

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

-----X

ADAM B. LEVY,

Plaintiff,

-against-

Index No. 2019/2013

DONALD B. SMITH, individually and
not in his capacity as an employee
of the County of Putnam and "JOHN
DOE 1" through "JOHN DOE 7,"
potential unidentified Defendants
in this action,

Defendants.

-----X

Date: September 1, 2015
Time: 9:58 a.m.
Place: 105 Gleneida Avenue
Carmel, New York

DEPOSITION OF DONALD B. SMITH,
a Defendant in the above-captioned matter, held pursuant
to Agreement, at the above time and place, before Stacie
Sullivan, CSR, a Notary Public of the State of New York.

COURT REPORTING ASSOCIATES, INC.
1699 Route 6; P.O. Box 113
Carmel, New York 10512
(845) 225-0024

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

3

4 ADAM B. LEVY, ESQ.
5 Plaintiff
6 105 Gleneida Avenue
7 Carmel, New York 10512

7

8 SUSSMAN & WATKINS
9 Attorneys for Plaintiff
10 One Railroad Avenue
11 Post Office Box 1005
12 Goshen, New York 10924
13 BY: MICHAEL H. SUSSMAN, ESQ.

11

12 SOKOLOFF STERN, LLP
13 Attorneys for Defendant Donald B. Smith
14 179 Westbury Avenue
15 Carle Place, New York 11514
16 BY: ADAM I. KLEINBERG, ESQ.

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2 S T I P U L A T I O N S

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5 IT IS HEREBY STIPULATED AND AGREED, by and between
6 the parties hereto, through their respective counsel,
7 that sealing, certification, and filing of the original
8 of this examination shall be waived;

9

10 IT IS FURTHER STIPULATED AND AGREED that all
11 objections except as to the form of the question shall
12 be reserved to the time of the trial;

13

14 IT IS FURTHER STIPULATED AND AGREED that the
15 transcript of testimony may be signed before any notary
16 public or other officer authorized to administer oaths;

17

18 IT IS FURTHER STIPULATED AND AGREED that the
19 examining party will furnish the examined party with a
20 copy of the transcript of testimony free of charge.

21

22 * * * * *

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2 DONALD B. SMITH,
3 having been first duly sworn by Stacie Sullivan,
4 a Notary Public of the State of New York, was
5 examined and testified as follows:

6 * * * * *

7 EXAMINATION BY MR. SUSSMAN:

8 Q Please state your name and address for the
9 record.

10 A Donald B. Smith, 3 County Center, Carmel,
11 New York, 10512.

12 Q Mr. Smith, you've been here for a number of
13 depositions, both taken by your counsel and taken by me
14 or Mr. Levy, so you basically know the rules.

15 A Yes, sir.

16 Q I'm going to ask you one question at a time.
17 Your job is to listen to that question. Assuming you
18 hear it and understand it, answer the question directly.
19 If you're not hearing the question or not understanding
20 the question, please don't answer the question and just
21 ask me to either repeat it or speak louder. I'm going
22 to try not to raise my voice. There's no reason to. If
23 you need a break at any time, just indicate that and
24 answer any question that's pending.

25 Do you understand that?

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1 DONALD B. SMITH

2 A Yes, sir.

3 Q If, as I've said to other witnesses, at some
4 point in the deposition, you recognize that you've given
5 an answer that's incorrect, incomplete, you want to
6 change or add something, please indicate that to me or
7 Mr. Kleinberg.

8 At the end of the process, you will get a
9 transcript, and you'll have an opportunity to read that
10 transcript to ensure that what you've said here today is
11 accurate, because, as you know, the transcript may be
12 used in later proceedings. So if it's not accurate, we
13 want to note that before those later proceedings. So if
14 you have the transcript and have changes to make, please
15 make them, not in the transcript, but on a separate
16 page. Okay?

17 A Yes, sir.

18 Q Now, you're aware that certain phone records,
19 including your phone records, have been produced in this
20 case; is that accurate?

21 A Yes, sir.

22 Q For a particular period of time in March of
23 2013?

24 A Yes, sir.

25 Q Have you had a chance, yourself, to review

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1 DONALD B. SMITH

2 those phone records to determine who you were in phone
3 contact with during the relevant period?

4 A I have not reviewed them, sir.

5 Q You've not reviewed your own records?

6 MR. KLEINBERG: Counsel, those were not
7 provided to us. The only records we had -- and we sent
8 them back to you -- were of Castaldo.

9 Q So you never got your own phone records?

10 A No, sir. Not that I recall. I don't recall.
11 I can tell you, I haven't reviewed them for sure and I
12 don't recall seeing them.

13 Q The phone records that we're talking about are
14 records for 494-5647. Is that a number you're familiar
15 with?

16 A Yes.

17 Q Whose number is that?

18 A 494-5647, in the 845 area code, that is my
19 cell phone, sir.

20 Q Is that a personal cell phone?

21 A No, sir.

22 Q Do you get the bill for it?

23 A The department gets the bill for it.

24 Q When you say, "the department," you mean the
25 sheriff's department?

1 DONALD B. SMITH

2 A Yes, sir.

3 Q In the normal course of business, do you
4 review that bill?

5 A Not normally. It's normally reviewed by our
6 operation secretary.

7 Q You've answered the question. You don't
8 review it.

9 A Yes, sir.

10 Q Do you know Greg Ball?

11 A Yes, sir, I do.

12 Q Do you have any recollection of on March 19th
13 and March 20th of 2013 having several conversations with
14 Greg Ball?

15 A I do not. I don't have a recollection.

16 Q You were in Rotterdam, New York, on the 20th.
17 Do you have any recollection of that?

18 MR. KLEINBERG: Objection. You can
19 answer.

20 A Sir, I don't have a recollection of it. I
21 could research it and find out.

22 Q One of the things about the deposition is if
23 the answer to a specific question is yes, no, or
24 something else, you should probably give that answer if
25 you can. If it's not that, then, obviously, you can

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2 give whatever answer is appropriate. We can all
3 research things and find things later, but if you don't
4 know the answer now, it's fine to just say you don't.
5 That's okay. All right?

6 A Yes, sir.

7 Q Do you have a recollection of conversations
8 with Greg Ball on March 19th and March 20th about the
9 Hossu case?

10 A I do not.

11 Q Do you deny that you spoke with Mr. Ball about
12 the Hossu case on those dates?

13 A I do not deny.

14 Q You don't know one way or the other?

15 A I don't have a recollection, sir.

16 Q What was your relationship on March 19th,
17 March 20th with Greg Ball? This is 2013.

18 A I would say I had a professional relationship
19 with the senator, and I would call it a friendly
20 relationship and a business relationship.

21 Q Were you political supporters one of the next
22 at that time, to your knowledge?

23 A I believe -- you're saying March of --

24 Q 2013. The same period of the Hossu arrest.

25 A In March of 2013, I believe we had a friendly

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2 relationship, and I believe he was a political supporter
3 of mine.

4 Q On the 20th of March, do you have any
5 recollection of that day, as opposed to any other day?
6 Again, this is 2013. Do you have any memory of your
7 activities that day, phone contacts that day?

8 A I obviously remember that was the day -- I
9 believe it was the day of the Hossu arrest that night,
10 but I don't have any recollection of my specific
11 calendar that day.

12 Q Where were you when the Hossu arrest occurred?

13 A I believe I was in Putnam County. I believe I
14 was at home, but, again, I don't have a specific
15 recollection.

16 Q Do you remember traveling back to Putnam
17 County that late afternoon from upstate New York?

18 A I don't. I don't have a recollection.

19 Q You don't have a recollection?

20 A And I didn't review my calendar, sir.

21 Q That's fine. Do you have any memory of
22 contacts that day with any members of your staff, the
23 day of the Hossu arrest?

24 A I'm sure I was in contact with my staff, as I
25 am every day, but I don't have any specific recollection

1 DONALD B. SMITH

2 of any specific conversations.

3 Q When you say you're sure you were in contact
4 with your staff, that's because, as you mentioned
5 earlier, that's a daily occurrence; that one or another
6 member of your staff will have contact with you?

7 A That is an absolute daily occurrence. We're
8 always in contact, and, again, that's a routine.

9 Q There's nothing about that day, though, the
10 contact that day, that you remember that sticks out?

11 A No.

12 Q And you know that Mr. Hossu was arrested that
13 day, you said earlier?

14 A I believe it was that night.

15 Q And is that something that you spoke with your
16 staff about before it happened, that he would be
17 arrested that night?

18 A I was aware, yes, sir.

19 Q Who did you speak to about that?

20 A Again, I don't have a specific recollection,
21 but I'm sure I was in contact with Captain McNamara.
22 And I do have a recollection of being told, you know,
23 that the arrest had been approved by the Westchester
24 County District Attorney's office, and I even believe
25 there was a bail recommendation that was mentioned.

1 DONALD B. SMITH

2 Q Okay. So you're telling me at this point you
3 have a memory of a conversation on the 20th with
4 Mr. McNamara; is that accurate?

5 A That's my recollection. And I may have talked
6 to others as well, but I know I was in contact --

7 Q You know you were in contact with Mr. McNamara
8 that day?

9 A Captain McNamara that day.

10 Q Captain McNamara. Is that right?

11 A Yes, sir.

12 Q Where were you when you were in contact with
13 Captain McNamara?

14 A My recollection is, now that you brought up
15 the issue of, you know, upstate New York -- again, I
16 wish I had a clearer recollection, but quite often if
17 I'm going to a sheriffs' association function or a
18 training function or an AMBER Alert meeting, if I'm not
19 leaving at 6:00 or 7:00 in the morning, I will drop by
20 staff call real quick and then hit the road to make the
21 function. I just don't have a clear recollection of --
22 I'm not saying I didn't talk to other people in the
23 department that morning, but as I sit here, Mr. Sussman,
24 I don't have a clear recollection.

25 MR. SUSSMAN: Move to strike.

1 DONALD B. SMITH

2 Q You'll hear me say, "Move to strike" if I find
3 an answer unresponsive. That's, obviously, up to the
4 judge ultimately whether to strike your testimony as
5 unresponsive. He may or may not choose to do that.
6 Just so you're aware when I say that, that's the
7 purpose, no other.

8 So the question was where were you when you
9 spoke to Captain McNamara and he told you about
10 Westchester County. Do you have any recollection of
11 where you were?

12 A I don't.

13 Q Do you have any recollection of what time of
14 day that happened?

15 A I don't.

16 Q Was anyone else part of the conversation that
17 you know of and can tell me?

18 A I don't know. Can I expand on that,
19 Mr. Sussman?

20 Q Well, the only question is: Was there someone
21 else part of the conversation? If you know there was
22 someone, you can tell us there was someone. If you
23 don't know, you can say you don't know.

24 A I don't recall.

25 MR. KLEINBERG: Before you ask another

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2 question, just to the extent that there are any records
3 that were subpoenaed of the sheriff's cell phone, we
4 have not received them, and I know we stipulated to
5 produce or to provide each other with any subpoenaed
6 records of phone records.

7 MR. SUSSMAN: I don't know why. I sent
8 them to you, but we'll get into that later.

9 MR. KLEINBERG: If you have them here, we
10 can make a copy so I can see them, because I never
11 received those records.

12 MR. SUSSMAN: Okay. We'll figure that
13 out later.

14 MR. KLEINBERG: After the questions about
15 them?

16 MR. SUSSMAN: There are no questions
17 about them, Mr. Kleinberg. No one is asking about them.

18 MR. KLEINBERG: All right.

19 MR. SUSSMAN: What I'm trying to
20 understand right now is the sheriff's testimony about
21 this particular contact, if he had the contact and when
22 he had it.

23 BY MR. SUSSMAN:

24 Q On the day of the 20th, do you have any memory
25 of seeing any members of your staff; seeing them, being

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2 in their presence?

3 A I don't have a specific memory. Mr. Sussman,
4 I'm not saying I didn't see them. As I sit here
5 two-plus years later, I don't have a specific memory for
6 a specific day.

7 Q Understand. That's the question. The
8 question is that specific day, which is the day of the
9 Hossu arrest, what you remember about what you did and
10 your involvement, if any, regarding it. So that's what
11 we're talking about.

12 A Yes, sir.

13 Q Let me ask you about the Hossu arrest. When
14 did you first learn, sir, that Mr. Hossu was a suspect
15 in a potential sexual assault or rape in Putnam County?

16 A To the best of my recollection -- and, again,
17 this is two-plus years ago -- I believe I received
18 information on the day that S. H. was interviewed at the
19 Child Advocacy Center.

20 Q So you didn't know in advance that she was
21 going to be interviewed?

22 A I don't recall.

23 Q Now, you've said a couple of times this is
24 two -- it is about two years and five months later. In
25 that time period, you were sued by Mr. Levy; correct?

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2 A Yes, sir.

3 Q And you were served with process regarding
4 that suit; right?

5 A Yes, sir.

6 Q You retained counsel; correct?

7 A Yes, sir.

8 Q You attended a number of depositions; correct?

9 A Yes, sir.

10 Q And you've received and provided documents
11 regarding this case?

12 A Yes, sir.

13 Q And you've had certain opportunity to consider
14 the allegations in the case, haven't you?

15 A Yes, sir.

16 Q All right. In that process -- I'm not asking
17 you the content of them, but have you made any writings
18 which explain what you knew and when you knew it? Have
19 you made any such writings?

20 A No, sir. Could you explain what you mean by
21 "writings"?

22 Q In other words, you got the Complaint, and
23 you've reviewed material relating to the Complaint.
24 Have you, yourself, committed any version of these
25 events to writing?

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2 A I have --

3 Q It's a yes or no question. I'm not asking you
4 to tell me what it was right now. Have you done that,
5 that enterprise?

6 MR. KLEINBERG: Do you understand what
7 he's asking?

8 Q Have you sat down and written your account of
9 events? This is when I found out about Mr. Hossu. This
10 is what I did. This is what I didn't do. Did you ever
11 do that?

12 A No, I don't recall doing that.

13 Q That's all I'm asking.

14 A I don't recall, sir, doing that.

15 Q Do you know a reporter named Higgins?

16 A Yes, sir.

17 Q Is that Lee Higgins?

18 A Yes, sir.

19 Q How do you know him?

20 A He's a reporter for The Journal News, and he
21 works a lot of police stories, so we've had contact with
22 him over the years.

23 Q What about Shawn Cohen; do you know him?

24 A Yes, sir, I do.

25 Q Same way?

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2 A He was a reporter for The Journal News. I
3 believe he has left The Journal News. I believe he's
4 moved on to a larger market.

5 Q In 2013, March, did you know both of those
6 gentlemen?

7 A Yes, sir.

8 Q Did you have any contact in March of 2013 with
9 Mr. Higgins regarding a story he was doing about the
10 strained relationship between you and Mr. Levy?

11 A I don't recall.

12 Q You don't recall if you had any such contact?

13 A In March of 2013, I don't -- as I sit here
14 today, I don't recall, but I have had conversations with
15 him over the years.

16 Q About that subject?

17 A I can't specifically remember talking to him
18 about that subject.

19 Q Have you talked to any journalist before March
20 of 2013 that you can recall about the relationship
21 between you and Mr. Levy?

22 A I may have had conversations with Terry
23 Corcoran because he was the other reporter for The
24 Journal News that we talked to a lot. But I can just
25 tell you, I tried very hard to not talk about the

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2 relationship with Mr. Levy.

3 Q Did it come to pass, as you remember it, that
4 on March 21st Ms. O'Dell, the county executive, asked
5 you to recuse yourself from the Hossu case?

6 A I don't recall MaryEllen O'Dell ever having a
7 personal conversation with me.

8 Q I didn't ask you that, though. Do you recall
9 that she called for you to recuse yourself in the case?

10 A I believe I read something, Mr. Sussman, in a
11 newspaper.

12 Q And you wrote a response to that?

13 A I don't recall.

14 Q You don't recall whether you responded to that
15 call for recusal?

16 A I may have, but as I sit here right now, I
17 don't recall. If you have something to refresh my
18 memory, I would appreciate it.

19 Q Let's see if we can refresh your memory.

20 MR. SUSSMAN: Let's mark this Exhibit 68.

21 (Plaintiff's Smith Ex. 68 - 3/21/13

22 NEWSPAPER ARTICLE marked for

23 identification.)

24 A (Witness peruses document).

25 Q All right. Mr. Smith, you've seen Exhibit 68,

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2 which is three pages.

3 A I'm still reading it.

4 Q Is this the article you were referring to
5 seeing in the news regarding Ms. O'Dell?

6 A It could be one of them. There may have been
7 others.

8 Q So you can't say this refreshes your
9 recollection that you saw this article?

10 A I believe I saw this article. There's no
11 reason -- again, I haven't looked at it in a while.

12 Q You read this particular newspaper on a
13 day-to-day basis, the one Eric Gross wrote for?

14 A Generally speaking, it comes out every
15 Thursday, and I would read it.

16 Q What paper is that?

17 A I believe this is the -- well, there are two
18 newspapers that run the same articles. One is The
19 Putnam County Courier, and the other one is The Putnam
20 County News and Recorder.

21 Q So the third page of the document is comments
22 of Sheriff Donald B. Smith in response to MaryEllen
23 O'Dell's remarks on the Putnam County rape case,
24 March 26, 2013. Are those comments that you released?

25 A I believe so. If my memory serves, this looks

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2 like something we would have done in response. Be very
3 focused.

4 Q Did you write this?

5 A I believe I either wrote it or provided the
6 thrust for it.

7 Q To whom did you provide the thrust?

8 A My public affairs officer is Captain McNamara,
9 and -- but I certainly accept that it's --

10 Q I'm just asking you who did you provide the
11 thrust to, and you're saying Captain McNamara. Is that
12 your answer?

13 A Well, Mr. Sussman, my memory is either I wrote
14 it or I provided the thrust. I can't recall.

15 Q I understood that. I'm asking you, in light
16 of your answer that either you wrote it or you provided
17 the thrust, I asked you who did you provide the thrust
18 to.

19 A It would be Captain McNamara.

20 Q Where you would provide the thrust of a
21 particular position to Captain McNamara and he would
22 then write it up, understanding that may or may not be
23 the case with this particular page, would you then
24 review the document before it was released?

25 A Yes, sir.

1 DONALD B. SMITH

2 Q So you take responsibility for all the press
3 releases that were released under your name?

4 A Yes, sir.

5 Q Now, when you then either wrote or approved
6 the statement which said that Ms. O'Dell's comments are,
7 quote, "pure unadulterated politics," close quote, could
8 you just explain to me what did you mean by that, "pure
9 unadulterated politics"?

10 A I don't remember that statement. This is my
11 recollection, what's on this news release (indicating).

12 Q That's part of your statement. So when you
13 say you don't remember, you don't remember that you
14 formed the view that her statement was "pure
15 unadulterated politics"?

16 A I don't have a specific recollection. This is
17 what I recall, this news release (indicating).

18 MR. SUSSMAN: I can't see what he's
19 pointing to when he says, "this news release."

20 MR. KLEINBERG: He's pointing to the
21 third page of the document.

22 A I'm sorry. The third page of the document.

23 Q Right. And I'm looking at the second line of
24 the third page, the first and second line. "I can only
25 conclude that her comments are pure unadulterated

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2 politics." That's what I'm asking you about, the third
3 page, your page.

4 So let me ask you the question in a different
5 way. Was it, at that time, your belief that Ms. O'Dell,
6 the county executive, was aligned with Mr. Levy?

7 MR. KLEINBERG: Objection. You can
8 answer.

9 A I don't know if she was aligned with Mr. Levy
10 or not.

11 Q I asked you if that was your belief. Was that
12 your belief? That's the question.

13 A I don't know if she was aligned with Mr. Levy,
14 but I certainly felt it was inappropriate.

15 MR. SUSSMAN: Move to strike as not
16 responsive to the question.

17 Q What I'm asking you, sir, is: When you said
18 "pure unadulterated politics," were you trying to say to
19 the public that Ms. O'Dell, as a political matter, was
20 aligning herself with Mr. Levy?

21 A I don't recall having that specific thought.

22 Q Very well.

23 A Can I explain?

24 MR. KLEINBERG: Finish your answer.

25 A I thought that Ms. O'Dell, the county

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1
2 executive, was making comments about an area where she
3 really didn't have information and the facts. And the
4 county executive's position is a political position. So
5 when she makes a statement, it can be political, but to
6 say that she was aligned with Mr. Levy, I didn't know if
7 she was aligned with Mr. Levy or not at the time, and as
8 I sit here today, I don't totally know what her feelings
9 are toward Mr. Levy.

10 Q By this time, a Mr. York had announced his
11 interest in your position, right, March 26th, 2013? Is
12 that true?

13 A I thought it was more like April.

14 Q By this time, he announced his interest;
15 right? I didn't say he had declared his candidacy. He
16 announced his interest in your position; is that true?

17 A Sir, I don't remember the specific date, but
18 about this time, in the spring of 2013, he expressed an
19 interest in becoming the sheriff. I don't remember the
20 specific date.

21 Q Just so we're all clear, and, as you know,
22 you're testifying here under oath, so let's all be very
23 clear, you're telling me when the Hossu matter first
24 came up, you had not read newspaper articles indicating
25 that Mr. York was interested in running for sheriff? Is

1 DONALD B. SMITH

2 that your testimony?

3 MR. KLEINBERG: Objection.

4 A Sir, that is not my testimony.

5 Q Did you know Mr. York was interested in
6 running as of March 20th of 2013?

7 A Sir, my testimony is that in the spring of
8 2013, I learned of Mr. York's interest in running for
9 the office. As I sit here today, I don't -- I can't
10 tell you what specific date, but it certainly was in the
11 spring of 2013.

12 Q Well, I understand your testimony about being
13 in the spring. My question was more particular.

14 MR. SUSSMAN: So, again, move to strike.
15 Irrelevant. Unresponsive.

16 Q With regard to the date, March 20th, when
17 Mr. Hossu was arrested, is it your testimony that as of
18 that date, you were unaware that Mr. York had expressed
19 an interest in running for sheriff? That's the
20 question.

21 MR. KLEINBERG: Objection.

22 A My testimony is the same, sir. I don't
23 remember the specific date as I sit here today. If you
24 have a document that can refresh my memory, I certainly
25 would be happy to review it.

1 DONALD B. SMITH

2 Q Now, one of the responsibilities of a sheriff
3 is not to presuppose innocence or guilt; is that true?

4 MR. KLEINBERG: Objection. You can
5 answer.

6 Q You can answer.

7 A I believe the sheriff and law enforcement and
8 the district attorney's office make decisions each and
9 every day based on evidence that is presented to them.
10 Obviously, obviously, if they believe there's guilt,
11 they proceed, and, ultimately, they form an opinion, but
12 in our jurisprudence system, everyone has the
13 presumption of innocence until proven guilty, and there
14 is a criminal justice system upon which they're judged
15 by a jury of their peers.

16 Q In that context, a statement repeated by a
17 sheriff that someone committed a violent rape, as
18 opposed to is accused of committing a rape, or we think
19 there's probable cause they committed a rape, is highly
20 prejudicial to that defendant, isn't it?

21 MR. KLEINBERG: Objection. You can
22 answer.

23 Q Isn't it?

24 A It could be. It could be.

25 Q So in this statement, "There's nothing that

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2 constitutes a conflict of interest that prevents my
3 office from fulfilling its duties in the investigation
4 of this case involving the rape of an innocent little
5 girl" -- and that's a statement you made; right?

6 A Yes, sir.

7 Q Now, when you wrote here, "I have already
8 referred matters pertaining to potential immigration law
9 violations to the appropriate federal authorities for a
10 full, fair, and objective investigation," how had you
11 done that by March 26th?

12 A I don't have a specific recollection of how we
13 did it, but just in general, I believe it would have
14 been done -- we would have done it in writing and
15 perhaps by phone calls.

16 Q Well, there was a meeting held with Homeland
17 Security, was there not?

18 A I remember a meeting in the Putnam County
19 Sheriff's Office. I don't remember the specific date.

20 Q Wasn't the meeting held at the offices of
21 Homeland Security at one of the Veterans Administration
22 facilities?

23 A There was a meeting held there, but I also
24 believe there was a brief meeting at the sheriff's
25 office, I believe.

1 DONALD B. SMITH

2 Q So you recall two meetings?

3 A I recall two, and I recall being at one. I
4 don't recall being at the office of Homeland Security.

5 Q You don't recall personally being there?

6 A I don't recall it.

7 Q Which meeting happened first, as you remember
8 it?

9 A Again, this is just my recollection. I
10 believe the meeting -- the brief meeting, encounter,
11 would have occurred at the sheriff's office first.

12 Q Who was present for that meeting?

13 A I believe it would have been -- if my memory
14 serves me, Captain McNamara and maybe some other members
15 of the command staff.

16 Q And who from Homeland Security was present?

17 A I believe it was a representative of ICE, and
18 I don't recall --

19 Q Do you know the person's name?

20 A I don't recall the person's name.

21 Q Was it one person from ICE who was present?

22 A I believe there were two, sir.

23 Q Were they male? Female? Do you remember?

24 A I believe one was a male, and I believe the
25 other was a female, but, again, I don't have -- that's

1 DONALD B. SMITH

2 just a recollection.

3 Q Did you conduct that meeting?

4 A Well, I'm the sheriff, so, yes, I guess I
5 conducted the meeting.

6 Q Did you invite them to the meeting?

7 A Yes.

8 Q What was your purpose?

9 A The purpose was just to share information with
10 them on the situation that we had and to --

11 Q What information did you share with them?

12 A I believe we provided them information
13 pertaining to Mr. Hossu's arrest and his, you know,
14 being in the country illegally.

15 Q Did you discuss Mr. Levy at that meeting?

16 A Mr. Levy's name came up, but I believe it
17 wasn't the major thrust of the meeting.

18 Q How did his name come up?

19 A Well, they certainly asked questions about,
20 you know, the illegal immigrant, and it came up during
21 the discussions, as I recall. Again, this is a couple
22 years-plus ago.

23 Q Can you be any more specific about what was
24 said about Mr. Levy?

25 A I don't have a specific recollection.

1 DONALD B. SMITH

2 Q Now, as of March 26th, 2013, as I understand
3 it, you had been aware of the Hossu matter for
4 approximately two weeks from your prior testimony. So
5 you first learned about it the day that S. H. was at the
6 CAC for an interview; correct?

7 A That's my recollection, yes, sir.

8 Q About how much time by then, if you can give
9 us your best estimate, had you spent on the Hossu
10 matter?

11 MR. KLEINBERG: Objection. You can
12 answer.

13 A My personal time?

14 Q Yes. How much time had you spent?

15 A Obviously, I'm not the chief investigator.

16 Q I know who you are. I'm just asking you how
17 much time you spent on it.

18 A I would say updates at staff calls about,
19 maybe, 30 minutes a day, getting updated and being
20 informed. Maybe some days, 45 minutes. It was one of
21 my many duties.

22 Q So if there were 10, which I believe there
23 would have been approximately 10 workdays between those
24 two dates -- that is March 12th and March 26th -- and we
25 took 30 to 45 minutes as accurate -- that's your

1 DONALD B. SMITH

2 testimony here today -- that would be approximately
3 five, six, seven hours on the matter in that period. Do
4 you believe that to be fair?

5 A That's probably fair.

6 Q Had you read any material by March 26th
7 regarding the Hossu matter, or was all your time spent
8 in briefings, verbal briefings?

9 A The majority of the information I received was
10 verbal. There could have been times when people shared
11 a document for me to look at, but it was primarily
12 verbal, primarily in the morning at staff calls or
13 following morning staff calls, which we have every
14 weekday in the sheriff's office, and if there was
15 anything else that we needed an update on, it would be
16 in the afternoon. But, again, my --

17 Q Again, try to focus on the question without
18 volunteering information, which we will get to. Believe
19 me, we'll get to it all.

20 So you say you could have read material in the
21 course of those two weeks. Do you have a distinct
22 memory of any written material that you did read during
23 those two weeks pertaining to Mr. Hossu?

24 A I don't.

25 Q Okay.

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2 A If I may finish my answer, that becomes even
3 more complicated because now, having sat through these
4 depositions, I have seen documents over and over again,
5 and so specifically, Mr. Sussman, and I'm trying to
6 answer your question, I don't.

7 Q That was your initial answer, which I accept.
8 You don't.

9 Did you have any direct conversation in those
10 two weeks which we're focusing on right now, March 12th
11 to the 26th, with Janet DiFiore regarding the Hossu
12 matter?

13 A I never spoke to Janet DiFiore.

14 Q So your answer is no?

15 A No.

16 Q Did you have any conversation in those two
17 weeks with Mr. Borden?

18 A I recall meeting Mr. Borden. I don't recall
19 any conversations on the telephone. I had information
20 conveyed to --

21 Q That's a different issue. We'll get to that.
22 Try to focus on the question.

23 A Would you rephrase the question?

24 Q Did you have any direct contact with
25 Mr. Borden in those two weeks?

1 DONALD B. SMITH

2 A Yes.

3 Q You did?

4 A Yes, sir.

5 Q Was that in a meeting, a phone call, or what
6 other form of contact?

7 A Sir, I don't remember any phone calls. I
8 remember meeting Mr. Borden.

9 Q So you remember a meeting with Mr. Borden?

10 A Yes, sir.

11 Q Was the meeting at your office?

12 A I remember a meeting in the Westchester County
13 District Attorney's office.

14 Q So the answer to my question; it was not in
15 your office?

16 A If I could finish, sir.

17 Q Please.

18 A I may have met him once briefly in the
19 conference room of the sheriff's office, but my specific
20 recollection, very specific, is I do remember going to
21 Westchester and meeting him there.

22 Q And that was between the 12th and the 26th?

23 A Well, sir, let me say this. Mr. Green was
24 also at that meeting.

25 Q So it wasn't between the 12th and the 26th.

1 DONALD B. SMITH

2 A If you have information that says Mr. Green
3 came on later, then, again, it was -- as I recall,
4 Mr. Green was there as well.

5 Q Do you have any recollection of meeting with
6 Mr. Borden without Mr. Green at the Westchester County
7 DA's office?

8 A I do not.

9 Q And the meeting that you say was a brief
10 meeting at the Putnam County Sheriff's Department in
11 which Mr. Borden was present, do you remember that
12 meeting?

13 A I don't have a specific recollection, other
14 than perhaps saying hello when he was meeting with
15 members of my staff. And, again, I really just don't
16 have a specific recollection of that meeting. I have a
17 much more specific recollection of the meeting in
18 Westchester.

19 MR. KLEINBERG: Just answer the question.

20 A Obviously, we drove there.

21 Q When you met with Mr. Borden briefly in your
22 own offices, that was before the meeting, if I'm
23 understanding your testimony, that Green and Borden had
24 in Westchester, which you attended; right?

25 A That's my recollection, sir.

1 DONALD B. SMITH

2 Q In the contact you had with Borden, brief as
3 it was, in your office, did Mr. Borden say anything to
4 you about Adam Levy?

5 A Not that I recall, sir.

6 Q Did you say anything to him about Adam Levy?

7 A Not that I recall, sir.

8 Q The Homeland Security folks who you met
9 with -- let's start with the meeting that you know you
10 were at, which was the one at your office which you
11 think preceded the one at the VA facility.

12 A That's my recollection, sir.

13 Q At that meeting, did Homeland Security present
14 you any information concerning Mr. Levy?

15 A Not that I recall, sir.

16 Q Did you present them any information
17 concerning Mr. Levy?

18 A Not that I recall.

19 Q Did any member of your staff present them any
20 information concerning Mr. Levy?

21 A There may have been a discussion on
22 Mr. Hossu's relationship to Mr. Levy.

23 Q There may have been?

24 A I don't have a specific recollection, sir.

25 Q Well, let me ask you this: As of the date of

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1 DONALD B. SMITH

2 the meeting which I'm calling the first meeting with
3 Homeland Security based upon your testimony, as of that
4 date, did you have any information that Mr. Levy was in
5 any way aware of any immigration status of Mr. Hossu?

6 A No, sir.

7 Q Did you ever generate any information that
8 Mr. Levy had any knowledge of his immigration status?

9 A Not that I recall, sir.

10 Q There are individuals who employed Mr. Hossu
11 in Putnam County in a particular gym. Did you have
12 knowledge of that relationship that Mr. Hossu had as an
13 employee at a particular gym in Putnam County?

14 A Yes, sir.

15 Q Do you remember what gym that was?

16 A I believe the name of the gym was World Gym,
17 is my recollection.

18 Q One of your sheriff's deputies had known
19 Mr. Hossu from the association of World's Gym. Do you
20 have a memory of that?

21 A Yes, sir, I do.

22 Q Do you remember which deputy that was?

23 A I believe it was Dan Hunsberger, if my
24 recollection is correct, sir.

25 Q Did Mr. Hunsberger ever indicate to you he had

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2 any knowledge of Mr. Hossu's immigration status during
3 the years he knew Mr. Hossu?

4 A I don't recall having any conversation -- the
5 answer is, I don't recall having any direct conversation
6 with Mr. Hunsberger on the subject, so the answer would
7 be no.

8 Q Was it ever reported to you that
9 Mr. Hunsberger indicated to any of the superiors in your
10 office that he knew of the immigration status of
11 Mr. Hossu?

12 A Not that I recall, sir.

13 Q Did you do or initiate any inquiry about the
14 World Gym management to ascertain whether they had any
15 knowledge about Mr. Hossu's immigration status when he
16 worked for them?

17 MR. KLEINBERG: Objection. You mean him
18 personally or his office?

19 MR. SUSSMAN: Let's start with his
20 office.

21 A Could you repeat the question?

22 Q Did your office, to your knowledge, do any
23 investigation to determine whether the proprietors of
24 World Gym had any knowledge of Mr. Hossu's immigration
25 status when he worked for them?

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2 A Sir, I know there was some contact made at
3 World Gym, but I don't have a specific recollection of
4 getting a report that someone talked to this person on
5 this specific day, but I do believe that -- the only
6 thing that pops in my mind right now is it was reported
7 to me that Mr. Levy was trying to contact -- I believe
8 the guy's name is Chip McElroy, who was the owner of the
9 World Gym, and that he was trying to ascertain when he
10 first -- he first, you know, came in contact with
11 Mr. Hossu and when Mr. Hossu worked there. And this was
12 something that was conveyed to me through the command
13 staff. But that's the only recollection I have of Chip
14 McElroy, the owner of the World Gym, as I sit here right
15 now.

16 MR. SUSSMAN: Move to strike.

17 Q Let me go back to the question. Do you have
18 any knowledge of any inquiry made by any members of the
19 sheriff's department as to whether the proprietors of
20 World Gym made inquiry of Mr. Hossu's immigration
21 status?

22 A Sir, I don't have a specific recollection.

23 Q And do you have any knowledge that the
24 proprietors of World Gym knew of Mr. Hossu's immigration
25 status?

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2 A Sir, I don't have a recollection of knowing
3 that.

4 Q Did Mr. Hossu have any other employers, to
5 your knowledge, in Putnam County, during the years of
6 2005 through 2013? Other than World Gym, do you know of
7 any other employers he had?

8 A Sir, I believe I learned -- and I can't tell
9 you the specific day or how I learned it, but I believe
10 that Mr. Hossu -- sir, I also want to qualify that I've
11 also sat here for a number of depositions, so it's hard
12 for me sometimes to discern what I learned through the
13 depositions and what I learned prior to these
14 depositions. I just want to make that clear, because I
15 do want to be responsive to your questions. But I
16 believe I learned somewhere that Mr. Lepler --
17 Mr. Harold Lepler may have had a relationship with
18 Mr. Hossu.

19 Q Employment relationship?

20 A Sir, I don't know the specifics, but I believe
21 it was a training relationship. Whether they were doing
22 it as friends or whether -- I have no knowledge of how
23 the compensation worked.

24 Q You were at Mr. Lepler's deposition?

25 A Yes, sir, I was. That's why I wanted to

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2 qualify that answer, sir.

3 Q In March of 2013, did you know anything about
4 any relationship between Lepler and Hossu?

5 A I believe -- I believe someone had provided
6 information that Mr. Lepler had a relationship, a
7 training relationship, where Mr. Hossu was acting as a
8 trainer for Mr. Lepler, but my memory is sketchy on
9 that.

10 Q On March 12th, as I understand your testimony,
11 you became aware that S. H. was going to be interviewed
12 at CAC, or had been interviewed, one or the other;
13 correct?

14 A Sir, I don't believe I said that. Sir, I
15 believe I said I have no memory of the 12th. I believe
16 I was informed on -- I believe it was the 13th, the 13th
17 of March.

18 Q So on the 13th of March, you became aware that
19 she had come in and sat for this interview?

20 A That's my recollection, sir.

21 Q And did someone report to you on that date
22 about that interview?

23 A Sir, I believe I received an update -- an
24 afternoon update on that.

25 Q So the answer is yes?

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2 A Yes, sir. To the best of my recollection.

3 Q Do you know who reported to you that day?

4 A I don't specifically know.

5 Q If you don't know, you can just say you don't
6 know. You can speculate about who it may have been, but
7 for now we're trying to find out what you know, as
8 opposed to what may have been or what could have been.

9 That day did you learn from any of your staff
10 that Mr. Levy -- he had been informed by a member of his
11 staff about the allegation against Hossu? Did you learn
12 that that day?

13 A I believe it was that day, sir. To the best
14 of my recollection, sir.

15 Q Did you learn that Mr. Levy -- on that day,
16 I'm asking you, as you recall what you knew and when you
17 knew it -- did you learn on that day that Mr. Levy had
18 indicated his office was going to recuse itself? Did
19 you learn that that day?

20 A I believe that was the day, sir.

21 Q How did you learn that Mr. Levy had determined
22 his office was going to recuse itself? How did you
23 learn that? From whom? If you know.

24 A I can tell you the when. I'm not able to tell
25 you the specific who.

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2 Q The when, you've already said it was that day.

3 A I believe it was that afternoon, sir.

4 Q Do you remember receiving a call from a person
5 who was actually at the CAC concerning what was
6 transpiring there?

7 A I don't recall receiving a call. I recall it
8 being an update in the conference room, is my
9 recollection.

10 Q Who was present in the conference room for
11 this update, to your current recollection? As you
12 envision it, who do you see there?

13 A Sir, I wish I could be a hundred percent sure,
14 but my recollection is it would have been Captain
15 McNamara and Patrick Castaldo, but that's just my
16 recollection. There could have been others in the room,
17 but that's my recollection.

18 Q Did they explain to you -- either Castaldo,
19 McNamara, whoever else may have been there -- that
20 Mr. Levy at that time was out of town, out of the
21 jurisdiction?

22 A Yes, sir. And it was explained to me that
23 Assistant District Attorney Laura Roberts was at the CAC
24 as part of the multiagency disciplinary team and that it
25 was Laura Roberts who said, I'm out of here.

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2 Q Laura Roberts was there as a representative of
3 Mr. Levy's office. You understood that?

4 A Yes, sir.

5 Q When Mr. Levy -- the name came up as someone
6 who Mr. Hossu allegedly had contact with, do you have
7 knowledge -- did she call and contact Mr. Levy? Do you
8 have knowledge of that?

9 MR. KLEINBERG: Objection.

10 A I have no direct knowledge. I believe it was
11 reported to me that Laura Roberts, you know, contacted
12 Mr. Levy.

13 Q She reached out to Mr. Levy?

14 A That's my understanding, sir.

15 Q Was it reported to you on that day, the 13th,
16 about the response from Mr. Levy?

17 A I believe the response was that the office was
18 recusing itself.

19 Q So when Mr. McNamara and Mr. Castaldo shared
20 that with you, or someone -- we're not really sure
21 exactly who -- was it indicated to you that contact had
22 been made by the Putnam DA's office to Westchester? Did
23 you know that that day?

24 A I know that as I sit here now. I don't have a
25 certain memory that --

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2 Q You're not sure?

3 A I'm not sure. I'm not saying I didn't know.
4 I just don't have the specific memory.

5 Q Okay. Do you have any knowledge of when
6 Mr. Levy came back from wherever he was out of the
7 jurisdiction?

8 A I don't know the specific date that he
9 returned. I knew he was on vacation, but I didn't know
10 when he returned.

11 Q Did you have any direct contact with Mr. Levy
12 when he was away about the situation with Mr. Hossu?

13 A Not that I recall, sir.

14 Q Did any of your staff members indicate to you
15 what investigative steps were going to be taken after
16 the CAC interview with S. H. to corroborate,
17 discorroborate, or otherwise investigate the allegation?

18 A Yes, sir.

19 Q Can you tell us affirmatively, to the extent
20 you can and remember it -- again, we're talking about
21 what you were told back then, not what you've heard
22 since, if you can distinguish the two. What were you
23 told back then your staff intended to do following the
24 S. H. interview?

25 A As I recall, sir, I was told they were going

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1
2 to continue doing interviews. They were going to at
3 some point in time do a controlled call. That they were
4 going to get as much corroborating evidence as they
5 could by continuing the interview process. They were
6 certainly -- you know, at the point when the Westchester
7 District Attorney's office became involved, that we were
8 going to provide all the information that we had to the
9 Westchester District Attorney's office, and we would
10 work with that DA's office the same way we would
11 normally work with the Putnam County District Attorney's
12 office in continuing to conduct the investigation
13 together, but it would be with Westchester and not with
14 Putnam.

15 Q Again, the question was what steps or
16 endeavors did members of your office intend to take
17 after the interview with S. H. You've indicated that
18 they intended to continue to conduct interviews, to try
19 to find corroborating information.

20 A And work under the direction of the
21 Westchester District Attorney's office.

22 Q Were you told from the outset that the
23 allegation involved an event that allegedly occurred
24 approximately two and a half years before the disclosure
25 at CAC?

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2 A Yes. I knew it was a --

3 Q The answer is you do?

4 A Yes, sir.

5 Q Were you told that there had been prior
6 history between your office and Mr. Hossu? Were you
7 told that early on during the investigation?

8 A I don't recall that being early on in the
9 investigation. As I sit here now, I obviously am aware
10 of it.

11 Q Before the arrest of Mr. Hossu on the 20th,
12 were you made aware that there had been previous
13 contacts between your officers and Mr. Hossu?

14 A I believe so, sir. Yes, sir.

15 Q Were you told where those contacts had
16 occurred?

17 A Yes, sir.

18 Q Where had they occurred?

19 A Well, I can remember one was at Clock Tower
20 Commons, and I believe one was out on -- I believe one
21 was on the highway, I believe.

22 Q The one at Clock Tower Commons, had you been
23 advised that this was in the summer of 2012?

24 A I don't recall the specific date.

25 Q Did anyone tell you the nature of that contact

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2 betwixt your officer or officers and Mr. Hossu?

3 A I believe so, yes, sir.

4 Q What were you briefed on with regard to the
5 nature of that interaction?

6 A I believe it was -- if we're talking about the
7 same thing, sir, I believe we're talking about an EDP,
8 emotionally disturbed person, involving S. H.'s mother.

9 Q Did officers from your department report or
10 respond to Clock Tower on that occasion, to your
11 knowledge?

12 A I believe so, sir.

13 Q Did any of them actually go into the unit that
14 Mr. Hossu was in?

15 A I believe so, sir.

16 Q Now, did you have any information as of
17 March 13th, 14th, the early days of the investigation,
18 that Mr. Hossu was then resident at Mr. Levy's house?

19 A Could you rephrase the question?

20 Q Yes.

21 A I missed the question.

22 Q That's fine. You understood that Mr. Levy had
23 recused himself. We got that piece already clear on
24 this record. I'm trying to understand now whether on
25 the 13th -- which you say is the day that you first

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2 learned about this, as I understand, when S. H., at
3 least by your account, was at CAC. And on that date,
4 you received some report as to Mr. Hossu's connection,
5 or at least alleged connection, with Mr. Levy relating
6 to him being a personal trainer of Mr. Levy; correct?

7 A That's my recollection, sir.

8 Q On that date, did anyone indicate to you in
9 any briefing that Mr. Hossu was then resident at
10 Mr. Levy's house?

11 A Then?

12 Q Yes.

13 A Not that I recall, sir.

14 Q Did anyone indicate to you before the 20th
15 that as of the period March of 2013, Mr. Hossu was then
16 resident at Mr. Levy's house?

17 A Could you rephrase that, sir?

18 Q Did anyone during the period March 13th to
19 March 20th state to you that they had information that
20 at that time Mr. Hossu was resident at Mr. Levy's house?
21 Did anyone tell you that?

22 A No one specifically told me that he was
23 residing at that house at the time, but they did provide
24 information that Mr. Hossu was receiving his mail at the
25 house, that Mr. Hossu's driver's license was at that

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2 residence, at Mr. Levy's residence, and that I believe
3 it was the -- I believe I was provided information that
4 the aunt, Aunt Bevin, stated that they had -- that S. H.
5 and her mother and Mr. Hossu sometimes had been
6 residents and had lived at the house.

7 Q So we're clear, you're telling us that someone
8 told you that S. H., her mother, and the aunt --

9 A No, not the aunt.

10 Q S. H. and the mother with Alex Hossu?

11 A Had lived there.

12 Q When was it alleged that occurred, that they
13 were living at the house? What year?

14 A I don't recall specific dates, but I
15 believe --

16 Q You're telling us the aunt is the source of
17 that?

18 A Well, the aunt and I have not had this
19 conversation. This information was provided to me by
20 my -- members of my staff.

21 Q You're telling me the aunt, though, is the
22 source of it. I understand she didn't speak directly
23 with you, but in your answer three answers ago, you
24 stated that it came from the aunt.

25 A That is my understanding. That is my

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2 recollection.

3 Q What member of your staff told you this?

4 A I don't recall, sir.

5 Q Is there any writing you've ever seen in this
6 case which attributes that information to the aunt?

7 A I don't recall, sir.

8 Q You don't recall seeing anything like that?

9 A I don't recall seeing it, no, sir.

10 Q And have you seen the interview with the aunt?
11 You watched the interview with the aunt?

12 A I have not.

13 Q Have you ever heard the interview with the
14 aunt?

15 A No, sir.

16 Q Do you know whether that's on that interview?

17 A I do not, sir.

18 Q It's fair to say, if I'm understanding your
19 testimony, that you had no information that Mr. Hossu as
20 of March of 2013 was residing at Levy's house; correct?

21 MR. KLEINBERG: Objection.

22 MR. SUSSMAN: Objection is noted.

23 Q Is that correct?

24 MR. KLEINBERG: Objection.

25 A Sir, as I already stated in my answer, I

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1
2 didn't have specific information that he was sleeping or
3 living in the house at the time, but I had information
4 that his driver's license -- this is Alexandru Hossu's
5 driver's license -- his insurance cards, his mail,
6 everything pointed that, you know, that was what he was
7 declaring as his residence. And Clock Tower Commons was
8 not a residential area. It was an office area, not a
9 residential area.

10 Q But that doesn't mean he wasn't living at
11 Clock Tower Commons; right?

12 A Sir, I don't -- I don't have information on
13 where he was laying his head or how much time he was
14 spending either at Mr. Levy's address or at Clock Tower
15 Commons.

16 Q Let me ask you this question: When was the
17 last time he stayed at Mr. Levy's house?

18 A Sir, I don't know.

19 Q Did you know that in March of 2013, when he
20 last stayed at Adam Levy's house? Did you know that?

21 A I don't have a specific recollection of
22 knowing that.

23 Q Did anyone tell you that they had observed
24 Mr. Hossu at Mr. Levy's house, let's say, at any time in
25 the prior year?

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2 A Not that I recall, sir.

3 Q Let's talk about October of 2010. That's when
4 this event allegedly occurred. Did anyone tell you
5 during the course of your investigation whether Mr. Levy
6 and Mr. Hossu were associated in October of 2010? Did
7 anyone ever represent one way or the other that to you?

8 A Going back to at that point in time?

9 Q Yes.

10 A I have no recollection of anybody telling me
11 that.

12 Q Did anyone represent to you that in October of
13 2010 Mr. Hossu was residing in Mr. Levy's house?

14 A I don't have any recollection of specific
15 dates when Mr. Hossu was residing in Mr. Levy's house.
16 I believe Mr. Levy has testified at his deposition about
17 certain dates, but I don't --

18 Q You didn't know that then?

19 A In October 2010, sir, I had no knowledge of
20 Mr. Hossu.

21 Q Let's not get confused on the record. In
22 March of 2013, that's when we're talking about your
23 state of knowledge for the purposes of the questions,
24 what you knew in March of 2013, specifically by
25 March 20, 21, 22.

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2 As of that point in time, did you have any
3 information that Mr. Hossu had resided in Mr. Levy's
4 house in October of 2010?

5 A In March of 2013 -- in other words, what I
6 knew in March of 2013 about --

7 Q Mr. Hossu.

8 A -- about October 2010?

9 Q Yes.

10 A I don't have a recollection of specific
11 knowledge in March of 2013.

12 Q Did you have any knowledge -- at the point
13 that Mr. Hossu was arrested, did you have any knowledge
14 of where he was residing in October of 2010 when he was
15 alleged to have raped S. H.?

16 A I'm searching for a recollection. I know I
17 have sat through a lot of depositions. I don't have a
18 specific recollection, sir.

19 Can we take a quick break? We've been going
20 about an hour.

21 Q Sure.

22 (Brief recess.)

23 BY MR. SUSSMAN:

24 Q Did you have any conversations with any of
25 your staff members concerning contact they initiated

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2 with Westchester County before the administrative judge
3 appointed Westchester County DA to be in the Hossu case?
4 Do you understand what I'm asking you?

5 A I believe I understand the question.

6 Q Let me ask it a different way. Maybe it will
7 be clearer. Did anyone from your staff tell you that he
8 or she contacted Westchester County to involve
9 Westchester County in this investigation, their DA's
10 office, before the administrative judge signed an order
11 to that effect?

12 A No, sir. Not that I recall.

13 Q Do you have any information that some
14 investigator or investigators from your staff, having
15 learned that Mr. Levy had this conflict, because he,
16 obviously, had had some personal dealings with Mr. Hossu
17 before the allegation, learning that, they actually
18 contacted Westchester on their own? Do you have any
19 knowledge of that?

20 A Not to my knowledge, sir.

21 Q Would that be protocol for your office to do
22 that?

23 A Sir --

24 Q I'm just asking you: Would that be protocol?

25 A I don't believe so, sir. If they weren't on

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2 the case, then we would not involve them at all.

3 Q But them being on the case, to use your words,
4 is something that's determined, as I understand it, by
5 the administrative judge who has to appoint some other
6 office to take -- other DA's office to prosecute or to
7 assist in determining whether to prosecute the case;
8 right?

9 A That's my understanding, sir.

10 Q Has that been your understanding? You've been
11 sheriff for a while now. Has that been your
12 understanding as sheriff, that that's how it works? If
13 there has to be a recusal, someone other than your
14 department determines what other district attorney's
15 office is going to work the case; right?

16 A Yes, sir.

17 Q Has your department ever attempted to
18 influence, to your knowledge, what other DA's office
19 gets assigned to a case?

20 A Not to my knowledge, sir.

21 Q You haven't done that personally?

22 A No, sir.

23 Q You understand what I'm saying? You
24 understand that there's a structure by which Mr. Levy
25 has to make an application to recuse himself, has to

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2 explain why, and then some other judicial officer has to
3 appoint the district attorney's office to take on the
4 case? You understand that?

5 A Yes, sir.

6 Q Were you consulted in any way about that
7 recusal application that Mr. Levy put in?

8 A No, sir, not to my recollection.

9 Q Did you ever see the application?

10 A No, sir, not to my recollection.

11 Q Do you know what date it was put in?

12 A No, sir, not to my recollection.

13 Q Did you ever ask Mr. Levy's office for a copy
14 of the application to see whether it had been put in and
15 what it said?

16 A I did not personally, and I don't know if any
17 member of my staff did.

18 Q Did Captain McNamara share with you that he
19 had done that?

20 A Not to my recollection, sir.

21 Q Did you direct him to do that?

22 A No, sir. Not to my recollection, sir.

23 Q Now, was Mr. Sayegh at that point -- we're in
24 March of 2013 -- still a confidential assistant, or had
25 that been budgeted out by then?

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2 A Sir, I believe that was already -- if my
3 memory serves me correct, I believe that was already out
4 of the budget as I recall, sir.

5 Q That happened toward the end of '12, that he
6 was budgeted out?

7 A That's my recollection, sir.

8 Q Did you have a confidential advisor at that
9 point?

10 A No, sir.

11 Q In other words, did you replace Mr. Sayegh? I
12 understand he was budgeted out. Did you somehow replace
13 that role?

14 A No.

15 Q On the political side, you had replaced
16 Mr. Sayegh with Mr. Gentile, as I understand it, by
17 then; correct?

18 A Well, he was a political advisor, yes, sir.

19 Q What do you know, if anything --

20 A Sir, could I go back? Your question, I don't
21 think your question was a fair one. If I could -- I
22 just thought about what you said. You said replaced.
23 He did not replace. He didn't replace Mr. Sayegh.

24 Q I said on the political side, not in terms of
25 your office.

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2 A I just want to make sure. There was no
3 replacement.

4 MR. KLEINBERG: That question was fair.
5 It was accurate.

6 Q I think we're saying the same thing. I
7 thought Mr. Sayegh was a confidential advisor to you and
8 also played some role, apart from that, in your
9 political affairs. Isn't that true?

10 A He was a trusted advisor, yes, sir.

11 Q Now, let's just go back to this issue for a
12 moment so I'm understanding what happened and what you
13 know about what happened. Mr. Levy, as we've
14 established earlier, was away. It's not really relevant
15 where he was, but he was away. And during the time he
16 was away, do you have knowledge that he instructed his
17 staff -- did you have knowledge in March that he was
18 instructing his staff to implement the recusal? Did you
19 know that?

20 MR. KLEINBERG: Objection. You can
21 answer.

22 A Sir, I have no direct knowledge of Mr. Levy's
23 interaction with his own staff. I think it's safe to
24 say that --

25 Q I'm just trying to find out whether you

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2 understood at that point in time that recusal was a
3 process and that he had to file certain paperwork to
4 make that happen. Did you know that?

5 A I understood the recusal process, yes, sir.

6 Q Did anyone who was involved from Mr. Levy's
7 staff in the recusal process, did anyone contact you and
8 explain what he was doing, or did you have any contact
9 like that with anybody?

10 A Not that I recall.

11 Q Did you initiate any contact during the period
12 from March 13th, when you learned of the conflict that
13 Levy had, to the 20th of March, when Hossu was arrested,
14 to ascertain whether they had, in fact, gone through the
15 process?

16 A Not me personally, sir.

17 Q Did someone do that for you?

18 A I believe my staff and Captain McNamara were
19 involved with the recusal process and where we were to
20 go for our -- the prosecution.

21 Q Did they advise you of anything during that
22 week -- I'm saying now the 13th, when you first found
23 out, to the evening of Hossu's arrest. Did they advise
24 you anything about how that process was going?

25 A Sir, as I sit here, I don't have a specific

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2 recollection of on a certain date being told this, but,
3 obviously, I knew that the Westchester District
4 Attorney's office at some point had been designated and
5 that we were to work with the Westchester District
6 Attorney's office.

7 Q Did you believe that there had been some delay
8 in the process that was orchestrated by Adam Levy?

9 A Sir, I have no knowledge or recollection of
10 what you just stated.

11 Q Well, I'm asking you: In that week period --
12 and then yourself just said by the end of that week,
13 from the 13th to the 20th, you knew Westchester was
14 involved. You told us earlier you already had contact
15 with Westchester in that period of time.

16 So I'm asking you: During that week, did you
17 form a conclusion that Mr. Levy was delaying the
18 appointment of another district attorney's office on the
19 Hossu case?

20 A No, sir.

21 Q Now, you said earlier, just to be fair to you,
22 that you understood that your staff was going to be
23 conducting certain interviews in an effort to confirm or
24 corroborate the alleged rape of S. H. And do you know
25 whether your staff attempted to interview people then,

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2 between the 13th and the 20th, in that regard?

3 A Yes.

4 Q Were you being apprised of who they were
5 trying to interview and what success they were having
6 reaching out to people?

7 A Sir, I was being given general updates, like I
8 said earlier, after morning staff call, sometimes in the
9 afternoon. If there was any movement, I would be given
10 updates. As I sit here, I don't have a specific
11 recollection --

12 Q I'm not asking if you have a specific
13 recollection of the people. I'm simply trying to find
14 out: Did you learn from your staff, even if you don't
15 remember now the names, that they were trying to
16 interview people and were actually having success
17 locating those people and speaking with them?

18 A Yes, sir.

19 Q Did you learn that there were any people that
20 were resistant in that week period to speaking with your
21 staff?

22 A I don't recall information on people being
23 resistant. I don't recall that, sir.

24 Q You also mentioned that you understood there
25 was a controlled call that was going to be made by your

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2 staff with Mr. Hossu in an effort, I gather, to gather
3 information potentially regarding his involvement with
4 S. H., I take it; right?

5 A Yes.

6 Q And that call did occur and was orchestrated
7 by your staff using one of your deputies; right?

8 A Yes, sir.

9 Q Before that call was made, did you have any
10 information that Mr. Levy had made contact with
11 Mr. Hossu about this matter?

12 A No, sir. I don't have any direct knowledge or
13 reported knowledge.

14 Q Well, you say, "direct." Did someone tell you
15 that, that Mr. Levy had made contact with Mr. Hossu?

16 A Sir, I'm saying I have no knowledge, direct or
17 reported to me, that -- I have no knowledge as I sit
18 here that Mr. Levy contacted Mr. Hossu.

19 Q Well, put aside Mr. Levy directly. Did
20 anybody on your staff tell you that they had information
21 that Mr. Levy had a third party contact Hossu and tell
22 Hossu that there was this allegation against him? Do
23 you have any knowledge of that, sir?

24 A I don't recall anything -- any knowledge of
25 that.

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2 Q Did any member of your staff ever suggest that
3 Mr. Levy, between the 13th, when assumedly he found out
4 about the charges, as you've explained earlier through
5 the S. H. interview at CAC and then the call-back by the
6 attorney who was present for that multidisciplinary
7 interview -- did you get any information from the 13th
8 to the 20th that Adam Levy had in some way conveyed to
9 Hossu that he was a potential target of a serious
10 investigation in that period of time?

11 A Sir, I don't recall any direct implication of
12 Mr. Levy, but to answer your question completely, I did
13 receive information that there was a concern -- it
14 wasn't directed directly at Mr. Levy, but there was a
15 concern that information was being conveyed to Mr. Hossu
16 and people close to Mr. Hossu, not directly from
17 Mr. Levy, because certain things were happening.

18 For example, all of a sudden, Jennifer
19 Bartlett -- it's reported to us with the coordination
20 with postal authorities that Jennifer Bartlett changed
21 the address at the post office.

22 There was concern about the controlled call;
23 that in the controlled call Mr. Hossu was coached. They
24 thought he was expecting the call, and he was very, very
25 schooled. This is the reception on the controlled call.

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2 There was another concern that --

3 Q Let's take it one at a time.

4 A -- Chana Krauss had a conversation with the
5 Westchester District Attorney's office, saying this
6 whole thing was quote, unquote, "bullshit" and trying to
7 dissuade the Westchester -- at least the impression was
8 trying to, you know, destroy the credibility of the
9 investigation, or at least hamper the credibility of the
10 investigation.

11 So there were some things -- to answer your
12 question completely and totally, there were some
13 concerns, but, specifically, there was nothing that was
14 tied directly to Mr. Levy. No one had, you know,
15 provided information that Mr. Levy --

16 Q Let's take these issues one at a time. You
17 mentioned the postal. When was the first time that
18 Ms. Bartlett attempted to change the address of her and
19 Mr. Hossu; do you know?

20 A I don't -- I recall from -- I believe it's
21 maybe from these depositions that there was the
22 establishment of a P. O. Box.

23 Q When, was the question.

24 A I believe it was -- I'm -- my best
25 recollection of the date --

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2 Q You can only give us what you remember.

3 A I could be wrong, but I believe it was in
4 January of 2013, but that was not changing the address.
5 That was establishing a P. O. Box, is my understanding.

6 Q A P. O. Box where they would get mail?

7 A Where they could get mail or where they could
8 have another source to get mail.

9 Q Do you know as a factual matter --

10 A Sir, but I want to clarify, that that is
11 information I have as I sit here now.

12 Q Your investigators didn't have that
13 information, to your knowledge?

14 A Well, if -- they didn't convey it to me, as I
15 recall. I have no recollection.

16 Q Let's just take it a step at a time. It's
17 very important to keep a question and answer format or
18 else we just get lost in things.

19 A Yes, sir.

20 Q Do you know as a factual matter from the
21 postal service one way or another whether after January
22 of 2013 Mr. Hossu was getting mail at Mr. Levy's house?
23 Do you know one way or the other?

24 A It was reported to me by my staff,
25 investigators, that mail was coming there.

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2 Q Do you know how they know that or knew that?
3 Do you know? In other words, did they represent the
4 source of that information?

5 A They did not, as I recall.

6 Q Do you know whether there are any statements
7 that your investigators received between March 13th and
8 March 20th from any postal employees, indicating one way
9 or the other where Mr. Hossu's mail was going in that
10 time period, from January through March?

11 A I don't recall, sir.

12 Q You never saw any such statements?

13 A I don't recall seeing them, sir.

14 Q You mentioned as well a comment by Ms. Krauss.
15 And I take it you were not a direct witness to such
16 comment?

17 A Sir, I was not a direct witness.

18 Q Do you have any memory of when that statement
19 was allegedly made in the course of this? In other
20 words, was it before the 20th, after the 20th, or do you
21 not know?

22 A My recollection is before the 20th.

23 Q Who was it made to, to your knowledge?

24 A I believe -- well --

25 Q If you don't know, you can say you don't know.

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2 A I have a belief.

3 Q Who?

4 A I believe it was Ken Borden, but it could have
5 been to Heidi Mason. Probably the best answer is --

6 Q Someone associated with the DA's office in
7 Westchester County?

8 A The DA's office in Westchester County.

9 Q Did you know about that statement as of
10 March 20th?

11 A I believe I did, sir.

12 Q So you knew about it directly from Ms. Heidi
13 Mason?

14 A No, sir.

15 Q Or Mr. Borden?

16 A No, sir.

17 Q You knew about it from them reporting it to
18 somebody on your staff?

19 A Yes, sir.

20 Q Who told you about this?

21 A I don't have an exact recollection, but I
22 believe Captain McNamara, or at least Captain McNamara
23 would have been present, I believe.

24 Q Now, did Ms. Krauss in that same conversation
25 as she had with whoever it was she spoke with at the

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2 DA's office in Westchester, as it was told to you, did
3 she explain why she thought this was bullshit?

4 A I don't have a recollection of any
5 explanation. I'm not saying they didn't give me one,
6 but I don't recall it.

7 Q What sticks in your mind is she made that
8 comment, but you don't know the rest of the
9 conversation. If there was a rest of the conversation,
10 you're not remembering it?

11 A I don't remember it. And I don't believe --

12 Q -- it was recounted to you.

13 A I don't believe, but --

14 Q Do you know whether Ms. Krauss had access
15 to -- by whatever date she made the statement, do you
16 know whether she had access to information that
17 significantly undermined the credibility of S. H.?

18 A I don't know what information she had, sir.

19 Q Do you know whether your investigators by the
20 20th, the day of the arrest, had information which
21 significantly undermined the credibility of S. H.?

22 A I don't recall knowing anything -- you're
23 saying before the 20th?

24 Q Before the arrest.

25 A Yes, sir. I don't recall.

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2 Q Did your investigators ever share with you,
3 before the arrest on the evening of the 20th, any
4 information about S. H., other than that she was
5 alleging that Mr. Hossu had committed this rape? Did
6 they share with you any information about prior contact,
7 for instance, between S. H. and your own offices?

8 A As I sit here now, Mr. Sussman, I'm aware of
9 the EDP, but I don't have a specific recollection back
10 in March of 2013.

11 Q Did they share with you the events of a few
12 weeks before the alleged rape, where her own mother
13 indicated that she was not credible and making things
14 up?

15 A Not that I recall, sir.

16 Q You didn't know that?

17 A Not that I recall, sir.

18 Q You know that's in your records?

19 A Yes, sir.

20 Q But it was never brought to your attention?

21 A Not that I recall, sir.

22 Q When I say, "never," of course I'm referring
23 to the period March 20th.

24 A Right.

25 Q Do you know whether Ms. Krauss had access to

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2 that information?

3 A I don't.

4 Q Now, again, you've sat through the
5 depositions -- that was your choice and, obviously,
6 you're a party and entitled to do that. I'm not
7 critical of it, but it does create the problem that
8 you've talked about here now; having that in your mind
9 and not being able to distinguish what you knew back
10 before the 20th or 21st of March 2013 and what you know
11 today.

12 But let me ask in that context this question:
13 Did you know that her own aunt had raised issues about
14 S. H.'s credibility by March 20th? Did any of your
15 staff share that with you?

16 A No. Not that I recall, sir. I don't have a
17 recollection of that.

18 Q As of March 20th, had your staff obtained from
19 S. H., to your knowledge, a date for when the alleged
20 rape or sexual assault occurred? We know October, but
21 did they obtain a date? Did they have a date that they
22 shared with you, a specific date?

23 A Obviously, as I sit here, Mr. Sussman, I know
24 what that alleged date is now, but I don't recall
25 whether that date was shared with me before March 20th

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2 or after March 20th.

3 Q You're not sure?

4 A I'm not sure, sir.

5 Q Did your staff have any phone records from the
6 alleged victim before the arrest of Mr. Hossu?

7 A I'm not sure of the date.

8 Q You're not sure?

9 A I'm not sure, sir.

10 Q Were you briefed regarding what those phone
11 records showed about her activities in October of 2012
12 [sic], particularly in and around the time she was
13 claiming the rape occurred? October 2010. I'm sorry.

14 A At some point in time, I received information
15 on that, but I don't recall, and I don't believe it
16 was -- I don't believe it was before -- you know,
17 March 20th seems to be the date you're concerned with
18 here.

19 Q Well, that's the date of the arrest and it's
20 the date that the press releases start and all that. So
21 I'm trying to understand the state of your knowledge at
22 that point as you were speaking to the press and
23 discussing the matter.

24 A Right.

25 Q With regard to the account that S. H. was

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2 providing as of that time to your investigators, as you
3 were hearing it, did you have any medical records of
4 S. H. by the 20th of March regarding her condition,
5 gynecological, obstetrical, any kind of records of that
6 sort that you knew of?

7 A I don't recall, sir.

8 Q Do you know if any were sought before
9 March 20th?

10 A I don't recall, sir.

11 Q What decisions did you, yourself, make
12 regarding this matter as of March 20th? In other words,
13 did you make the decision to arrest the gentleman as
14 sheriff?

15 A No, sir.

16 Q You did not?

17 A I would say that in the way the sheriff's
18 office works is, I do not insert myself in multiple,
19 multiple investigations. I am kept informed. I
20 certainly can -- you know, I can certainly weigh in and
21 certainly, I guess, stop something from happening. But
22 generally speaking, you know, we work very closely as a
23 part of a team, and the sheriff is responsible for a
24 whole variety of issues, including the jail, civil
25 bureau, so he's got issues on a widespread front. And

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2 so basically I was certainly kept informed, but what I
3 was told -- what I was told was that the Westchester
4 District Attorney's office had approved the arrest; that
5 it would not be done as a summary arrest; that it would
6 be done, you know, with a warrant through the court
7 system. And there was -- even though investigations can
8 go on a long time before an arrest, or an arrest can be
9 made and investigations can go after the arrest, that
10 there was -- there was a concern that Mr. Hossu could be
11 a flight risk. There was a concern about, as I stated
12 earlier, about the mailbox. You know, the mail being
13 forwarded. There was a concern about the controlled
14 call. There were concerns. And this decision was made
15 with my command staff and the Westchester District
16 Attorney's office. It was not something that certainly
17 I -- I concurred with it, but as I said earlier, I don't
18 insert myself in an investigative team that's working
19 with either the Putnam County District Attorney's office
20 or a special prosecutor or the Westchester District
21 Attorney's office in this particular case. In other
22 words, this investigative team works, and it was clear
23 that we were working under their prosecutorial
24 authority, in this particular case, and initially it was
25 Mr. Borden, and later Mr. Green took over the lead on

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2 the prosecution.

3 Q Understood. To go back to the question, when
4 you say you concurred, that suggests that there was a
5 discussion that you were party to in which you said, Go
6 ahead; is that accurate?

7 A Sir, I remember -- again, as I sit here, I
8 don't have a recollection. You informed me that I was,
9 you know, up in the Albany area or north of Albany area.
10 And I certainly can check on that. But I do recall some
11 type of discussion -- I don't know whether it was in the
12 conference room before I left or it was on the
13 telephone -- of a meeting taking place with Captain
14 McNamara. I believe Chief Schramek was at the meeting.
15 I believe he was. And I believe everyone in the room
16 concurred that -- and that they conveyed that the
17 Westchester District Attorney's office had concurred in
18 making an arrest with a warrant, not a summary arrest.

19 Q You mentioned Chief Schramek a moment ago.

20 A Yes, sir.

21 Q Do you have a memory, in terms of the
22 decisions you made regarding the Hossu case, of having
23 Chief Schramek not involved in the chain of command in
24 the investigation; is that accurate?

25 A Sir, I think I need to explain that answer in

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2 full.

3 Q Let's start with this: Did you make that
4 determination? Then you can explain.

5 A I believe there was a concern that Chief
6 Schramek would be in a difficult situation because
7 Mr. Hossu was a friend of Mr. Levy's and Mr. Schramek
8 had, you know, by his own accounts been at Mr. Levy's
9 home many times and they were close personal friends.

10 Q You knew that then?

11 A I certainly knew that then. And his daughter,
12 Mr. Schramek's -- Chief Investigator Schramek, his
13 daughter had, I believe, been an intern for Mr. Levy,
14 and I believe even -- again, this is information and
15 belief from my recollection of conversations with Gerry
16 Schramek, was that she actually, you know, was in the
17 Levy home and may have baby-sat at some point in time.

18 So there was that concern, but there was
19 something else going on with Chief Schramek at that
20 time. Chief Schramek -- there were two things that were
21 involved. One was he had -- I believe it was a two-week
22 vacation during part of this time period. And then the
23 other thing, he was very, very ill. He had some type
24 of --

25 Q We don't have to get into the nature of it.

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2 A He had some type of illness that caused him to
3 miss a fair amount of time. But the bottom line was we
4 didn't -- Chief Schramek, as I recall, was there the
5 night -- I believe he was there the night the arrest was
6 made. We were just concerned that we didn't want to put
7 him in a tough situation.

8 Q What I'm trying to understand is, again, your
9 decisions, because on the one hand, you're telling me in
10 your answer that Chief Schramek was part of a
11 conversation in which there was discussion of whether
12 there was sufficient evidence to arrest Mr. Hossu, which
13 would seem to be a fairly important meeting to be part
14 of, and on the other hand, I'm understanding from prior
15 testimony, which you've also heard, that you actually
16 made and communicated a decision to your staff that
17 Schramek should not be involved in this case.

18 So I'm asking you directly: Did you make that
19 and communicate that decision?

20 A I just don't agree with the root of your
21 question.

22 Q Which is what?

23 A That I excluded him. I believe what happened
24 was Chief Schramek was away from the office and we had
25 already started working with the Westchester County

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2 District Attorney's office, and we needed a commissioned
3 officer to be the liaison to the Westchester DA, both
4 Ken Borden and Fred Green later. And I believe
5 Captain -- if my memory serves me, Captain McNamara took
6 on that responsibility. And so he became our liaison to
7 the Westchester DA's office. As you know, Captain
8 McNamara is also an attorney. You know, he's a
9 brilliant attorney and a very trusted advisor. So the
10 point I want to make is that he was already working the
11 case, providing leadership, working with the
12 noncommissioned officers and the deputies in the Bureau
13 of Criminal Investigation. And so it made sense to keep
14 him in that role.

15 Just going back to the root of your question,
16 I think we recognized that Chief Schramek had missed a
17 lot on some of the early part of the investigation, but
18 I don't think -- if my memory serves me correctly, I
19 don't think I excluded him, but McNamara clearly had a
20 lead role. You know, I don't think we hid information
21 from Gerry Schramek, Mr. Sussman. That's the part --

22 Q Do you have any information that Schramek
23 shared anything about the investigation with Adam Levy?

24 A Sir, I do not.

25 Q Do you have any information that any member of

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2 your staff under the cover, so to speak, improperly
3 shared any information with Mr. Levy?

4 A Sir, I do not.

5 Q For instance, do you have any information that
6 any member of your staff told Mr. Levy there was going
7 to be a controlled call?

8 I do not.

9 Q Now, you suggested that someone said that
10 Mr. Hossu's performance during the controlled call
11 suggested preknowledge, and you said preparation for the
12 call. Do you remember speaking about that a few moments
13 ago?

14 A Yes, sir.

15 Q Do you have any knowledge of who conveyed
16 anything about the controlled call to Mr. Hossu?

17 A Sir, I didn't state that -- my recollection is
18 I didn't state that he was informed of the controlled
19 call, but if he -- if someone tipped him off about the
20 investigation.

21 Q That's what I'm asking you. Do you have any
22 information that anybody tipped him off?

23 A So the root of your question was somebody
24 tipped him off about a controlled call. I have no
25 knowledge that anybody tipped him off about a controlled

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2 call.

3 Q You actually said earlier that he was prepared
4 for the controlled call. Coached. Those were the words
5 you used, yourself. I'm asking you: Do you have any
6 information that he, in advance, learned there would be
7 a controlled call? It's a simple question.

8 A No, sir.

9 Q And do you have any information that he was
10 actually coached for the call?

11 A No, sir.

12 Q Now, with regard to this issue of being tipped
13 off to the investigation, [REDACTED]
14 [REDACTED] conducted that anyone tipped
15 anyone off to this investigation?

16 A I have no knowledge, direct or otherwise.
17 Just what I shared with you earlier, that my staff was
18 concerned about some things that were happening.

19 Q Well, as an example, do you have knowledge
20 that there came a time in this period that Mr. Hossu
21 actually did call Mr. Levy? Did you know that? Between
22 the 13th of March and the 20th, did you know that
23 Mr. Hossu had actually called Mr. Levy?

24 A I don't have knowledge of that. I don't have
25 a recollection or knowledge as I sit here today.

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2 Q Did you have any knowledge at that period of
3 time whether Ms. Bartlett, Jenny, was working at the
4 Levy house, or had she finished her assignment at the
5 Levy house?

6 A I don't recall, sir.

7 Q Did your staff brief you one way or the other
8 on whether -- you know the girlfriend we're talking
9 about, Hossu's girlfriend?

10 A Yes, sir.

11 Q Do you know whether Hossu and the girlfriend
12 were then living together outside of the Levy house?

13 A I do not know, sir.

14 Q Did you develop any information at that time
15 about the relationship between Mr. Levy and Jenny at
16 that point in time? Were they even talking?

17 A Not that I recall, sir.

18 Q So let's go back to these interviews and what
19 you were told, if anything, about the interviews. And I
20 understand your prior testimony that you were briefed in
21 general and you don't remember specific names, as I
22 understand it, as to the people who were interviewed.
23 Is that accurate, or do you remember the specific people
24 who were being interviewed by your staff?

25 A I can think of a couple of names that come to

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2 mind. But, again, Mr. Sussman, I don't remember if I
3 had that information at the time --

4 Q That's what we're trying to focus on.

5 A -- or if I picked up the information in the
6 course of the depositions.

7 Q As an example, there was a woman who had
8 previously been either married to or in close
9 relationship with Mr. Hossu who was interviewed, I
10 believe, it was out of state -- perhaps in
11 Connecticut -- where she was interviewed. Did you learn
12 about that interview?

13 A Yes, sir.

14 Q Did you learn about that before he was
15 arrested?

16 A Sir, as I recall, my recollection is that
17 interview was -- happened after.

18 Q So that didn't happen before the arrest, as
19 far as you know?

20 A As far as my recollection, yes, sir.

21 Q There was a woman named Lodge. Do you
22 remember her?

23 A Henrietta Lodge.

24 Q Do you know whether she was interviewed before
25 the arrest?

1 DONALD B. SMITH

2 A As I sit here, I don't recall, sir.

3 Q Do you remember anyone who was interviewed as
4 you're sitting here before the arrest other than the
5 girl and her aunt?

6 A I remember being briefed, but as I sit here
7 today, I don't have knowledge of specific dates of
8 specific interviews.

9 Q Did you develop any information, or did your
10 staff relate any information, that Mr. Levy had been in
11 touch with any person who your offices intended to
12 interview and spoke with them about Mr. Hossu?

13 A Not that I recall, sir.

14 Q Now, you know that Mr. Levy is married and has
15 children; correct?

16 A Yes, sir.

17 Q Do you know his wife?

18 A I have met her. I don't know her well, but
19 I've certainly met her.

20 Q Did you develop during the course of this
21 investigation between the 12th and the 13th and the 20th
22 any information about Mr. Levy's wife and her
23 relationship with Mr. Hossu? Positive, negative, or
24 anything else?

25 A No, sir, not that I recall.

1 DONALD B. SMITH

2 Q Did anyone report to you any belief that
3 Mrs. Levy played any role in tipping Mr. Hossu off to
4 any aspects of your investigation?

5 A No, sir, not that I recall.

6 Q Now, I asked you earlier about Mr. York.
7 Mr. York was working in Mr. Levy's office, as I
8 understand it, as some sort of deputy, or whatever his
9 title was, in February and March and preceding that;
10 correct?

11 A Yes, sir.

12 Q You knew Mr. York through your contacts with
13 the office; correct?

14 A Yes, sir.

15 Q Did you have an understanding in early March
16 that Mr. Levy was, in fact, supporting Mr. York in his
17 race or potential race against you? Was that your
18 understanding?

19 A Would you repeat the question?

20 Q Was it your understanding that Mr. Levy was
21 supportive of Mr. York's potential race against you?

22 A I don't believe I had any direct knowledge.

23 Q Was it your understanding, whether you had
24 direct knowledge or not?

25 A I would just say this: Obviously, if someone

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1
2 is running and they work for someone else, then you
3 could assume that there's a relationship there. But I
4 was very surprised when Mr. York ran, because in the
5 Josette Wright case, it was -- or was it DiPippo? I
6 believe it was DiPippo. It was a retrial, if my memory
7 serves me correct. Our office worked very, very closely
8 with Mr. York, and Mr. York felt -- he confided in me
9 that he felt that, you know, without our support, that
10 case would not have been successful. He was thrilled
11 with the support he got. He really had wanted us to
12 second chair to be with him on that case, because it was
13 an old case. It was retrial.

14 Quite frankly, I was very surprised when
15 Mr. York announced for sheriff, because he had only been
16 supportive, complimentary, and we had a very good
17 personal relationship. He was very pleased with the
18 support he received from me and the sheriff's office.
19 So I was -- quite frankly, Mr. Sussman, I thought
20 Mr. York was nothing but a stalking horse at the time
21 anyhow.

22 Q For whom?

23 A A stalking horse is someone who just goes out
24 there and runs for a time and then drops out.

25 Q But a stalking horse normally --

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1 DONALD B. SMITH

2 MR. KLEINBERG: He asked for whom.

3 Q A stalking horse normally means that he's
4 going out for someone else.

5 A Somebody else will come in later.

6 Q So who did you --

7 A I didn't know. I didn't know at the time.

8 Q But in light of how you thought Mr. York felt
9 about you personally and the support your office
10 received, you didn't think there was really much reason
11 for him to be running, as I'm understanding your
12 testimony?

13 A That's true.

14 Q You felt he was being put up to it by Adam;
15 right?

16 A You know --

17 Q You can state it.

18 MR. KLEINBERG: Objection. You can
19 answer.

20 A I'm just saying as I sit here, I don't know --
21 obviously, later on, you know, I believe -- I could be
22 wrong about the time, but I thought it was in April I
23 think Adam made comments supporting Mr. York and making
24 negative comments about me. But I don't -- you know, I
25 don't think initially -- quite frankly, I wasn't all

1 DONALD B. SMITH

2 that concerned about Mr. York.

3 MR. KLEINBERG: Just listen to the
4 question and answer it.

5 Q We can be here a long time.

6 A I'm sorry.

7 Q I'm trying to appeal to you that, you know,
8 there's no right or wrong answer. I'm trying to get a
9 truthful account of what happened from all sides. I
10 think everyone is entitled to that. You're entitled to
11 give whatever answer you wish, and we'll proceed with
12 the deposition. I'm not the judge of what's truthful
13 and what's not. Obviously, some other people are going
14 to be judging that at another point in time. I'm just
15 appealing to you to try to answer the question directly,
16 whoever it will help or hurt. You can't answer
17 questions at a deposition wondering who it's going to
18 help or hurt. You just can't keep score. That's my
19 view of it. And I tell the same thing to Adam Levy.

20 Here's where we are. We're in early March of
21 2013 or mid-March of 2013. By then, you had had a
22 number of public skirmishes with Adam Levy; is that
23 true?

24 A We had some disagreements on some issues, yes,
25 sir.

1 DONALD B. SMITH

2 Q When do you recall first having what you're
3 calling "disagreements on some issues"? When did that
4 first arise?

5 A Well, I believe the first issue that came
6 up -- and I don't even categorize this one as a
7 disagreement, Mr. Sussman, but the first one I recall
8 was, I believe, either orally or in writing, we may have
9 sent a letter or talked to Adam about the jail
10 population.

11 Q Do you know when that was?

12 A I want to say it was in October of 2008. I
13 believe --

14 Q Hold on.

15 A Can I finish my answer, sir?

16 Q I think you've answered the question when it
17 occurred and what was the first thing you recall. You
18 said it was something about the jail population, and
19 you've told me a date. You'll have a chance to expand
20 your answer, but I'd like to try to keep answers to the
21 questions that are asked.

22 MR. KLEINBERG: Can we take a quick
23 break? Two minutes.

24 MR. SUSSMAN: No question pending.

25 (Brief recess.)

1 DONALD B. SMITH

2 BY MR. SUSSMAN:

3 Q Let's go back, sir. As I understand it, you
4 were a deputy county executive; is that accurate?

5 A Yes, sir.

6 Q After you retired from the military, you went
7 down to Florida?

8 A Yes, sir.

9 Q Did you run for political office in Florida?

10 A No, sir.

11 Q When you came back here, what year was it?

12 A Sir, I took my oath of office on 1
13 January 1999. I believe I came back in the county the
14 last day or two of, maybe, December, December of '98.

15 Q So you began your service as a deputy county
16 executive. Who was then county executive?

17 A Robert J. Bondi.

18 Q B-O-N-D-I?

19 A B-O-N-D-I.

20 Q Had you known Mr. Bondi?

21 A I've known Mr. Bondi --

22 Q The answer is yes?

23 A Yes, sir.

24 Q When did you meet Mr. Bondi, what year?

25 A Sir, I don't remember the exact year, but I

1 DONALD B. SMITH

2 believe, if my memory serves me correctly, I believe it
3 was in the early '80s.

4 Q Were you in the military then?

5 A Yes.

6 Q Was he in the military?

7 A No, sir.

8 Q When you were in the military, were you
9 stationed at West Point at any time?

10 A Yes, sir.

11 Q What years were you at West Point?

12 A Well, I was at West Point twice. I was at
13 West Point from July 1st, 1965, to June 4th, 1969, and I
14 was a cadet. Then I was again at West Point from July
15 of 1975 through June of 1978.

16 Q So then, after serving some time as the deputy
17 county executive, you ran for sheriff; right?

18 A Yes, sir.

19 Q When did you first run?

20 A Sir, I ran in -- I think I first ran starting
21 in May of 2001.

22 Q Were you elected in 2001?

23 A I was elected in November of 2001.

24 Q So, yes, you were elected in November of 2001?

25 A Yes, sir.

1 DONALD B. SMITH

2 Q At the time you were elected sheriff, was
3 Mr. Levy a practicing attorney in this county, if you
4 know?

5 A My memory, yes, sir, I believe he was.

6 Q Did you know him in that capacity?

7 A Yes, sir.

8 Q What was your relationship with him when you
9 became sheriff and he was a practicing attorney, if any?

10 A I believe we were always certainly
11 acquaintances, and, you know, we had a friendly
12 relationship.

13 Q Were you members of the same political party
14 at that time?

15 A Yes, sir, I believe so.

16 Q What was your relationship with state Senator
17 Leibell at that time, 2001? Were you supportive of one
18 another at that time?

19 A On the surface, we were friendly.

20 Q Did he support your run? In '01, did he
21 support your run?

22 A He didn't get involved.

23 Q So you're saying he did not either support or
24 oppose?

25 A That's my recollection.

1 DONALD B. SMITH

2 Q Did you seek his support?

3 A Not that I recall, sir.

4 Q During the 2001 campaign, did you campaign
5 against Mr. Leibell in any way?

6 A Not that I recall, sir.

7 Q What year was Mr. Leibell criminally
8 prosecuted, if you know?

9 A Sir, I believe it was in 2010, is my
10 recollection.

11 Q Now, there comes a time when you run for
12 re-election, and that would have been in 2005; correct?

13 A Yes, sir.

14 Q And was Mr. Levy in any way involved in your
15 campaign, if you know?

16 A I don't recall his involvement. Whether he
17 came to a fundraiser, I have no recollection, but he
18 certainly -- he wasn't involved in my campaign actively.

19 Q Do you know whether he was supportive of you
20 at that point?

21 A I don't believe he was not supportive of me at
22 that point. I don't have a recollection of --

23 Q Did you have a primary in 2005 for the
24 Republican Party?

25 A No, sir.

1 DONALD B. SMITH

2 Q Did you have a Democratic opponent in 2005?

3 A No, sir.

4 Q So you ran unopposed?

5 A Yes, sir. That's my memory.

6 Q So 2009 comes, and Mr. Levy is not supportive
7 of you; correct?

8 A I don't recall him being actively against me.

9 Q There were two primary opponents?

10 A Yes, sir.

11 Q Mr. Corville and Mr. --

12 A McConville.

13 Q Mr. McConville and Mr. DeStefano; correct?

14 A Yes, sir.

15 Q Did Mr. Levy support either of them, to your
16 knowledge?

17 A Not that I recall. I don't have a
18 recollection of him being active. That's my
19 recollection. I could be wrong.

20 Q Whatever your recollection is, that's what
21 we're here about.

22 Do you remember telling people -- and, in
23 fact, telling many people -- at that point in time that
24 you thought Mr. Levy was attempting to create a
25 two-person race which he thought it more likely you

1 DONALD B. SMITH

2 would lose? Do you remember stating that publicly in
3 2009?

4 A I don't recall saying it, but something did
5 occur later that caused me to be concerned.

6 Q Well, do you have any recollection of stating
7 directly in 2009 that Mr. Levy was doing Mr. Leibell's
8 bidding by trying to get one of the two candidates off
9 the ballot? Do you remember stating that publicly or
10 not?

11 A Sir, I don't recall saying it. I don't
12 recall. If you can refresh my memory.

13 Q I can do a lot of things, but we have limited
14 time here. I want to try to understand what you
15 remember and what your testimony is.

16 Do you have a recollection of going to the
17 home of either of your opponents in 2009, let's say the
18 September, October, November 2009 period?

19 A Yes, sir.

20 Q Which opponent's home did you go to?

21 A Andrew DeStefano.

22 Q Did you go after Mr. DeStefano withdrew from
23 the ballot?

24 A Yes.

25 Q Did he withdraw from the ballot after he was

1 DONALD B. SMITH

2 advised that he was going to be prosecuted by Mr. Levy
3 for election fraud?

4 A That's my recollection, sir.

5 Q Did you publicly comment on that prosecution?

6 A I don't recall making public comments.

7 Q Did you speak to Mr. DeStefano and his wife at
8 his home?

9 A Yes, sir.

10 Q Do you remember the conversations?

11 A Yes, sir. Again, that's a long time ago.

12 Q Do you remember the conversation?

13 A I can remember the thrust of the conversation.

14 Q Did you say to either Mr. DeStefano or his
15 wife that you felt that the prosecution by Mr. Levy was
16 inappropriate?

17 A I don't recall saying that.

18 Q Was that your belief at the time?

19 A At the time I visited Mr. DeStefano, I don't
20 recall having that belief. I believe that belief came
21 later.

22 Q During the campaign?

23 A During the next several days.

24 Q What belief did you form during the next
25 several days about Mr. Levy's prosecution of

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2 Mr. DeStefano?

3 A It was -- well, I was concerned that there
4 were some things happening during that campaign
5 involving Mr. DeStefano and Mr. Borkowski and that race
6 and with some attorneys who were working -- or an
7 attorney who was working for -- supposedly for
8 Mr. DeStefano, but who was reported to me later that
9 had -- he had worked for Mr. DeStefano's opponent. But
10 this was not -- I didn't have this information on the
11 morning that I visited Mr. DeStefano.

12 MR. SUSSMAN: Move to strike as
13 nonresponsive.

14 Q The question I asked you, sir, had to do with
15 what belief you formed concerning Mr. Levy and his
16 prosecution of Mr. DeStefano. Did you form a belief
17 about that matter within a few days of meeting with
18 Mr. DeStefano?

19 A I would say it was over the next two weeks,
20 sir.

21 Q What belief did you form with regard to
22 Mr. Levy's prosecution of Mr. DeStefano during the next
23 few weeks?

24 A I was concerned that Mr. DeStefano was not
25 getting a fair shake. He wasn't getting due process.

1 DONALD B. SMITH

2 Q Why did you feel Mr. Levy was not giving him a
3 fair shake or due process?

4 A I was visited by a Mr. Kowalski and several
5 members of DeStefano's team, and -- I remember
6 Mr. Kowalski's name. And they provided some very
7 disturbing news that a Mr. Bonanno, who was acting as a
8 go-between between Mr. Levy and Mr. DeStefano to get
9 Mr. DeStefano off the ballot for the primary.

10 Q Was Mr. Bonanno an attorney?

11 A Mr. Bonanno was and is an attorney, I believe.

12 Q Do you know his first name?

13 A I believe his first name is Pat.

14 Q You came to an understanding that Mr. Levy was
15 using Mr. Bonanno as a go-between to get Mr. DeStefano
16 off the ballot?

17 A It was conveyed on information and belief. It
18 was conveyed that Mr. Levy -- that if -- that Adam
19 wanted him to resign from the campaign --

20 Q DeStefano to resign?

21 A DeStefano. At one point in time to -- this is
22 a while ago, Mr. Sussman -- to change his address to New
23 York City or something like he's leaving so that he
24 could be removed from the ballot.

25 Q Was this to avert prosecution, as you

1 DONALD B. SMITH

2 understood it, for election fraud?

3 A My understanding was that was the hammer that
4 was being held over Mr. DeStefano. And Mr. Kowalski,
5 you know, conveyed this. And there was some others in
6 the campaign, because -- I'll stop there.

7 Q Just try to answer the question. You're doing
8 fine right now. So let me get clear what it was you
9 concluded, because that's what, right now, is important.
10 What's true and what's not true is not really what I'm
11 asking. It's what you understood and concluded.

12 Did you voice to Mr. DeStefano when you went
13 to see Mr. DeStefano at his home your concern that he
14 was being, essentially, run off the ballot?

15 A No, sir.

16 Q Are you sure?

17 A Sir, that is my memory, because my
18 recollection is I didn't learn a lot of this information
19 until later. My purpose for going to Mr. DeStefano's
20 home, if my memory serves me, was to console him. When
21 you're campaigning against opponents, you know, you
22 build up a mutual respect. And just to console him.

23 Q Having then concluded, based on what
24 Mr. Kowalski and others told you, that Mr. Levy had
25 tried to orchestrate Mr. DeStefano's withdrawal from the

1 DONALD B. SMITH

2 race, did you conclude that Mr. Levy had some political
3 motive to do that, as opposed to a law enforcement
4 motive?

5 A My conclusion was -- my conclusion was that
6 this was a matter that was bigger than the purview of
7 the Putnam County Sheriff's Office and it should be
8 looked at by a higher authority.

9 MR. SUSSMAN: Move to strike as not
10 responsive.

11 Q Mr. Borkowski, was he an individual who had
12 brought proceedings against Mr. DeStefano, as you
13 understood it, to have him removed from the ballot?

14 A I believe he did. I believe he did.

15 Q Do you have a recollection of indicating to
16 Mr. DeStefano that you felt the people should get to
17 decide who amongst the three of you should be the
18 candidate for sheriff? Do you remember saying that?

19 A I don't recall the conversation, sir.

20 Q Do you have a recollection of concluding that
21 Mr. Leibell was at this point, in 2009 -- this is
22 September of 2009 -- interested in having you removed as
23 sheriff? Was that your view?

24 A I believe that -- my belief.

25 Q That's what we're talking about, your belief.

1 DONALD B. SMITH

2 A I believe that Vinny Leibell, Senator Leibell,
3 wanted a sheriff that he could control.

4 Q You were not that person?

5 A And I was not that person.

6 Q When did you first conclude that Leibell
7 wanted a sheriff that he could control and that you were
8 not that person?

9 A Sir, I don't think I can give you an exact
10 date.

11 Q Was it during your first term? Your second
12 term?

13 A Sir, I think most of the people in public
14 office in Putnam County knew that Mr. Leibell was the
15 number one political force and that he pretty much
16 wanted to control things. And I would say -- I can't
17 give you an exact date and time, but I can tell you
18 this: That we in the sheriff's office weren't going to
19 do Mr. Leibell's bidding or Mr. Ray Maguire's, his chief
20 of staff, bidding, and we made that very clear.

21 Q Did Mr. Leibell or Mr. Ray Maguire ever ask
22 you to do their bidding, or is this an assumption that
23 you had, that they wanted you to do their bidding?

24 A They --

25 MR. KLEINBERG: Just answer the question.

1 DONALD B. SMITH

2 It's a simple question.

3 Q Do you understand the question?

4 A I understand the question, sir.

5 Q Please answer it. Just so we're clear,
6 Mr. Kleinberg can't answer questions for you, and he
7 also can't interpose objections just for the sake of
8 objecting. The courts have made that very clear. He's
9 following his oath. He can't just jump in here.

10 A Sir, I'm trying to be succinct.

11 Q Well, just try to answer the question. The
12 question is: Did Mr. Leibell or Mr. Maguire ever say
13 anything or do anything to you directly which gave you
14 the understanding that one of them wanted you to do
15 their bidding?

16 A Sir, not to me directly.

17 Q Now, you associated in your mind at some point
18 Mr. Levy and Mr. Leibell; is that right? You associated
19 them. You believed they were aligned; is that true?

20 MR. KLEINBERG: Objection.

21 THE WITNESS: Can I answer the previous
22 question?

23 MR. KLEINBERG: You can answer any of his
24 questions.

25 A I just want to make it clear so it makes sense

1 DONALD B. SMITH

2 that it was Mr. Maguire, I believe, who reached out on
3 behalf of Senator Leibell to my undersheriff, Peter
4 Convery.

5 Q What did he want?

6 A He wanted the town supervisor of the Town of
7 Southeast, Michael Rights, he wanted him followed,
8 because he thought that he would be -- he would be a
9 target for DWI.

10 Q Rights is his name?

11 A Michael Rights. Undersheriff Convery and I
12 had a conversation. And I said, We don't do that; We
13 will enforce the law. As it was, we did make a number
14 of arrests of Mr. Rights, but they were bona fide law
15 enforcement arrests. They weren't targeting any
16 individual. That's the one thing that comes to my mind,
17 but that's the complete answer to your question.

18 Q What year was that, roughly?

19 A I don't want to guess, Mr. Sussman.

20 Q That's fine.

21 A I believe it was in the late first decade of
22 the century. I believe that's where it was.

23 Q Going back to my next question, did there come
24 a time when you believed that Mr. Levy was associated
25 somehow with Mr. Leibell?

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2 A Well, I think I've learned through the years
3 that Mr. Leibell -- Mr. Leibell was a political force in
4 Putnam County, and people normally ascended to power in
5 going to him. And I learned at some point in time -- I
6 don't remember the exact dates, probably through
7 newspaper reports; I don't recall exactly when -- that
8 Mr. Levy in his first campaign provided, you know, funds
9 for an organization, I guess, that Ray Maguire was
10 affiliated with, Mr. Leibell's chief of staff, to, I
11 believe, run the campaign.

12 Q Run whose campaign?

13 A Run Adam's campaign.

14 Q So you're saying that Mr. Levy employed an
15 organization Mr. Maguire was associated with to help run
16 his campaign?

17 A That's on information and belief.

18 Q That's what you believe.

19 A From newspaper reports.

20 Q And you felt that that was a way, if I
21 understand what you're saying, of Mr. Levy to
22 essentially buy favored status with Mr. Leibell and
23 Mr. Maguire; is that fair?

24 A Well --

25 Q Is that what you believed? It's very simple.

1 DONALD B. SMITH

2 A I believe there was an affiliation there, like
3 with many other politicians in Putnam County.

4 Q When you spoke to Mr. Sayegh about corruption
5 in this county -- and you did have many conversations
6 with Billy Sayegh about corruption in the county;
7 correct?

8 A Yes, sir.

9 Q -- you were referring in part to what you
10 understood to be this alliance or affiliation between
11 Levy as a DA and Leibell; right? That's part of the
12 corruption that you were referring to?

13 A I believe I was speaking --

14 MR. KLEINBERG: Objection.

15 A I believe I was speaking in broad terms.

16 Q I understand that. Is that part of what you
17 were speaking about?

18 A Is it a part of it? You know --

19 Q You're defending yourself. All I'm asking
20 you: Was that part of what you were referring to? It's
21 a simple question. It either was or it wasn't. If it
22 was, say it was. Was it?

23 MR. KLEINBERG: Objection. You can
24 answer.

25 A It's part of it.

1 DONALD B. SMITH

2 Q Now, when did you come to the feeling or
3 conclusion that part of the corruption that you believed
4 existed in the county -- we're not talking about right
5 now whether you're right or wrong. We're not
6 adjudicating that here. I'm just trying to understand
7 what you believed and when you came to these views.

8 When did you come to the view that that
9 association was part of the corruption you were
10 concerned about in this county?

11 A Well, there were --

12 Q When? I'm just asking a time frame.

13 A I don't know the exact year, but it was --

14 Q '09? '08? That time period?

15 A The time of the Caruso case. Around the time
16 of the Caruso case.

17 Q Now, the Caruso case, involved, among other
18 people, Billy Sayegh?

19 A Yes, sir.

20 Q Billy Sayegh was working in your office in
21 this confidential role; right?

22 A Yes, sir.

23 Q At the same time he was doing that, he was
24 representing the neighbor of Mr. Caruso?

25 A That's my understanding, sir.

1 DONALD B. SMITH

2 Q Did you know that at that time? When it was
3 happening, did you know that was happening?

4 A Yes. But can I give you a complete answer?

5 Q Sure. "Yes" is the complete answer to my
6 question, but you can go further if you want.

7 A I was told by Bill Sayegh at the time that he
8 was going to get off that case.

9 Q But he didn't get off the case, did he?

10 A Not that I know of, sir.

11 Q You didn't tell him to get off the case?

12 A Well, he told me he was getting off the case.

13 Q But you learned he was not off the case, and
14 you didn't instruct him to get off, did you?

15 MR. KLEINBERG: Objection.

16 A Not until later. I didn't learn of this until
17 later.

18 Q Well, it certainly wasn't proper for him, as a
19 confidential advisor to your office, to also be
20 representing a party to that case, was it?

21 A I don't believe so.

22 Q Now, you're aware that Compton Spain was
23 involved in that case; right?

24 A Yes, sir.

25 Q What was the relationship between Adam Levy

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1 DONALD B. SMITH

2 and Compton Spain at the time Mr. Spain was involved in
3 that case, if any?

4 A I believe they're friends, but that's just
5 information and belief.

6 Q Well, Mr. Levy is friends with most attorneys
7 in this county, isn't he?

8 A I would suspect so, yes, sir.

9 Q So can you explain to me whether, with regard
10 to the Caruso matter, you ever had any direct
11 conversations with Adam Levy?

12 A I don't recall conversations.

13 Q You don't recall having any?

14 A I don't recall. I'm not saying that it didn't
15 happen, but I don't recall any.

16 Q Now, the Caruso matter continued for a number
17 of years; right?

18 A Yes, sir.

19 Q In fact, in March of 2013, the Caruso matter
20 was still going on; right?

21 A Yes, sir.

22 Q What was going on in March 2013 with regard to
23 the Caruso matter?

24 A As I recall, and I'm using your date -- I
25 don't have a recollection of the date -- there was an

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2 issue with Mr. Mario Caruso moving back next to his
3 victim, and at the time that this issue came into play,
4 there was --

5 Q I'm asking you about March 13th. Just keep
6 that in mind. I'm not asking you for a recitation of
7 everything you know about Caruso. Do you know what was
8 going on in March of 2013? Either you do or you don't.

9 A Okay. Well, I know -- I don't know if I'm on
10 the right part of the Mario Caruso story. Are you
11 talking about the suit brought by Spain, or are you
12 talking about the issue of letting Mario Caruso move
13 back next to his victim?

14 Q By March 2013, Spain was in court on behalf of
15 Mr. Caruso suing, among others, Mr. McNamara; right?

16 A Yes, sir. And initially, I believe Chief
17 Schramek, and I believe Mr. Levy was also.

18 Q They were already out of the case by March of
19 '13.

20 A Okay.

21 Q The issue, in part, was whether your offices
22 had provided Mr. Sayegh with access to confidential
23 information which he had then used. Do you know that?
24 Do you know that's an issue that was then in the case?

25 A I remember the case. Yes, sir.

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2 Q Were you personally sued?

3 A Not that I recall, sir.

4 Q So how did the matter end, that civil suit?

5 How did it end? Do you remember?

6 A As I recall, the County -- the County settled
7 out, and I believe --

8 Q On whose behalf? McNamara, for instance?

9 A No. On the County's behalf. Sir, I don't
10 have a good memory on how the case ended, sir.

11 MR. KLEINBERG: If there's anything you
12 want to stipulate on that --

13 MR. SUSSMAN: No. That's fine. We don't
14 have to stipulate. I'm just asking some questions of
15 this gentleman.

16 MR. KLEINBERG: Of course.

17 BY MR. SUSSMAN:

18 Q Did you and Mr. Levy have any public
19 disagreement about the Caruso matter, as opposed to
20 whatever you may have both felt? Was there any time
21 that you publicly spoke to Mr. Levy's role in the Caruso
22 matter?

23 A I don't recall.

24 Q Did you have conversations with your staff
25 concerning Mr. Levy's role in the Caruso matter?

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2 A Yes.

3 Q And what was the sum and substance of what you
4 conveyed to your staff about Mr. Levy's role in the
5 Caruso matter?

6 A The big issue that we discussed in the Mario
7 Caruso case was the issue of Mario Caruso being
8 allowed -- a Level 3, violent identifier, sex offender,
9 being allowed to move back in next to his victim, one of
10 his victims. And there was a time when this matter --
11 and I believe it was going -- I believe it was going
12 before Judge Lorenzo, and I believe the issue was the
13 filing on behalf of Caruso to move back in next to his
14 victim. And as I recall, Chana Krauss, who represented
15 Mr. Levy's office, filed paperwork that indicated that
16 law enforcement was in agreement with this and that we
17 could not supervise Mr. Caruso in a transient status.
18 And virtually my entire staff at the time felt like we
19 could supervise Mr. Caruso, that that was not an issue,
20 and that Mr. Caruso should not be allowed to live next
21 to the victim. And, ultimately, he had other options
22 than living in a transient status. And we just didn't
23 agree with -- we didn't agree with Ms. Krauss's
24 assertion. And that's my recollection, sir.

25 Q So you filed an affidavit with the Supreme

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2 Court of the County of Putnam expressing your
3 perspective on that issue; correct?

4 A I believe -- I didn't personally. I believe,
5 if my memory serves me correctly, it was Chief Schramek.

6 Q You didn't file an affidavit?

7 A I don't believe so, if memory serves me.

8 Q So a document dated April 23, 2012, signed by
9 you, and it says, "Affidavit of Donald B. Smith," you
10 didn't file that or sign it?

11 MR. SUSSMAN: I'm just using this right
12 now to refresh his recollection.

13 Q Just look at the last page. Is that your
14 signature on the last page?

15 A Obviously --

16 Q So it refreshes your recollection that you did
17 sign it?

18 A Yes. I apologize.

19 Q Very well. That was drafted by you or
20 McNamara or both of you?

21 A Could I look at it for a second?

22 Q Sure.

23 MR. SUSSMAN: It's not marked.

24 MR. KLEINBERG: Then I don't have it.

25 MR. SUSSMAN: For purposes of his reading

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2 and telling me who wrote it, he can look at this. I'm
3 giving the witness a document which he has indicated --

4 MR. KLEINBERG: Should we mark it?

5 MR. SUSSMAN: We'll deem it marked.

6 Let's deem it marked and proceed. We can mark it at the
7 end.

8 MR. KLEINBERG: All right. Fine.

9 (Plaintiff's Smith Ex. 69 - 4/23/12

10 AFFIDAVIT OF SMITH marked for
11 identification.)

12 A (Witness peruses document).

13 Q Who wrote this document? That's the question.

14 A I just want to refresh myself, sir.

15 Q Sure. I'm not going to ask you questions
16 about the detail of it, but if you need to look at it
17 further to tell me who wrote it, that's fine.

18 MR. KLEINBERG: Did you ask him if there
19 was an attorney involved?

20 MR. SUSSMAN: I'm just asking who wrote
21 it.

22 MR. KLEINBERG: To the extent there was
23 any attorney/client privilege --

24 MR. SUSSMAN: I don't think
25 attorney/client privilege applies to who wrote a

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2 document. Who wrote the document? Did he write it?
3 Did someone else write it?

4 MR. KLEINBERG: I'm not saying he can't
5 answer. I'm just cautioning him not to reveal any
6 discussions he had with --

7 MR. SUSSMAN: I'm not asking him about
8 discussions. I'm just asking who wrote the document.

9 MR. KLEINBERG: I know, but certain
10 things today have gone past just the questions, so I
11 caution him.

12 A (Witness peruses document).

13 Q Can you answer the question?

14 A Yes, sir. First of all, let me just say when
15 you asked the question originally, I was referring to a
16 different part of the Caruso matter. I was referring to
17 the issue of him -- the stay away order, the 1500-foot
18 stay away order.

19 Now that I've read this, I believe that this
20 document was authored by Captain McNamara with guidance
21 from me, and certainly when I read the paragraph about,
22 I have served -- there's certainly some of my writing
23 here too, sir.

24 Q Let me ask you, since you've read it now -- I
25 wasn't going to get into this, but since you've had a

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2 chance to read it, let me ask you a couple of specific
3 questions about the issues that are here.

4 There's a meeting described at paragraph 9, a
5 meeting which was convened on or about August 2, 2011,
6 in the Putnam County DA's office. Am I accurate you
7 were not at that meeting?

8 A Yes, sir, that's my understanding. I don't
9 recall being at that meeting.

10 Q You're signing an affidavit under your name,
11 and in paragraph 10, you're saying, Upon information and
12 belief based upon information provided by McNamara and
13 Schramek during the meeting.

14 So they were at the meeting, and they're
15 providing you this information, if I understand it; is
16 that correct?

17 A That's my understanding, sir.

18 Q Had you ever spoke with Ms. Krauss about the
19 matter before preparing this affidavit?

20 A I don't recall, sir.

21 Q You don't recall doing that?

22 A I don't.

23 Q Now, there's also a discussion about certain
24 subpoenas that Mr. Spain had issued. That's on page 8,
25 paragraph 15.

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2 A Paragraph 15?

3 Q Yes.

4 MR. SUSSMAN: We'll deem marked as
5 Exhibit 70 Compton Spain's affidavit.

6 (Plaintiff's Smith Ex. 70 - AFFIDAVIT OF
7 COMPTON SPAIN marked for identification.)

8 BY MR. SUSSMAN:

9 Q You had seen Compton Spain's affidavit,
10 obviously, since you're responding to it; right?

11 A I don't have a memory of it, but, obviously --

12 Q You may not have seen it?

13 A I don't recall, sir.

14 Q As you say, Mr. McNamara may have seen it and
15 written a response on your behalf; correct?

16 A I don't recall the specifics of it.

17 Q And Mr. Spain, in paragraph 25, indicates that
18 there had been a free flow of information, strategy, and
19 opinion between your department and the Sayegh law firm
20 regarding a pending criminal case involving Mr. Caruso.
21 And then he cites to a number of statements which are in
22 various locations, affirmations, and other documents.

23 You read this before?

24 A I don't recall.

25 Q Did you have any knowledge of Mr. Sayegh being

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2 present for conversations where members of your
3 department were speaking about this matter and he was
4 representing one of the parties? Did you have any
5 knowledge that was going on in 2011?

6 A There was only one conversation I remember
7 with Mr. Spain -- I mean Mr. Sayegh, and at that time, I
8 told Captain McNamara that we would put up a Chinese
9 wall and not have Mr. Sayegh be involved with anything
10 within the department. I have no knowledge of
11 information.

12 Q When was this discussion about the, quote,
13 "Chinese wall"?

14 A It was at the time -- I can't give you a date,
15 but it was at the time of --

16 Q Do you know the year?

17 A I don't know the year. Chana Krauss was
18 working the action on the 1500-foot order.

19 Q When you say, "working the action," was it
20 after the meeting that's referred to in your own
21 affidavit, the meeting you talked about in paragraph 5
22 that you did not attend but are writing about here?

23 A It was after that meeting, yes, sir.

24 Q That's when the Chinese wall, you're saying,
25 was erected?

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2 A Yes, sir.

3 Q That meeting, according to the information
4 here, occurred at or around August of 2011.

5 Let's go back to another subject. Let's go
6 back to this period between March 12th and March 20th.
7 There was a large detail -- I don't know if it's six
8 men, maybe eight, or 10 men -- who were dispatched from
9 your offices to execute the arrest of Mr. Hossu. Do you
10 have knowledge of that?

11 A I'm aware of that, yes, sir.

12 Q That was then on the evening of the 20th at
13 Clock Tower. Do you have knowledge of that?

14 A Yes, sir.

15 Q How many men were detailed to Mr. Levy's
16 residence that night to participate in the arrest of
17 Mr. Hossu at his address?

18 A I don't recall any, sir.

19 Q Why not?

20 A Because I don't believe Mr. Hossu was there at
21 the time of the arrest.

22 Q Where did you get the idea that he wasn't
23 there at the time of the arrest?

24 A Well, the arrest paperwork shows where
25 Mr. Hossu was arrested.

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2 Q E [REDACTED]

3 [REDACTED]

4 A Yes, sir.

5 Q I'm trying to understand the decision to
6 deploy a substantial number of men to the Clock Tower
7 residence and none to Mr. Levy's residence. What was
8 that decision based upon, if you know?

9 A I'm sure that information was based on
10 information from the investigation as to where Mr. Hossu
11 was. We quite often arrest people not at their
12 residence. We arrest them at their place of business.
13 We arrest them on the road. We arrest people in a way
14 that we can safely bring them into custody without
15 harming innocent bystanders.

16 Q Are you telling me now that you believed on
17 March 20th that Mr. Hossu was residing at Mr. Levy's?

18 A Well, I believe that was his official
19 residence based on his --

20 Q Was he residing there? That was the question.

21 A I don't know. He wasn't there when he was
22 arrested, but I don't know.

23 Q When was the last time he was there?

24 A I don't know, Mr. Sussman.

25 Q Did your investigation determine the last time

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2 he was present at Mr. Levy's house for any purpose? Any
3 purpose. Training? Visiting? Living?

4 A Not that I'm aware of.

5 Q Well, let me ask you the question this way so
6 it's clear to you: Wherever you were the evening of the
7 20th -- I think you said earlier you were at your house.

8 A That's my best memory.

9 Q You were getting reports about what was going
10 on at your home, I take it; correct?

11 A Yes, sir, that's my memory.

12 Q Did you have at that point in time any
13 understanding of when Mr. Hossu was last at Mr. Levy's
14 home? Did you have any understanding?

15 A Not that I recall, sir.

16 Q Had anyone from your staff indicated that he
17 or she had any knowledge of when Mr. Hossu had last been
18 at Mr. Levy's home?

19 A Not that I recall.

20 Q Did anyone on your staff indicate to you any
21 knowledge of how Mr. Levy and Mr. Hossu had -- whether
22 they were relating to one another at all in March of
23 2013?

24 A Not that I recall, sir.

25 Q There was some information developed from the

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2 aunt, as I understand what happened, factually, that
3 Mr. Levy had been, or at least at some point in time
4 that she had knowledge of, personally trained by
5 Mr. Hossu?

6 A That's my understanding.

7 Q Did the aunt give any information as to when
8 that had occurred in time?

9 A Not that I recall, sir.

10 Q Was there any information, other than from the
11 aunt, as of March 20th about the personal training
12 relationship between the two? In other words, any other
13 person know of that or speak about that before
14 March 20th, as it was reported to you, of course?

15 A I'm just trying to think if Deputy
16 Hunsberger -- I'm trying to answer your question
17 completely. I'm trying to think if Deputy Hunsberger
18 had conveyed some information. I seem to have a
19 recollection of that, but not to me directly.

20 Q But what you learned. What do you think
21 Hunsberger had said about the relationship between Levy
22 and Hossu?

23 A I think -- well, I don't have a good
24 recollection. I don't want to guess.

25 MR. SUSSMAN: Let's mark as Exhibit 71 an

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2 excerpt of a News 12 segment, "DA's Trainer Charged."

3 (Plaintiff's Smith Ex. 71 - TRANSCRIPTION
4 OF NEWS 12 EXCERPT marked for
5 identification.)

6 MR. SUSSMAN: We don't have to transcribe
7 the audio, but I think it's a fair way for the sheriff
8 to hear the comments.

9 Q You can read Exhibit 71 while it's being set
10 up.

11 A (Witness peruses document).

12 Q While Mr. Levy is doing that, I just want to
13 ask you a couple of questions about this. First of all,
14 do you have a recollection of a Lily Jamali from News
15 12?

16 A I do not, sir.

17 Q Do you have a recollection of circulating two
18 press releases concerning Mr. Hossu on or between
19 March 20th and March 23rd?

20 A Yes, sir.

21 Q You've answered. Again, you'll have a chance
22 to elaborate if needed, but let's make sure we're
23 understanding each other.

24 Did you have any interviews with members of
25 the media in which they called you and you spoke to them

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2 on the telephone or in person regarding this matter of
3 the Hossu arrest and Mr. Levy?

4 A Sir, I don't recall any interviews, and I
5 don't recall ever talking to this Lily Jamali. I don't
6 recall going on camera, sir.

7 Q So as I understand your testimony here today,
8 you don't recall giving any live interviews between the
9 20th and 23rd or 24th, those three or four days,
10 concerning this matter?

11 A Not that I recall, sir. I recall being at one
12 meeting. I believe it was a chamber of commerce meeting
13 in Cornerstone Park. I believe it was on a Sunday. And
14 I recall walking out and getting ambushed by a reporter,
15 and all I said was -- I believe all I said was, This
16 matter needs to be dealt with in the criminal justice
17 system. I don't recall making any comment, and I
18 certainly don't recall talking to Lily Jamali. I have
19 no recollection of that, sir.

20 Q We're going to listen to this broadcast.

21 (Whereupon video footage was viewed.)

22 Q Do you recognize her?

23 A No, sir, I do not.

24 (Whereupon video footage was viewed.)

25 Q Did you see that account when it aired, sir?

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2 A Sir, I don't recall seeing that particular
3 account. I really don't.

4 Q Did anyone send you that account by email?

5 A Not that I recall, sir. Sir, could I --

6 Q Please answer the questions.

7 MR. KLEINBERG: If you have to supplement
8 your answer, you're free to.

9 Q Now, what was, if you have any knowledge of
10 it, Greg Ball's involvement in the Hossu matter?

11 A I don't recall any matter --

12 Q In the period from March 12th to March 20th.

13 A I don't recall any involvement by Greg Ball.

14 Q Did you tell Greg Ball before Mr. Hossu's
15 arrest that Mr. Levy and Mr. Hossu had some
16 relationship?

17 A Not that I recall, sir.

18 Q Do you recall not doing that, or you don't
19 recall one way or the other?

20 A I don't recall any conversations with Greg
21 Ball at that particular point in time and specifically
22 not about the Hossu case. I've had numerous
23 conversations with Greg Ball over the years, but --

24 Q Let's put aside "over the years," because we
25 know Greg Ball has made various statements about

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2 Mr. Levy, but I'm not interested in that. I'm
3 interested in the time period we're speaking about and
4 your particular conversations with him.

5 Do you have any recollection of any subjects,
6 other than Hossu and Levy, which you say you didn't talk
7 to him about, that you were talking with him about that
8 week, the week of the 12th through the 20th, the 13th
9 through the 20th?

10 A I don't recall, sir.

11 Q When you and Mr. Ball spoke, what number did
12 you reach him at; do you know?

13 A I usually spoke to Senator Ball on his cell
14 phone.

15 Q You had his cell phone number?

16 A Yes, I had his cell phone number.

17 Q Were there certain subjects that he had asked
18 you to keep him apprised of or briefed on as the state
19 senator?

20 A The only thing he always asked for was to be
21 made aware of public events, and he was -- he was a very
22 ubiquitous politician. He liked to attend a lot of
23 events. He liked to go to Eagle Scout ceremonies and
24 things like that, and if he couldn't go to one, he might
25 ask someone to present a proclamation on his behalf.

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2 Certainly he was involved with legislation. He was very
3 close to the sheriffs' association. He would attend --
4 sometimes he would come over to the sheriffs'
5 association to deal with, you know, upcoming
6 legislation. He invited me as an expert witness on
7 certain pieces of legislation. I can remember going
8 before some of the committees he chaired. I believe he
9 had Homeland Security, so that was one of the
10 committees.

11 Q That's one of the questions I have. In light
12 of the interest you had in contacting Homeland Security
13 about Hossu, do you remember speaking to Greg about
14 that?

15 A I do not. And, quite frankly, Mr. Sussman,
16 you know, Greg Ball's interest in illegal immigration in
17 his early years in the assembly had kind of waned over
18 the years. He wasn't as much on illegal immigration.

19 Q By '13, you don't believe you would have
20 called him and told him that Adam Levy was housing an
21 illegal immigrant?

22 A I don't recall ever having that conversation
23 with Greg Ball.

24 Q Have you continued to have contact with Greg
25 Ball in the years since he retired from politics, so to

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2 speak?

3 A Not as much, but he has called me to check on
4 my wife and see how she's doing. I've got a couple of
5 calls from him. Probably in the last 60 days, maybe two
6 calls, three calls.

7 Q Have you --

8 A Just social calls. I think one was an
9 invitation to go to some event he was having up in the
10 northeast, and I wasn't able to go to it.

11 Q Have you talked to him about this case?

12 A Not that I recall, sir.

13 Q Has he asked you any questions about this
14 case?

15 A Not that I recall.

16 Q If he indicates that he's talked to you about
17 this case, he might be right; you just wouldn't recall?

18 A That's correct, sir. I just don't have a
19 recollection of it.

20 MR. SUSSMAN: We're going to take lunch
21 break. We're going to start again at 2:00. We'll try
22 to go to 4:30, just so you can gather your schedule
23 together. We'll try to finish. If we can't finish,
24 we'll figure it out.

25 (Lunch recess.)

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2 BY MR. SUSSMAN:

3 Q We're back on the record, and everyone has had
4 an opportunity to have lunch. It's a few minutes after
5 2:00. Are you ready to proceed, sir?

6 A Yes, sir.

7 Q I want to direct your attention back to the
8 time period between the 13th of March and the date of
9 the arrest, March 20th. Did you know that, as part of
10 the normal course of business, your investigators were
11 maintaining a record of their activities in some written
12 form?

13 A Yes. They maintain notes and records.

14 Q Did you know that they were using a computer
15 system of the department to record their activities
16 pertinent to the investigation?

17 A We have a records management system, yes, sir.

18 Q Was it, to your knowledge, the instruction
19 from the chain of command that they record significant
20 events pertinent to the investigation in that system?

21 A Yes. That's the standard operating procedure.

22 Q Is that so individuals who are in the chain of
23 command can access and review what, in fact, is
24 occurring with regard to a case, should they choose to
25 do so, and there would be a record of that?

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2 A That's one of the reasons, yes, sir.

3 Q Do you have access to that system on a
4 day-to-day basis, should you choose to use it, and
5 determine what the course of an investigation is?

6 A I have access to it, but generally, I deal
7 with the chain of command and normally deal with hard
8 copies if I want to see something.

9 Q Now, do you know from being at these
10 depositions that recorded in Mr. Tricinelli's
11 recordation is a conversation with the Westchester
12 County District Attorney on the 19th of March 2013 with
13 regard to the sufficiency of the evidence then available
14 to arrest Mr. Hossu? Are you familiar with that?

15 A I believe --

16 MR. KLEINBERG: Objection.

17 A I believe, if my memory serves me correct,
18 Mr. Sussman, I think we're talking about the 18th of
19 March and not the 19th of March.

20 Q Okay. You're familiar with the entry?

21 A I'm familiar with the entry, but I just want
22 to make sure the record reflects we're talking the 18th
23 of March.

24 Q But you're familiar with the entry?

25 A Yes, sir.

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2 Q The record will reflect the date.

3 A Yes, sir.

4 Q Do you know who made that entry?

5 A As I sit here, I don't recall.

6 Q Now, you mentioned that you had briefings on a
7 regular basis with staff concerning this matter. Were
8 you briefed with regard to that particular contact
9 contemporaneous with the contact?

10 A I don't recall being briefed on that.

11 Q So your testimony is that you were not briefed
12 on the 18th, or the 19th, for that matter, with regard
13 to the content of that direction or advice?

14 A I don't recall being briefed.

15 Q And is it also your testimony you were not
16 aware of that written entry contemporaneous with its
17 being made?

18 A You're talking about the discussion between
19 Tricinelli --

20 Q We can find it.

21 A -- between Tricinelli, Investigator
22 Tricinelli, and Ken Borden?

23 Q I think there may be people involved beyond
24 Tricinelli, but certainly at least Tricinelli and
25 Borden. You're telling us that you didn't see that

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2 entry at the time?

3 A I don't recall seeing it.

4 Q So this is Exhibit 10, Plaintiff's 10, called
5 a Supplemental Report. It's a narrative.

6 MR. SUSSMAN: Counsel, if he doesn't
7 mind, can share it. Just so the record is clear, it's
8 at page D0119. It is an entry by, according to the
9 previous testimony on the document, Stephen E.
10 Tricinelli, and it is dated the 18th, as the witness
11 said.

12 Q It says, "A second phone conversation took
13 place with ADA Borden. He stated some things have
14 changed that Adam Levy and his family were not
15 available. ADA Borden stated he spoke with someone at
16 Putnam County DA's office and he told this member,
17 Investigator Nalbone, and Senior Investigator Castaldo
18 while speaker phone that between you and I've been told
19 by someone that Alex has not been living at Adam Levy's
20 residence and he hasn't been living there for a long
21 time."

22 Just so we're all clear, your testimony today
23 is that you were neither told that, nor did you read it,
24 on or about March 18th or 19th or 20th; is that
25 accurate?

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2 A I don't recall exactly what you just said. I
3 don't recall seeing it or being briefed on it.

4 Q Do you have any explanation for why you would
5 not have been briefed on that?

6 A I don't.

7 Q Then it says, "This member explained all
8 Alex's DMV documents and his girlfriends come back to
9 Adam Levy's residence. This member asked ADA Borden who
10 told him that and he said the head the sex crime unit
11 and I asked was it Chauna Krauss and he replied yes.
12 That she was very familiar with the situation and he
13 does not reside there and hasn't for some time."

14 Do you see that?

15 A Yes, sir.

16 Q Now, were you advised that Chana Krauss had
17 reported to your investigators and/or the Westchester
18 County DA that information?

19 A The only thing I can recall about Chana Krauss
20 was the information that I testified to earlier today.

21 Q So the answer is no?

22 A No. Yes, sir.

23 Q Then it says, "ADA Borden further stated he
24 was not comfortable with having Alex Hossu arrested
25 because there was not enough cooberating" [sic] -- it's

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2 spelled here cooberating, C-O-O-B-E-R-A-T-I-N-G --
3 "evidence."

4 As of the 18th -- again, there's no time
5 listed here, but I assume on the computer one could find
6 the time, perhaps. As of the 18th, had anyone shared
7 with you any corroborating evidence?

8 A They gave me briefings on interviews, but I
9 can't say that I could specifically remember
10 corroborating evidence.

11 Q Then it further says -- and just to be
12 absolutely clear so the record is not in any way muddled
13 on the issue, your testimony is that this conversation,
14 which as it's related here involved three people from
15 your own offices, which would be the member writing,
16 Tricinelli, Mr. Nalbone, and Castaldo -- you said
17 earlier Castaldo was briefing you on this matter; right?

18 A Right.

19 Q You're telling us that Castaldo did not tell
20 you about this conversation with ADA Borden; is that an
21 accurate statement?

22 A I do not recall Castaldo telling me about a
23 conversation with ADA Borden.

24 Q In which Borden said he is not comfortable
25 with having Mr. Hossu arrested because there was not

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2 enough corroborating evidence? He did not tell you
3 that?

4 A I don't recall him telling me that.

5 Q Now, by your protocol, since you indicated
6 earlier you concur and don't concur in an arrest, is
7 that the sort of information which the senior
8 investigator normally would share with you, the opinion
9 of an ADA with regard to whether there is or isn't
10 sufficient evidence?

11 A Well, obviously, at the time we're going to
12 make an arrest, yes, certainly.

13 Q What about during the investigation?

14 A I want as much information as I can get,
15 Mr. Sussman, obviously.

16 Q Now, it also goes on to say, "ADA Borden
17 stated the victim, a 15 YO and 12 at the time of the
18 rape would have to go before a 12 panel jury of
19 strangers and that the case was a he said she said case
20 and a 50/50 case and that the victim would lose."

21 Was that information brought to your attention
22 on the 18th?

23 A Not that I recall.

24 Q It then says, "The [sic] we discussed that he
25 could interview the victim tomorrow he agreed."

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2 A Yes, sir.

3 Q Now, is there any record in your department of
4 an interview conducted by Mr. Borden on the 19th?

5 A I don't know, but I believe there was an
6 interview --

7 Q That's not what I'm asking you. Just try to
8 listen to the question. I would like to finish today if
9 we can, but it's going to depend on your answering the
10 specific question, as I told you at the beginning.
11 There will be a trial in this case. You'll say whatever
12 you want to say, but today is not the day for that.
13 It's for you to answer the questions asked, quite
14 honestly.

15 So the question is: Is there any writing
16 you've ever seen which chronicles an interview between
17 Mr. Borden and this alleged victim the next day?

18 A Not that I recall.

19 Q Is there any writing you've ever seen which
20 gave any advice from Mr. Borden on the 19th or 20th
21 which says, Yes, we now believe there is enough evidence
22 to proceed and make an arrest? Is there any such
23 recordation in any of your records?

24 A Not that I recall or not that I've seen here
25 at these depositions.

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2 Q Did you ever see anything like that
3 contemporaneously?

4 A Not that I recall.

5 Q Well, let me ask you this question: This
6 document, Exhibit 10, is an official record of your
7 agency. It's maintained in the ordinary course of
8 business by someone with, apparently, a duty to do it;
9 right?

10 A Yes, sir.

11 Q And the last words regarding the issue of
12 whether there's sufficient corroboration to make an
13 arrest is that which is attributed to Borden in this
14 document; is that true?

15 A Yes, sir.

16 Q Did you prepare any document on or about the
17 20th or 21st relating this conversation you say occurred
18 with someone in the Westchester County DA's office in
19 which you were given the go ahead to make an arrest?

20 A No, sir.

21 Q Did anyone prepare any document that you've
22 ever seen regarding that conversation?

23 A Not that I've seen, sir.

24 Q Now, let me ask you this: Between the --
25 again, we don't know when on the 18th this was prepared,

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2 nor do we know exactly when the conversation was, at
3 least not from the document. Between that time and the
4 evening of the 20th, we know, if I understand correctly,
5 that Mr. Hossu had this controlled call, and I believe
6 that was with one of your deputies.

7 Do you remember which deputy that was with?

8 A I don't recall.

9 Q Do you know of any other investigative
10 activity in that, roughly, two-day period? It could be
11 three days depending when on the 18th this was written
12 (indicating).

13 A I don't specifically recall, but I remember
14 they were out obtaining -- trying to interview people to
15 include, to try to do an interview with Mr. Hossu's
16 wife, Corey. I don't think that interview happened
17 until after the 20th, as I recall. But they were
18 working the case, Mr. Sussman.

19 Q Let me ask you more directly. We have this
20 Supplemental Report. Is there any Supplemental Report
21 that chronicles activities either further on the 18th,
22 19th, or 20th, that you know of?

23 A I believe we've turned over everything that we
24 have, Mr. Sussman.

25 Q I'm asking: Do you know whether there is any

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2 further Supplemental Report?

3 A I do not know of any.

4 Q You mentioned earlier a Harold Lepler in this
5 deposition. Did you know as of this week we're talking
6 about in March that Mr. Lepler had some interest in the
7 location where Mr. Hossu was arrested? Did you have
8 knowledge of his interest in that?

9 A I believe I had knowledge of him having
10 interest in all sorts of properties --

11 Q We're talking about that --

12 A -- particularly in the Town of Southeast, and
13 I believe at that time I knew that he was either the
14 developer or an investor. He had something to do with
15 it.

16 Q With regard to attempting to ascertain and
17 confirm Mr. Hossu's residence at the time -- and by
18 residence, I mean where he was staying on a day-to-day
19 basis -- did anyone from your office make contact with
20 Mr. Lepler in that time period to ascertain whether he
21 was allowing Mr. Hossu to reside in that unit? Do you
22 know?

23 A I'm not sure. I don't know.

24 Q You didn't speak to Mr. Lepler about that
25 during that time, did you?

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2 A I don't recall any conversation with
3 Mr. Lepler at that time.

4 Q Do you know of any reason, if one was trying
5 to determine the residence -- again, as I've defined
6 residence, where someone is staying on a day-to-day
7 basis, where they might reasonably be expected if one
8 was trying to arrest them, for example, to be -- do you
9 know of any reason why Mr. Lepler was not contacted?

10 A I don't.

11 Q You were here for his deposition?

12 A Yes, sir, I was.

13 Q Do you recall Mr. Lepler indicating that he
14 was not contacted during that period with regard to
15 ascertaining whether Mr. Hossu resided there or not?

16 A I don't recall that. You, obviously, have the
17 copy of his deposition. I don't recall it.

18 Q I'm just asking what you remember at this
19 point.

20 A Yes, sir.

21 Q Was there any discussion that you had between
22 the 13th and the 20th regarding the medical record of
23 S. H.? Did you have any conversation with your staff --
24 when I say, "staff," I mean your subordinates --
25 regarding that medical record?

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2 A I don't recall a conversation.

3 Q You don't recall it?

4 A I don't recall it, and I know it's something
5 we certainly always pursue, but I don't recall the
6 specific conversation.

7 Q Do you know whether there had been any effort
8 made in that week, to use your term, to pursue that
9 record? Do you know one way or the other?

10 A I don't. I don't know.

11 Q To obtain that record -- again, if you know
12 from your experience -- would you need what's called a
13 HIPAA release or authorization from the alleged victim
14 allowing whatever hospital or any treatment to be turned
15 over to you? Do you know?

16 A I believe you need either a HIPAA and/or
17 potentially a subpoena to get records like that.

18 Q So some written document, whether it be that
19 one or the other or both?

20 A Yes, sir.

21 Q HIPAA might be attached to a subpoena,
22 actually. But however it would work, you --

23 A Yes, sir. I'm not the operator on that, so --
24 I'm not the expert on it, but that's my impression.

25 Q Have you seen any such document generated

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2 during the time period in question to any medical
3 provider who this young lady or her aunt identified as
4 relevant to this?

5 A I don't recall seeing one.

6 Q You said earlier that there was some issue of
7 flight as to Mr. Hossu. Do you remember speaking about
8 that?

9 A Yes, sir.

10 Q On March 19th, Mr. Hossu was apprehended at a
11 traffic stop of some sort. Do you know that?

12 A I know that now, sir. I don't recall what I
13 specifically knew at that time, just to be clear.

14 Q So you're not a hundred percent sure whether
15 it was reported to you that he had been stopped; is that
16 what you're saying?

17 A It may have. I don't recall that
18 specifically.

19 Q But you do know that he was stopped by a
20 member of your department; correct?

21 A Yes, sir.

22 Q Do you know that that stop was part of the
23 investigation into this alleged rape, as opposed to
24 being independent of it?

25 A Sir, I was under the impression it was

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2 independent of it.

3 Q You thought it was independent?

4 A Yes, sir. That's my impression.

5 Q The stop was executed by an Officer Varley,
6 V-A-R-L-E-Y?

7 A Yes, sir.

8 Q It was in the evening of the 19th. Do you
9 remember this?

10 A I remember it, yes, sir.

11 Q Do you have any idea what the stop was for?

12 A I don't recall, sir.

13 Q Do you have any knowledge of whether Varley,
14 in making that stop, knew of the investigation that was
15 ongoing?

16 A I'm not sure, sir.

17 Q You said earlier something about surveilling
18 Reitz, and you were explaining the former supervisor of
19 the Town of Southeast --

20 A No, sir. Can I correct you right there? It's
21 Michael Rights.

22 Q Rights. Reitz is the judge.

23 A Reitz is our judge.

24 Q So Michael Rights. Sorry for the
25 mispronunciation.

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2 You indicated earlier that in that regard it
3 was not a policy to surveil or target someone in that
4 kind of situation?

5 A To target someone without a bona fide law
6 enforcement purpose. In other words, just to --
7 obviously, if the district attorney, or if we had a law
8 enforcement purpose as part of an investigation, that
9 would be different, but to just get a call from a
10 political person and be asked to do that, we wouldn't do
11 that.

12 Q I understand your point. What I'm asking is
13 this: In contravention to that and in distinction to
14 that, in the period between March 12th or March 13th,
15 assuming it was the 13th from your testimony, until his
16 arrest, there clearly was a law enforcement purpose to
17 be shadowing, pursuing, or surveilling Mr. Hossu? Do
18 you agree with that?

19 A Yes, sir.

20 Q And was that being done, if you know?

21 A I believe there was law enforcement action
22 being taken. For example, people were looking at the
23 World Gym, but as far as --

24 Q What I mean is: You were asked earlier --

25 A I believe there was an investigation ongoing,

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2 which may have included -- investigation can include
3 surveillance, but I don't know the specifics of, you
4 know, who was given what mission. That was done at the
5 tactical level, not at the strategic level.

6 Q Did you authorize any form of surveillance in
7 that time period yourself?

8 A I did not personally authorize any
9 surveillance.

10 Q Were you asked to?

11 A I was not asked to, is my memory, and
12 generally speaking, I don't think I would be asked to.

13 Q So your authority is not required if an
14 individual is going to be, essentially, surveilled by
15 your agency?

16 A That is correct.

17 Q Whose decision is that?

18 A It's generally a commissioned officer,
19 normally.

20 Q So that would be McNamara here?

21 A It could be a commissioned officer, like a
22 captain or the chief at that time. It's often worked in
23 concert with the district attorney's office that we're
24 working with, which is, obviously, normally the Putnam
25 County District Attorney's office.

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2 Q With regard to the supervisor from Southeast
3 who you testified about earlier, do you have information
4 that that gentleman after his 2007 arrest made a
5 campaign contribution to your campaign? Do you have any
6 knowledge of that?

7 A I don't recall, sir.

8 Q You don't recall whether he did or didn't?

9 A I don't recall if he did or didn't.

10 Q Do you have a recollection that he was
11 arrested in both 2007 and 2008 for DWI offenses?

12 A My memory may not be accurate, but I was under
13 the impression it might have been even --

14 Q Let's just talk about those two. There may be
15 more. You remember that there were two at least?

16 A I remember there were multiple arrests. I
17 can't give you a date to the arrest, but I think --
18 obviously, if you have the dates there, I think that's
19 probably an accurate statement.

20 Q Do you have a memory of a role that Captain
21 McNamara played with regard to inventorying possessions
22 of this gentleman after his 2008 arrest?

23 A I don't recall.

24 Q Did Captain McNamara advise you that he had
25 inventoried an item of condoms which were found in that

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2 gentleman's car upon a search? Do you have any memory
3 of that?

4 A I don't have any memory.

5 Q Have you ever seen the actual inventory which
6 was done and signed off by Mr. McNamara, the captain?

7 A I don't recall seeing it.

8 Q You spoke earlier about your concerns about
9 public corruption particularly, and as I understand it,
10 one of your principal articulated platforms over the
11 years you've run has been a strong position against
12 public corruption.

13 Do you agree with that?

14 A Yes, sir.

15 Q And one of the things you've repeatedly said
16 is that you have a desire to essentially rout out public
17 corruption in the county; is that fair?

18 A Yes, sir.

19 Q In that regard, when Mr. Tendy's fiancée was
20 arrested for a DWI charge, did you have direct knowledge
21 of that?

22 A Yes, sir, I did.

23 Q What year was that?

24 A I don't recall. Maybe you could refresh my
25 memory.

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2 Q Well, I'm not supposed to testify, and I'm
3 going to try not to.

4 A I don't recall the year. I remember the
5 incident, but I don't remember the year.

6 Q Do you know what a P1 is?

7 A Yes.

8 Q What is that?

9 A A P1 is just a nickname -- and it actually
10 appears on the document. It is basically a memorandum
11 which information is imparted from one part of the
12 agency to the other part of the agency.

13 Q It's used within your agency?

14 A It's within the Putnam County Sheriff's
15 Office. It's just a number for that form. It's just a
16 memorandum, really, is what it is.

17 Q Now, with regard to the Tendy matter, was
18 there contact, to your memory, between Mr. Tendy and the
19 undersheriff after Tendy's fiancée was arrested?

20 A There may have been.

21 Q I'm not asking what you may have been. Do you
22 know that there was?

23 A To the best of my recollection, I believe the
24 undersheriff mentioned to me -- you know, lots of things
25 happen every day, and I'm just trying to be precise,

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2 Mr. Sussman. I'm not trying to make this go longer.

3 Q I'm asking you --

4 A To the best of my recollection, yes.

5 Q Do you know the nature of that contact?

6 A To the best of my recollection, the
7 undersheriff briefed me that Mr. Tendy was not happy
8 with us, that he didn't think we handled this very well,
9 and that --

10 Q Did he ask that anything be done?

11 A Not that I recall. I think he expressed his
12 dissatisfaction. And I don't recall him ever expressing
13 it to me, but I have a recollection of the undersheriff
14 briefing me on this.

15 Q What was the dissatisfaction about, more
16 particularly?

17 A As I recall, I think he was claiming -- I
18 believe it was a -- if memory serves me correct, I
19 believe -- was it a DWAI? DWI or DWAI, I believe. And,
20 ultimately, I think he felt like we didn't do our job
21 correctly; we weren't fair.

22 Q What was unfair?

23 A I don't recall the specifics.

24 Q Was the Tendy matter prosecuted by Mr. Levy's
25 office? If you don't remember, you can say that.

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2 A I've got to believe it was, but I don't
3 remember.

4 Q Do you know what the outcome was?

5 A I don't remember.

6 Q Now, you mentioned something earlier about the
7 former supervisor of Southeast. Do you have a memory of
8 an event where this gentleman actually was driving a
9 Jaguar, flipped the Jaguar, and was heliported to a
10 hospital in Westchester?

11 A Yes, sir.

12 Q That was during your watch as sheriff?

13 A Yes, sir.

14 Q Did that event happen, to your memory, before
15 or after you claim that Mr. Maguire had contacted your
16 offices about following this gentleman related to
17 drinking and driving; do you know?

18 A I don't recall, sir. I don't recall.

19 Q You mentioned earlier that you believed there
20 are probably three events, DWI events, regarding that
21 person. I mentioned two, and you thought there was a
22 third?

23 A I could be wrong, but --

24 Q You may not be. What I'm asking you is this:
25 In the context of those events, as you remember it, when

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2 did you receive this contact from Maguire regarding the
3 surveilling of this supervisor?

4 A I don't recall.

5 Q Did you report the contact from the political
6 figure you mentioned, Mr. Maguire, who you say was a top
7 aide to Mr. Leibell -- did you report that contact as
8 inappropriate to Mr. Levy?

9 A I don't believe we did.

10 Q Why didn't you if you thought it was
11 inappropriate?

12 A I don't recall why.

13 Q Did you believe it was an effort to influence
14 official actions by your agency? It might not have been
15 successful. Did you think that's what it was?

16 A It could have been, but we didn't pursue it.
17 We didn't follow it.

18 Q I understand you didn't follow it or pursue
19 it, but it was wrong to do it at all. It was a sign of
20 corrupting the process, even though it didn't work;
21 true?

22 A Yes. It's a bad process. It is.

23 Q Did you not report it to Mr. Levy's office
24 after it occurred because you thought Mr. Levy was
25 somehow involved in that?

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2 A No. I don't recall. As I recall, it was just
3 a quick briefing by the undersheriff, and it was -- he
4 handled it. He took the right course of action. And,
5 you know, obviously, looking back with 20/20 hindsight,
6 maybe it should have been reported.

7 Q Let me ask you about this Tendy matter.
8 You're telling me today, as I'm hearing you, and, again,
9 correct me if I'm not accurately capturing what you've
10 said, that Mr. Tendy, when he contacted your staff about
11 this --

12 A The undersheriff.

13 Q The undersheriff. You're telling me he did
14 not ask the undersheriff to do anything particularly; he
15 was just expressing displeasure?

16 A That's my memory. He was not happy with us,
17 and the undersheriff wanted me to know that he wasn't
18 happy with us, because he is a town supervisor of the
19 Town of Putnam Valley.

20 Q Do you know whether Mr. Tendy represented that
21 his fiancée was not engaged in DWI on the occasion that
22 she was being charged by your deputy?

23 A Sir, I don't recall. I don't recall.

24 Q You mentioned earlier today the erection of
25 what you called a Chinese wall as between Mr. Sayegh and

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2 the events regarding Mr. Caruso. Do you remember using
3 the term?

4 A Yes, sir, I do.

5 Q You also testified earlier that a Mr. Sayegh
6 had indicated to you in some form that he was getting
7 out of the matter?

8 A I'm sorry?

9 Q You indicated that Mr. Sayegh had told you
10 that he was getting out of the matter?

11 A That he was going to get rid of the case. In
12 other words, get the case with somebody else.

13 Q Right. Get out of the matter. That means
14 just he would not be involved in the case, because he
15 recognized, apparently, a conflict between it and what
16 he was doing in your office?

17 A Yes, sir.

18 Q So was the Chinese wall erected before he told
19 you that or after he told you that?

20 A After.

21 Q So --

22 A It was a direct result.

23 Q It was a direct result of his telling you he
24 was going to get out of the case?

25 A No. It was a direct result that he had

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2 information and he had a case going. I felt it was
3 inappropriate, and so did Captain McNamara.

4 Q All right. But the question I'm asking you is
5 this: The gentleman told you he was going to get out of
6 the case. When Sayegh told you that, did he give you
7 any time frame for when he was going to get out of the
8 case?

9 A No, he did not. Not that I recall.

10 Q When did you learn he had not? In terms of
11 when I say, "when," I mean in terms of when he told you
12 he was. Did you learn a month later that he hadn't
13 gotten out of it? Three months later?

14 A I don't recall.

15 Q Can you take a look at Exhibit 50, please.
16 Fifty is the Chana Krauss affirmation. Is this the
17 affidavit in the Caruso case of Ms. Krauss that you were
18 responding to in the exhibit that we marked earlier
19 today as 69?

20 MR. SUSSMAN: Do you have 69 there?

21 MR. KLEINBERG: What was that question?

22 MR. SUSSMAN: Is this, what I've just
23 showed him, 50, the affirmation to which he was
24 responding in his exhibit -- what we marked here as 69?

25 MR. KLEINBERG: Objection. You can

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2 answer.

3 A Okay. This is Ms. Krauss. And what am I
4 supposed to be looking at?

5 Q Right. Were you discussing that affidavit in
6 your Exhibit 69? Let me rephrase the question that way.
7 I've shown you the page where there's references here to
8 Ms. Krauss and the position she was articulating.

9 A Where are we looking at?

10 Q I'll show you in Exhibit 69.

11 A This was for a specific case brought against
12 the County. This was for the order of protection
13 (indicating). So there are two separate matters.

14 Q There are. You write in paragraph 18, Upon
15 information and belief, Spain's threats toward ADA
16 Krauss apparently achieved his intended aims of coercing
17 Krauss to contradict and mischaracterize law
18 enforcement's objections to Spain's motion on behalf of
19 Caruso to allow the convicted sex offender to move back
20 next door to the minor victim.

21 What I'm asking you is: Are you referring in
22 that to the position Krauss took in what I've just shown
23 you as Exhibit 50?

24 A These are from separate cases, but I believe
25 that this is referring to this (indicating), but I want

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2 to make it clear --

3 Q I understand there are two separate cases.

4 A -- that this is a case that was brought
5 against the County, and this was the issue for the order
6 of protection (indicating).

7 Q Right. But you're referring in your
8 affidavit --

9 A I believe that's correct.

10 Q -- to Krauss's position as outlined in Exhibit
11 50. We're agreeing on that?

12 A I believe that's correct.

13 Q You said earlier today that Ms. Krauss had
14 indicated that law enforcement supported the position
15 the district attorney's office was taking. Do you
16 remember saying that this morning?

17 A That is absolutely my belief, and I believe I
18 said that this morning.

19 Q Where in the Exhibit 50 does Ms. Krauss say
20 that, or write, or aver, A-V-E-R, that law enforcement
21 supports the position that the district attorney's
22 office was taking?

23 MR. SUSSMAN: And the record should
24 reflect that the witness is looking at Plaintiff's
25 Exhibit 50, which is the Krauss affidavit.

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2 A Well, what I see here, she is inferring, she
3 says, Each time the defendant changes his residence, the
4 Putnam County Sheriff's Office must be immediately --
5 comply with their community information requirements,
6 and the Department of Probation must determine the
7 appropriateness of the living arrangements and ensure
8 that they have current contact information so they can
9 adequately supervise their probationer, and the local
10 agencies of the town the defendant has moved to must be
11 notified as well. Then it goes on to say that she has
12 met with Mike Piazza, the commissioner of Social
13 Services, as well as Lieutenant Brian Karst from the
14 Carmel Police Department, and Gerald Schramek of the
15 Putnam County Sheriff's Office.

16 MR. SUSSMAN: Move to strike.

17 Q Please listen to the question. The question
18 is: Where in there does it say that law enforcement
19 supports the position being taken by the Putnam County
20 DA's office, if it does?

21 A I guess when I read it, it's implied when she
22 puts those names down there, sir, but I guess it doesn't
23 directly say it. I got --

24 Q All right.

25 A Somehow I have a memory of reading a document,

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2 and I don't know what document it is, where I saw that
3 in writing, but it's obviously not in this document.

4 Q The other question I have regarding this is:
5 You said earlier this morning that Ms. Krauss said that
6 law enforcement could not -- in her position paper,
7 affidavit, she says that law enforcement could not
8 supervise this gentleman because of his transient
9 nature. Again, there's no such statement in the
10 affidavit that you could not. It simply indicates that
11 there's a burden by his moving around that you have to
12 continually update information and notify the community;
13 right?

14 A Mr. Sussman, I accept that that was a poor
15 choice of words on my part.

16 Q Let me just be clear. Did your offices in the
17 time period that Ms. Krauss submitted this document --
18 you can see the date of the document here is August 22,
19 2011 -- did your offices take a position in the county
20 court with respect to her affidavit? I'm not talking
21 about your affidavit a year plus later. Did you take
22 any position at that time in county court, if you know?

23 A If my memory serves me correct, and I don't
24 know what kind of standing we had, because really --

25 Q That's a different issue.

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2 A If I can finish my answer.

3 Q Please go ahead.

4 A As I recall, I believe Chief Schramek
5 testified in court. I believe this was in front of
6 Judge Lorenzo, if my memory is correct. I believe Chief
7 Schramek was allowed to testify in court, if I'm talking
8 about the same incident, and I believe when he came
9 back, he briefed me that it was the worst day of his law
10 enforcement career because he felt like, you know, he
11 was being questioned. I believe he was able to testify,
12 if my memory serves me correct, that we could supervise
13 Mr. Caruso even if he was in a transient status,
14 although he had capability to be out of a transient
15 status, and that, you know, we, in law enforcement, felt
16 strongly that a sex offender -- particularly a Level 3
17 sex offender -- should not be allowed to live right next
18 door to the victim. That's my recollection, sir. I
19 think it's accurate, but that's my recollection.

20 Q Do you have any knowledge personally that when
21 the district attorney's office took the position it
22 initially took with regard to this case -- that there
23 would be no ban on him moving back -- that the family
24 was aware of that and raised no protest? Do you have
25 any knowledge of that?

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2 A I don't have any personal knowledge other
3 than --

4 Q You don't have any personal knowledge. That's
5 your answer.

6 Have you heard that before from anyone, that
7 when this plea was negotiated, the family was fully
8 knowledgeable about the conditions and raised no issue?
9 Have you heard that?

10 A I believe I heard that. I believe I heard it
11 from Mr. Levy. I don't know exactly where or when, but
12 I believe I heard Mr. Levy at some point in time. I
13 don't know the exact point in time.

14 Q Were you aware that Mr. Sayegh was billing the
15 victim's family for his legal services in this case?
16 Were you aware of that one way or the other?

17 A I was not aware of the arrangement in any way.

18 Q The phone which you identified earlier as your
19 phone, 494-5647, was that a phone that was dedicated to
20 County purposes, sheriff's department purposes?

21 A Yes, sir.

22 Q And did you have another cell phone that you
23 did and could use for other purposes?

24 A Yes, sir.

25 Q Personal purposes?

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2 A Yes, sir.

3 Q Did you make clear to people like Greg Ball
4 that you had two phones?

5 A Yes, sir. And --

6 Q You've answered, yes, you did. I'm accepting
7 your answer.

8 And is it then a fair conclusion -- "fair"
9 meaning accurate conclusion -- that you abided by that
10 division, or not?

11 A Sir, I strive and continue to strive every day
12 to abide by that. That's one of the reasons why I have
13 two phones, and I have unlimited calls on my personal
14 phone.

15 Q So your answer is yes?

16 A Yes.

17 Q Now, do you have any knowledge of any
18 work-related matter that you and Mr. Ball were speaking
19 about in March of 2013?

20 A As I sit here, the only thing that really
21 jumps out and comes to mind is the SAFE Act. I was the
22 president of the New York State Sheriffs' Association.
23 As I recall, I was --

24 Q This is March of '13?

25 A Let me just say this. I had a number of

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1
2 issues that I have discussed with Senator Ball over the
3 years pertaining to law enforcement legislation, the All
4 Crimes DNA bill, the Yellow Dot program, the SAFE Act,
5 and what was going on with Albany with the Second
6 Amendment, but as I sit here, Mr. Sussman, I don't have
7 an exact recollection of that at this point in time.
8 Also, I testified before a number of Senator Ball's
9 committees on law enforcement issues.

10 Q I'm going to represent to you -- and if you
11 need to, go through each page -- there are -- in the
12 week that we're discussing, there are more than 10 phone
13 calls between you and Mr. Ball. They range in time from
14 one, two, five minutes to more extensive calls. What
15 I'd like to know from you, to the extent you can tell us
16 this, is whether at that time you had any knowledge of
17 the relationship between Mr. Levy and Mr. Ball. Did you
18 have any knowledge of the relationship they had at that
19 time?

20 A I don't recall any relationship, and I don't
21 recall --

22 Q You don't recall anything positive? Negative?

23 A I don't recall positive, negative, and I don't
24 recall -- I don't recall Mr. Ball ever even mentioning
25 Mr. Levy's name. I don't recall him mentioning it.

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2 This was 20 --

3 Q '13.

4 A 2013. Okay.

5 Q Now, after the arrest of Mr. Hossu was
6 announced by your offices, if you know -- and Mr. Hossu
7 then was, of course, apprehended and he was placed in
8 custody of your jail; is that true?

9 A Yes, sir.

10 Q -- was there any ongoing forensic evidence
11 gathering going on at his place of then residence?

12 A You mean where he was arrested?

13 Q Yes, where he was arrested. Was there any
14 ongoing, if you know --

15 A I don't know. As I sit here today, I don't
16 know.

17 Q Was there ever any search made of that
18 residence for any evidence that could be linked to the
19 alleged rape?

20 A I don't know.

21 Q Well, let me ask the question this way. You
22 did know when he was arrested that the alleged rape did
23 not allegedly occur at that location?

24 A Yes, sir.

25 Q You had no reports of any sexual crime at that

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2 location?

3 A Yes, sir.

4 Q Was there anything about that location on
5 March 21st, after the apprehension and arrest of the
6 gentleman, which, in your opinion, was sensitive?

7 MR. KLEINBERG: You're talking about the
8 arrest location?

9 MR. SUSSMAN: Yes.

10 Q Was there anything sensitive about that
11 location? In other words, we know it wasn't the crime
12 scene. I'm trying to understand: Was there anything
13 ongoing at that location that you knew of from a law
14 enforcement perspective? I haven't found anything in
15 the record. I'm asking you.

16 A I don't recall.

17 Q You don't recall anything?

18 A I don't recall if there was a computer. I
19 don't have a memory of --

20 Q Well, do you have any memory of any kind of
21 search warrant for that location or any inventory of
22 property?

23 A I don't.

24 Q Was it discussed in advance that there was
25 going to be some effort to obtain property from that

1 DONALD B. SMITH

2 location pertinent to this alleged crime?

3 A I don't recall.

4 Q You don't recall that one way or the other?

5 A No, I don't.

6 Q Was the location itself that he was arrested
7 at declared a crime scene? You know what a crime scene
8 is?

9 A Of course.

10 Q You seem to be puzzled.

11 A I don't believe a crime was committed at that
12 location.

13 Q Well, I gathered that from the record in this
14 case, but I'm trying to understand: Was there an
15 occasion when you discussed with your subordinates
16 declaring that location a crime scene for some reason?

17 A That is something that the chief criminal
18 investigator, the senior investigators -- they wouldn't
19 come to me to say they were going to declare something a
20 crime scene.

21 Q Do you know if they did it?

22 A I don't.

23 Q Do you know of any reason to do it based on
24 what you know of this case?

25 A I think you can always exercise caution and

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2 gather evidence wherever you can find it, but I don't
3 know specifically that there was anything at that
4 location.

5 Q The man was arrested on the 20th. Was there
6 then an effort to gather information or evidence at his
7 location?

8 A I don't recall.

9 Q Let me ask you this -- and, again, this may
10 test your legal knowledge, and I don't mean to do that,
11 but practically speaking, if you know -- you did have an
12 arrest warrant here; right?

13 A Yes, sir, we did.

14 Q When you have an arrest warrant, does that
15 allow you to search the scene of the arrest for any
16 relevant material, property, if you know?

17 A Well, my knowledge of the law is, whenever we
18 do searches, we want to have a warrant that is very
19 specific.

20 Q Did you seek a search warrant at any time for
21 that location?

22 A I don't recall.

23 Q Have you ever seen one?

24 A Yes, sir, but not for that --

25 Q For that location?

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2 A Not for that location.

3 Q Mr. Hossu, at that location.

4 A No, I have not seen one.

5 Q Do you have any information that there was
6 anything at that location alleged by any third party or
7 anyone else that had anything to do with the events as
8 alleged of October of 2010, other than Mr. Hossu
9 personally?

10 A Not that I'm aware of.

11 Q Did you make a conscious decision at some
12 point in time to not inform the public of where this
13 arrest took place? Did you make a conscious decision,
14 I'm asking? I'm not asking about anyone else. Did you
15 make a conscious decision as the sheriff of this county?

16 A I did not make a conscious decision as the
17 sheriff of the county, but we did not provide that
18 information to the public.

19 Q But you did not make a conscious decision to
20 do that?

21 A Not that I recall.

22 Q Did you discuss with Mr. McNamara before the
23 press releases went out that issue one way or the other?
24 You may not have.

25 A Not that I recall.

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2 Q Now, did you go to the arraignment of
3 Mr. Hossu?

4 A I did not.

5 Q Did your office have a practice at that time
6 of requesting the taped arraignments from the local
7 justice courts so you could keep them in your files?
8 Was that a protocol or practice of your agency?

9 A I don't recall it being a protocol.

10 Q Do you know as a matter of fact that in this
11 case your agency did do that after the --

12 A There is a tape of the arraignment.

13 Q I know there's a tape. But do you know as a
14 fact that your agency did request specifically of that
15 court -- which I believe is the Town of Patterson, as I
16 remember it.

17 A It was the Town of Patterson.

18 Q -- a copy of the actual arraignment?

19 A I did not see any documents to that effect,
20 but I'm aware that there was a tape of that arraignment.

21 Q Your offices received that tape fairly quickly
22 after the arraignment?

23 A That is my understanding.

24 Q Did you ever listen to it?

25 A I believe the only time I listened to it was I

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2 believe in a deposition.

3 Q Forgetting about the deposition.

4 A I don't recall listening to it independent
5 of -- I may have, but I don't recall.

6 Q That's fine. Whatever you did, you did.

7 Again, I'm not here keeping score. I'm trying to get
8 what is true on the record one way or the other. Do you
9 understand that?

10 A Yes, sir.

11 Q With regard to those who attended the
12 arraignment, did you ask any of those individuals about
13 what happened at the arraignment?

14 A I don't recall if I asked, but I believe I was
15 briefed on it, so I may not have had to ask. I don't
16 recall if I asked or if, as part of a briefing, I was
17 briefed on it.

18 Q Did someone brief you on it?

19 A As I recall, yes.

20 Q Do you know who?

21 A I would be --

22 Q You're guessing?

23 A I would be guessing.

24 Q Do you know the nature of the briefing, the
25 content of the briefing?

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2 A The briefing was just a summary of the
3 arraignment.

4 Q That he entered a plea of not guilty, in other
5 words?

6 A Right.

7 Q That he was remanded?

8 A Right.

9 Q Was there any other discussion?

10 A I think they talked about bail. They might
11 have mentioned the fact that he did say 70 Indian Wells.

12 Q Did they say initially he gave his address as
13 the address where he was found?

14 A I don't recall them saying that to me.

15 Q No one told you that?

16 A I don't recall that.

17 Q The people who briefed you or might have
18 briefed you, did that include Castaldo?

19 A That would include Castaldo.

20 Q Captain McNamara?

21 A Captain McNamara.

22 Q Anyone else?

23 A Chief Schramek. And maybe on one occasion or
24 two occasions, maybe Nalbene or Tricinelli or both
25 during this whole time span.

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2 Q Let's go back for a moment to Mr. York. I
3 think there may be some documents here that we can use
4 to refresh your recollection with regard to the timing
5 of Mr. York. The actual day of the arrest, there's a
6 Putnam County News article dated 3/20/13 entitled -- by
7 Douglas Cunningham. You know who he is?

8 A Yes, sir, I do.

9 Q -- "Only One Candidate, But Sheriff's Race
10 Churning Fast."

11 MR. SUSSMAN: We'll just mark this as
12 Exhibit 72.

13 (Plaintiff's Smith Ex. 72 - 3/20/13
14 NEWSPAPER ARTICLE WRITTEN BY CUNNINGHAM
15 marked for identification.)

16 BY MR. SUSSMAN:

17 Q Sir, here's Exhibit 72.

18 A (Witness peruses document).

19 Q So you've had a chance to look at the document
20 which has been marked as Exhibit 72?

21 A Yes, sir.

22 Q Does this refresh your recollection that the
23 Tuesday, the 19th of March, you were questioned by Doug
24 Cunningham and gave various quotes regarding this
25 matter?

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2 A It refreshes my memory of what's in the
3 document, but as far as what day I talked to Doug
4 Cunningham, I can't testify to that on any specific --

5 Q It says in the middle of the document, quote,
6 "Smith was clear Tuesday in denouncing the push poll."

7 A I have no issue -- I don't have a recollection
8 that it was Tuesday, but from what this says, I would go
9 with what Doug Cunningham wrote.

10 Q So you also are quoted here as saying the
11 following, quoting, from the article, "Smith noted
12 pointedly that neither of the other possible candidates
13 yet has a campaign committee." Quote, "'Who is paying
14 for this and how is it being paid for,' Smith asked."

15 Do you see that?

16 A Yes, sir, I do.

17 Q As of March 19th, you did have knowledge of
18 Mr. York's interest in this particular race; correct?

19 A According to this, yes, sir.

20 Q And when did you first gain that knowledge,
21 sir? Before or after the interview of S. H. on the 13th
22 of March?

23 A I don't have a recollection.

24 Q You said earlier it was the spring. Do you
25 remember giving that testimony here?

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2 A Yes, sir.

3 MR. SUSSMAN: Let's mark this document as
4 Exhibit 73.

5 (Plaintiff's Smith Ex. 73 - 3/7/13
6 NEWSPAPER ARTICLE WRITTEN BY CUNNINGHAM
7 marked for identification.)

8 MR. SUSSMAN: I'm showing the witness
9 Exhibit 73.

10 A (Witness peruses document).

11 Q Have you had a chance to read 73, sir?

12 A Yes, sir.

13 Q This is dated March 7, 2013, another article
14 by Cunningham. Do you see that?

15 A Yes, sir.

16 Q And you certainly would have read this. It's
17 about your own race; right?

18 A I don't know what day I read it on, but I'm
19 sure I read it.

20 Q This quotes you directly as saying, "It's a
21 free country. That's the beauty of the office of
22 sheriff. It's an elected position. I think that
23 elections and people running is all a part of what
24 elected office is all about. This is a passion for me
25 to do what's right for Putnam County."

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2 You said all that?

3 A If it's there and it's quoted, I'm sure I said
4 it.

5 Q A few paragraphs down the following appears,
6 "Political insiders say that O'Dell and Levy have helped
7 seek contenders to run against Smith. Smith said he
8 couldn't speak to whether other county officials have
9 done that. He said that," quote, "'There are people who
10 don't believe in the separation of government and they
11 don't believe in the branches of government,'" close
12 quote.

13 Is that something you said?

14 A That is something, as I sit here, I don't
15 remember saying, but seeing it in quotes, yes, I'm sure
16 I said it.

17 Q Were you asked specifically about the notion
18 that Mr. Levy was helping to seek contenders to run
19 against you?

20 A I don't recall the conversation, but I had no
21 reason to disbelieve Doug Cunningham's report, that he
22 probably asked it back then.

23 Q Now, as of March 7th, 2013, the reporter,
24 Mr. Cunningham, who did cover the county for the
25 previous several years at least; correct?

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2 A He was maybe in his second year. He wasn't
3 there very long. He replaced the previous writer.

4 Q He indicates that you and Levy, as well as
5 Ms. O'Dell, the county executive, quote, "have sparred
6 over the past year in sometimes heated exchanges."

7 Do you have any memory of what heated
8 exchanges you and Mr. Levy had had during the past year?
9 That means the year you were president of the sheriffs'
10 association -- which was actually 2012, as I recall it;
11 correct?

12 A It was 2012 into 2013. I think maybe through
13 the month of January 2013. Yes, sir.

14 Q If you remember them, what were these heated
15 exchanges about with Levy in that year?

16 A I don't know how heated they were, but they
17 were certainly passionate, I think.

18 Q What were they about? That's what I'm asking.

19 A I think one issue was who was going to
20 prosecute traffic violations. Were we going to stay
21 with the current policy of letting law enforcement
22 officers show up in court and do it, or were we going to
23 have someone appointed by the DA to do it? I believe
24 all along I -- you know, however we discussed this, I
25 think as we closed out the issue, whether it be in a

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2 letter or discussion -- I think I refer in the
3 legislature, I think I always said, Mr. Levy has that
4 authority; It's his decision to make.

5 Q What position did you take?

6 A I believed in it, because I believe --

7 Q What position did you believe in? That's what
8 I'm asking you.

9 A I supported continuing with the status quo.

10 Q That was the officers themselves doing the
11 prosecution of the matters; is that accurate?

12 A Yes, sir. But I always recognized that it was
13 Mr. Levy's decision to make, and as soon as he made it,
14 we would salute and follow the position that he takes,
15 because I believe it clearly belongs to the district
16 attorney.

17 Q Who is Ronald Salvato?

18 A Ron Salvato is an attorney.

19 Q He's from the Goshen area?

20 A He's from Orange County. I believe it's
21 Goshen, but I'm not sure.

22 Q Was he your attorney at some point?

23 A Yeah, he's represented me. Yes, sir.

24 Q When he represented you, did he represent you
25 through the County or you as a private person retaining

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2 him?

3 A Me as a private person.

4 Q So you retained Mr. Salvato for a case?

5 A Yes, sir, I did.

6 Q Did he also represent the County concurrently
7 in cases?

8 A I'm not sure. He may have represented the
9 County on some other matters.

10 Q But you did not gain his representation from
11 the County for your lawsuit against Mr. Edelman?

12 A No, sir, I did not.

13 Q That was a private matter between you and
14 Salvato?

15 A Yes, sir.

16 Q Did that matter settle?

17 A Yes, sir, it did.

18 Q Mr. Salvato through the entire course of that
19 matter, if I understand it from you, was not on the
20 payroll in any way of the County, but only, essentially,
21 retained by you?

22 A Yes, sir. That is correct.

23 Q Does he continue to be your attorney in any
24 matter?

25 A I don't believe at the present time he's my

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2 attorney in any matter that I'm aware of.

3 Q You started telling me about disputes in the
4 year of '12 to '13 between you and Levy. You mentioned
5 one about the prosecution of, essentially, V & T
6 violations or infractions.

7 Were there any other matters that were public
8 disputes as between the two of you, whether in the
9 legislature, in the media, or otherwise in that year?

10 A At some point in time, and, again, I'm having
11 a hard time with the years, Mr. Sussman, but, obviously,
12 the issue of Mario Caruso moving back was an issue.

13 Q That was a public issue?

14 A I believe it was, because, ultimately, there
15 was a lawsuit that followed, if you recall. There was
16 two parts to that.

17 Q Yes.

18 A Really, there was a couple other things that I
19 can think of. You're talking about disputes. Let's
20 call them issues that we both had positions on.

21 One was I was at a sheriffs' association
22 conference, and if my memory serves me correct, the
23 acting director was a gentleman of the Division of
24 Criminal Justice Services, DCJS, who was Sean Byrne, and
25 Sean gave a nice pitch to the sheriffs -- nice speech to

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1

2 the sheriffs. And he said, Gentlemen, if you really
3 want to lower the crime rate in your county, he said, go
4 back and look at your repeat offenders; Find your
5 multiple offenders, people that have committed more than
6 two crimes, and see how they are being handled, and when
7 you do that, I guarantee you're going to take a nice
8 bite out of crime.

9 So I came back, and I believe I did this in
10 writing. I drafted a document asking my staff to look
11 at repeat offenders, and I believe that it fit this
12 definition in Putnam -- I believe there was, like, only
13 eight on the list. I asked my confidential advisor at
14 the time, Bill Sayegh, to look at it, to work with the
15 court system, to work with the district attorney. And
16 somehow Adam -- I don't know whether it was Bill
17 contacting Adam, or somehow Adam got wind of this, and
18 he was really not happy with me. He called me up to his
19 office. And certainly I went up. We sat down. We
20 looked at the list. He was telling me what he was doing
21 on every case. It was almost like I was questioning,
22 you know, his handling of cases. And that's not what I
23 was doing. All I was doing was looking at an analysis
24 of the criminal justice system and how repeat offenders
25 were being handled in the county. I was not being

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2 critical. I wasn't being critical of my office, his
3 office, the courts. Just looking at that. But that was
4 an issue.

5 Q Did that become public in any way?

6 A I don't recall that becoming public. I'm not
7 saying it didn't, but I don't recall it becoming public.

8 Then there was the one issue that I told you
9 about in 2008 where I was just questioning that we had a
10 large number of illegal immigrants in our jail for
11 crimes that -- you know, some that weren't serious and
12 that we were getting a backlog of inmates, and it was
13 affecting our ability for boarding revenue. I think I
14 just sent him a nice note, saying could we take a look
15 at this, moving some of these cases along. That's my
16 recollection of that.

17 If you have any other issues -- those are the
18 ones that come to mind.

19 Q Let me ask you some questions.

20 A Yes, sir.

21 Q Was there a time that you publicly accused
22 Mr. Levy of engaging in corrupt behavior with
23 Mr. Leibell?

24 A I don't recall.

25 Q You don't recall ever doing that publicly?

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2 A I don't recall publicly saying Adam Levy is
3 involved with corruption. I don't recall it. I mean,
4 if you have a document that would refresh my memory.

5 Q Did there come a time when your accreditation
6 status became an issue?

7 A I don't believe it ever became an issue.

8 Q Do you know what accreditation by DCJS means?

9 A Yes, sir.

10 Q Are you accredited?

11 A We are not. We are working on accreditation.

12 Q How long have you been you working on it?

13 A The last three and a half, four years, I would
14 say.

15 Q Did Mr. Levy make any public statements with
16 regard to the lack of accreditation as a detriment?

17 A I don't recall. Maybe he did, but I don't
18 recall.

19 Q Have you and he ever discussed the lack of
20 accreditation issue?

21 A I don't recall him ever having a conversation
22 with me on it, that I can remember.

23 Q Has the issue of lack of accreditation been a
24 public issue in your campaigns?

25 A It was an issue in the last campaign, but it

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2 was not a big issue.

3 Q Now, what about your agency -- that is, the
4 sheriff's department -- and the sheriff's department use
5 of case enhancement procedures prior to arrests in child
6 abuse cases? Has that been an issue as between the two
7 of you?

8 A I think that was an issue for just a time as
9 part of the CAC, the Child Advocacy Center, and I think
10 very quickly we signed on to the Child Advocacy
11 protocol, and that is the protocol that we follow today.
12 I think the issue -- the issue of video confessions,
13 video interviews, there was resistance, obviously, in a
14 lot of segments of law enforcement, and I think --

15 Q That was an initiative of Mr. Levy's that you
16 had issues with?

17 A I didn't personally have issues with it. I
18 believe there were some issues within the department,
19 and, obviously, we have overcome those issues. I
20 believe. I believe we're doing great work, and I
21 believe Mr. Levy has even told the legislature that
22 there's some great work being done.

23 Q In April 2008, a report came out -- this is
24 shortly after Mr. Levy took office -- regarding your
25 offices handling of a particular child abuse

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2 investigation. Do you know what I'm talking about?

3 A You're talking about the P. B. case.

4 Q Were you the sheriff during that time?

5 A I was not the sheriff when the incident
6 occurred. The incident occurred -- as I recall it, it
7 was in the spring of 2001. I was the deputy county
8 executive when the incident occurred. The Complaint --

9 Q Was the report --

10 A I'll listen to you, Mr. Sussman.

11 Q I'm just asking you specific questions, as I
12 told you I would do.

13 Was the report by the commissioner of
14 investigation critical of your leadership?

15 A The report was critical of the sheriff's
16 office, and, obviously, I'm the sheriff. It was
17 critical of the district attorney's office. I believe
18 it was critical of the school. It was very critical of
19 everyone. And interestingly enough, I believe it was
20 either the day the report came out or the day after,
21 there was a meeting in the sheriff's department, which
22 Mr. Levy attended, and Mr. Levy was very vocal and very
23 upset about the report. He thought the report -- the
24 methodology -- he spoke out, and I think that there were
25 others in the room that could testify to this as well.

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2 He was very critical of the methodology of the SIC and
3 that it didn't conduct thorough interviews. By the way,
4 the SIC has since been done away with by the State of
5 New York. But that incident happened when -- the senior
6 investigator who handled the case has long since
7 retired. That was part of what I call the old culture
8 in the department, and I think we are a far different
9 department today when it comes to handling those kinds
10 of cases.

11 Q Your perspective at least is that you and
12 Mr. Levy were essentially on the same page with regard
13 to that report?

14 A Absolutely. In fact, I think Mr. Levy and I
15 had a very good relationship when he ran the first time.
16 I was very supportive of him.

17 Q From your perspective, when did that change
18 and why?

19 A I've asked myself this a number of times, and
20 I believe it was over my way of doing business of being
21 a learning organization and wanting to do after-action
22 reviews and wanting to take a critical look at how our
23 agency does business, with the idea of not placing
24 blame, but looking at how we can make things better.
25 And I truly believe that when, you know, those two --

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2 the one was the issue of moving the cases along quicker
3 so we could, you know, deal with illegal aliens quicker
4 and also have boarding revenue space. And the second
5 one was the idea of the multiple offenders. The third
6 one, the third issue on the -- who was going to
7 prosecute cases, I sincerely believe I told Adam from
8 day one that that was his call to make, and I would
9 abide by it. Even though I may not agree with it, I
10 respected the fact that that was the district attorney's
11 purview to decide who prosecutes cases.

12 Q So your answer to my question is what? You
13 think the genesis of the bad feelings are the actions
14 you spoke of earlier, his misconstrual of them; is that
15 what you're saying?

16 MR. KLEINBERG: Objection. You can
17 answer.

18 Q I asked you a specific question.

19 A That's my best judgment. I'm still asking
20 myself.

21 Q Well, let me ask the question to you this way.
22 From your perspective, did Mr. Levy take any action
23 against you which you felt was out of bounds?

24 A What particular time are you talking about?

25 Q Well, let's say up to the time of this event

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2 with Mr. Hossu and his arrest. Had Mr. Levy taken any
3 action regarding you or your department which you felt
4 indicated hostility by him against you?

5 A Only with some of the -- I think there were
6 some letters that he wrote, but, you know, Mr. Sussman
7 I'm pretty thick skinned. I understand government, and
8 I understand politics is involved with government. So I
9 can't say that he took any -- as I sit here, I can't say
10 he took action against me. And the framework of your
11 question was up until that time.

12 Q I understand. We're not talking about your
13 lawsuit against him, which relates to actions that
14 occurred later, after your press releases and the like.
15 We're not talking about that. That's for another case
16 and another day. I'm trying to understand the events
17 before the Hossu matter.

18 Given the importance of the Hossu case, which
19 did involve a person with whom Mr. Levy had some form of
20 relationship previously, was there any particular reason
21 why, when you found out about the Hossu matter, you did
22 not attempt to speak to Mr. Levy and discuss the
23 situation with him? Was there any particular reason?

24 A Yeah. I think in a case like this, when
25 someone is involved maybe as a witness -- and I can just

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1
2 tell you, I never picked up the phone and even called
3 Janet DiFiore, never. As I sit here, I have a firm
4 memory of this, because I know I didn't do it. I never
5 called Janet DiFiore to talk to her. In the same
6 ethics, I just felt like it would be -- it was
7 inappropriate for me to talk to Mr. Levy about a case in
8 which he was recusing himself.

9 Q Well, did you feel that before the arrest of
10 Mr. Hossu it might make sense to speak with Mr. Levy and
11 members of his family as potential witnesses in the case
12 to ascertain what information they had? Did you think
13 that made sense?

14 A I don't recall that thought process at the
15 time.

16 Q Was it your opinion at the time -- we're
17 talking about in that week we focused on -- that
18 Mr. Levy would take whatever steps he could to defend
19 Mr. Hossu regardless of whether Mr. Hossu had committed
20 a vicious rape? Is that what you believed?

21 A Not at all.

22 Q Did you believe that Mr. Levy was going to
23 attempt to assist Mr. Hossu regardless of Mr. Levy's
24 opinion about whether he was or wasn't guilty simply out
25 of pride?

1 DONALD B. SMITH

2 A Not at all.

3 Q Okay. You've answered the question. You're
4 saying that wasn't your belief. You said, "Not at all."

5 I want to ask you about some other documents
6 that we've had limited access to, but access to,
7 nonetheless. You told me earlier you knew who Shawn
8 Cohen was. There's a package of documents which were
9 made available here as D27 through D32. We're mark them
10 as an exhibit.

11 MR. SUSSMAN: We'll mark them as Exhibit
12 74, please.

13 (Plaintiff's Smith Ex. 74 - DOCUMENTS
14 MARKED D27 THROUGH D32 marked for
15 identification.)

16 BY MR. SUSSMAN:

17 Q Showing you what's been marked as Exhibit 74,
18 this is a response to a FOIA request of what says,
19 "letters sent to state and federal officials." This was
20 provided in response to our request for your
21 communications concerning Mr. Levy with these various
22 officials.

23 So what we have here chronologically is an
24 October 1st letter -- that's 31 and 32 at the bottom
25 right -- in which you're requesting crucial assistance

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2 in helping to restore and preserve proper and lawful
3 administration of justice, and you say that the
4 integrity of the criminal justice system is being
5 undermined by untoward forces. I'm not, frankly, sure
6 of the redactions here and what they're about, to the
7 extent they are premised on some alleged investigation
8 by Mr. Schneiderman.

9 Let me ask you this: Is there any
10 investigation you have any awareness of by
11 Mr. Schneiderman at this point of Mr. Levy?

12 MR. KLEINBERG: I'll let him answer. I
13 just want to make clear that the redactions were the way
14 it was produced in response to the FOIA request. It
15 wasn't our office that did those redactions. With that
16 said, you can answer his question.

17 Q Let me repeat the question so we're sure
18 you're answering the question. Do you have any current
19 knowledge of any investigation by Mr. Schneiderman of
20 Mr. Levy particularly with regard to the Hossu matter?

21 A With regard to the Hossu matter, no.

22 Q Were you here complaining -- because, again,
23 I'm not sure I understand these redactions. I gather
24 they were redacted from the newspaper man, but I'm not
25 sure the redactions pertain in this case where one of

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2 the issues is malice and what you were representing to
3 others, including third parties in prominent positions,
4 about Mr. Levy.

5 What is it that you were representing here to
6 Mr. Schneiderman? You say, The integrity of the
7 criminal justice system of the county is being
8 undermined by untoward forces. And I expect what you
9 then wrote was some illustration of that so that
10 Mr. Schneiderman could be advised of whatever your
11 concern was, but as I said earlier, that's redacted.
12 What was your concern?

13 MR. KLEINBERG: You're talking
14 specifically about the October letter?

15 MR. SUSSMAN: Well, the November 1st
16 letter simply is a resending of it. That's page 30.
17 Let's just focus on those two letters right now.

18 MR. KLEINBERG: The other one is also to
19 the U.S. Attorney's Office.

20 MR. SUSSMAN: I'm aware of that. That's
21 another one. That's not this one.

22 MR. KLEINBERG: I'm going to direct him
23 not to answer to the extent that he's aware of any
24 matter that's not a closed investigation by any
25 government official.

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2 MR. SUSSMAN: Well, there's been no
3 establishment of any existing investigation. I have
4 been in touch with these various offices, and I know of
5 no investigation relating to Mr. Levy and the Hossu
6 matter being engaged in by any of them, and they've
7 indicated to me there are no such investigations. I'm
8 not asking the gentleman about other matters. I'm
9 trying to understand what he conveyed to these people
10 about Levy and Hossu, if anything. I don't know what he
11 conveyed. That's what I'm trying to say. I don't know
12 what's in here (indicating).

13 MR. KLEINBERG: My concern for him
14 responding is that if he conveyed anything to these
15 offices -- and I don't know the status of any
16 investigation, but if it was also conveyed to another
17 office that has a --

18 MR. SUSSMAN: But I'm not asking him what
19 he conveyed to another office.

20 MR. KLEINBERG: Right, but if he conveyed
21 it to both and one has a pending investigation, then
22 there's a law enforcement privilege.

23 A I believe there are open investigations at
24 this time.

25 Q About Hossu?

1 DONALD B. SMITH

2 A Not about Hossu.

3 Q That's all I'm asking you about, though.

4 That's the whole problem. You keep talking about other
5 things. I don't care about anything else. You made
6 other claims, and they're being investigated. Fine.

7 I'm asking you: With regard to Mr. Hossu,
8 what is it that you reported or related to these
9 officials concerning Mr. Levy, if anything?

10 MR. KLEINBERG: You can answer that
11 question.

12 A I believe there were -- right now as I sit
13 here with these blanks, without seeing the original
14 documents, I don't recall anything with Mr. Hossu. I
15 think there were other --

16 Q Don't get into other matters. I'm saying that
17 that's not really my concern right now. Frankly, other
18 matters may have a great bearing on this case, but
19 that's for a judge to decide, and I'm not -- because the
20 other matters may, from our position, be equally
21 specious. But that's a different issue. I'm not trying
22 to get into that today.

23 So you're telling me sitting here today that
24 less than two years ago, you wrote to Mr. Schneiderman,
25 then to Mr. Cuomo, Mr. Schneiderman, and then a

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2 Mr. Bharara (phonetic), and you don't know whether you
3 made any allegations of alleged facts concerning
4 Mr. Levy and Hossu? That's what you're telling me?

5 A There are a number of issues, and I'm not sure
6 which ones --

7 Q I'm just asking you about Hossu.

8 A That's my answer. I don't recall Mr. Hossu.

9 Q Do you have unredacted versions of these
10 letters? Do you have them in your files, unredacted
11 versions?

12 A I believe we do.

13 Q Is it possible for you to check by reading
14 them and advising through counsel whether these letters
15 have to do in any measure with the Hossu matter? Is
16 that possible?

17 MR. KLEINBERG: Yeah. Absolutely. We
18 can -- I hate to give the typical "take it under
19 advisement." Yes, we can look at it and then get back
20 to you on that. I do not have a problem with it.

21 MR. SUSSMAN: What I'm going to ask is
22 this -- again, you can take it under advisement, but I'm
23 telling you I'm going to ask the Court for a ruling if
24 you refuse. I'd like to know -- I'd like to get a copy
25 of the letters. They can be redacted with regard to

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2 everything else for right now, because we don't have any
3 other ruling, but if there is something in here about
4 Hossu, I'd like to have that in an unredacted form. You
5 can redact whatever else you say you have. It's,
6 obviously, as you say, Boy Scouts honor, but that's the
7 way it has to go right now.

8 MR. KLEINBERG: I understand what you're
9 saying on that. We will get the -- I will get the
10 unredacted version from him and see what we can do to
11 resolve this. If we can resolve it without a motion, I
12 think we've been able to do that on a number of issues.

13 MR. SUSSMAN: I agree.

14 (UNREDACTED VERSION OF PLAINTIFF'S SMITH
15 EXHIBIT 74 REQUESTED BY COUNSEL.)

16 BY MR. SUSSMAN:

17 Q With regard to your other claim, without
18 getting into the content of your allegations about or
19 against Mr. Levy, but in order to develop a record that
20 the Court can utilize meaningfully, it's your claim here
21 today, because you advanced it a few answers ago, that
22 there are, you say, outstanding -- you know there are
23 open or outstanding investigations by some branch of law
24 enforcement outside of this county concerning Mr. Levy.
25 Is that your statement?

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2 A That is not my statement. Your words are
3 different than mine. You said I know, and what I hope I
4 said, and what I believe I said, is "I believe."
5 Because you know, Mr. Sussman, in dealing with these
6 agencies, most often the answer they will always give
7 you is, We neither can confirm nor deny.

8 Q Well, this is what I'd like to know, as
9 precisely as you can tell us -- because I think the
10 Court has an interest in this. And you're under oath
11 here, and that's why I think this is the place to ask
12 the question. Can you tell us when the last time -- and
13 I'm going to separate them so you're not getting them
14 confused -- the last time -- "the last time" meaning not
15 a specific day, but a month, time of year, a year --
16 when you had contact with the New York State AG's office
17 and were told what you just told us; We can't confirm or
18 deny? When was the last time you had that contact?

19 A I don't recall. With the federal --

20 Q We'll get to each one.

21 A I don't recall. I have had contact with the
22 AG's office, but going to the root of your question, we
23 didn't specifically talk in the manner that you just
24 posed in your question.

25 Q Did that contact with the AG's office give you

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2 information that there was an open investigation of
3 Levy?

4 A No.

5 Q When was the last time you had contact with
6 the AG's office where it was confirmed to you that there
7 was an open investigation of Levy?

8 A I don't recall.

9 Q Have you ever had contact with them in which
10 that was confirmed?

11 A Yes.

12 Q And you don't know when it was, for the last
13 time. Do you know the year?

14 A I don't recall, but there was contact.

15 Q Did you provide -- again, without getting into
16 its content, did you provide information to that office
17 with regard to any investigation it was doing?

18 A Yes, sir.

19 Q What about the U.S. Attorney's Office; when
20 was the last time you had contact with them in which
21 they said they won't confirm or deny, or words to that
22 effect?

23 A We have had contact with the U.S. Attorney's
24 Office, but our primary contact is with the Federal
25 Bureau of Investigation.

1 DONALD B. SMITH

2 Q When did they tell that they couldn't confirm
3 or deny whether there was an ongoing investigation?
4 When was the last time?

5 A To the best of my recollection, six or eight
6 months ago. And that was --

7 Q Go ahead.

8 A That was a contact Captain McNamara had.

9 Q Not you directly?

10 A Not me directly.

11 Q What about Homeland Security? We talked about
12 them earlier in the deposition.

13 A Homeland Security we have contact with on a
14 routine basis.

15 Q About Mr. Levy, I'm asking, not about anything
16 else.

17 A Not in a long time with Homeland Security.

18 Q You mentioned Mr. Sayegh a number of times in
19 this deposition. I want to be clear on a few things
20 with regard to Mr. Sayegh. By January of 2013, several
21 months before Hossu, as I understand it, Mr. Sayegh was
22 no longer your confidential advisor because of what the
23 legislature and the county executive did to your budget;
24 is that correct?

25 A That is correct.

1 DONALD B. SMITH

2 Q Did you have a belief that what was done to
3 your budget and to Mr. Sayegh was orchestrated by
4 Mr. Levy?

5 A No.

6 Q Did you have a belief that he had taken a
7 position one way or the other on whether Mr. Sayegh
8 should be continued?

9 A I don't know.

10 Q Did you have a belief? Your belief is you
11 didn't know, or you don't know if you had a belief?

12 A No. I know what beliefs I have.

13 Q On that issue, did you form a conclusion that
14 Mr. Levy played some role in getting rid of Mr. Sayegh?

15 A I don't know if he had played a role. I know
16 that there were people who were close to Mr. Levy who I
17 believe might have played a role, but that doesn't make
18 Mr. Levy a part of that.

19 Q Well, I agree with what you just said, but
20 that's not really answering the question, respectfully.
21 The question is what you believed. It's not really even
22 whether you could justify your belief. People believe
23 whatever they believe.

24 I'm asking you: Did you, as of January 1,
25 2013, think that Mr. Levy was in some way responsible

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2 for you not having Sayegh?

3 A Responsible, no.

4 Q Who did you think was responsible?

5 A I believed it was the leaders of the
6 Conservative Party in Putnam County.

7 Q And do they have names, these people?

8 A The chairman is James Maxwell.

9 Q Who was the vice chairman at that time?

10 A I don't know.

11 Q Did you believe Mr. Maxwell had something to
12 do with this?

13 A Just belief.

14 Q That was your belief. Did you have any facts
15 that you knew to be true that supported that belief? In
16 other words, he talked to someone. He did something.
17 Did you have any basis for it like that?

18 A I believe I did, but as I sit here today, you
19 know, I'm not able to articulate specific times and
20 dates and everything.

21 Q Mr. Sayegh took the position that you didn't
22 fight hard for him; right?

23 A I believe that's true. Initially.

24 Q And what is your current relationship with
25 him? Repaired? Fractured?

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2 A I would say friendly. I would say repaired.

3 Q Has Mr. Sayegh told you anything about Adam
4 Levy's role in the Hossu matter whatsoever?

5 A Not that I can recall.

6 Q Has he told you that he has any information
7 that Mr. Levy directly or indirectly was in contact with
8 Mr. Hossu between the date of the S. H. interview and
9 the date of his arrest?

10 A No.

11 Q Have you asked Mr. Sayegh to take any
12 investigative steps on your behalf?

13 A No.

14 Q Apart from the lawyer or the law firm you have
15 representing you, have you asked any third party to take
16 any investigative steps to try to determine Mr. Levy's
17 role in tipping off Mr. Hossu on this investigation?

18 A Not that I can recall.

19 Q Did you ask any members of your staff do that?

20 A No.

21 Q Did any members of your staff ever tell you
22 that they had information in that period of time we're
23 talking about that Mr. Levy had interfered in their
24 investigative steps?

25 A No.

1 DONALD B. SMITH

2 Q Did you ever ask them whether they had such
3 information?

4 A I don't recall specifically.

5 Q Generally?

6 A I don't recall asking them generally or
7 specifically. I just don't have a recollection of that.

8 Q Now, is there anything that happened in the
9 investigation during the time period that we're talking
10 about, which is this, essentially, week, eight-day time
11 period -- is there anything that happened in that
12 investigation which you believe reflects actions by Adam
13 Levy? In other words, do you think Adam Levy did
14 anything or didn't do anything which affected your
15 investigation in that time period?

16 A Yes.

17 Q What?

18 A I was very shocked when Adam took such a
19 proactive role in an action that he had recused himself
20 from when he put out the news release in response to
21 what I considered to be just a vanilla news release that
22 we had put out. In fact, the news release that we had
23 put out was put out after the news media already had the
24 story. They were already running the story. They had
25 more information than we even wanted out there.

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2 Q Where did they get that information?

3 A I have no idea.

4 Q Did you ever try to find out?

5 A We don't believe it came from within the
6 sheriff's office, I can tell you that.

7 Q Do you know where it came from?

8 A I don't know where it came from.

9 Q Did it come from the Westchester DA's office?

10 A It could have, but I don't know that.

11 Q Did you ever ask anyone there whether they
12 had, in fact, released information?

13 A I believe Captain McNamara may have had some
14 comments -- discussions with them.

15 Q Did they deny it?

16 A I don't believe anybody ever said that they
17 knew where it came from.

18 Q So they denied it?

19 A I believe so.

20 Q So you were saying you put out a vanilla
21 release. That's the release that included Mr. Levy's
22 address as Mr. Hossu's?

23 A Right. But it never mentioned anything about
24 the relationship. Then this news release comes out from
25 a recused district attorney, who is attacking the

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2 sheriff's office, saying how he's tried to educate the
3 sheriff over the years on so many things, attacking our
4 competency, releasing information on -- that we had not
5 released -- where the arrest had been made.

6 So we were obviously also concerned -- deeply
7 concerned about the telephone call between Ms. Krauss
8 and the Westchester DA's office. We were concerned
9 about the controlled call. And, you know, again, we
10 didn't specifically -- I don't think anyone at any time
11 said that Adam specifically was involved. We were
12 concerned about the change of address at the post office
13 that just happened in consonance with -- you know,
14 following the interview at the Child Advocacy Center.

15 So we had a lot of concerns about Adam putting
16 out that in a case that he was recused from, and then
17 even putting out a correction on the address. And it
18 was just, like, you know, this district attorney is
19 recused. That means no involvement -- in my parlance,
20 no involvement in the case.

21 Q So you could say anything, and your position
22 is he wouldn't be able to respond?

23 A I would say certainly not --

24 MR. KLEINBERG: Objection.

25 Q Is that correct?

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2 A I would say he certainly -- he doesn't lose
3 his First Amendment rights, but as the district
4 attorney, using district attorney letterhead, using the
5 county email system to put out information about our
6 investigation, putting out information that we didn't
7 want out, and attacking the sheriff's office.

8 Q Let me stop you there. You said, "we didn't
9 want out." You said about two hours ago when you were
10 asked the question directly about the address, that you
11 didn't make a conscious decision with regard to not
12 including the arrest address. You told me that.

13 A Yes.

14 Q So what are you talking about? What
15 information is in there that you didn't want out?

16 A Well, it's not for him, a recused DA, to put
17 out an address that has not been released by either the
18 Westchester District Attorney's office or the Putnam
19 County Sheriff's Office.

20 Q I'm asking you: Why not? Why not? Why isn't
21 it for him to put out? If the issue is -- you're
22 suggesting that the arrestee is residing at his house,
23 which is what you did in the initial release; right? Is
24 Exhibit 60, the arrest location -- is that arrest
25 location in there? It says, "Arrest Location." It's

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2 right at the top. Do you see it? Do you see it in
3 there?

4 A Yes.

5 Q Isn't that a public document?

6 A I would tell you on release of --

7 Q You have to answer the question. Is that a
8 public document, if you know? If you don't know, say
9 you don't know.

10 A I believe certainly parts of it are
11 releasable.

12 Q Parts of it are releasable. Are you really
13 telling me sitting here after you've been sheriff for
14 all these years that you can't say that the arrest
15 location on the warrant for arrest is public
16 information? Is that what you're telling me?

17 A No. I believe most information is public
18 information.

19 Q Now, you're here -- and I understand your
20 testimony, if I'm understanding your testimony, just so
21 we're clear, totally clear, square up, is that the use
22 of the 70 Indian Wells address was not intentional on
23 your part to associate Mr. Hossu with Mr. Levy? That's
24 what you're telling me?

25 A It was not -- in fact, that news release went

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2 out --

3 Q Is that what you're telling me? You have to
4 answer yes, no, or something else.

5 A Yes.

6 Q It was not intentional?

7 A It was not. It was what we believed to be the
8 accurate address.

9 Q The accurate address of what? That's what
10 we're trying to find out. You believed it was the
11 accurate address of what?

12 A Of Mr. Hossu's sense of place. That's it.

13 Q You've already told me here today that you had
14 no idea of when the last time Hossu was there. You
15 already said that; right? Do you adhere to that, or do
16 you want to change that testimony?

17 A No. I don't want to change.

18 MR. KLEINBERG: Wait. You're talking
19 over each other. One at a time.

20 Q Do you want to adhere to that, or do you want
21 to change your testimony, sitting here today?

22 A I don't know.

23 Q You didn't know. It's not that you don't
24 know. You didn't know.

25 A I didn't know.

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2 Q Now, in that context, did you have knowledge
3 of your own department having responded to Mr. Hossu
4 living at the very same Clock Tower address the summer
5 before? Did you know that?

6 A I know it now.

7 Q I'm not asking you now. Did you know it?
8 Listen to the question, please.

9 A I don't recall knowing it.

10 Q Should you have known that?

11 MR. KLEINBERG: Objection.

12 Q I'm asking you. You're the sheriff. Should
13 you have known that your own department had engaged this
14 man at that same address the year before?

15 MR. KLEINBERG: Objection. You can
16 answer.

17 A Obviously, as a sheriff, I want to know as
18 much as I can about everything, but it's a big town.

19 Q Let's go it another way, sir, so we can really
20 get to the bottom of this. Who made the decision to
21 include that address in Exhibit 34?

22 MR. SUSSMAN: Can I see Exhibit 34,
23 please.

24 MR. LEVY: (Hanging).

25 Q This is the vanilla press release. "Of 70

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2 Indian Wells Road in Southeast," that's the very first
3 paragraph. Who made the decision to write that?

4 A Well, I can remember talking with Captain
5 McNamara -- I believe it was over the phone -- that the
6 press was screaming for a press release and they already
7 had information. I think he even said something was
8 already up on the web site, and so --

9 Q What information did they already have?
10 Seventy Indian Wells Road in Southeast; is that what
11 you're saying?

12 A I think they had more than what we put in this
13 press release.

14 Q Did they have 70 Indian Wells Road in
15 Southeast?

16 A I don't know.

17 Q I asked you this question: Who made the
18 decision to put in here as his address -- rather than
19 where he was actually residing, who made the decision to
20 say 70 Indian Wells Road in Southeast? Did you? Did
21 McNamara? Did both of you?

22 A Well, this press release was prepared by
23 Captain McNamara, and he normally would read a press
24 release to me over the phone. I can't specifically
25 remember whether he read this press release over the

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2 phone, but I know -- but I'm the sheriff of the county,
3 Mr. Sussman. I mean, this press release is put out in
4 my name.

5 Q I'm really not asking you that as much. I
6 know you're the sheriff and I know that, ultimately,
7 you're responsible. I've been around as long as you
8 have almost. That's not what I'm asking you. We're
9 talking about an action which is reflected by these
10 words that in the press's mind and in the public's mind
11 would associate Mr. Hossu with Mr. Levy. Did you
12 discuss that with McNamara?

13 A No.

14 MR. KLEINBERG: Objection. You can
15 answer.

16 A Not that I recall.

17 Q You didn't discuss it.

18 A However, we --

19 MR. KLEINBERG: You answered the
20 question.

21 Q You answered the question. You didn't discuss
22 it.

23 And the quote at the bottom, quote, "This was
24 a vicious crime committed against a little girl," okay,
25 do you see that?

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2 A Yes, I do.

3 Q You were the president of the sheriffs'
4 association; right?

5 A I was not.

6 Q Not at this moment. You had been the year
7 before?

8 A I was the past president.

9 Q Past president. Are there any guidelines that
10 you know of -- this is a yes or no question -- that
11 relate to statements like that, which are conclusions
12 that the crime occurred? Are there any ethical
13 standards about that in your profession?

14 A I believe there are.

15 Q What are they?

16 A I believe that everyone is innocent until
17 proven guilty.

18 Q Is that reflected in that statement, "This was
19 a vicious crime"?

20 A I think the word "alleged" probably should
21 have been in there, or words to that effect.

22 Q So you're telling us that on March 21, 2013,
23 this release came out. You're responsible for the
24 release. And this had nothing to do with Christopher
25 York; right?

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2 A Absolutely nothing to do with Christopher
3 York.

4 Q It had nothing to do with your belief that
5 Christopher York was going to challenge you with the
6 support of Adam Levy?

7 A Absolutely not.

8 Q Now, on March 20, 2013, this is what the
9 district attorney's office wrote, and I would like to
10 ask you this question: "The Putnam County Sheriff's
11 Department filed two felony complaints in Justice Court,
12 Town of Southeast." This is from their pleading. It
13 says as follows: "Pursuant to this warrant, defendant
14 was arrested at 221 Clock Tower Commons, a business
15 complex where defendant was living at the time." That's
16 at page 6 of their memorandum to the Court in the
17 criminal case.

18 Have you ever seen that?

19 MR. KLEINBERG: You're not giving it to
20 him now.

21 MR. SUSSMAN: I'm not giving it to him.

22 Q I'm asking: Have you ever seen it?

23 A I don't recall.

24 Q Did you discuss with the Westchester County
25 District Attorney's office where Mr. Hossu was then

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2 residing before that press release went out?

3 A I don't recall.

4 Q Let's take a look at Exhibit 39, please. I
5 just have a few specific questions I want to ask you
6 about this document. The second paragraph -- really the
7 first paragraph, it says that Levy issued a statement,
8 quote, "concerning the case of People of the State of
9 New York versus Alexandru Ionut Hossu, a case involving
10 the violent rape of a 12-year-old girl."

11 Do you see that?

12 A Yes, sir.

13 Q So it was a case involving an alleged rape;
14 right?

15 A Yes, sir.

16 Q Where it says in the next paragraph, "The
17 arrest of Mr. Hossu was based upon the investigative
18 findings of," and then it includes the Advocacy Center,
19 do you see that?

20 A Yes, sir.

21 Q Did the Advocacy Center participate, to your
22 knowledge, in making any findings with regard to this
23 case, if you know?

24 A Well, they were part of the interview.

25 Q I know they were at the interview.

1 DONALD B. SMITH

2 A That's quite often their role.

3 Q I understand that. But after the interview,
4 did they play any role in discussing whether this man
5 should be arrested, to your knowledge?

6 A Not to my knowledge.

7 Q Were there any investigative findings shared
8 with that agency, to your knowledge, after the
9 interview?

10 A Not that I recall.

11 Q Now, the term that -- going to the next
12 paragraph, quote, "that Mr. Hossu was his live-in
13 personal trainer," close quote, do you see that? It's
14 the fourth line of the next paragraph.

15 A Hold on a second. Which paragraph are you in?

16 Q It's the third paragraph. It starts with the
17 words, "In fact..."

18 A Okay.

19 Q To go back to my question, quoting, "that not
20 only did Mr. Hossu and Mr. Levy know each other, but
21 that Mr. Hossu was his live-in personal trainer," do you
22 see that?

23 A Yes, sir.

24 Q Okay. As of the 22nd of March 2013, what was
25 the basis for the statement that he was his live-in

1 DONALD B. SMITH

2 personal trainer, if you know?

3 A I believe we had information.

4 Q From whom?

5 A I don't recall specifically, but we had
6 information that was the case.

7 Q Did you have any information as to when that
8 was the case?

9 A Not that I recall.

10 Q What was the basis for the statement, "Upon
11 learning that information" -- the information we just
12 went over -- quote, "the assistant DA concluded that
13 Mr. Levy's office could not properly continue"? Who was
14 the assistant DA?

15 A As I recall, it was Laura Roberts. And she
16 basically threw up her hands, it was conveyed to me, and
17 said, I'm out of here; We cannot be anywhere near this
18 case.

19 Q Was it her decision to make or Mr. Levy's,
20 whether to recuse his office?

21 A Well, obviously, she needs to make an
22 on-the-spot decision, and then Mr. Levy needs to make
23 the ultimate decision for the office to get another
24 agency to take the case.

25 Q It's not her decision to make; do we agree

1 DONALD B. SMITH

2 with that? It's Mr. Levy's.

3 MR. KLEINBERG: Objection.

4 Q Sir, was it Mr. Levy's decision whether to
5 recuse his office or hers, Ms. Roberts?

6 A I believe initially -- she represents
7 Mr. Levy. And so initially -- it was conveyed to me she
8 recused the office and then she contacted Mr. Levy, who
9 ultimately concurred with her decision. I think it's
10 semantics here, Mr. Sussman.

11 Q You think that Ms. Roberts has the right to
12 determine that the Putnam County DA's office has to
13 recuse itself from a case; is that what you're telling
14 me?

15 A I think Ms. Roberts has the right to realize
16 when she is in a conflict of interest, and she takes the
17 initial action to recuse her office and then conveys it
18 to her boss, who ultimately concurs in her decision and
19 takes the ultimate action.

20 Q Now, you write here that, "Mr. Levy's press
21 release" -- which is the action by which you believe he
22 was trying to influence and affect the investigation,
23 correct, his press release?

24 A Yes, sir.

25 Q -- "could be perceived as an ethical

1 DONALD B. SMITH

2 violation." Did you report any ethical violation to the
3 grievance committee?

4 A Not that I recall.

5 Q Did Mr. McNamara?

6 A Not that I recall.

7 Q Now, in your next paragraph on the other page,
8 you are claiming that one of the, quote, "facts of the
9 case," close quote -- and the case we're talking about
10 is the alleged rape of a young woman; correct? That's
11 the case.

12 MR. KLEINBERG: Which paragraph?

13 MR. SUSSMAN: The carryover paragraph on
14 page 2.

15 Q Let me go back to the question, sir. The case
16 that's being referred to in that paragraph is the
17 alleged rape of S. H.; correct? That's the only case;
18 right?

19 A Where do you see the word --

20 Q "Facts of the case."

21 A I'm with you now.

22 Q The case that you're talking about is this
23 alleged rape; correct?

24 A Yes.

25 Q And where Mr. Hossu was arrested has

1 DONALD B. SMITH

2 absolutely nothing to do with quote, "the facts of the
3 case," does it?

4 A Well, no. It is a fact. I think it is a
5 fact.

6 Q Explain how. How is it a fact of the case
7 concerning a rape from 2010?

8 A Well, I think anything that happens in the
9 course of an investigation, an arrest is part of the
10 case. It's part of the case file.

11 Q So you believe, just so we're all clear -- I
12 want to give you every opportunity, but I want to make
13 sure you're answering the question -- that Mr. Levy
14 indicating where the arrest actually took place, as
15 opposed to at this gentleman's residence, as opposed to
16 his house, you were calling that an official
17 pronouncement concerning the facts of the case; is that
18 correct?

19 A Yes. And let me say this.

20 Q Sure.

21 A Mr. Levy is at this time recused from the
22 case, and he is using his official DA's office
23 letterhead, email system.

24 Q To respond to your linking him to the case;
25 right?

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2 MR. KLEINBERG: Objection.

3 Q Is that what you understood he was doing?

4 A He's using -- he's abusing his official
5 capacity involving himself in a case that he's recused
6 from.

7 Q Can we agree that he's using his official
8 capacity -- to the extent he was using his official
9 capacity as you explained it, on his letterhead,
10 circulating this document to email addresses within the
11 county -- he is using that to indicate his lack of
12 connection to Mr. Hossu; correct? Is that what you
13 understood?

14 MR. KLEINBERG: Objection.

15 Q Is that what you understood?

16 MR. KLEINBERG: Objection. You can
17 answer.

18 A I believe -- I believe that he was recused
19 from the case and he should not be acting with his DA
20 hat on at all at that point in time.

21 Q You believed that he shouldn't be acting on
22 behalf of Mr. Hossu at all, correct, whether it was his
23 DA hat or his private hat; right?

24 A Well, I can tell you this: If you recuse
25 yourself from a case, that means, in my parlance, the

1 DONALD B. SMITH

2 entire case. You don't work for the -- you don't work
3 for the DA's part of the case, you don't work for the
4 Westchester DA, and you certainly don't work with the
5 defense either.

6 Q As a private citizen, you felt he couldn't
7 work for Mr. Hossu; right?

8 A He's not a private citizen. He's the district
9 attorney of Putnam County. He's what some people call
10 the chief law enforcement of the Putnam County. So
11 recusal, to me, is not a very tough word. To me,
12 recusal means nicht, nein, none, no involvement
13 whatsoever. That's my interpretation.

14 Q Did he have any involvement as attorney of
15 record in the case? Did he?

16 A Well, right now we're talking here, but if you
17 want to go past this date and you talk about funding the
18 defense and then hiring --

19 Q Do you know why he funded the defense? I'm
20 asking you. Do you know why?

21 A That's certainly his business.

22 Q Do you know why he --

23 A I'm saying he's the district attorney of
24 Putnam County, Mr. Sussman.

25 Q I understand that. Do you know why he funded

1 DONALD B. SMITH

2 the defense?

3 Did you ever hear him explain -- let me ask it
4 a different way -- why he funded the defense?

5 A No, I don't think I've heard him explain it to
6 me.

7 Q To you, personally, you never heard him
8 explain it at all anywhere?

9 A I don't have a recollection of him explaining.
10 Maybe he's explained it places, but I don't recall.

11 Q Well, he explained it publicly on several
12 occasions, and I believe it was reported in the press
13 you say you read, but you've never read his explanation?

14 A I didn't say that. I said I don't recall it
15 as I sit here today.

16 Q His explanation was that he thought you were
17 targeting Hossu; right? Isn't that true? Isn't that
18 his explanation?

19 MR. KLEINBERG: Objection.

20 MR. SUSSMAN: I'm asking. The gentleman
21 raised it. I'm asking him if that's his understanding.

22 A I don't recall.

23 Q And you were targeting Hossu for a very
24 specific reason, as a way of discrediting him. Is that
25 his explanation, as you understand it?

1 DONALD B. SMITH

2 A It's not my job --

3 Q As you understand it, is that his explanation?

4 A As I said earlier, I don't recall his
5 explanation as I sit here.

6 Q You don't recall. Very good.

7 Now, you also write in paragraph 3, "In point
8 of fact Mr. Hossu told arresting officers that his
9 current legal address is..." Do you see that?

10 A Yes.

11 Q Did he tell the arresting officers where he
12 resided, if you know?

13 A I don't know.

14 Q Did they ask him where he resided, if you
15 know?

16 A I believe they asked him where he resided.

17 Q What person was present when that question was
18 asked of him, where he resided?

19 A I believe there were at least two occasions.
20 One was when he was arraigned, and there was another
21 occasion, I believe, with the booking officer.

22 Q Let me ask you about that arraignment issue
23 again. I asked you a little bit earlier about it. Have
24 you seen the several transcripts of the arraignment?
25 There are two different transcripts. Have you seen both

1 DONALD B. SMITH

2 of them?

3 A I'm not sure I've seen both of them.

4 Q One transcript, when he's asked where he
5 resides, there's an inaudible noted, and the other noted
6 the Clock Tower address. Are you aware of that?

7 A My impression was he used both addresses in
8 front of the judge.

9 Q Initially, the Clock Tower address; are you
10 aware of that?

11 A I'm not sure which was first, but my
12 impression is he used both addresses with the judge, and
13 I think somebody even clarified, Where do you get your
14 mail and your driver's license?

15 MR. SUSSMAN: Exhibit 32, could you show
16 the gentleman that, please.

17 Q Do you see where it says on your own arrest
18 sheet -- this is an arrest sheet your office maintained;
19 is that true?

20 A Yes, sir.

21 Q -- Address, 70 Indian Wells Road, Clock Tower
22 over a year? Do you see that?

23 A Yes, sir.

24 Q Did you know this existed?

25 A I believe I've seen this document.

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1 DONALD B. SMITH

2 Q Did you know it existed at the time you issued
3 this release?

4 A I don't recall.

5 Q Do you have any knowledge of the testimony of
6 Mr. Tricinelli to the effect that on a day-to-day basis
7 during the briefings the week we're speaking about the
8 issue of Mr. Hossu's address came up in your presence?

9 A I was at Mr. Tricinelli's --

10 Q His grand jury testimony. Have you ever seen
11 it?

12 A If it was presented here at the depositions, I
13 saw it, but if it wasn't, then I haven't seen it.

14 Q It's Exhibit 29. Mr. Green is questioning on
15 page 163 this particular witness, Mr. Tricinelli, and
16 Mr. Tricinelli says at lines 8 and 9 in answer to a
17 question by Mr. Green: "He was living there as if it
18 was a residence, right," answer, "Yes."

19 Did you know that Mr. Tricinelli had given
20 that testimony?

21 A I don't recall knowing.

22 Q Did Mr. Tricinelli ever advise you of that?

23 A Not that I recall.

24 Q On page 166 Grand Juror No. 12 at line 15 of
25 Exhibit 29 asks this question of Mr. Tricinelli: "Does

1 DONALD B. SMITH

2 Alex Hossu have a known place of residence or this is
3 where he was just claiming to stay?" Tricinelli: "He
4 does not have another residence."

5 Were you aware of that?

6 A No. Not that I recall.

7 Q Just to go back, so we're clear on your
8 testimony, because it's important that we get it clear,
9 we talked about the presumption of innocence earlier,
10 and your testimony is here that you're not trying to
11 link Mr. Levy to Mr. Hossu.

12 Look at the paragraph in Exhibit 39 in the
13 middle of the second page, quoting, "To address the
14 general tenor and tone of Mr. Levy's statement, it
15 should be very clear to any intelligent reader what
16 Mr. Levy is attempting to do. Sadly he is trying to
17 distract the citizens from what this case is really
18 about, the vicious rape of a little girl by a man whom
19 he housed and hired as his personal fitness trainer."

20 So you're now saying, if I understand it, that
21 the district attorney's intent is to distract the
22 citizens from this crime by a man who he housed and
23 hired; is that right?

24 A That was our opinion because of what he put
25 out.

1 DONALD B. SMITH

2 Q "What really bothers Mr. Levy, the district
3 attorney, is that the investigation has uncovered facts
4 that may be very inconvenient truths for him."

5 You wrote that as well; right?

6 A Yes, sir.

7 Q This is your writing?

8 A This is, again, a combination of Captain
9 McNamara and myself.

10 Q And your position is that --

11 A But I'm -- again, Mr. Sussman, I'm the
12 sheriff, and, obviously, I'm responsible.

13 Q "If he could have his own way," you write,
14 "Mr. Hossu would never have been brought to justice for
15 his crime."

16 You wrote this two days after the man was
17 arrested; right?

18 A Yes, sir.

19 Q Before your investigation was really even
20 partially completed; right?

21 A It was still an ongoing investigation, yes,
22 sir.

23 Q You weren't in any way predetermining to the
24 public this man's innocence or guilt, were you, of this
25 crime?

1 DONALD B. SMITH

2 A We certainly believed -- we don't make an
3 arrest unless we believe someone is guilty.

4 Q Now, the last paragraph, I just wanted to ask
5 you some questions about that. We talked earlier about
6 Homeland Security and your contact with Homeland
7 Security, and you were, frankly, a little vague on the
8 meeting with Homeland Security, so let me ask you if
9 this refreshes your recollection. When you met with
10 Homeland Security, did you formally request them to
11 conduct a thorough investigation to determine whether
12 any prosecutable violations in immigration laws were
13 committed?

14 A I believe so.

15 Q Did you ask them to do with regard to Mr. Levy
16 particularly?

17 A I don't believe we mentioned Mr. Levy by name.
18 That's my recollection. We --

19 Q Committed by whom?

20 A Committed by anybody.

21 Q "Whereby Mr. Hossu may have been harbored,
22 shielded, aided, or abetted in the time leading up to,
23 during, or following his vicious rape of the little girl
24 in Southeast."

25 So that's the fourth time in two pages you're

1 DONALD B. SMITH

2 mentioning the vicious rape; right?

3 A Yes, sir.

4 Q And were you suggesting here that Mr. Hossu
5 might have been harbored, shielded, aided, or abetted by
6 Mr. Levy?

7 A By anybody.

8 Q Were you suggesting by Mr. Levy? That was my
9 question.

10 A I don't believe we referenced Mr. Levy
11 directly on this.

12 Q Were you suggesting it? That was my question.
13 I know you didn't directly mention him by name. Was
14 that your intent?

15 A No, that wasn't our intent. Our intent was
16 anyone. When you call for Homeland Security, you ask
17 them to check anyone who has aided, abetted, harbored.

18 Q Let me ask you this. You met with
19 Mr. Appelbaum; right? David, is that his name?

20 A I believe that's the -- I believe that's one
21 of the people we met with.

22 Q Does David Appelbaum have, to your knowledge,
23 any motive to falsify anything you would say? Do you
24 know anything about him which would give you reason to
25 believe he would have a motive to falsify --

1 DONALD B. SMITH

2 A When you say Mr. Appelbaum, you mean from
3 Homeland Security?

4 Q From Homeland Security.

5 A I don't have any reason to believe he would.

6 Q Did you have any animus that you know of with
7 him?

8 A None whatsoever.

9 Q So if Mr. Appelbaum testifies that you
10 specifically requested that he investigate Levy, you
11 believe he would be telling the truth?

12 A I have no reason to believe he wouldn't be
13 telling the truth.

14 Q But you're not prepared here today to admit
15 that's what you said to him; is that true?

16 A All I'm saying is I don't have a recollection
17 of the specifics of what was said to him.

18 Q Well, you say you don't have a recollection of
19 specifics. Let me ask you this: In light of the timing
20 of the meeting with Mr. Appelbaum and the content of
21 this document which you're looking at, Exhibit 39, do
22 you think, knowing yourself far better than I know you,
23 that it's likely that you asked Mr. Appelbaum to
24 investigate Mr. Levy specifically?

25 A I know that my intent was to have an open

1 DONALD B. SMITH

2 investigation for anyone who aided and abetted and --
3 you know, Mr. Hossu had been here for quite a number of
4 years.

5 Q Now, you've looked at that press release,
6 Exhibit 39. Did you give any interviews about that
7 press release to any members of the press?

8 A I don't recall giving any interviews.

9 Q Did you get any phone calls after you issued
10 that press release --

11 A I'm sure --

12 Q I have to finish the question. Did you get
13 any phone calls after you issued that press release
14 concerning its content?

15 A I don't have any recollection of phone calls,
16 but if I may expand on that?

17 Q Sure.

18 A I'm sure that Captain McNamara handled a
19 number of phone calls.

20 Q Did you direct him to say something specific
21 in response to these phone calls?

22 A As I recall, we just stuck to the press
23 release.

24 Q So reiterate the press release?

25 A Well, to just refer people to the press

DONALD B. SMITH

1
2 release. I don't recall as I sit here, Mr. Sussman --
3 and if you have any documents to refresh my memory, I
4 would appreciate seeing them, but I don't recall giving
5 any press conferences on this. In fact, if I may, on
6 that TV tape that you showed, where there was footage of
7 me on News 12, that was file footage from right after --
8 we had a school meeting with all the school
9 superintendents. That was file footage. That was not
10 pertaining to --

11 Q Nor did it purport to. It purported simply to
12 show you speaking to various people. It didn't purport
13 to indicate that.

14 MR. KLEINBERG: Off the record.

15 (Discussion held off the record.)

16 (At 4:27 p.m., the examination of this
17 witness was adjourned.)

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DONALD B. SMITH

J U R A T

STATE OF)

COUNTY OF)

I, _____, have read the
foregoing record of my testimony taken at the time and
place noted in the heading hereof and do hereby
acknowledge: (Check one)

() That it is a true and correct
transcript of same

() With the exceptions noted in the
attached errata sheet, it is a true and
correct transcript of same

Donald B. Smith

Subscribed and sworn to before me
this _____ day of _____, 201__.

Notary Public

My commission expires: _____.

1

DONALD B. SMITH

2

E R R A T A S H E E T

3

Please note any errors or corrections on this sheet.

4

Indicate a reason for any change or correction.

5

PAGE \ LINE \ CHANGE \ REASON

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Donald B. Smith

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2 C E R T I F I C A T E

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4

5 I, STACIE SULLIVAN, a shorthand reporter and
6 Notary Public within and for the State of New York, do
7 hereby certify:

8 That the witness whose deposition is
9 hereinbefore set forth was duly sworn by me and that the
10 within transcript is a true and accurate record to the
11 best of my knowledge and ability.

12 I further certify that I am not related to any
13 of the parties to this action by blood or marriage and
14 that I am in no way interested in the outcome of this
15 matter.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand.

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Stacie Sullivan, CSR

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20	EXHIBIT 74 REQUESTED BY COUNSEL.		

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