

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM: CIVIL COURT: PART RMD

-----X
ADAM B. LEVY,

PLAINTIFF,

-against-

INDEX NO. 00219/2013

DONALD SMITH,

DEFENDANT.
-----X

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
IMPOSITION OF LIQUIDATED DAMAGES AND AWARD
OF ATTORNEYS' FEES FOR VIOLATION OF SETTLEMENT
AGREEMENT'S NON-DEPRECIATION CLAUSE**

In settling the instant case, Putnam County Sheriff Don Smith released the following statement:

"In March 2013, I issued two press releases which stated that Alexandru Hossu resided at your home, that you had interfered with the investigation into the claim that Hossu had raped a young woman and that further suggested that you valued loyalty to Mr. Hossu over law enforcement objectives and should be investigated for knowingly harboring an illegal alien...

Today, I retract these releases unequivocally and apologize for the statements contained therein. These statements *were untrue and I should not have made them*. Mr. Hossu did not then reside at your home. He was arrested at another location where he then lived. I know that you did not interfere with the

investigation of Mr. Hossu. Nor is there any evidence that you had any knowledge of Mr. Hossu's immigration status or were intentionally harboring an illegal alien. And, finally, throughout your career, you prosecuted all manner of cases and I apologize for conveying anything to the contrary." See, Exhibit 1 to Sussman Affirmation.

In settling *Levy v. Smith*, Smith agreed to pay Levy \$150,000 and to a non-deprecation clause which "disallows Mr. Smith from making public comments which are denigrating or deprecating to Mr. Levy or disparaging to Mr. Levy." Violation of that provision will cause a court to impose liquidated damages in the sum of \$50,000 and attorney's fees. See, Exhibit 2 to Sussman Affidavit for transcript of June 13, 2017 settlement.

In recent weeks, Mr. Smith and his agent, Adam Kleinberg, who negotiated the settlement and remains Smith's attorney in Mr. Hossu's federal case, have made statements which undercut his retraction and, in so doing, denigrate Mr. Levy, suggesting that he, Smith, had a factual basis to issue the press releases he did about Levy when he did so. These public statements undercut Smith's retraction and explicit admission that he should not have made the statements he made.

Suggesting that those statements had a factual basis when made and that Mr. Smith only voluntarily retracted them when faced with contrary evidence

undermines the apology and retraction and thereby again suggests that Smith had evidence supporting the since retracted statements when Smith published his press releases in March 2013. However, Smith already has admitted he had no such evidence.

Rather than respond to claims that he lied about Levy by simply acknowledging that he had retracted his false statements and apologized, Smith and his mouthpiece now again put forward the discredited and previously abandoned perspective that he had reason to believe these claims when he made them.

In the two attached newspaper articles published in the *Putnam Examiner* and the *Putnam Daily Voice*, responding to an attack by his current opponent in his re-election campaign that he had lied about Mr. Levy and, therefore, should resign, Smith does not merely respond to his opponent: he suggests that when he issued his press releases about Levy, he had reason to believe there was some truth to those statements. He stated, "**Each and every day I strive to provide the truth and if I later learn new information, I make the correction.**" [emphasis added]. See, Exhibits 3 & 4 to Sussman Affirmation.

This is not what Smith apologized for: he apologized because when he issued the two press releases about Levy, he had no facts to support what he wrote, not because he later learned new facts which contradicted facts he had when he

issued the two press releases and simply had failed to timely correct previously factually-premised statements.

Smith's current press statements deprecate Levy anew by implying that Smith initially possessed facts which supported his press releases to the effect that, at the time of his arrest, Hossu lived with Levy, that Levy had interfered in the Hossu investigation, that Levy was intentionally harboring Hossu, an "illegal alien," and that Levy valued his friendship with Hossu over his functions as Putnam County District Attorney.

To the contrary, as Smith admitted through his retraction and apology, each of these statements was false when published, not supported then by facts which were supervened by new facts learned by Smith. This current statement severely undercuts Smith's retraction, making it sound like he had a factual basis for what he said in March 2013. This plainly denigrates Levy.

In Exhibit 5 to the Sussman Affirmation, on September 28, 2017, Mr. Kleinberg, Smith's attorney, is quoted by LoHUD. His statement again plainly deprecate Levy by suggesting that Smith had factual information supporting his false statements when he made them. As LOHUD reported, "Adam Kleinberg said Smith reached out to other agencies after the arrest of Levy's friend because he wanted to avoid a conflict of interest when he "received information" regarding the rape suspect's immigration status." Kleinberg is then directly quoted, "In the years

that followed, the sheriff was embroiled in a very public lawsuit. He was deposed over the course of several days and responded candidly when he could not recall specifics about documents that were not in front of him. He testified to the best of his ability, while watching his wife losing her fight with cancer on a daily basis. When the dust settled and all of the information was in front of the sheriff, he apologized for certain statements made *based on what was known to him at the time*. The Sheriff moved on.” [emphasis added].

Again, the force and effect of Kleinberg's statements is to minimize his client's false statements, again claiming they had a factual basis when Smith made them and thereby suggesting that evidence exists for each of the discredited statements. This too violates the settlement agreement as it denigrates Levy by suggesting that Smith had before him evidence in March 2013 which supported each of his patently false and defamatory statements. This plainly undermines the force and effect of Smith's June 13, 2017 apology and retraction.

In short, rather than honor the agreement, Smith and Kleinberg have now resorted to the claim that, when he made statements he admitted he should not have made in March 2013, Smith had a factual basis. This besmirches Levy and leaves the public wondering what information Smith then had showing that Hossu then lived with Levy, that Levy had interfered in the Hossu rape investigation, that Levy had harbored intentionally an illegal alien or that Levy would elevate his friendship

with Hossu to the legitimate needs of law enforcement officers investigating an allegation of a serious crime.

By re-opening the possibility that Smith did have facts underlying these claims, albeit facts he later realized were insufficient to predicate his statements, Smith has deprecated Levy.

CONCLUSION

Since Sheriff Smith and his agent have violated the terms of the settlement agreement, he should be required to pay Levy the agreed-upon liquidated damages, \$50,000, and the attorneys fees arising from the making of this motion.

Respectfully submitted,


MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES
PO BOX 1005
1 RAILROAD AVENUE, SUITE 3
Goshen, New York 10924
(845)-294-3991

Counsel for Adam Levy

Dated: October 26, 2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM: CIVIL COURT: PART RMD

-----X
ADAM B. LEVY,

PLAINTIFF,

-against-

INDEX NO. 00219/2013

DONALD SMITH,

NOTICE OF MOTION

DEFENDANT.
-----X

PLEASE TAKE NOTICE that upon the annexed Affirmation of Michael H. Sussman, Esq., Exhibits 1-5 attached thereto and the Memorandum of Law provided herewith, plaintiff shall move this Honorable Court at 10:00 a.m. or as soon thereafter as counsel may be heard on November 16, 2017, at the Putnam County Courthouse, 21 County Center, Carmel, New York for an Order [a] finding that defendant Donald Smith has intentionally breached the settlement agreement entered into between the parties on June 13, 2017; [b] requiring defendant Smith to pay liquidated damages in the sum of \$50,000 as set forth in that settlement agreement for said breach as well as the reasonably incurred attorney's fees in the making of this motion and [c] for any further relief which the court deems warranted by the interests of law and equity.

Reply papers should be filed seven days before said return date.

Dated: October 26, 2017

Yours, etc.

A handwritten signature in black ink, appearing to read "mussman", with a long horizontal stroke extending to the right.

MICHAEL H. SUSSMAN

SUSSMAN & ASSOCIATES

1 Railroad Avenue, Suite 3

PO BOX 1005

GOSHEN, NEW YORK 10924

(845)-294-3991

Counsel for Levy

To: Adam Kleinberg, Esq., counsel for defendant Donald Smith

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM: CIVIL COURT: PART RMD

-----X
ADAM B. LEVY,

PLAINTIFF,

-against-

DONALD SMITH,

DEFENDANT.
-----X

INDEX NO. 00219/2013

Assigned: Justice Dibella

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

AFFIRMATION OF MICHAEL H. SUSSMAN, ESQ.

Michael H. Sussman, an attorney duly admitted to practice law in the State of New York and in good standing to do so, hereby states and deposes:

1. I am counsel for plaintiff in this manner and make this Affirmation on personal knowledge.
2. Exhibit 1 is a true and accurate copy of a statement of retraction and apology signed by defendant Donald Smith on June 13, 2017.
3. Exhibit 2 is the transcript of proceedings held in and before this Honorable Court on June 13, 2017.
4. Exhibits 3-5 are newspaper articles printed in local media outlets in September and October 2017.



MICHAEL H. SUSSMAN, ESQ.

EXHIBIT 1

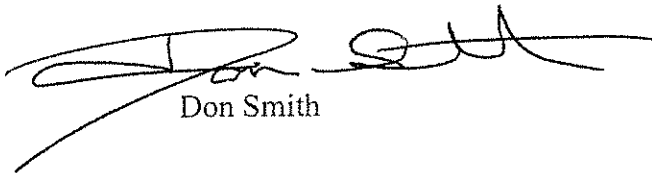
In March 2013, I issued two press releases which stated that Alexandru Hossu resided at your home, that you had interfered with the investigation into the claim that Hossu raped a young woman and that further suggested that you valued loyalty to Mr. Hossu over law enforcement objectives and should be investigated for knowingly harboring an illegal alien. These press releases, which I approved, received considerable attention and caused you embarrassment.

Today, I retract these releases unequivocally and apologize for the statements contained therein. These statements were untrue and I should not have made them. Mr. Hossu did not then reside at your home. He was arrested at another location where he then lived. I know that you did not interfere with the investigation of Mr. Hossu. Nor is there any evidence that you had any knowledge of Mr. Hossu's immigration status or were intentionally harboring an illegal alien. And, finally, throughout your career, you prosecuted all manner of cases and I apologize for conveying anything, to the contrary.

I recognize that my statements spawned substantial litigation. As you know, before making this apology and retraction, I dismissed with prejudice the case I initiated against you and trust we can put this chapter behind us.

My best wishes for the future.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Don Smith", with a long horizontal stroke extending to the right.

Don Smith

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM: CIVIL COURT: PART RMD

-----x
ADAM B. LEVY,

Plaintiff,

-against-

DONALD SMITH,

Defendant.

: Index #
002019/2013
:

-----x
Stipulation of Settlement Proceedings

Putnam County Courthouse
Carmel, New York 10512
June 13, 2017

B E F O R E: HONORABLE ROBERT M. DiBELLA,
Supreme Court Justice

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

SUSSMAN & ASSOCIATES, ESQS.
Attorneys for the Plaintiff
One Railroad Avenue, Suite 3
Goshen, New York 10924
BY: MICHAEL H. SUSSMAN, ESQ..

SOKOLOFF STERN, LLP.
Attorneys for the Defendant
179 Westbury Avenue
Carle Place, New York 11514
BY: ADAM KLEINBERG, ESQ.
and DAVID A. GOLD, ESQ.

BARBARA MARCIANTE,
Senior Court Reporter

1 THE CLERK: Case on trial, Adam Levy versus
2 Donald Smith, Index number 2019 of 2013. May I have
3 appearances, please.

4 MR. SUSSMAN: Good morning. Michael H. Sussman,
5 Sussman & Associates, One Railroad Avenue, Goshen,
6 New York. With me is Mr. Levy.

7 MR. KLEINBERG: Good morning, Your Honor. Adam
8 Kleinberg, Sokoloff Stern, LLP, 179 Westbury Avenue, Carle
9 Place, New York 11514.

10 MR. GOLD: Good morning, Your Honor. David Gold,
11 Sokoloff Stern, 179 Westbury Avenue, Carle Place, New York
12 11514 for Defendant, Donald Smith.

13 THE COURT: Good morning. Okay, very well. Let
14 the record reflect we are in Court, the parties and Counsel
15 are present. We are outside the presence of the jury at
16 this time.

17 At the end of yesterday we had concluded the
18 preliminary instructions and the opening statements. We
19 were prepared to proceed with the testimony today.
20 However, this morning the attorneys advised me that they
21 have a potential settlement that they are desirous to put
22 on the record.

23 Thereafter, I will allocute the parties and we
24 will see how it goes. Mr. Sussman, will you be putting
25 the stipulation on the record?

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MR. SUSSMAN: Yes, Your Honor. Thank you.

THE COURT: Thank you.

MR. SUSSMAN: First of all, before I go into the terms, I do want to thank the Court for its sedulous efforts in assisting the parties in resolving this case. It is not an easy case that the Court has recognized and without your persistence, I don't know that we would have reached a resolution. So thank you for that.

I also want to comment the professionalism of Mr. Kleinberg and Mr. Gold and the County Attorney because I think they assisted significantly in coming to where we are right now.

So I want the record to reflect my appreciation for their efforts as well as understanding the difficulties for all of us involved. And Mr. Smith, I certainly appreciate the position you're taking in helping us to resolve this matter, which is of some public importance in this County.

That all being said, Mr. Levy has agreed, Your Honor, to dismiss this matter with prejudice on the following terms: There will be a payment of \$150,000. \$125,000 of which will be coming from the County to me as attorney for Mr. Levy. \$25,000 will come from Mr. Smith to Mr. Levy, again through my office but payable to Mr. Levy.

There is an agreed upon attachment, Court Exhibit

1 A, which is a letter of retraction and apology, which is
2 being signed by Don Smith in his capacity individually,
3 which is the capacity in which he was sued.

4 The Sheriff will cause to be removed from the
5 Putnam County Sheriff's office website letters which were
6 the subject of this case, letters that the Sheriff signed
7 on the 21st and 22nd of March. And he will place
8 prominently on that website the retraction and apology
9 letter, which is Court Exhibit A.

10 THE COURT: Excuse me for one second. I believe
11 we already had a Court Exhibit Number 1. It was the media
12 application. So I'm going to have this marked as Court's
13 Exhibit Number 2.

14 MR. SUSSMAN: Thank you. You have a copy of that
15 signed?

16 THE COURT: I do. Do we have one marked yet?

17 MR. SUSSMAN: No, Your Honor.

18 THE COURT: I will hand it down and let it be
19 marked now. Thank you.

20 (Whereupon, a one-page typed written letter was
21 received and marked as Court's Exhibit 2.)

22 MR. SUSSMAN: Mr. Smith is also agreeing, Your
23 Honor, to a non-deprecation provision, which applies to him
24 and him alone. That provision disallows Mr. Smith from
25 making public comments which are denigrating or deprecating

1 to Mr. Levy or disparaging to Mr. Levy.

2 Mr. Smith is permitted to fully participate as he
3 is a litigant in the Hossu versus Putnam County litigation
4 and that non-disparaging provision has nothing to do with
5 limiting him in any way in that particular proceeding.

6 And Mr. Smith, as the Sheriff of the County, we
7 understand may be contacted by law enforcement with regard
8 to inquiries of anyone, including Mr. Levy or anyone else,
9 and it's our understanding that he would truthfully and
10 honestly respond and be able to truthfully and honestly
11 respond to those inquiries with no limitation. The only
12 obvious limitation is that he be telling what he knows to
13 be true.

14 If Mr. Smith is found by a Court of competent
15 jurisdiction to have violated the non-disparaging,
16 non-deprecation agreement, a liquidating damage in the sum
17 of \$50,000 has been agreed upon as the sanction, along with
18 attorney's fees reasonably incurred in demonstrating to the
19 Court by the standard imposed by a Court of law of that
20 violation.

21 I believe, Your Honor, that those are the terms
22 that these parties have agreed to. I think Mr. Kleinberg
23 and I have agreed that there need be no further written
24 settlement agreement of such. These are the terms and
25 there need be no further agreement.

1 The only other matter is that Mr. Levy and I will
2 both provide, per the settlement, the agreement to the
3 County, which will allow them to make the payment to
4 Mr. Smith, which will allow him to make the payment. Other
5 than that, which is a ministerial matter, nothing further.
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7 I just want to close by saying the following
8 briefly: This is a public law litigation. It involves
9 matters of public importance. I think both sides have
10 recognized that and I think both are committed to seeing
11 the business of the County be attended to. Thank you.

12 THE COURT: Very well. Will a stipulation of
13 discontinuance with prejudice be filed in this Court?

14 MR. SUSSMAN: We can file that within a two-day
15 period. I think you do want that in writing. We will do
16 that after the allocution.

17 THE COURT: Very well. Counsel, is there
18 anything you would like to add?

19 MR. KLEINBERG: No, Your Honor. Just that the
20 County will have to adopt a formal resolution, but this
21 will be accepted and we're prepared to proceed as
22 Mr. Sussman outlined.

23 THE COURT: Have you had occasion to speak to
24 people who represent the County Legislature group?

25 MR. KLEINBERG: I have the County Attorney here
today to represent that to Your Honor.

1 MS. BAUMGARNER: Good morning, Your Honor.

2 THE COURT: Good morning. Please place your
3 appearance on the record.

4 MS. BAUMGARNER: Jennifer Baumgarner, Putnam
5 County Attorney, 48 Glenieda Avenue, Carmel, New York
6 10512.

7 THE COURT: Counsel, have you had an opportunity
8 to speak to the County Legislature Group?

9 MS. BAUMGARNER: I did, yes, along with the
10 County Legislature Counsel, we met with the Legislature
11 last evening informally and I do have, indeed, the formal
12 authority to move forward with the settlement today pending
13 the presentation to them of the formalized resolution.

14 THE COURT: Very well. Thank you. Is there
15 anything else we need to discuss before we allocute the
16 parties?

17 MR. SUSSMAN: No, Your Honor.

18 MR. KLEINBERG: No, Your Honor.

19 THE COURT: Mr. Levy, would you please stand up
20 and raise your right hand. Sir, do you solemnly swear or
21 affirm that the statements you're about to give to the
22 Court today will be the truth, the whole truth and nothing
23 but the truth?

24 A D A M L E V Y, the Plaintiff herein, having been first duly
25 sworn by The Court, was examined and testified as follows:

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MR. LEVY: Yes, sir.

THE COURT: Thank you. If you're more comfortable you may sit or you may choose to stand, at your leisure, whatever you prefer.

MR. LEVY: Thank you.

THE COURT: Sir, how old are you?

MR. LEVY: I'm 48 years old.

THE COURT: Do you speak and understand English?

MR. LEVY: I do.

THE COURT: Is English, in fact, your primary language?

MR. LEVY: It is.

THE COURT: Do you understand, sir, that we've been engaged in the trial in this matter and we are prepared to proceed to the trial after the opening statements that we had yesterday, and obviously the jury is picked and prepared to hear this matter.

Do you understand that by entering into this agreement today, this trial will stop, it will end and the matter will be adjusted and settled pursuant to the terms and conditions of the stipulation that your attorney has put on the record?

MR. LEVY: Yes.

THE COURT: And, sir, is that what you want to do today?

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MR. LEVY: It is.

THE COURT: Has anyone forced you, threatened you or coerced you in any way to enter into this agreement?

MR. LEVY: No.

THE COURT: Are you doing so of your own free will?

MR. LEVY: Yes, I am.

THE COURT: You've been represented throughout this matter by Counsel; is that correct?

MR. LEVY: It is.

THE COURT: And you, yourself, are an attorney; is that correct?

MR. LEVY: I am.

THE COURT: Are you satisfied with the legal representation you've received in this matter to date?

MR. LEVY: Yes, I am.

THE COURT: And sir, have you had sufficient time to speak to your attorney about the terms and conditions of the settlement?

MR. LEVY: Yes.

THE COURT: Sir, are you under the influence of any medications, narcotic, alcohol or drug that would prevent you from understanding what you're doing here today?

MR. LEVY: No.

1 THE COURT: Have you, in fact, understood these
2 proceedings?

3 MR. LEVY: Yes, I have.

4 THE COURT: Do you have any questions about these
5 proceedings or this settlement or any other matter either
6 for me or for attorney?

7 MR. LEVY: No, I do not.

8 THE COURT: Do you understand, sir, if you wanted
9 more time to talk to your attorney, I'd be prepared to
10 provide that to you?

11 MR. LEVY: I understand that.

12 THE COURT: Are you asking me for more time or do
13 you want it to be resolved today?

14 MR. LEVY: No, Judge. I'm asking that it be
15 resolve today.

16 THE COURT: Thank you very much, Mr. Levy. I
17 appreciate it.

18 MR. LEVY: Thank you, Judge.

19 THE COURT: Sheriff Smith, please raise your
20 right hand. Sir, do you solemnly swear or affirm that the
21 statements and testimony that you're about to give today
22 will be the truth, the whole truth and nothing but the
23 truth?

24 D O N A L D S M I T H, the Defendant herein, having been
25 first duly sworn by The Court, was examined and testified as

1 follows:

2 MR. SMITH: I do, Your Honor.

3 THE COURT: Thank you, sir. Sir, how old are
4 you?

5 MR. SMITH: I'm 69 years old, sir.

6 THE COURT: Do you speak and understand English,
7 sir?

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: Is English, in fact, your primary
10 language?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: And, sir, again, you understand that
13 you've been involved and engaged in this litigation and we
14 are at trial now. We have a jury in the back and we have
15 begun the trial. We're prepared to continue it today.

16 But that in accordance with this stipulation,
17 this trial will end. The right to defend yourself and
18 cross-examine witnesses and testify yourself and all of the
19 other protections and rights normally associated with a
20 trial, all of those would be waived by you in lieu of this
21 settlement that has been proposed to me. Do you understand
22 that's what is going to be happening today?

23 MR. SMITH: Yes, Your Honor.

24 THE COURT: Is that what you want to do today,
25 sir?

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MR. SMITH: Yes, Your Honor.

THE COURT: Has anyone forced you, threatened you or coerced you in any manner to enter into this agreement?

MR. SMITH: No, Your Honor.

THE COURT: Are you doing so of your own free will?

MR. SMITH: Yes, Your Honor.

THE COURT: During the course of this litigation and this trial, you've been represented by Counsel; is that correct, sir?

MR. SMITH: Yes, Your Honor.

THE COURT: Are you satisfied with the legal representation you have you received from your attorneys?

MR. SMITH: Yes, Your Honor.

THE COURT: And sir, are you under the influence of any medication, narcotic, alcohol or drug that would prevent you from understand what you're doing here today?

MR. SMITH: No, Your Honor.

THE COURT: Do you believe that you, in fact, understand these proceedings and what the terms and conditions of the settlement are?

MR. SMITH: Yes, Your Honor.

THE COURT: Are you asking the Court to approve it?

MR. SMITH: Yes, Your Honor.

1 THE COURT: Have you had enough time to talk to
2 your attorneys about this?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Do you understand, sir, that if you
5 needed more time to think about it or discuss it with your
6 attorneys, I will provide that to you?

7 MR. SMITH: Yes, Your Honor.

8 THE COURT: Are you asking me for more time or do
9 you want it to be resolved today?

10 MR. SMITH: No, Your Honor. I want it to be
11 resolved today.

12 THE COURT: Thank you very much, sir. You may be
13 seated.

14 Okay, the Court finds that the settlement
15 agreement is knowingly, intelligently and voluntarily
16 entered into and it's approved and so ordered. The
17 stipulation of discontinuance with prejudice will be filed
18 to the Court within three days.

19 If, Mr. Sussman, you need additional time you let
20 me know. I am not married into three days, but I would
21 like to try to get it resolved on our inventory as soon as
22 possible.

23 MR. SUSSMAN: Okay.

24 THE COURT: In addition, I would like to thank
25 both the parties. It's been a pleasure to meet you both.

1 I never had the honor before, but it was very nice to meet
2 you. And I would also like to thank you for your practical
3 approach in resolving this matter. These things are never
4 easy. They are always difficult.

5 And while litigation provides an ultimate way of
6 resolving every type of dispute, sometimes coming to an
7 agreement, acknowledging what we've done and stand by it,
8 own it, if you will, and make a compromise is always a
9 better way forward than to be arbitrarily determined by
10 some other body.

11 So I applaud both of you, gentlemen, for seeing
12 the benefits in that and getting it done. It's in my view,
13 it was befitting of the high office that each of you held
14 and I think have been very good at that in each of your
15 respective positions.

16 I would also like to thank the attorneys. It's
17 been a pleasure to work with you both. That is not always
18 the case, but it certainly is when I am able to face the
19 Counsel with suo jure. You've been very prepared, very
20 practical. You worked very well together and that's always
21 something that the Court can admire in our profession.
22 Thank you very much for that.

23 MR. SUSSMAN: Thank you.

24 THE COURT: Okay. I will be addressing and
25 discharging the jurors shortly. Is there anything that

1 either side needs me to do or wants me to do before I do
2 that?

3 MR. SUSSMAN: No, Your Honor.

4 MR. KLEINBERG: No, Your Honor.

5 THE COURT: Very well. At this time, we will
6 turn the cameras off and as soon as that's done, we will
7 bring the jury in.

8 COURT OFFICER: Jury entering.

9 (Whereupon, the jury panel is escorted into the
10 Courtroom.)

11 THE COURT: Please be seated. Okay, good
12 morning, ladies and gentlemen of the jury. As you will
13 recall yesterday when we were together, we had completed
14 the preliminary instructions and the opening statements and
15 we were prepared this morning to proceed to the
16 presentation of evidence phase of the trial, the witness
17 testimony, if you will.

18 However, by reason of proceedings that we had
19 earlier this morning and also late last night, this matter
20 has been settled and adjusted between the parties. So the
21 trial will not be proceeding and the matter will be
22 discontinued pursuant to the stipulation settlement that's
23 been placed on the record by the parties.

24 So with that, it's my duty to, therefore,
25 discharge you from jury service at this time. I want to

1 thank each of you for your jury service. Before you leave
2 the Courtroom, I want to inform you that you are not
3 required to answer questions about this case by anyone
4 other than me.

5 There has been media requests and media present
6 and they are present today. As I indicated to you, no
7 filming of the jury so they are not filming now. But you
8 are not required to speak to anyone about this case except
9 for myself.

10 On the other hand, there is no impediment. You
11 are free to speak about the case. All my admonitions that
12 I gave you during the case, that you are not to discuss the
13 case, you are not to speak to anyone about it, all of those
14 admonitions go away with the end of the case at this time.
15 So you are certainly free to discuss it. However, you are
16 not required to discuss it.

17 The public interest requires that jurors have the
18 utmost freedom of debate as jurors and that each of you be
19 free to express your views without fears and of what others
20 may think. Although we're not required to maintain that
21 secrecy about the jury that has surrounded you or cloaked
22 you in that secrecy during the time of your service, you
23 should keep in your mind your own best interest as jurors
24 before choosing to discuss anything with anyone or
25 answering questions.

1 But you are free to discuss the case with anyone
2 that you choose. You are also free to decline to discuss
3 the case with anyone, except the Court.

4 Again, I want to thank you very much. I have
5 about two more minutes worth of work to do in here and then
6 I'll be back to thank you individually in the jury room.
7 You need not wait for me.

8 I have directed that your certificates of service
9 be prepared as we speak. So they should all be available
10 to you before you leave.

11 But as I said, you can go back to the jury room.
12 To those of you who do choose to stay, I will be back in a
13 couple of minutes to answer any questions about your jury
14 service and thank you for it. And if you don't choose to
15 stay, that's okay too. Thank you very much. You're
16 discharged.

17 (Whereupon, the jury panel is escorted out of the
18 Courtroom.)

19 THE COURT: Okay, anything else before we recess?

20 MR. SUSSMAN: Judge, there are just two other
21 very brief things that should be stated on the record, and
22 I thought about it after I finished.

23 One is that we will order a transcript of this
24 proceeding and we will attach the transcript or have it
25 attached ultimately to the stipulation or have it filed

1 with the Court's consent so it's a matter of record.

2 Second of all, the sum of money that was
3 discussed is inclusive of any fees and costs for any
4 applications. That should have been stated. It wasn't.
5 But that's understood and I wanted that to be clear on the
6 record.

7 MR. KLEINBERG: Absolutely, thank you.

8 MR. SUSSMAN: All right.

9 THE COURT: Thank you. Anything else?

10 MR. SUSSMAN: Nothing else.

11 MR. KLEINBERG: No, Your Honor.

12 THE COURT: Thank you, again.

13 MR. LEVY: Thank you.

14 MR. GOLD: Thank you.

15 MR. SMITH: Thank you.

16 THE COURT: The Court will stand in recess.
17
18

19 * * * * *

20 Certified to be a true and accurate transcript
21 of the stenographic minutes taken within.

22
23 
24 Barbara Marciahte,
25 Senior Court Reporter

EXHIBIT 3



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SMALL NEWS IS BIG NEWS

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Volume 9, Issue 446

Odell Clinches Budget Below Tax Cap Again

By David Propper

Putnam County Executive MaryEllen Odell unveiled her sixth straight budget that will remain under the New York State tax cap during her annual budget address Thursday night.

Presenting at the Putnam County Golf Course, Odell offered a \$155.3 million budget that will remain under the 1.84 percent cap. And average homeowner will pay about \$984 of county taxes, which is a \$22 increase from the previous year. Decrying the state mandates that eat up much of the county's expenditure plan, Odell said the county was still able to put forth a budget that is both fiscally and socially fair.

The net budget increase is about \$2.3 million from the 2017 budget, including

continued on page 2



DAVID PROPPER PHOTO
County Executive MaryEllen Odell presented her annual budget last week.

Budget Debate in Southeast Heats Up

By Neal Rentz

Southeast town board members said last week they would seek reductions in an attempt to stay within the New York State property tax cap, which would be broken if Supervisor Tony Hay's proposed 2018 budget was approved without changes.

Hay is proposing a \$16.8 million town budget that would increase property taxes by 9.47 percent--well above the state-mandated cap of 1.8 percent.

Hay has said the garbage pickup contract, which will be hiked by 26.4 percent next year, and town employee health insurance, which will rise by 11 percent, were the major reasons for the proposed tax spike, which would translate into an \$8 tax increase on the

'We don't have to bust the tax cap.'

Councilwoman
Elizabeth Hudak

average accessed house next year.

At the Oct. 5 town board meeting, Hay said his method of budgeting has been prudent over his tenure as supervisor. When he took office, the town's budget surplus was \$98,000, Hay said. Today, the surplus is \$1.9 million and the town's bond rating has risen, he

continued on page 7

Gloves Off in Battle for Putnam Sheriff's Office

By Anna Young and David Propper

With Election Day less than a month away, the rhetoric in the race for Putnam County sheriff has been ratcheted up as Democrat Robert Langley tries to knock off incumbent Republican Don Smith.

Langley held a press conference Thursday morning taking aim at Sheriff Smith's actions toward former district attorney Adam Levy. Surrounded by supporters outside the county Sheriff's Department, the Democratic candidate said that the sheriff's office is broken under Smith's leadership asserting that the longtime sheriff should resign immediately. Smith has served as sheriff since 2002.

"This year, Smith gave a written confession of the lies he told about the district attorney," Langley said. "Because

of Smith's lies, the citizens of Putnam County were forced to pay a civil lawsuit settlement of \$125,000. We paid for Smith's lies. And we will pay millions more in another lawsuit because Smith lied."

After Levy settled his 2013 defamation lawsuit against Smith in June, Smith admitted in a public letter that he was untruthful when he claimed Levy interfered in the Alexadru Hossu rape case and Hossu resided at Levy's house in Southeast. Levy received \$125,000 from the county and another \$25,000 personally from Smith.

Hossu, the former personal trainer of Levy, is also suing the sheriff's office for civil rights violations after his 2013 arrest-

continued on page 7



ANNA YOUNG PHOTO
Former sheriff investigator and Democratic candidate for sheriff Robert Langley outside the sheriff's office last week called on Don Smith to resign.

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Gloves Off in Battle for Budget Debate in Putnam Sheriff's Office Southeast Heats Up

continued from page 1

-where he was later found innocent--that left him sitting in jail for a year.

Smith also came under fire last week after a LoHud investigation revealed that Smith, over several months, sent letters to the FBI, U.S. Attorney's Office, U.S. Department of Homeland Security, state Attorney General Eric Schneiderman and Gov. Andrew Cuomo pleading they investigate and arrest Levy for unethical behavior and harboring an illegal immigrant.

"These letters were all based on what Smith now admits were lies," Langley said. "As a West Point Cadet, Smith swore an oath that he would not lie, cheat, steal, or tolerate those who do; Smith has violated that oath, over, and over, and over again."

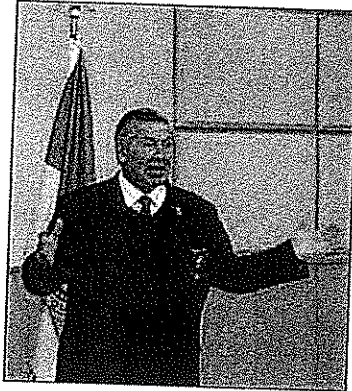
He argued that Smith, who is running for re-election, has grotesquely abused his power as Sheriff.

"If Smith is willing to lie to arrest a sitting district attorney, he is willing to lie to arrest you or me," Langley said.

When reached for comment, Smith didn't back down. He said his focus has remained on keeping the county safe.

"This is a manufactured effort to create a controversy where none exists. My opponent, without first hand knowledge, can make assumptions, conclusions, and innuendos that are plain and simple just not true and he doesn't have to make corrections to his statements," Smith said in a statement. "Each and every day I strive to provide the truth and if I later learn new information, I make the correction. My opponent wants to divert attention from the fact that I have provided leadership that has helped keep Putnam, the county with the lowest crime rate in New York State, for the past several years."

Residents, who surrounded Langley with signs saying, "Smith is a criminal!"



DAVID PROPPER PHOTO

Sheriff Don Smith.

and, "Langley returning integrity," expressed their anger with Smith's conduct stating that it's time for a change.

Cold Spring resident Candace Cole said she is outraged that taxpayers are paying for the unethical actions of an elected official, stating that he should dip into his retirement fund to cover his own legal fees. Mahopac resident Baila Lemonik even referred to Smith as a "felon" even though Smith has never been charged or convicted of anything.

"It makes me nervous to have a sheriff who was not telling the truth and would lie under oath," Lemonik alleged.

While several criticized Smith's actions, supporters praised the retired county sheriff's investigator for the integrity he will bring to department if elected.

"I believe that he believes in the spirit of the law and ethics," said Cold Spring resident Eileen Caulfield, who applauded Langley on the work he's done combating the opioid crisis. "I think that with so many dirty politicians, he's a breath of fresh air."

continued from page 1

said. But town board members said the tax increase being sought was excessive. Councilwoman Elizabeth Hudak said the town budget for 2018 must stay within the tax cap. Hudak said there are various areas in the budget that have not been spent this year, but the supervisor is seeking to fund those lines in 2018 regardless.

"We don't have to bust the tax cap," Hudak said.

Hudak questioned if the town needed the \$1.9 million in the fund balance while Hay is proposing a significant tax increase. If the 2018 budget is not changed, "I will vote against it," she said.

Hay defended his budget, arguing it would be unwise to cut many budget lines because the funding may be needed in the future and if those funds were not available that would lead to higher taxes.

Hay also said the state comptroller's office advises municipalities to maintain a fund balance of at least

10 percent of its annual budget. The current fund balance is \$100,000 above that 10 percent mark, he said.

Hudak was not impressed with Hay's comments.

"We have to tighten our belt," she said.

Councilman Robert Cullen also said the board needed to look for spending reductions in next year's budget. For example, not sending out a town flyer could save between \$6,000 and \$7,000.

"We just have to look at every line," Cullen said.

Hay said it would not be easy to meet the tax cap next year. To meet the cap, spending would need to be cut by \$550,000 from what he is proposing, Hay said.

Councilwoman Lynne Eckardt also said the board needed to examine the proposed budget and seek reductions to hold taxes down.

The town board agreed to meet with heads of town government departments in an effort to seek ways to reduce spending.

The deadline to approve the 2018 budget is Nov. 20.

Supervisors, Odell at Odds Over Shared Services Plan

continued from page 5

existent," Hay said, and it's "not even close to being true" that the towns didn't have interest in shared services.

He said town leadership would continue to meet and work toward possibly three shared services goals by the 2018 deadline.

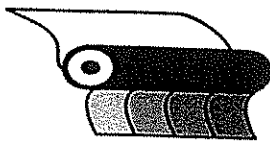
"Don't blame the supervisors why it's not moving forward," Hay said. "We're

going to do our job and hopefully the county will do theirs."

Odell said she believes politics is at play with some criticism directed at her from some supervisors.

"They sent us a letter at that time telling us they weren't prepared," Odell said. "At no time am I blocking this (shared services) concept."

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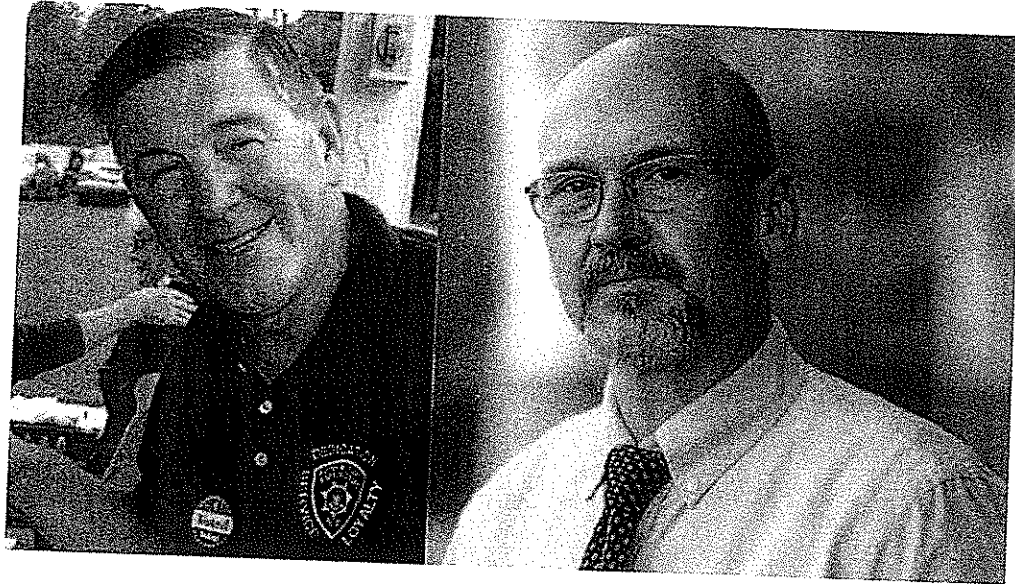
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EXHIBIT 4

Putnam Sheriff's Race Heats Up

22 hours ago



Putnam County Sheriff Don Smith and his challenger Robert Langley. Photo Credit: *Contributed*

PUTNAM COUNTY, N.Y. -- Robert Langley, who is challenging incumbent Don Smith for Putnam County Sheriff, wants his opponent removed from office over allegations of perjury.

Langley, a Democrat, claims Smith, a Republican, perjured himself in depositions related to a lawsuit filed by former Putnam District Attorney Adam Levy.

Levy recently settled a lawsuit with Smith after Smith said Levy publicly interfered in his investigation of Levy's personal trainer Alexander Hossu for raping a 13-year-old girl. Hossu was acquitted on the charges.

In letters sent to the FBI, US Attorney's Office the U.S. Department of Homeland Security, Attorney General Eric Schneiderman and Gov. Andrew Cuomo, Smith asked them to charge Levy with illegally housing an undocumented immigrant or to take over his criminal cases.

"The leadership of the Putnam County Sheriff's Office is broken," Langley said. "Smith has abused the powers of his office. If Smith is willing to lie about a sitting District Attorney, would he be willing to lie about you or me?"

Langley said Smith should resign or be removed from office by Gov. Andrew Cuomo.

"Smith apparently doesn't even seem to think he's done anything wrong, Langley said.

Smith fired back, issuing a statement saying Langley is trying to create a controversy where none exists.

"My opponent, without first hand knowledge, can make assumptions, conclusions, and innuendos that are plain and simple just not true and he doesn't have to make corrections to his statements," Smith said. "Each and every day I strive to provide the truth and if I later learn new information, I make the correction. My opponent wants to divert attention from the fact that I have provided leadership that has helped keep Putnam, the county with the lowest crime rate in New York State, for the past several years."

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EXHIBIT 5

Putnam Sheriff Don Smith wanted ex-DA Adam Levy charged by feds, records show

Jorge Fitz-Gibbon Updated 8:47 a.m. ET Sept. 28, 2017



Putnam Sheriff Don Smith wanted ex-DA Adam Levy charged by feds, records show. Video by Jorge Fitz-Gibbon/lohud Wochit

Putnam County Sheriff Donald Smith was so fervent in his disdain for former District Attorney Adam Levy that he implored state and federal authorities to

arrest or remove him from office, records reviewed by The Journal News/lohud show.

In more than a dozen letters previously kept from public view, Smith used his law enforcement status to plead with the FBI, the U.S. Attorney's Office, the U.S. Department of Homeland Security, state Attorney General Eric Schneiderman and even Gov. Andrew Cuomo to intervene in his long-running feud with Levy.

For more than three years, the sheriff pushed the agencies to investigate the then-prosecutor, at times asking them to take over his criminal cases and charge him with illegally housing an undocumented immigrant.

LETTERS: Read some of Smith's letters

LAWSUIT: Smith settles defamation suit

ACQUITTED: Hossu cleared in rape case

"I implore you, gentlemen, that legal intervention by one or perhaps even all of your offices is needed immediately to protect our criminal justice system against the violence being done to it by Mr. Levy," Smith said in a Nov. 1, 2013 letter to Cuomo, Schneiderman and former U.S. Attorney Preet Bharara. "The situation is dire. Please take any and all necessary and lawful action to step in and prevent further damage to the legal process within Putnam County and the further erosion of public confidence."

But the letters also reveal that he later lied under oath about what he wrote. Lying on sworn documents or under oath can constitute perjury, punishable by fines or prison.

"In my view, Mr. Smith has engaged in a baseless vendetta against Mr. Levy," said Michael Sussman, Levy's attorney. "He abused his office in that regard, he attempted to bring numerous other law enforcement entities into his grudge match with Mr. Levy, and in that sense prepared documents on his



Buy Photo

Former Putnam County
DA Adam Levy, center,
with his mother,
television personality
"Judge Judy"
Scheindlin. (Photo: Joe
Larese, Staff TJN)

official letterhead which markedly misrepresented and fabricated information about Mr. Levy."

Bitter feud

The revelations come as Smith, a Republican, faces an Election Day challenge from Democrat Robert Langley for the \$142,818-a-year post. Smith, a retired U.S. Army brigadier general, has held the post since 2002.

Although both men are Republicans, Smith's relationship with Levy began to sour in the years after Levy took office in 2007. The two increasingly quarreled over perceived intrusions into each man's respective county agency.

In March 2013, Smith began writing to law enforcement agencies alleging that Levy intervened in his office's criminal probe of a friend and illegally sheltered him despite knowing his friend was an undocumented immigrant. Smith later denied making those claims when he testified under oath during court depositions.

Earlier this year, new questions arose when Smith acknowledged publicly that many of the claims in the letters — and in parts of his sworn testimony — were also untrue.

Smith did not respond to a request for comment.

But his attorney, Adam Kleinberg, said Smith reached out to other agencies after the arrest of Levy's friend because he wanted to avoid a conflict of interest when he "received information" regarding the rape suspect's immigration status.

"In the years that followed, the sheriff was embroiled in a very public

lawsuit," Kleinberg said. "He was deposed over the course of several days and responded candidly when he could not recall specifics about documents that were not in front of him."

"He testified to the best of his ability, even while watching his wife losing her fight with cancer on a daily basis," he said. "When the dust settled and all of the information was in front of the sheriff, he apologized to Levy for certain statements made based on what was known to him at the time. The sheriff moved on."

Rape case

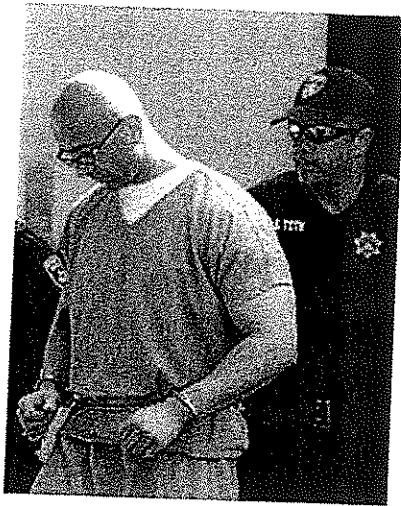
The Journal News/lohud examined hundreds of pages of documents, including letters written by Smith between 2013 and last year, Smith's depositions in two civil cases — Levy's defamation suit against the sheriff and Smith's lawsuit against Levy — and other correspondence and court records.

The records show that Smith had been complaining to federal and state law enforcement agencies about Levy since at least January 2013. But his letter-writing campaign intensified after Levy's friend and personal trainer was arrested by Putnam sheriff's deputies on March 20, 2013 and charged with raping a 12-year-old girl.

Alexandru Hossu, a Romanian immigrant who had overstayed his visa by years, was later acquitted of the rape charge, but not before he became one of the central figures in the public scuffle between Levy and Smith.

Levy charged that the sheriff pushed the arrest in an attempt to link Hossu to him in order to embarrass him politically. For instance, sheriff's office press releases listed Hossu as living at Levy's address, although he had not stayed there for months.

Smith, in turn, accused the prosecutor of interfering in the investigation and choosing his friend over the law. In one letter, he suggested that Levy, "or



Buy Photo

Alexandru Hossu is led out of Southeast Town Court following a May 21 hearing related to rape charges against him. (Photo: Frank Becerra Jr./The Journal Ne)

someone acting at his direction,” had even tipped off Hossu and coached him on what to say during a monitored call with the alleged rape victim prior to the arrest.

Levy, the son of television personality Judge Judy Scheindlin, served two terms as district attorney before he lost a re-election bid in 2015.

While still in office, Levy acknowledged that he paid at least \$30,000 for Hossu’s defense, including for his trial attorney, Dan Mentzer, who is Levy’s brother-in-law. But Levy continues to deny that he interfered in the Putnam sheriff’s criminal investigation into Hossu or knew he was undocumented at the time of the arrest.

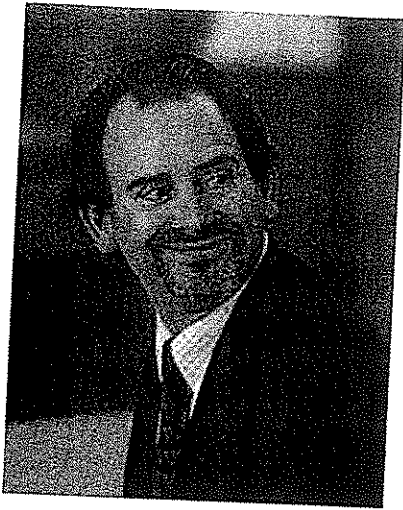
Apology

Levy settled his 2013 defamation suit against Smith in June, with the sheriff agreeing to drop his own lawsuit against Levy and pay \$150,000. In addition, Smith issued a retraction in which he apologized and acknowledged statements he made about Levy were “untrue.”

“Today, I retract these releases unequivocally and apologize for the statements contained therein,” Smith wrote. “Mr. Hossu did not then reside at your home.... Nor is there any evidence that you had any knowledge of Mr. Hossu’s immigration status or were intentionally harboring an illegal alien.”

Smith also retracted his claim that Levy “had interfered with the investigation into the claim that Hossu raped a young woman.”

Although the apology specifically addressed only two press releases issued by the sheriff’s office, the admissions contradicted Smith’s repeated past claims



Buy Photo

Former Putnam County District Attorney Adam Levy smiles as he looks back at family and friends after the trial against Putnam County Sheriff Don Smith in the Putnam County Courthouse in Carmel June 13, 2017. (Photo: Frank Becerra Jr./The Journal Ne, Frank Becerra Jr./The Journal Ne)

in his letters to law enforcement officials and parts of his depositions.

In letter after letter, Smith had pushed for Levy to be investigated and charged with violating federal immigration law. On March 21, 2013, just one day after Hossu's arrest, Smith spoke with two federal agents on the issue, the documents show.

The next day, Smith wrote to Sean Willman, agent-in-charge at the agency, "that the person who housed and hired the alien is Mr. Adam Levy."

In another letter to the FBI and U.S. Attorney's Office, Smith said he had a "smoking gun" to "show that Mr. Levy had affirmative knowledge of Mr. Hossu's illegal immigration status."

"I believe more strongly than ever that, based upon the facts and circumstances surrounding Mr. Levy and his involvement with Mr. Hossu, as summarized

here and in my other correspondence and reported in other sources, that the Putnam County District Attorney has violated the law to pervert justice in the Hossu case," Smith wrote. "I am again renewing the request I have been making for well over a year now that the FBI and the U.S. Attorney's Office carefully and fully investigate this case."

Under oath

But that's not what Smith said during a sworn deposition on Sept. 1, 2015. Under questioning by Sussman, Levy's lawyer, Smith said "I don't believe we mentioned Mr. Levy by name" during his exchanges with state and federal agencies:



Buy Photo

Attorney Michael Sussman represented former Putnam DA Adam Levy in his defamation lawsuit against Sheriff Donald Smith. (Photo: File photo by Ricky Flores/The J)

Sussman: And were you suggesting here that Mr. Hossu might have been harbored, shielded, aided, or abetted by Mr. Levy?

Smith: By anybody.

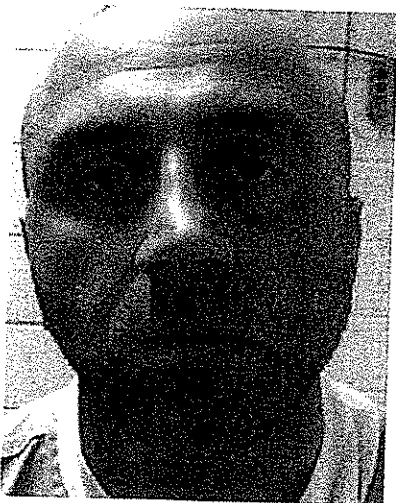
Sussman: Were you suggesting by Mr. Levy? That was my question.

Smith: I don't believe we referenced Mr. Levy directly on this.

Sussman: Were you suggesting it? That was my question. I know you didn't directly mention him by name. Was that your intent?

Smith: No, that wasn't our intent. Our intent was anyone. When you call for Homeland Security, you ask them to check anyone who has aided, abetted, harbored.

Smith was also asked about a March 28, 2013 meeting he arranged between three of his top executive officers and David Applebaum, an agent with the U.S. Department of Homeland Security. Smith conceded "there may have been a discussion on Mr. Hossu's relationship to Levy," but said "it wasn't the major thrust of the meeting."



Applebaum, who was deposed July 11, 2016 remembered the meeting differently.

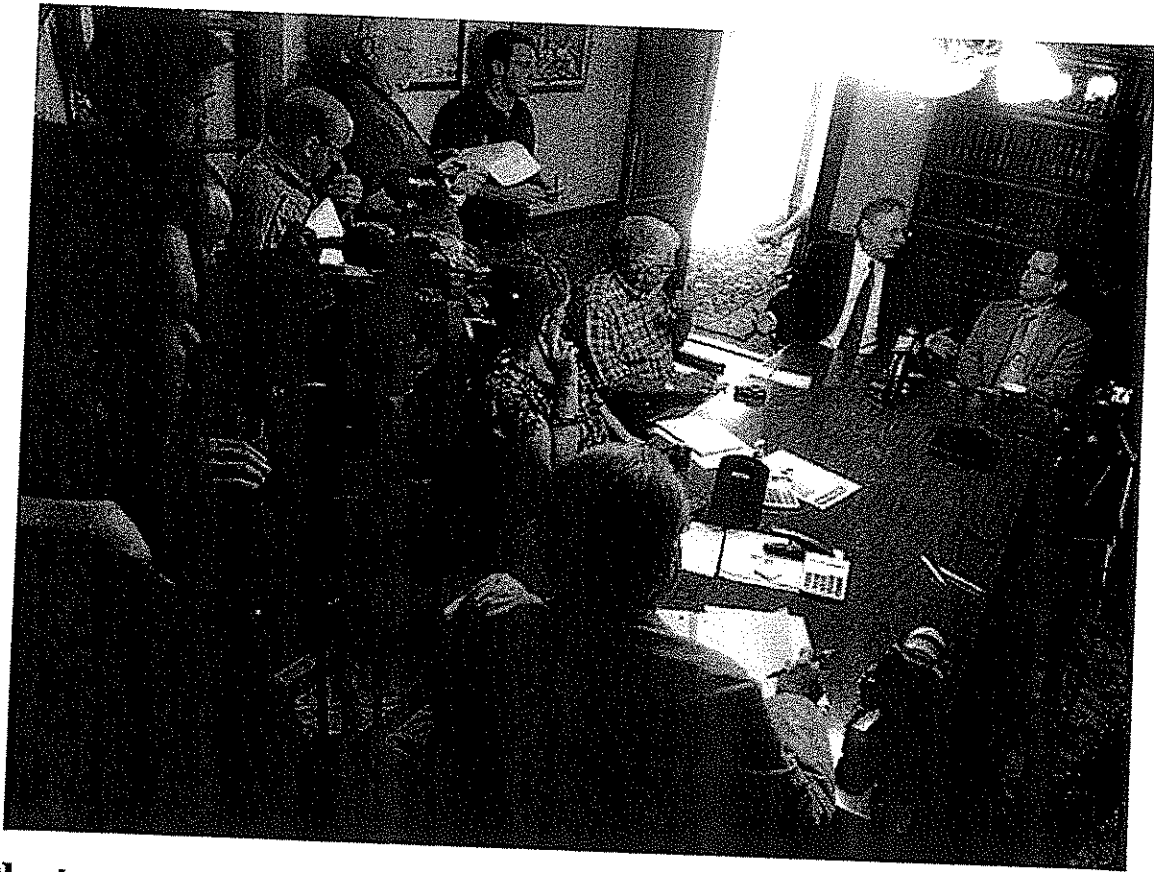
"They alleged that he, that Mr. Levy was employing Hossu illegally and providing domicile to an illegal alien," Applebaum said. "That's what they were alleging."

Applebaum also filed a report with his agency 10 days

Former Putnam County District Attorney Adam Levy's friend and personal trainer was acquitted of charges that he raped a 12-year-old girl in 2010. He now has a pending civil lawsuit against Putnam County and the county sheriff's department. *(Photo: File photo)*

later, and wrote that "Putnam County Sheriff's Department informs and provides evidence that Hossu is/was residing and employed by Adam Levy."

The matter became more confounding with Smith's apology to Levy in June. The apology contradicted not only his letters and testimony, but claims in the sheriff's now-defunct civil lawsuit against Levy.



Buy Photo

Attorney Michael Sussman, left, and former Putnam County District Attorney Adam Levy announce Levy's defamation lawsuit Wednesday against Putnam Sheriff Donald Smith in 2013. *(Photo: Frank Becerra Jr./The Journal Ne)*

"I think that it unfortunately is painfully clear that under oath this gentleman did not tell the truth," Sussman said. "He was attempting, very clearly, to

besmirch Mr. Levy and taint his reputation. And he gave the false impression that Mr. Levy was the one abusing his office when it was, I believe, Mr. Smith. I think that couldn't be clearer."

Sussman is now representing Hossu in a wrongful arrest lawsuit against Putnam County and the sheriff's department.

Twitter: @jfitzgibbon