

In The Matter Of:

*Caniglia vs
Strom, et al*

*Cpt. Russell C. Henry, Jr.
June 13, 2018*



Min-U-Script® with Word Index

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1 A. Yes, I did. I was hired in February of '93,
2 and I went to the police academy, I believe it
3 started in September of '93, graduated December of
4 '93.

5 Q. Okay. What did you do between February of '93
6 when you were hired and when you went to the
7 police academy in September?

8 A. I was a police officer.

9 MR. LYONS: Oh, okay.

10 A. Pre-Cornel Young rules.

11 Q. Did you receive any formal training from the
12 Cranston Police Department before you went to the
13 police academy?

14 A. Yes. So to get hired by the police
15 department we were required to attend a, I believe
16 four hours a night, and I think it lasted six
17 weeks. It was basically, they called it a mini
18 academy, and it was after you had passed the
19 written test, agility, they made a list of people,
20 potential candidates, those candidates went to
21 this mini, so-called mini school, and then there
22 was testing, tests given based on the curriculum
23 which formulated the hiring list based on how you
24 did on the test.

25 Q. So you were doing the mini school while you were

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1 working as a police officer, or was that before?

2 A. Before.

3 Q. Oh, okay. So how long was the mini school?

4 A. Six weeks, which I believe was the end of
5 1992. So, I think I stated I have done that while
6 I was a police officer; I misspoke. That was
7 right before I got hired. Based on the results of
8 the mini academy, I was hired in February '93.

9 Q. Okay. Do you recall what the topics were of
10 instruction during the mini academy?

11 A. I don't specifically. It was general law
12 enforcement topics.

13 Q. All right. Did it include constitutional law?

14 A. I don't recall specifically the topics.

15 Q. All right. Do you have any written materials from
16 when you went to the mini academy?

17 A. I don't believe that I do.

18 Q. How about when you went to the police training
19 academy, do you recall what the topics of
20 instruction were?

21 A. Not every topic, no. But again, general law
22 enforcement, defensive topics, report writing,
23 driving, firearms.

24 Q. Did you receive any instruction on when it is
25 appropriate to hold or detain a person without

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1 arresting them?

2 A. May have been, I don't specifically recall.

3 Q. Okay. Did you receive any instruction at the
4 police training academy about when it is
5 appropriate to seize property without a warrant or
6 a court order?

7 A. May have. Specifically I don't recall the
8 exact curriculum.

9 Q. Okay. As we go through this deposition, what's
10 going to happen is you may answer a question that
11 you don't remember, and then I may follow up with
12 a more specific question to see if that prods your
13 recollection, it may not, but that's what I'm
14 doing. I'm not asking the question just to be
15 annoying.

16 A. Again, there may very well have been, I just
17 don't know for sure 25 years later if that was the
18 case.

19 Q. That's fine. Some people have remarkable
20 memories --

21 A. I remember the bigger topics but, you know,
22 even today if you look at the police academy
23 curriculum, there is four-hour blocks, two-hour
24 blocks of different things. They cover many, many
25 topics in the 22 weeks it is now.

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1 Q. Okay. When you were at the police training
2 academy, did you have any instruction on when, if
3 ever, it is appropriate to seize weapons for
4 safekeeping?

5 A. May have been, I don't specifically recall.

6 Q. Okay. Did you have any training, any instruction
7 at the police training academy on the community
8 caretaking function?

9 A. May have been. I don't specifically recall.

10 Q. Okay. Did you have any training or education at
11 the police training academy on domestic violence
12 issues?

13 A. Yes.

14 Q. What do you recall about that?

15 A. I believe in 1993 the domestic violence laws
16 had just recently been enacted and the mandatory
17 arrest was part of that. So that was a new topic
18 for law enforcement across the state that would be
19 rolled out, I believe that was in 1992, if I
20 remember correctly.

21 Q. Do you recall anything else about the instruction
22 or education on domestic violence issues at the
23 training academy?

24 A. Specifically, no.

25 Q. Did you receive any instruction at the police

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1 training academy on dealing with people who have
2 mental issues?

3 A. I believe so.

4 Q. What do you recall about that?

5 A. Just generalization on how to recognize
6 people that may have mental health issues and what
7 the, you know, what's expected of police when
8 dealing with people that may be identified as
9 having mental health issues.

10 Q. What do you recall they told you about what was
11 expected?

12 A. Specifically, I don't recall what the
13 instruction was.

14 Q. Okay. Did you have any instruction at the police
15 training academy about whether you can require
16 people to have psychiatric evaluations?

17 A. Specifically, I don't recall.

18 Q. When did you have the supervisor courses that you
19 took at Roger Williams?

20 A. Some time in the late '90s I was promoted to
21 sergeant in 1999. It might have been right before
22 or right after that.

23 Q. What do you recall about that instruction?

24 A. Specifically not much, other than it was a
25 generalized course on what the role of the

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1 A. Yes, sir.

2 Q. Don't get impatient with me.

3 A. I have all day.

4 Q. I mentioned the community caretaking function,
5 have you heard of that phrase before?

6 A. Yes.

7 Q. What is your understanding of it?

8 A. My understanding is that the courts recognize
9 that law enforcement needs to take certain actions
10 relative to the Fourth Amendment without a warrant
11 that pertain to public safety functions or
12 emergencies.

13 Q. Are public safety functions and emergencies
14 different categories or --

15 A. Or emergencies.

16 Q. So when you say a public safety function, what
17 public safety -- what kind of public safety
18 functions are you referring to?

19 A. Say, an intoxicated person stumbling down
20 Reservoir Avenue into traffic, I think the courts
21 recognize that it's reasonable for the police to
22 take custody of the person for their own
23 well-being, protect them from getting hurt, make
24 sure they receive whatever care that they need.

25 Hypothetically, a person jumping off the Pell

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1 Bridge, I think the courts recognize that the
2 police have to, you know, take reasonable action
3 to prevent the person from killing themselves.

4 A person has a firearm that's thinking of
5 harming themselves or others, I think the courts
6 recognize police have to take whatever action is
7 necessary to prevent that. Those type of
8 scenarios.

9 Q. Okay. Are those either a public safety function
10 or an emergency, or are there other examples that
11 you would put in the category of an emergency?

12 A. I think the circumstances around those type
13 of issues where they're unfolding as the police
14 are there. So I think the courts recognize
15 sometimes, whether it's a seizure of a person or
16 some type of property to maintain public safety, I
17 think as long as it's reasonable, the courts
18 recognize that it's okay to do it without a
19 warrant.

20 Q. My question was, as you had sort of made two broad
21 categories, public safety functions or
22 emergencies, I was asking, maybe unclearly, the
23 examples you gave were, those just public safety,
24 or were they emergencies, or were they a
25 combination of both?

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1 Caretaking Act, so the answer would be no.

2 Q. Well, have you had any in-service training that
3 covered the community caretaking function,
4 regardless of whether or not the title of the
5 instruction was community caretaking function?

6 A. I believe that we've had in-service training
7 and trainings offered -- trainings put on by
8 outside agencies that were offered to our officers
9 that covered mental health topics.

10 Q. Okay. And you think that the mental health
11 training would have covered the police's authority
12 under the community caretaking function?

13 A. I would believe so.

14 Q. All right. Has the community caretaking function
15 come up in any other training other than mental
16 health?

17 A. Not that I can recall right now.

18 Q. Okay. We have used the phrase in this litigation
19 seizure of firearms for safekeeping, does that
20 come under the community caretaking function, or
21 is there a different authorization for that?

22 MR. CUNNINGHAM: Objection.

23 MR. LYONS: If you understand what I
24 mean.

25 Q. Let me back up. Let's break it down. Have you

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1 heard the phrase safekeeping when referring to the
2 seizure of firearms?

3 A. Yes.

4 Q. What's your understanding of seizing firearms for
5 safekeeping?

6 A. My understanding relative to the Cranston
7 Police Department is when situations arise where
8 we're dealing with firearms, if we feel that the
9 circumstances that exist at the time create a
10 danger relative to the firearms, create a danger
11 to the public, or to any member of the public, we
12 would take the firearms, hold them for
13 safekeeping, if that explain your question.

14 Q. Okay. I'm referring specifically to the
15 circumstance that does not involve a criminal
16 investigation; okay?

17 A. Yes, sir.

18 Q. All right. So when the Cranston Police Department
19 seizes a firearm for safekeeping, and it's not a
20 criminal investigation, is it your understanding
21 that its authority to do that arises from the
22 community caretaking function?

23 A. Yes.

24 Q. Okay. Do you know if the Power DMS program has
25 any materials that discuss the community

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1 Q. Would the community caretaking function ever come
2 up during a roll call training?

3 A. It may have, I don't recall specifically. We
4 do it on a regular basis, we do high-speed pursuit
5 training at roll call, we do review of the cell
6 block policy at roll call. We're mandated by
7 CALEA to do that, the accreditation. There are
8 certain policies within the Cranston police
9 general orders that mandate roll call training,
10 continuous training. That particular phrase,
11 community caretaking, may not be, but it may be
12 part of a different topic.

13 Q. Okay. So, in other words, the theory of the
14 community caretaking function may have been
15 discussed even if that particular phrase was not
16 used?

17 A. It may have been discussed under mental
18 health in roll call training.

19 Q. Do you believe, or is it your understanding that
20 the Cranston Police Department has the authority,
21 separate from a criminal investigation, of
22 requiring a person to submit to a psychiatric
23 evaluation?

24 THE WITNESS: Can you repeat that?

25 (QUESTION READ)

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1 A. No.

2 Q. Do you know whether any Cranston police officer
3 has ever required a person to submit to a
4 psychiatric evaluation?

5 A. Not that I'm aware of, no.

6 Q. Do you know whether the Cranston Police Department
7 has any written materials that describe its
8 authority under the community caretaking function?

9 A. It may be referenced in one of those policies
10 we talked about when we first started. I'd have
11 to have the policy in front of me.

12 Q. Do you recall a specific policy that refers --

13 A. Either the public mental health policy or
14 maybe the BCI policy.

15 Q. Okay. Are you aware of any Rhode Island statute
16 that recognizes the community caretaking function?

17 A. I believe -- it's my opinion that there was
18 recently a law passed last year, I believe, under
19 Title 40.1 that memorializes the -- I don't
20 believe it uses those words, but I believe it
21 memorialized the concept, gives the authority to
22 law enforcement under Rhode Island General Law to
23 do those functions.

24 Q. Okay. Prior to the legislation last year in 2017,
25 were you aware of any Rhode Island statute that

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1 the names?

2 A. No. As I stated earlier, I do a lot of
3 reading, self-education, to try and maintain my
4 knowledge on different court cases.

5 Q. Do you recall in what circumstances those courts
6 recognize the community caretaking function?

7 A. I read one about motor vehicle accidents and
8 the resulting search of a motor vehicle. That's
9 probably the most recent one I remember.

10 Q. Okay. Are you aware of any court decisions
11 recognizing the community caretaking function, and
12 stating that it authorizes police to seize
13 property, including firearms, from a person's
14 residence?

15 A. Off the top of my head, no.

16 Q. Are you aware of any court decision recognizing
17 the community caretaking function and stating it
18 authorizes police to require someone to leave
19 their residence and go for a psychiatric
20 evaluation?

21 A. No.

22 Q. Other than what we've talked about so far, have
23 you had any other training on the seizing of
24 firearms for safekeeping?

25 THE WITNESS: Specific to that

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1 EXHIBIT 15 (PLAINTIFF'S EXHIBIT 15
2 MARKED FOR IDENTIFICATION)

3 Q. I show you what's been marked as Exhibit 15 and
4 ask you if you can tell me what this is?

5 A. It's the policy, procedure manual table of
6 contents.

7 Q. Okay. So this doesn't contain all the policies
8 and procedures, but it's a list of what they are
9 and identifies them by number?

10 A. Yes, sir.

11 Q. Is this document on the Power DMS program?

12 A. I believe so.

13 Q. So you referred to CALEA, and CALEA is an acronym?

14 A. Yes, sir, Commission for Accreditation of Law
15 Enforcement.

16 Q. Agencies?

17 A. Agencies.

18 Q. It's a national organization that accredits state
19 and local police departments?

20 A. Yes, sir.

21 Q. What does the accreditation mean, what's the point
22 of it?

23 A. So, CALEA establishes best practices for law
24 enforcement, what they believe are best practices
25 for law enforcement for a variety of topics, and

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1 for police departments to receive an
2 accreditation, to be accredited they need to meet
3 the standards for each one of these topics, and
4 there's different levels of accreditation, a
5 different amount of standards that need to be met
6 depending on the level of accreditation.

7 Q. And what are the different levels of
8 accreditation?

9 A. I know there's a gold standard, then there is
10 another level you can attain after being
11 accredited for consecutive years. Off the top of
12 my head, I don't know them all. But I know there
13 are different levels.

14 Q. Are you involved in the CALEA accreditation for
15 the Cranston Police Department?

16 A. So, accreditation, just to explain, it's not
17 yes or no. CALEA falls under the inspections
18 division. So I do not work in the inspection
19 division, but the process of being accredited is a
20 departmentwide effort.

21 Q. So what has your involvement in the accreditation
22 process involve?

23 A. Generally for the policies that pertain to
24 the Uniform Division, larger policies, cell block
25 policy, police pursuit, use of force, those type

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1 of issues. I'm sometimes consulted on policy
2 changes and whatnot.

3 Q. Do you know what level of accreditation Cranston
4 Police Department has?

5 A. I'm embarrassed to say we were just
6 re-accredited recently, I forget the level we
7 attained.

8 Q. Who at the Cranston Police Department would be the
9 most knowledgeable person about the accreditation?

10 A. Captain Ricci, he's in charge of inspections.

11 Q. R-i-c-c-i?

12 A. Yes, sir.

13 Q. Has the Cranston Police Department always been
14 accredited by CALEA?

15 A. No, sir.

16 Q. When was it first accredited by CALEA?

17 A. I believe 2011, '12.

18 Q. Was it accredited by any other organization before
19 CALEA?

20 A. Not to my knowledge.

21 Q. The general orders which are listed in the policy
22 and procedure manual that are in there, are they
23 based on CALEA standards?

24 A. Yes.

25 Q. Are there any CALEA standards, to your knowledge,

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1 that the Cranston Police Department has not
2 adopted?

3 A. I don't know. My knowledge of it is that of
4 the X amount of standards that are mandated to
5 receive the accreditation, the department has to
6 meet a certain percentage. That's my
7 understanding of it. Captain Ricci is the
8 authority on the CALEA process.

9 Q. So it's theoretically possible there is some CALEA
10 standards that the department has not adopted?

11 A. I think adopted may not be the right word.
12 We may have a policy that may not meet the
13 particular criteria that CALEA believes is the
14 best practice, but we have -- hypothetically, the
15 fire suppression system in the cell block. The
16 department may have it but may not meet the
17 criteria 2018 that CALEA believes is best
18 practice, best standard.

19 Q. Do you know if CALEA has a standard that
20 specifically references the community caretaking
21 function?

22 A. I do not.

23 Q. Do you know if it has a standard that addresses
24 the community caretaking function regardless of
25 whether or not it uses that phrase?

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1 A. I don't know.

2 (BRIEF RECESS)

3 Q. I might have asked this, just in case I haven't,
4 I'm going to ask it now. Are you aware of whether
5 the Cranston Police Department has a written
6 policy or procedure other than the mental health
7 ones or one that addresses the community
8 caretaking function, whether or not it uses that
9 name?

10 A. I don't believe so. There may be, I reviewed
11 the policy database quickly. I believe the public
12 mental health policy is the only one I saw that
13 rings a bell at this point.

14 Q. All right. I'm going to show you a few of the
15 general orders and ask you some questions about
16 them.

17 EXHIBIT 16 (PLAINTIFF'S EXHIBIT 16
18 MARKED FOR IDENTIFICATION)

19 Q. This one is entitled General Order 000.01, and its
20 title is Introduction. It's fairly short. But
21 subpart B says, "This manual is a complete catalog
22 of department issued general orders, policies,
23 procedures, rules and regulations, revisions have
24 been completed as needed." Do you see that?

25 A. Yes, sir.

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1 Q. Is it your understanding that that is correct,
2 that this is a complete catalog of the
3 department's general orders, policies, procedures,
4 rules and regulations?

5 A. As of June 6th, 2014, it's my understanding
6 that this statement Introduction, A, B and C is
7 true on June 6, 2014.

8 Q. Okay. Have there been any general orders,
9 policies, procedures, rules or regulations which
10 the Cranston Police Department adopted after June
11 6, 2014 which are not included in the manual?

12 A. I'd have to get the current printout of the
13 manual and compare it line by line with the one
14 you provided to me, Exhibit 15.

15 Q. Well, just for the record, that is what was
16 produced to us, so I don't know if there's a more
17 current one, generally, than that, although we
18 were alerted that apparently there is a new
19 general order on mental health that we'll talk
20 about in a little while. Other than the
21 relatively new general order on mental health, are
22 you aware of any other changes to the Cranston
23 Police Department's general orders that are set
24 forth in Exhibit 15?

25 A. I think it's fair to say there's been many

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1 2018. That's the current policy database.

2 Q. Okay. What I'm getting at is there's not some
3 other collection or document or whatever that has
4 a different name where there are other policies or
5 procedures that are kept?

6 A. Not that I know of, no. Unless there's
7 something obvious I was not thinking at this
8 point, but I'm not following -- I don't believe
9 so. This is the Bible for the Cranston Police
10 Department.

11 Q. That gets me to another guideline I'll mention,
12 which is, if as the deposition goes on you
13 remember something that you did not remember
14 earlier in the deposition, please bring that up
15 and let me know.

16 A. Yes, sir.

17 Q. I'm going to show you what was previously during
18 Officer Mastrati's deposition as Exhibit 4, which
19 is entitled General Order 100.10, and it's called
20 Limits of Authority; do you see that?

21 A. Yes, sir.

22 Q. Is this a general order that you looked at either
23 earlier today or with Ms. Murphy?

24 A. Yes, sir.

25 Q. Did you look at this today, or was it with Ms.

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1 trying to serve an eviction notice on a tenant,
2 the tenant was resisting. So our role there was
3 strictly to keep the peace, not to assist the
4 constable in forcibly removing the tenant.
5 Basically, our role was to make sure there were no
6 laws broken, document the incident, provide a copy
7 of the report to the constable, and then for them
8 to go back to the court and let the court decide
9 what further action; not to assist the person
10 executing a civil action.

11 Q. And is that because your understanding is the
12 court does not have authority to do that in a
13 civil matter?

14 MR. CUNNINGHAM: Objection.

15 A. It's my understanding that it's not legal.

16 Q. Okay. So with respect to the community caretaking
17 function, are there circumstances under which the
18 police may have -- may not have the authority to
19 act in a civil situation?

20 MR. CUNNINGHAM: Objection.

21 Q. Let me put it differently. Do you have any
22 understanding of what the limits are of the police
23 authority to act under the community caretaking
24 function?

25 THE WITNESS: Limits on the

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1 community caretaking function?

2 MR. LYONS: Right.

3 A. My understanding would be as long as the
4 community caretaking function is not used to
5 collect evidence to prosecute a crime, that would
6 be the limit.

7 Q. Okay. Otherwise, whenever the police believe
8 they're acting to protect an individual or the
9 community, they're authorized to take whatever
10 steps they think are appropriate?

11 A. Whatever reasonable steps -- whatever we feel
12 is reasonable based on the facts and circumstances
13 that exist at the time.

14 Q. All right. How does the police determine what is
15 reasonable under the community caretaking
16 function?

17 A. I think it's in the eyes of the beholder, you
18 know, the person who is on scene collecting all
19 the facts, all information they can, make the most
20 reasonable decision to resolve the situation.

21 Q. Are there any sets, to your knowledge, of written
22 factors, criteria, protocols that are offered as
23 guidelines to a police officer who is on the scene
24 attempting to determine whether or not he or she
25 has the authority to act under the community

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1 caretaking function?

2 A. Maybe -- can I have her repeat that? I'm not
3 sure I understand the question.

4 (QUESTION READ)

5 A. No.

6 Q. Do you know what training is offered to members of
7 the Cranston Police Department as to the scope of
8 their authority to act under the community
9 caretaking function?

10 A. Training? There may have been specifically,
11 I don't recall. That would be a better question
12 for the training lieutenant.

13 Q. Okay. And who would that be?

14 A. Lieutenant Mark Freeborn. He's probably the
15 person that provided training records issued
16 earlier.

17 Q. You referred earlier respecting the Bureau of
18 Criminal Identification?

19 A. Yes, sir.

20 Q. Let's take a look at that now. Let me show you
21 what was previously marked as Exhibit 5 during
22 Officer Mastrati's deposition, and ask you if this
23 is the criminal order to which you referred?

24 A. This is the general order --

25 MR. LYONS: I'm sorry, yes, the

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1 you see that?

2 A. Yes.

3 Q. Is this a paragraph with respect to firearms
4 seized for safekeeping that applies to
5 Mr. Caniglia?

6 MR. CUNNINGHAM: Objection.

7 A. I would say so, yes.

8 Q. Okay. Do you know if there was ever a case
9 involving him that was adjudicated, other than
10 this one?

11 A. Not to my knowledge.

12 Q. Are you aware whether there were any court orders
13 in effect with respect to Mr. Caniglia?

14 A. Not to my knowledge.

15 Q. Are you aware of any other circumstances that
16 would prevent Mr. Caniglia from legally possessing
17 his firearms?

18 THE WITNESS: Can you repeat that?

19 Q. Are you aware of any other circumstances that
20 existed that prevented Mr. Caniglia from legally
21 possessing his firearms?

22 A. On the date of the incident the guns were
23 taken, the officers on scene felt that it was
24 reasonable to take them based on his state of
25 mind.

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1 me -- let's start on the first page where it says
2 procedures, and then A says "Recognizing mental
3 illness"; do you see that?

4 A. Yes.

5 Q. Number 1 or Roman -- small i says, quote,
6 "Officers are not in a position to diagnose mental
7 illness, but must be alert to common symptoms"; do
8 you see that?

9 A. Yes.

10 Q. Would you agree with that?

11 A. Yes.

12 Q. Then if you go to Page 2, there's a section which
13 is called C in this exhibit, "Response to people
14 with perceived mental illness." If you go down to
15 Roman Numeral iv, i-v, it says, "Once sufficient
16 information has been collected about the nature of
17 the situation, and the situation has been
18 stabilized, there is a range of options officers
19 should consider when selecting an appropriate
20 disposition, these include the following." And it
21 says at Number 5, "Assist in arranging voluntary
22 admission to a mental health facility, if
23 requested"; do you see that?

24 A. Yes.

25 Q. To whom does the if requested refer, in other

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1 words, requested by whom?

2 A. I don't know. I'm not really sure who
3 they're referring to. I'm assuming a lot of
4 assumptions here because it's not really specific.
5 I assume the rescue personnel on the scene, they
6 can be requesting, the actual person who is
7 suffering from the alleged mental illness could be
8 requesting, or the officers could be requesting.

9 Q. Okay. If the person, for lack of a better word,
10 who has the perceived mental illness objects to
11 being taken to a mental health facility, would
12 that be a voluntary admission?

13 A. So, just to clarify, I'm not sure why this
14 says mental health facility. As a practice, we
15 don't bring people to a mental health facility, we
16 bring them to a hospital, whether it's for medical
17 treatment from injury or for an evaluation for a
18 perceived mental health issue, for being
19 intoxicated, drugs or alcohol, our role is to
20 provide, bring them to the hospital. We can't
21 make them submit to anything, whether it's medical
22 treatment, mental health treatment, evaluations or
23 anything else at the hospital.

24 Q. So, in other words, even if the police officer
25 says to a person we think you should go for an

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1 evaluation, and the person says I don't want to
2 go, you can't compel them to go to the hospital;
3 would you agree with that?

4 A. If we feel it's necessary for them to go to
5 the hospital and receive medical treatment, used
6 in a broad term, then we'll do that. We can't
7 make them submit to it once they're at the
8 hospital.

9 Q. Oh, so you can take them to the hospital, but you
10 can't make them be treated?

11 A. I believe it's our role under the Community
12 Caretaking Act or Doctrine, that under certain
13 circumstances we think is reasonable, are
14 reasonable, if we force somebody to be transported
15 to a medical facility, whatever type of facility,
16 walk-in, whatever it is, for treatment, then we'll
17 do that. Once they're there, we can't force them
18 to participate in anything, nor would we try.

19 Q. Number 6 underneath that says, one of the options
20 says, "Transport for involuntary emergency
21 psychiatric evaluation if the person's behavior
22 meets the criteria for this action." Do you see
23 that?

24 A. Yes.

25 Q. How does a police officer determine if a person's

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1 with the firearm.

2 Q. What actions he took with the firearm are you
3 referring to?

4 A. I was told that he took a firearm out, placed
5 it on the counter and asked his wife to use it on
6 him to kill him.

7 Q. Okay. When had he done that?

8 A. I believe it was the night before, or some
9 time the day before.

10 Q. All right. The general order refers to imminently
11 dangerous, what's your understanding of what
12 imminently means?

13 A. A definite time, some point in the future.

14 Q. How do you define definite?

15 MR. CUNNINGHAM: Objection.

16 A. Certain.

17 Q. Do you know how it was determined that
18 Mr. Caniglia was a threat to himself or others at
19 a definite time in the future?

20 A. Based on the action taken with the firearm,
21 the statements he made to his wife, and the
22 conversation he had with the officers.

23 Q. Okay. The statements that he made to his wife and
24 his actions were the prior evening; is that
25 correct?

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1 A. Some time the day before, correct.

2 Q. So, was there anything, to your knowledge, that he
3 said the next morning when the police officers
4 spoke to him, besides what had occurred in the
5 prior evening that indicated that he was
6 imminently dangerous?

7 A. Not that I recall at this time.

8 Q. All right. So why do the prior evening events
9 make him imminently dangerous the next day?

10 A. Well, the behavior that took place the day
11 before with the firearm caused the wife to be
12 alarmed enough to leave the residence. Officers
13 took that into consideration, based on the actions
14 he took with the firearm, the statements he wanted
15 the wife to use it on him to end his life, the
16 fact that he still had the firearm available to
17 him, the officers thought it was reasonable to
18 have him brought to a medical facility and to be
19 evaluated. It's my understanding that the wife
20 turned the firearms over to the officers
21 voluntarily.

22 Q. Do you know whether the Cranston Police Department
23 consulted with any medical professional in
24 determining the circumstances under which a person
25 is imminently dangerous to himself or others?

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1 Q. Okay. And where do they derive the
2 reasonableness?

3 A. Based on training, experience, alternatives
4 to the decision that they're going to make,
5 potential consequences for not taking the action.

6 Q. Have the Cranston police received any training --

7 A. Can I add to that last answer? Potential
8 consequences that may result from not taking
9 action.

10 Q. Okay. Have the Cranston police received any
11 formal training in determining whether or not
12 someone is imminently dangerous?

13 A. No, not that I know of.

14 Q. And how, from their experience, would the Cranston
15 police determine whether or not somebody was
16 imminently dangerous?

17 MR. CUNNINGHAM: Objection.

18 A. I don't even know if there is an actual
19 definition of imminently dangerous. I think it's
20 a case-by-case basis based on the facts that a
21 reasonable person is presented with.

22 Q. So what I'm getting at is if you have two similar
23 situations and two different police officers, is
24 it possible for them to come to two different
25 conclusions as to whether or not the person

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1 involved is imminently dangerous?

2 MR. CUNNINGHAM: Objection.

3 A. Is it possible, yes.

4 Q. Okay. So, how does the police department ensure a
5 consistent application of its policies and
6 procedures in determining that this police officer
7 appropriately treats one person as imminently
8 dangerous, whereas a different police officer does
9 not treat somebody differently in the same
10 circumstance?

11 A. So I would say we try to ensure consistency
12 through supervision where we have a platoon of X
13 amount of officers supervised by one person who
14 would ensure consistency. But there's no way to
15 legislate reasonableness. It's all based on what
16 the person knows at the time, the facts the person
17 is taking into consideration at the time. Just
18 like you can't legislate discretion, it's all
19 based on what the officer feels based on facts
20 they're presented with.

21 Q. You also refer to potential consequences that may
22 result from not taking action.

23 A. Yes.

24 Q. How does that factor into the decision of
25 determining whether or not somebody is imminently

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1 to a health care professional. As I spoke about
2 earlier, that's our primary goal is to get --
3 present them to a medical personnel, and if the
4 person doesn't want to participate, the person
5 we're bringing doesn't want to participate, that's
6 their prerogative, we can't force them. It's much
7 different than involuntary committal.

8 Q. Do you know if Mr. Caniglia was given any reason
9 why he should agree to go for a psychiatric
10 evaluation?

11 MR. CUNNINGHAM: Objection.

12 A. No.

13 Q. Do you know, for example, whether any of the
14 police officers on the scene told Mr. Caniglia
15 that they were going to seize his firearms, but if
16 he had, and passed a psychiatric evaluation, he
17 could get them back?

18 A. No.

19 Q. Okay. If a police officer said that to
20 Mr. Caniglia, would that be contrary to police
21 department policy or procedure?

22 A. Well, we wouldn't coerce somebody. We
23 request, and then if it came to a point where the
24 person didn't want to cooperate, and we felt it
25 was necessary to have him transported, then we

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1 could physically take them to the hospital. But
2 it was not quid pro quo, if you submit, we'll give
3 you the guns back; that's not part of our policy.

4 MR. LYONS: Since we were just
5 talking about it, let's mark this as Exhibit 20.

6 EXHIBIT 20 (PLAINTIFF'S EXHIBIT 20
7 MARKED FOR IDENTIFICATION)

8 Q. Captain Henry, let me show you what's been marked
9 as Exhibit 20, which is a copy of a Rhode Island
10 General Law Section 40-1-5-7 which is entitled
11 Emergency Certification. I'm going to ask you if
12 this is the same one that is referred to in the
13 PowerPoint presentation we just looked at.

14 A. I believe so.

15 Q. Is it your understanding this was the statute that
16 was in effect in August of 2015?

17 A. I'm not 100 percent sure about the history of
18 the section, it shows 2017. I believe this is the
19 last update to this.

20 MR. CUNNINGHAM: Yes.

21 Q. Do you know when you studied to be captain if this
22 is what you looked at?

23 A. Some form of this, I believe.

24 Q. As you sit here, are you aware of any differences
25 between this statute that's been marked as an

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1 of these conditions apply to him?

2 Q. I'm asking whether any of them were considered,
3 specifically considered. Let me withdraw the
4 question. Let me put it this way: You recall
5 having a discussion with an officer who was at
6 Mr. Caniglia's home at the time -- phone
7 conversation at the time of the alleged incident?

8 A. Right.

9 Q. Did you, in the course of that conversation,
10 discuss any of these factors or warning signs or
11 questions that are set forth in Pages 43, 44 or 45
12 of the exhibit?

13 A. Well, the sergeant told me that -- he asked
14 the wife to kill him, end his life. So although
15 he didn't threaten, which would fit this criteria
16 on Page 44, he did speak -- ask the wife to do it,
17 told her he wanted her to end his life. So to me
18 that's synonymous with suicide. He wanted the
19 wife to do it. Some people commit suicide by
20 police, because they don't want to do it
21 themselves. It was my impression he wanted his
22 life ended by the wife. That was one of the
23 factors.

24 Q. Okay. Do you know if the wife said that she
25 believed that Mr. Caniglia wanted her to kill him?

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1 In other words, did the wife believe that
2 Mr. Caniglia wanted his wife to kill him?

3 MR. CUNNINGHAM: Objection.

4 A. I don't know what the wife believes, other
5 than she believed she was in danger, and she left
6 the house for the night.

7 Q. Did the wife say that she was in danger, she
8 believed she was in danger?

9 A. My understanding is that is what was relayed
10 to the officers on scene.

11 Q. Okay. Again, that was from the phone conversation
12 you had with an officer who was at the scene?

13 A. Yes.

14 Q. Do you know if any of the other warning signs of
15 suicide were considered with respect to
16 Mr. Caniglia?

17 A. Talking about or writing about dying of
18 suicide -- the conversation he had with his wife
19 about dying meets that third criteria. I would
20 say agitation was one of them, because I believe
21 they said there was a trivial argument over a
22 coffee mug. As far as the questions to ask, I
23 don't know if they read any of those verbatim. I
24 doubt they had this available to them.

25 Q. Do you know if anything else was considered or

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1 applied to Mr. Caniglia --

2 MR. CUNNINGHAM: Objection.

3 Q. -- that's set forth in this PowerPoint
4 presentation?

5 A. I'd have to review the whole presentation.

6 Q. All right. I'm only talking about -- I'm sorry,
7 the pages dealing with suicide, 43, 44 and 45?

8 A. No.

9 Q. Okay. Let me show you what was previously marked
10 as Exhibit 10 during Officer Mastrati's deposition
11 which again appears to be a printout of a
12 PowerPoint presentation entitled Mental Health 101
13 Review, Cranston Police 2013. Have you seen this
14 before?

15 A. May have. I don't recall specifically. It
16 looks like an in-service training presentation.

17 Q. All right. Do you know if the date on the first
18 slide indicates that this presentation was given
19 in 2013?

20 A. I'm not sure what it means. I would assume
21 it was created in 2013 or presented, one or the
22 other.

23 Q. Okay. If you go to Page 8, there's a slide which
24 appears to be numbered number 23, which is
25 entitled "Assess for risk of suicide or harm"; do

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1 you see that?

2 A. Yes.

3 Q. Do you know if any of the factors set forth on
4 this slide were considered with respect to
5 Mr. Caniglia?

6 A. I don't know if any of those were applied by
7 the officers.

8 Q. I'm going to show you one more, what I think is a
9 piece of training material, and then we'll get to
10 the specific incident. This was previously marked
11 as Exhibit 8 during Officer Mastrati's deposition,
12 it's a PowerPoint presentation, or appears to be a
13 printout of a PowerPoint presentation entitled
14 Rhode Island Search and Seizure Law, presented by
15 Rhode Island Department of Attorney General
16 Stephen A. Regine, Assistant Attorney General, and
17 bears the date January 2016 on the first slide.

18 A. Okay.

19 Q. Do you recall if you have ever seen this before?

20 A. May have, it looks familiar.

21 Q. Do you know if this presentation was given to the
22 Cranston Police Department in January of 2016?

23 A. This writing in the lower right-hand corner
24 is Lieutenant Freeborn's signature, he's the
25 training lieutenant, so I would assume that's what

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1 A. Yes.

2 Q. Does that part describe the police officer's
3 community caretaking function?

4 A. To me it means the initial intent of the act
5 taken by the officers wasn't to make an
6 apprehension of an alleged criminal or to
7 investigate a crime.

8 So with respect to the case they made the
9 little snippet of, I think the point they're
10 trying to make in the training was the trooper had
11 opened the passenger side door of the motor
12 vehicle to make observations. They deemed it was
13 not a search because he was checking on the
14 well-being of the erratic operator.

15 Q. Do you know if there's any Rhode Island decisions
16 dealing with the community caretaking function
17 apart from those dealing with the operation of a
18 motor vehicle?

19 A. No.

20 MR. CUNNINGHAM: Can we take a
21 two-minute break?

22 (BRIEF RECESS)

23 Q. Actually, I have a couple more background
24 questions, and then we'll get to this. I see
25 you're carrying a sidearm today?

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1 when you answered your interrogatories, and you
2 looked at it again yesterday?

3 A. Yesterday.

4 Q. And none of those times refreshed your
5 recollection as to what had happened?

6 A. No.

7 Q. When I say refreshed your recollection, I meant
8 brought about an independent recollection of the
9 events?

10 A. No. I hate to --

11 MR. CUNNINGHAM: Go ahead, I thought
12 you were going to say something we talked about.

13 A. It was just what I -- to the point where I
14 don't remember if it was a phone call I was
15 informed of this, or it was me actually driving by
16 the scene and the sergeant came out and told me.
17 So I don't even recall exactly what method the
18 conversation took place by. We checked the
19 dispatch log, it wasn't on it, so I'm assuming
20 it's a phone call. Can I explain?

21 MR. CUNNINGHAM: Sure.

22 A. Because the way the police department is
23 structured, I explained this to Ms. Murphy just as
24 background --

25 MR. CUNNINGHAM: Not anything you

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1 A. Yes.

2 Q. And it says, "He requested," does that mean that
3 you requested that the officers on the scene seize
4 the firearms?

5 A. Yes.

6 Q. Do you recall separate from what is set forth in
7 this incident report, the reasons why you
8 requested seizure of the firearms?

9 A. No.

10 Q. Do you recall whether -- let me back up. Do you
11 know whether the firearms belonged to
12 Mr. Caniglia -- let me withdraw the question. Is
13 it your understanding the firearms belonged to
14 Mr. Caniglia?

15 A. I believe so.

16 Q. Okay. And did you know that in 2015 when you made
17 the request to seize them?

18 A. That would make sense.

19 Q. Do you know if Mr. Caniglia gave permission for
20 the seizure of the firearms?

21 A. I don't know.

22 Q. All right. Do you know if Mrs. Caniglia, Kim,
23 gave permission for seizure of the firearms?

24 A. I believe that was part of the information
25 relayed to me.

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1 Q. Was Mr. Caniglia ever under a guardianship?

2 A. Not that I'm aware of.

3 Q. Was he ever determined to be mentally incompetent?

4 A. I don't know.

5 Q. Was he ever a drug addict?

6 A. I don't know.

7 Q. Was he ever a felon or fugitive from justice?

8 A. I don't know.

9 Q. Was he an unnaturalized, foreign born person?

10 A. I don't know.

11 Q. If Mr. Caniglia had objected to the seizure of his
12 firearm, would your decision have been any
13 different?

14 A. No. Can I add to that?

15 MR. LYONS: Yes.

16 A. If he had -- if we were able to make
17 alternative arrangements to have them stored at a
18 firearm dealer or a relative, more likely a
19 relative, that could have been an alternative;
20 we've done that in the past.

21 Q. Do you know if that was discussed with him?

22 A. I don't believe it was.

23 Q. Do you know why not?

24 A. No, I don't know.

25 Q. Would the Cranston Police Department's a decision

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1 to have Mr. Caniglia sent for psychological
2 evaluation have been different if he had objected?

3 A. Our decision was to send him to the hospital
4 for medical care.

5 Q. But it was for a psychiatric evaluation, right?

6 A. Speak to a medical professional, and they
7 could determine that.

8 Q. Right. But if he had objected --

9 A. It wouldn't have mattered.

10 Q. He would still have been sent?

11 A. Yes.

12 Q. Does the Cranston Police Department use written
13 consent forms for searches of property?

14 A. We have a form for that, yes.

15 Q. Did it use one in this case?

16 A. No.

17 Q. Do you know why not?

18 A. It's my understanding under community
19 caretaking we do not need consent or warrant to
20 search as long as it's not to collect evidence of
21 a crime.

22 MR. LYONS: I believe those are all
23 my questions. Thank you, very much.

24 THE WITNESS: Thank you.

25 (DEPOSITION CLOSED AT 2:23 P.M.)