon recess until 2:30.

6 We're going to come back 2:30, resume the
7 testimony of Mr. Castorina, and then we will hear from one
8 other witness from today.

9 And then what I'll do is at the end of the day
10 we'll discuss the schedule for Friday and then for next week
11 also just to give everybody advance notice in terms of
12 dealing with work or other matters that you have to deal
13 with.

14 Okay. At this time I'm going to call Ashleigh
15 Owens.

16 Miss Owens, I'm just going to ask you to approach
17 the witness chair, remain standing, place your left hand on
18 the bible, raise your right hand, and face the forelady of
19 the Grand Jury, please.

20 A S H L E I G H O W E N S, called as a witness, having been
21 first duly sworn/affirmed by the Foreperson of the Grand
22 Jury, was examined and testified as follows:

23 MR. NELSON: Have a seat.

24 DIRECT EXAMINATION

25 BY MR. NELSON:

A. Owens - Direct - Nelson

1 Q. Good afternoon, Miss Owens.

2 A. Good afternoon.

3 Q. Can you please relate to the Grand Jury what your --
4 your current position is in terms of being in the District
5 Attorney's Office, the Richmond D.A.'s Office?

6 A. Sure. I'm the Chief Administrative ADA of the
7 Richmond County D.A.'s Office. I serve on the executive
8 committee.

9 Q. Just keep your voice loud.

10 A. I'll be loud. Sorry, guys. I'll project.

11 Q. Sorry about that but -- and the District Attorney of
12 Richmond -- Richmond County currently is Michael McMahon?

13 A. Correct.

14 Q. Miss Owens, in September -- November of 2015 was
15 Mr. McMahon a candidate under the Democratic party for District
16 Attorney?

17 A. In November he was the -- he had been elected but not
18 sworn in. But earlier in the summer he was a candidate, yes.

19 Q. And you're elected in November and then sworn in on
20 January 1st --

21 A. Correct.

22 Q. -- of the following year?

23 A. Correct.

24 Q. What role, if any, did you play in his campaign?

25 A. I was a senior adviser for part of the time and then

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1 campaign manager for the victory, so to speak.

2 Q. In terms of social media, did the campaign itself,
3 under your coordination and other members of the campaign
4 committee, have any social media sites?

5 A. Yes. We had a Facebook page, a Twitter page, an
6 Instagram page.

7 Q. Can you relate to the jury what the names were of each
8 of those respective pages, if you recall? And in particular I'm
9 looking for the Facebook.

10 A. Okay. I -- I have to be honest. I -- my -- it's some
11 iteration of Michael McMahon for D.A. or McMahon for District
12 Attorney; something to that effect.

13 Q. And generally what is put on the social media site in
14 terms of the Facebook aspect of it?

15 A. It's a way to communicate with our supporters and also
16 possible volunteers.

17 So we post the D.A.'s statements and positions on
18 certain issues. We post pictures of events he's attending. We
19 post events that are scheduled, anything that -- that may be
20 relevant, and it's a way to communicate with, again, voters and
21 supporters, our message and who the candidate is.

22 Q. And -- and he had an opponent during the November
23 election?

24 A. Yes.

25 Q. And that was Miss Iluzzi, Joan Iluzzi?

A. Owens - Direct - Nelson

1 A. Correct.

2 Q. It's I-L-U-Z-Z-I?

3 A. Yes.

4 Q. Okay. Was there a time when you were contacted by an
5 individual -- I'm not going to ask you to describe the
6 conversation that you had with that individual -- but was there
7 a time when you had a conversation with an individual about the
8 official McMahon for District Attorney's Facebook page?

9 A. I had -- well, honestly, I had many conversations with
10 many individuals about the page itself early on in the creation
11 of the campaign.

12 We had honestly just started the Facebook page. We
13 were trying to, as you do on a Facebook page, you try and get
14 supporters or followers to kind of build who you're
15 communicating with, and we noticed that another page had been
16 created that looked and mirrored ours almost to a tee except for
17 a few key differences and -- and some misstatements.

18 And so a lot of people started contacting me about:
19 Did you notice there's this other page? And: Someone else
20 created a page.

21 So I had those conversations, and then I also had
22 conversations with the individual who created that page about
23 asking him to take it down or merge it with ours.

24 At the time I thought he was possibly a supporter.
25 And -- and he was nonresponsive.

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1 And then eventually I got him to put a disclaimer on
2 the page for a period of time, and then eventually it became a
3 negative page and completely misconstrued my boss.

4 But yes, yes, so several conversations.

5 Q. Who was that individual you had the conversation with?

6 A. Richard Luthmann.

7 THE GRAND JURY FOREPERSON: Richard who?

8 THE WITNESS: Richard Luthmann. Sorry.

9 Q. Now, Miss Owens, in terms of having that conversation
10 with Mr. Luthmann, what I meant to ask you before was -- yes or
11 no -- did you have a conversation with --

12 A. I'm sorry.

13 Q. -- another individual before you spoke with
14 Mr. Luthmann?

15 A. So just --

16 Q. Just --

17 A. -- in terms of getting things corrected, I had a
18 conversation with Mr. Luthmann first. Then I spoke -- when he
19 was nonresponsive to me, I spoke with a mutual friend and
20 acquaintance, John Sollazzo.

21 Q. Do not discuss what was said.

22 A. Okay.

23 Q. But just that you did have a conversation?

24 A. I did have a conversation.

25 Q. Okay. And what, if anything, did you notice about

A. Owens - Direct - Nelson

1 this other page that was not created by the campaign that was
2 inaccurate?

3 A. So there were a few different iterations. So
4 originally there was some pictures that, quite frankly, you
5 know, our campaign would never have posted of our candidate.
6 They weren't flattering. They were --

7 Q. Such as?

8 A. Well, again, at the beginning they were just images
9 where he didn't look great or they were -- or they were late --
10 and then later they were distorted to be -- to make him look
11 evil. He was yellow and black.

12 And then there were also other posts that, you know,
13 said negative things about people who were affiliated with our
14 campaign, and then also created an organizational chart that
15 implied that we were doing illegal or nefarious things.

16 So obviously in -- that iteration was just completely
17 meant to defame our campaign.

18 Q. In your opinion and based upon your familiarity
19 with -- with elections and campaigns --

20 A. Mm-hmm.

21 Q. In your opinion, were those messages, would they have
22 had a negative effect or a negative connotation on the
23 reputation of the campaign itself?

24 A. Absolutely.

25 Q. And would the same response apply to, if you know,

A. Owens - Direct - Nelson

1 Mr. McMahon personally?

2 A. Absolutely. Like he would -- he -- knowing him, he
3 places integrity above everything else. So anything that
4 implies differently, particularly to the public or in a way that
5 says that, you know, first it was -- it was positive and then it
6 switches to negative.

7 So it was very confusing to people and very upsetting
8 to many people who were following the page.

9 Q. Did you authorize any individual, any person to create
10 a -- either a Facebook page pertaining to the campaign or a
11 Facebook page pertaining to the campaign itself?

12 A. Not -- not outside of our organization, no.

13 Q. Please detail, once again, the conversation that you
14 had with Mr. Luthmann regarding this and -- and first was it
15 over the phone or was it by communication by text or e-mail?

16 A. I think it was -- it was over text. So we -- my
17 initial contact was, again, I thought he was possibly supporting
18 us and just had created a fan page that he was trying to make
19 look like our page, and so my conversation was fairly innocuous
20 of: Hey, I noticed you created this page or many people think
21 you created this page.

22 Can we merge our pages together because I don't want
23 followers to follow the wrong page and not get the right idea
24 and also I don't want them to -- you know, we are the only ones
25 who are authorized to speak for the candidate in the campaign

A. Owens - Direct - Nelson

1 and I don't want them to get the wrong idea. Can we merge them?

2 He was pretty nonresponsive, noncommittal to me.

3 And then I again later had a conversation with a
4 shared acquaintance and asked him to -- to ask him to remove the
5 page or combine the pages, and the response I got was -- weeks
6 later was: I put a disclaimer at the top of the page. Thank
7 Sollazzo.

8 Q. Thank Sollazzo, S-O-L-L-A-Z-Z-O?

9 A. Correct.

10 MR. NELSON: Okay. My next exhibit I'm going to
11 deem this document collectively as Grand Jury Exhibit
12 Number 14 for identification.

13 Q. If you could just have an opportunity to take a look
14 at those documents, please.

15 (Handing to the witness.)

16 Q. Miss Owens, just continue to take a look at that in
17 the interim.

18 A. Okay.

19 Q. Miss Owens, did you have an opportunity to review
20 those documents?

21 A. Yes.

22 Q. And what do those documents reflect?

23 A. They were reflect various -- well, they reflect some
24 posts that were made to the page that were -- screenshots were
25 taken of comments and then also public -- members of the public

A. Owens - Direct - Nelson

1 e-mailing to express their -- how upset they were that a face --
2 a fake Facebook page had been created and was -- and they were
3 outraged about the dishonesty of that and thought it was in some
4 way tied to our opposing campaign.

5 Q. In terms of your examination of those documents that
6 are before you that have been marked for identification --

7 A. Yes.

8 Q. -- do they fairly and accurately represent some of the
9 messages and the documentation that you saw at the time in
10 September or October or November of 2015, whenever this was?

11 A. Yes. Certainly. They are e-mails and text messages
12 and screenshots from that time period.

13 Q. And I should more accurately say during the 2015
14 campaign?

15 A. Correct.

16 MR. NELSON: At this time I would offer it into
17 evidence as Grand Jury Exhibit Number 15.

18 GRAND JURY FOREPERSON: Fourteen.

19 MR. NELSON: Fourteen, excuse me.

20 Q. During the course of the some of the communications
21 over Facebook, there's a reference to an individual named
22 Jonathan Yedin, Y-E-D-I-N. Was he formerly with the McMahon
23 campaign?

24 A. He was for a period of time. So, as I mentioned, when
25 I was senior adviser, he was campaign manager. He then later

A. Owens - Direct - Nelson

1 was asked to resign from the campaign, and I became the campaign
2 manager. So he was --

3 Q. And then it also indicates in this exhibit an
4 individual Kevin Elkins, E-L-K-I-N-S?

5 A. Yes.

6 Q. And who is Mr. Elkins?

7 A. Kevin, for part of the campaign worked for the
8 counselor's office, and for part of the campaign he was the
9 communications director.

10 Q. For the McMahon campaign?

11 A. For the McMahon campaign, for the end of it.

12 Q. And who was Jessica Scarcella?

13 A. Jessica Scarcella was also an employee of the McMahon
14 campaign. She was the volunteer coordinator.

15 Q. Now, at times did the campaign believe that these
16 messages and this Facebook account was created by someone other
17 than Mr. Luthmann?

18 A. So there was -- so when it was originally created,
19 there was confusion over who -- who created it. Then we were
20 pretty certain we knew he had created it.

21 And then later, in August, there was a period of time
22 when he changed the page completely to look like it represented
23 Allen Cappelli.

24 And while within the campaign we still knew that
25 Richard Luthmann had created it because of my conversation with

A. Owens - Direct - Nelson

1 him, the -- some of our other supporters contacted us and were
2 confused as to: Is Allen Cappelli behind this? Like, What is
3 going on? Why did the page change? I've been following this
4 page all along.

5 Kind of that level of confusion, so, yes.

6 Q. You had mentioned an organizational chart?

7 A. Yes.

8 Q. Now, I'm going to mark this for identification as 15.
9 I'm going to ask you to take a look at it. Do you recognize
10 that particular item that you have in front of you?

11 A. Yes. This is one of the posts that was placed on the
12 fake Facebook page.

13 Q. And does it fairly and accurately represent what you
14 observed on what you called the fake McMahon Facebook page?

15 A. Yes. This is a picture of a post that was posted for
16 a period of time.

17 MR. NELSON: At this time I will offer that into
18 evidence as Grand Jury Exhibit Number 15.

19 Q. Now, was this organizational chart created as if it
20 was an organizational chart within organized crime?

21 A. It certainly looks that way, yes.

22 Q. And, in fact, they have what they call "the boss" and
23 that would be Judge Judy aka "the judge?"

24 A. Yes.

25 Q. And, in fact, that's Judith McMahon, Mr. McMahon's

A. Owens - Direct - Nelson

1 wife?

2 A. Correct.

3 Q. And she's a Supreme Court judge in New York State?

4 A. She is.

5 Q. And then under him -- under it it had "underboss" and
6 it had Mr. McMahon's picture?

7 A. Correct.

8 Q. And then it had, Consigliere, Jimmy Mo aka 10 Percent
9 Jimmy?

10 A. Mm-hmm.

11 Q. And to your knowledge is that a picture of the former
12 Deputy Borough President Mr. Molinaro?

13 A. Former Borough President he would want me to tell you.

14 Q. Excuse me?

15 A. So --

16 Q. And it also had a picture of Judge Carmen Cagnetta,
17 who was a former Family Court judge?

18 A. Yes.

19 Q. And did that make references to allegations or
20 accusations against Judge Cagnetta at one time?

21 A. It did.

22 Q. And did -- it also had some of you; a picture of you
23 in here, is that correct?

24 A. It certainly did.

25 MR. NELSON: Okay. I have no further questions

M. McMahon - Direct - Nelson

1 of Miss Owens.

2 Do any Members of the Grand Jury have any
3 questions? Let the record reflect -- thank you very much.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 MR. NELSON: Ladies and gentlemen, I'm calling
7 Michael McMahon.

8 Sir, just have a seat in the witness chair.

9 Remain standing. Place your left hand on the bible. Raise
10 your right hand and face the forelady of the Grand Jury.

11 M I C H A E L M C M A H O N, called as a witness, having been
12 first duly sworn/affirmed by the Foreperson of the Grand
13 Jury, was examined and testified as follows:

14 MR. NELSON: Have a seat, sir.

15 DIRECT EXAMINATION

16 BY MR. NELSON:

17 Q. Sir, can you just state your name and your current
18 position.

19 A. Sure. Michael McMahon, and I'm the District Attorney
20 for Richmond County.

21 Q. Mr. McMahon, we just heard testimony from Miss Owens.
22 Miss Owens was your campaign manager for part of the time during
23 your campaign in 2015?

24 A. Correct.

25 Q. To the best of your knowledge, did your campaign

M. McMahon - Direct - Nelson

1 create a Facebook page in support of your campaign and in
2 support of different events and volunteers that may want to work
3 on the campaign?

4 A. Yes, we did; that's pretty much standard procedure for
5 any campaign.

6 Q. And, sir, did you have an opportunity before you
7 testified here today to examine what's been marked into evidence
8 as Grand Jury Exhibit Number 15?

9 A. Yes, I did.

10 Q. And did you have an opportunity to recognize that
11 document recently or back in 2015?

12 A. Well, both. When I was shown it recently, I
13 recognized it from something that I had seen in 2015.

14 Q. During the course of the campaign?

15 A. Correct.

16 Q. And your campaign resulted in an election on
17 November 3rd of 2015, is that correct?

18 A. Correct.

19 Q. And the District Attorney, by law, is sworn in on
20 January 1st of the preceding year?

21 A. Of the following year.

22 Q. Of the following year. So, for example, in 2016?

23 A. Yes. I officially became District Attorney on
24 January 1st, 2016.

25 Q. Looking at that document in terms of the allegations

M. McMahon - Direct - Nelson

1 that are made in that particular document, they talk about, for
2 example, 10 Percent Jim, and they're referring to the former
3 borough president?

4 A. Mm-hmm.

5 Q. Now, in the context of a ten percent, are they
6 referring to a potentially illegal activity or bribery?

7 A. Yes; especially I think that that would be true
8 especially because it sort of, as an organizational chart, is
9 similar to charts that are used to chart out organized crime
10 activities.

11 Q. And what happens in those particular charts? Based
12 upon your experience as District Attorney, those charts are
13 sometimes prepared by the investigators or by the police
14 department to indicate the affiliation of various individuals
15 who may be accused of a crime within an enterprise or an
16 organization?

17 A. That's correct.

18 Q. And, sir, that particular chart, in your opinion was
19 it done to create the fact that you ran an enterprise; whether
20 it's legal or not?

21 A. Yes. Absolutely.

22 Q. And the connotation, meaning the meaning of the term
23 "enterprise" in the context of this diagram, in your opinion
24 would tend to elicit somewhat of illegal activity, is that
25 correct?

M. McMahon - Direct - Nelson

1 A. Well, I think it -- yes, it was, I think, trying to
2 create the impression that my wife and I were involved in
3 organized crime.

4 Q. And Miss Owens testified that your wife is a Supreme
5 Court judge?

6 A. That's correct.

7 Q. And would the meaning of that, in your opinion,
8 indicate that there was also favoritism --

9 A. Sure.

10 Q. -- that would go on or nepotism?

11 A. Yeah, I think -- sure.

12 Q. Did you authorize any individual to create a fake
13 Facebook page for you?

14 A. Absolutely not.

15 Q. In particular did you give Mr. Luthmann authorization
16 to create a fake Facebook page or fan page pertaining to your
17 2015 campaign?

18 A. Absolutely not.

19 Q. Okay.

20 MR. NELSON: I have no further questions of the
21 District Attorney.

22 Do any members of the Grand Jury have any
23 questions? Thank you, sir.

24 THE WITNESS: Okay. Thank you, all. Thank you.

25 (Witness excused.)

A. Owens - Direct - Nelson

1 MR. NELSON: Ladies and gentlemen, I'm just going
2 to recall Miss Owens for a few more questions.

3 (Whereupon, the witness, Ashleigh Owens, resumed
4 the witness stand.)

5 MR. NELSON: Just please resume the witness
6 chair. I remind you you are still under oath.

7 THE WITNESS: Okay.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. NELSON:

10 Q. My question is this, Miss Owens: After you had a
11 conversation with Mr. Luthmann, what, if anything, did you
12 notice about the page that you testified was not a page of the
13 campaign or was a fake page?

14 A. Yeah. So after our initial conversation and after
15 reaching out to a mutual acquaintance, he put a disclaimer on
16 the top of the page for about a month that said something to the
17 effect of -- and I'm paraphrasing: This is the unofficial --
18 This is not the official page of the McMahon for District
19 Attorney campaign.

20 Q. When you say "he," you're referring to Mr. Luthmann?

21 A. Yes. I'm sorry.

22 Q. And that disclaimer did not appear up until the point
23 in time when you had a conversation with him about the page
24 itself, is that correct?

25 A. Correct.

A. Owens - Direct - Nelson

1 Q. So in other words --

2 A. And --

3 Q. -- the disclaimer language did not appear until after
4 you had the conversation?

5 A. That's correct. It -- until I had the conversation
6 and then also supposedly John Sollazzo.

7 Q. Okay.

8 MR. NELSON: Thank you very much.

9 THE WITNESS: Thank you. Thank you again.

10 (Witness excused.)

11 MR. NELSON: It's now 12:45. We're at the point
12 where we will take the luncheon recess. Again, we'll
13 reconvene at 2:30.

14 Up until that time, please do not discuss the
15 case amongst yourself until you've heard all the evidence in
16 the case.

17 If you happen to run into myself or any of the
18 witnesses in the St. George area, please do not have any
19 conversations with them. Do not acknowledge them. I will
20 not acknowledge you.

21 And, again, I'm not trying to be rude or stuffy,
22 but the point is that's the law and that's what attorneys
23 and witnesses have to do up until that time.

24 Have a good afternoon and enjoy your lunch,
25 everyone.

Proceedings

1 GRAND JUROR: One thing. Can the evidence stay
2 there in case we come back early we can go through it?

3 MR. NELSON: Yes, we can.

4 GRAND JUROR: What about the most recent that we
5 didn't see?

6 MR. NELSON: What we have to do is the entire
7 Grand Jury has to be present when you review all the
8 evidence.

9 So, if you wish, before we reconvene, we
10 recommence testimony this afternoon, you will have an
11 additional opportunity to see the remainder of the evidence,
12 what's been introduced into evidence so far.

13 GRAND JUROR: We can even see the things with
14 Mr. McMahon?

15 MR. NELSON: You can see whatever is in evidence,
16 yes.

17 GRAND JUROR: Okay.

18 MR. NELSON: Yes. Yes. Thank you.

19 GRAND JUROR: Thank you.

20 (Whereupon, Grand Jury Exhibits 14 and 15 were
21 physically marked into evidence.)

22 (Whereupon, a luncheon recess was taken.)

23 A F T E R N O O N S E S S I O N

24 MR. NELSON: Okay. Good afternoon everyone.

25 Again, my apologies about the later start, but we're going

R. Castorina - Direct - Nelson

1 to continue now with the testimony of Assemblyman Castorina.

2 (Whereupon, the witness, Assemblyman Ronald

3 Castorina, resumed the witness stand.)

4 MR. NELSON: Sir, I just remind you you are still
5 under oath. Have a seat.

6 THE WITNESS: Yes, sir.

7 MR. NELSON: And we'll proceed in a second.

8 THE WITNESS: Sure.

9 CONTINUED DIRECT EXAMINATION

10 BY MR. NELSON:

11 Q. During the morning session of your testimony I -- you
12 referred to Exhibits 10, 11, and 12, is that correct?

13 A. Yes.

14 Q. And that was from Mr. Luthmann's own Facebook, but his
15 private part of his Facebook in terms of any communication that
16 he may have had with you or with other individuals in a private
17 setting, is that correct?

18 A. Ten, eleven and twelve --

19 Q. Excuse me.

20 A. -- were public.

21 Q. I'm sorry. Ten, eleven, twelve were public, but the
22 others that you had with him, other than seeing things in a
23 public venture, let's just say the public Facebook, there were
24 private messages between --

25 A. He did communicate with me over private message,

1 that's correct.

2 Q. I'm going to show you what's been marked for
3 identification as 16, 17, and 18. Before I begin, sir, from
4 your recollection were there posts or messages communicated
5 about other public officials other than Miss Materna?

6 A. Oh, yes. Definitely. He definitely communicated
7 that.

8 Q. And -- and did that include both Mr. McMahon during
9 the course of his particular race for District Attorney as well
10 as Miss Rose for her race in the Democratic primary for City
11 Council?

12 A. I don't recall as to Miss Rose in particular, but I do
13 recall making comments about D.A. McMahon and some other elected
14 officials and also non-elected officials that may be appointed
15 or worked at other agencies for the City of New York or the
16 state.

17 Q. And one of those individuals who worked for the City
18 of New York as a non-public official would be Mr. Richmond from
19 the New York City Board of Elections?

20 A. From the New York City Board of Elections, correct.

21 Q. In particular, what do you recall about any of the
22 observations that you made regarding Mr. Richmond?

23 A. It's kind of embarrassing to say because it was so
24 disgusting. Picture of a -- an obvious Photoshopped picture.
25 Was not a real picture.

R. Castorina - Direct - Nelson

1 A Photoshopped picture of Mr. Richmond involving a
2 penis, and it was a very lewd -- let's just say it's a very lewd
3 photograph that was clearly Photoshopped.

4 Q. Did it involve semen?

5 A. I --

6 Q. I mean it's -- for lack of a better term.

7 GRAND JUROR: We're all adults.

8 A. I guess. I guess so, yes. It was a pretty
9 disgusting, disgusting picture that I can't believe that
10 somebody would even think to create nonetheless transmit to
11 somebody, transmit the image to somebody else.

12 Q. And -- and -- yes or no -- were some of those images
13 that you just described with Mr. Richmond similar to a Photoshop
14 picture with a penis regarding Miss Materna?

15 A. Also -- well, the Photoshopped picture, I believe,
16 that -- of -- wasn't of Miss Materna, but it was of a blond
17 woman that appeared to be like Miss Materna with the face
18 blurred out, also involving what looked like a man standing over
19 the woman, a penis, and semen.

20 Q. I'm going to show you 15 (sic) and 16 for
21 identification. Do you recognize those photographs? And I'm
22 just going to pull this last one, please. Excuse me, 16, 17,
23 those two.

24 A. Yes.

25 Q. And what do you recognize?

R. Castorina - Direct - Nelson

1 A. He compared D.A. McMahon to a Dr. Seuss character in a
2 photograph. He put two photographs side by side. It shows D.A.
3 McMahon looked like he's in a frowning -- has a frowning face
4 on, and then the Dr. Seuss character has a similar frowning
5 face.

6 Q. Now, does that fairly and accurately represent what
7 you observed around the time period of September of 2015, which
8 would be several months before the District Attorney's general
9 election?

10 A. And at least seven months before my first election,
11 yes. It does accurately represent a -- a message -- I mean a
12 message, if you will, because it's two photographs that was
13 transmitted to me by Mr. Luthmann.

14 Q. And how about the next photograph, sir?

15 A. The next one had -- it says, Smiling Jack and Girl Get
16 On Your Back. Meet Team McMahon. Is this who you want keeping
17 Staten Island safe?

18 I don't know who he's referring to as well. I guess
19 he's referring to D.A. McMahon as Smiling Jack, I guess. I
20 don't know. I would be speculating to say.

21 But clearly there are two photographs, one of what
22 appears to be D.A. McMahon and another which looks like former
23 Judge Cagnetta.

24 Q. Now, do those fairly and accurately represent the
25 images of what you observed around September of 2015?

R. Castorina - Direct - Nelson

1 A. To the best of my recollection I would have to say it
2 does.

3 Q. Now, on top of the page itself, within the blue bar it
4 has the name "Richard" and it says "home" next to --

5 A. Yes.

6 Q. And then underneath that it says, Ron Castorina,
7 Junior?

8 A. Yes.

9 Q. Now, looking at those two entries, "Richard space
10 Home" -- H-O-M-E -- and "Ron Castorina, Junior," can you state
11 within a reasonable degree of certainty that they fairly and
12 accurately represent what was sent to your -- to you via a
13 private Facebook message?

14 A. What -- what it appears to me to be is a screenshot of
15 the Facebook page of Richard Luthmann which had been opened up
16 to the private message area under the category of messages that
17 had been sent to me.

18 That's what it appears to be based upon what I'm
19 looking at right here.

20 Q. In terms of Facebook itself -- and you're a user of
21 Facebook?

22 A. Yes.

23 Q. And within Facebook you have, for example, the Ron
24 Castorina page. Can you, within your page itself, create other
25 different accounts and give them different names, for example?

R. Castorina - Direct - Nelson

1 A. I'm not that sophisticated in Facebook, but I can tell
2 you that I know that you can link pages.

3 For instance, I have a personal page and I also have
4 an assembly -- a page called Assemblyman Ron Castorina, and I
5 have them linked together so that I can share stuff on both
6 accounts.

7 That's -- that's how -- that's the level of
8 sophistication that I have with this stuff.

9 Q. I just want to show you this exhibit over here.

10 A. Mm-hmm.

11 Q. Nineteen. Look at 19 for identification.

12 A. Yes.

13 Q. Do you recognize that document?

14 A. Yes. This is that picture of Eric Holder with Janine
15 Materna and her sister.

16 Q. Does it fairly and accurately represent what you
17 received over Facebook in the private message setting from an
18 individual?

19 A. Yes, this looks like a screenshot from the page of
20 Richard Luthmann opened up to messages to me on or about -- I
21 don't see a date. I can't -- at least I can't make one out.
22 But yes.

23 Q. Does it fairly and accurately represent a message that
24 was sent to you at around the time or before the primary
25 election for yourself in the 62nd Assembly District?

R. Castorina - Direct - Nelson

1 A. It -- I do see messages on this page that were sent to
2 me prior to the primary.

3 MR. NELSON: May I just see that for a second?

4 THE WITNESS: Yes.

5 (Hanging.)

6 MR. NELSON: At this time I'm going to offer it
7 into evidence as Exhibit Number 19.

8 Q. Are there any identification features further in the
9 context of the messages that you can tell the jury about?

10 A. There's a particular message that looks like it was
11 sent to me that says, uh: Yes, period. But I'm Luthmann,
12 exclamation point.

13 Q. Sir, during the course of looking at these various
14 messages, was there any reference to what they call a dark web?

15 A. He had mentioned this. I don't know what a dark web
16 is, but he had -- in one message I can recall him making some
17 reference to, Dark web, ha, ha, ha; something like that.

18 Q. How about the term "untraceable?" Do you recall
19 seeing that?

20 A. I do recall him saying something like that.

21 Q. And how about "untraceable IPs, IP?"

22 A. Yes, I think that was when he used the word
23 "untraceable." These were -- I believe that was in the context
24 of several messages that he had sent to me that I either ignored
25 or -- or didn't -- or didn't see at this time, but later on saw

R. Castorina - Direct - Nelson

1 them last year when this stuff came to light.

2 Q. And you've had an opportunity to review various
3 documents that have been introduced into evidence in my office
4 prior to your testimony?

5 A. Yeah, I've had the opportunity to review some of the
6 documents that have been offered for identification and offered
7 into evidence today.

8 Q. At one point, if you recall, did he say that, It's
9 time for a Janine Materna page?

10 A. Yes. Yes, he did.

11 Q. And -- and in your opinion, when you received that,
12 did you form any opinion in your mind as to what he meant from
13 his words as to a Janine Materna page?

14 A. Well, you know, you never know what to believe when
15 this individual, Mr. Luthmann, says something. So, frankly, I
16 would assume at that point that he may have been talking about
17 either a fake page or a page where he would -- a satirical page
18 where he would clearly be making fun of her to people and not in
19 a way that was subterfuge, you know, either/or, or probably what
20 he was talking about in that type of a message.

21 Q. Just generally, sir, being an attorney, you're
22 familiar with the First Amendment and the right of --

23 A. Yes.

24 Q. -- free speech?

25 A. Absolutely.

R. Castorina - Direct - Nelson

1 Q. And you're also aware of the fact that there's
2 constitutional protections for political speech?

3 A. That's correct.

4 Q. I'm not going to ask you to characterize this, but
5 would it be accurate to say that the line between political
6 speech, free political speech and other actions in this case
7 that there certainly could be a difference?

8 A. Well, certainly I -- I don't believe that I can
9 characterize the speech as either political or -- or anything
10 other than what it is. It's lewd. It's lascivious. It's
11 outrageous at times.

12 It's not the type of conversation that I'd want to
13 have at my kitchen table clearly.

14 So it's -- it's not good speech. It's not the type of
15 speech that I welcome or that I wish to participate in in any
16 way, and certainly I would characterize it generally as
17 unwelcome.

18 Q. In terms of the speech itself or the contents of some
19 of the messages that I've introduced into evidence, would it be
20 accurate to say that that -- what is put down is not a debate
21 about the issue or an issue that may surround a political race?

22 A. No. These are -- these appear to be ad hominem or
23 personal attacks on somebody's either physical appearance and
24 not on any substantive issue --

25 Q. Okay.

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1 A. -- whether political or legal or other.

2 MR. NELSON: I have no further questions of the
3 assemblyman.

4 Do any members of the Grand Jury have any
5 questions?

6 Okay. Let the record reflect there are no
7 further questions. Thank you very much, sir.

8 THE WITNESS: Thank you, Mr. Nelson.

9 (Witness excused.)

10 MR. NELSON: I just want to line up my next
11 witness. Just give me one minute, please.

12 (Whereupon, Grand Jury Exhibit Number 16, 17, 18
13 and 19 were physically marked into evidence.)

14 MR. NELSON: Ladies and gentlemen, I'm just
15 waiting for two more witnesses to come down from one of the
16 floors, so why don't we take a look at exhibits in the
17 interim to fill some time, okay?

18 (Whereupon, Grand Jury exhibits were distributed
19 to the grand jurors.)

20 MR. NELSON: Ladies and gentlemen, there was a
21 question posed to me about some terminology that was used by
22 one of the grand jurors.

23 Again, I remind you grand jurors have a right to
24 ask questions of the various witnesses. If you do not
25 understand a term, you could, of course, ask questions after

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1 my direct examination of that particular witness.

2 If there comes a time when a certain term or
3 terminology is not explained, as I explained yesterday,
4 there's always a right to recall a particular witness to
5 hear further testimony from that witness.

6 You haven't heard from all the witnesses in the
7 case, so I would suggest you reserve your questions until --
8 until everybody if you have a question.

9 GRAND JUROR: I don't know this Facebook. What
10 is this LMAO?

11 MR. NELSON: Let's just wait for someone to come
12 in.

13 (Whereupon, Grand Jury Exhibits Number 20 through
14 26 were marked for identification only.)

15 MR. NELSON: Just some housekeeping. I have had
16 the stenographer mark some exhibits which we'll hear from
17 the next witness.

18 I plan on calling two more witnesses this
19 afternoon, and then we will resume again on Friday.

20 But I understand, ma'am, you had a procedural
21 question you wanted to ask me.

22 GRAND JUROR: Okay.

23 MR. NELSON: Please.

24 GRAND JUROR: I'm going to use the example of the
25 city seal. If we're viewing a city seal, would the courts

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1 be able to provide an official city seal so that we can
2 compare the two and make some kind of a determination if an
3 official city seal was used or not?

4 MR. NELSON: Are you referring to like a city
5 seal on the elections record?

6 GRAND JUROR: No, like on here -- and, again, I'm
7 using the term "city seal" as an example. It could be any
8 seal. Anything official.

9 MR. NELSON: Okay. Regarding what particular
10 piece of evidence?

11 GRAND JUROR: The score chart in here. There's a
12 Richmond city seal on that or county seal, whatever you
13 folks call it.

14 Would we be able to see an official seal to
15 compare it to what's on that organization chart?

16 MR. NELSON: I understand exactly where your
17 question is, and I think to answer that question, down the
18 road perhaps we could call someone from the District
19 Attorney's Office to talk about the authenticity of the
20 seal.

21 Is that what you meant on the document?

22 GRAND JUROR: Yes.

23 MR. NELSON: Because there are seals on
24 documents, S-E-A-L-S --

25 GRAND JUROR: Yes.

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1 MR. NELSON: -- that are imprinted --

2 GRAND JUROR: Correct.

3 MR. NELSON: -- on the Board of Election records
4 that are signed by Mr. Ryan.

5 GRAND JUROR: Some of the pieces of evidence have
6 those seals. That's not what I'm questioning.

7 MR. NELSON: There is a seal in terms of you get
8 something stamped and then there is a seal where it's an
9 emblem of that office.

10 Is that what you're referring to? Like an emblem
11 of the office?

12 GRAND JUROR: I'm referring to whatever term --
13 whether you want to call it a seal, an emblem, an official
14 flag. I'm referring specifically to that seal on that
15 organization chart.

16 MR. NELSON: We could always -- I will think
17 about it, and then if that's a question that you have, to
18 answer that question we can call someone from the --
19 officially from the District Attorney's Office to testify as
20 to what the official seal looks like.

21 GRAND JUROR: Okay. I didn't want to push it as
22 far as testimony.

23 MR. NELSON: No. No.

24 GRAND JUROR: I was just wondering if there -- it
25 exists, the seal of the Richmond County, whatever that is,

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1 state office exists, would we be able to just put the two
2 side by side.

3 MR. NELSON: I know what you're trying to say,
4 but without testimony or a foundation, I just can't put
5 something in evidence for you to take a look at.

6 It has to be linked up through testimony --

7 GRAND JUROR: Oh, okay.

8 MR. NELSON: -- or through someone familiar with
9 the records of something to testify.

10 So let's -- again, I understand exactly where
11 you're going with the question, and it's a question which
12 obviously you're looking at in terms of what was created.

13 GRAND JUROR: Correct.

14 MR. NELSON: This page.

15 GRAND JUROR: Correct.

16 MR. NELSON: So why don't we wait for that point
17 in time?

18 GRAND JUROR: Thank you.

19 GRAND JUROR: It's Photoshopped.

20 MR. NELSON: This is what I didn't want to get
21 into in terms of everything.

22 GRAND JUROR: Sometimes to satisfy us that's what
23 we need to know.

24 MR. NELSON: I'm not disagreeing, but I'm not
25 prepared to call someone today for that.

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1 GRAND JUROR: Oh, okay.

2 MR. NELSON: I could call someone for Friday if
3 that's a question that was asked.

4 GRAND JUROR: Can you state what freedom of
5 speech, what is -- the second amendment?

6 GRAND JURY FOREPERSON: First amendment.

7 MR. NELSON: First amendment.

8 GRAND JUROR: Can you tell us what the whole
9 thing --

10 MR. NELSON: I'm not going to give a course on
11 freedom of speech.

12 GRAND JUROR: I can look it up though?

13 MR. NELSON: You could look things up in terms of
14 what freedom of speech means, but you cannot look it up in
15 the context of this case.

16 GRAND JUROR: No, just --

17 MR. NELSON: You have a right to go on the
18 Internet and look on anything as long as it doesn't pertain
19 to this particular case.

20 GRAND JUROR: Okay.

21 MR. NELSON: Again, at the end of the case I may
22 submit charges to you, criminal charges or offenses
23 regarding the testimony in this case, so that point a
24 determination has to be made as to whether or not a crime
25 was committed.

G. Passariello - Direct - Nelson

1 It's not necessarily judging whether or not
2 somebody has a right to free speech, because this is not a
3 proceeding in terms of determining whether this is free
4 speech from a Constitutional point of view.

5 It's to determine whether or not there's criminal
6 activity that's going on here.

7 GRAND JUROR: I understand.

8 MR. NELSON: So we'll, again, reserve on that
9 question also down the road.

10 Okay. Are we ready to take more testimony or do
11 you still need more time?

12 GRAND JUROR: We're ready.

13 MR. NELSON: Okay. At this time I'm going to
14 call -- I'm going to call George Passariello.

15 Mr. Passariello, just approach the witness stand.
16 Remain standing. Place your left hand on the bible. Raise
17 your right hand and face the Grand Jury Forelady.

18 G E O R G E P A S S A R I E L L O, called as a witness,
19 having been first duly sworn by the Foreperson of the Grand
20 Jury, was examined and testified as follows:

21 MR. NELSON: Sir, have a seat.

22 THE WITNESS: Okay.

23 DIRECT EXAMINATION

24 BY MR. NELSON:

25 Q. Before I begin, are you a resident of Richmond County?