

CRANSTON

Weapons returned to Vietnam veteran

Robert Machado, ACLU sued after police seized guns, swords for 'safekeeping'

By **KATIE MULVANEY**
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A Vietnam veteran whose weapons collection was seized by the Cranston police for safety reasons got his guns back, the city solicitor said.

The Cranston police returned Robert Machado's weapons and paid him \$2,500 for time spent away from his guns to resolve a lawsuit brought by the Rhode Island Affiliate of the American Civil Liberties Union accusing the city of violating his right to due process and his right to bear arms, according to Machado's lawyer Thomas W. Lyons. In addition,

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A 2nd Amendment case

he received \$2,000 for legal fees in the settlement.

The police seized Machado's guns on Sept. 13, 2011, for "safekeeping" from his 474 Farmington Ave., Cranston, apartment after responding to a concerned call that Machado might harm himself. Machado, who has posttraumatic stress disorder, was taken to Our Lady of Fatima Hospital for a mental health evaluation.

Police had seized "various weapons he lawfully possessed, including firearms and a collection of ceremonial samurai swords," according to an ACLU news release Friday announcing the settlement.

The police ran his two firearms through a national database and came up negative for criminal activity.

Machado returned from the hospital the same day and found his weapons missing. He asked police to return them and was told to get a letter from a therapist saying he was not a threat to himself, court records show.

He got a letter from Dr. Lawrence H. Weiner, who treats his PTSD, attesting to his sanity without suicidal tendencies or thoughts. Weiner indicated there should be no concerns about returning the weapons.

Machado asked again and was told he needed a court order for their return. Machado learned from a court clerk there was no such remedy since Machado had not been criminally charged, records show. Still, police refused to return his weapons.

Machado reached out to the ACLU and, in June, sued the police, alleging police deprived him of his property without due process of law

and violated his right to bear arms.

"We did want to give the guns back, but just not without a release," Cranston City Solicitor Christopher M. Rawson said. The police require people whose guns are seized, but who have not been criminally charged, to sign a release absolving the city of any liability for damages or injuries related to the guns, he said.

"We did get the release, which is a good thing," Rawson said.

Rawson observed that there is an uptick in similar scenarios that are being evaluated on a "case-by-case" basis. "It is a pretty scary situation, but there's the Second Amendment," he said, on the right to bear arms.

Lyons said the ACLU fell short of negotiating a change in police policy regarding the gun seizures. Guns can usually be seized in relation to a criminal case and then a District Court order would be needed for their return.

Rawson said the ACLU wanted the police to reach a consent agreement that would have allowed a hearing before a federal tribunal to get guns returned in non-criminal cases. The police, Rawson said, could not be bound to such terms.

"We're reasonably satisfied with the result," Lyons said. "We anticipate it coming up again. This sort of thing is happening with some degree of regularity around the state."

Cranston Police Chief Marco Palombo Jr. declined to comment on the settlement.

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COURTS

Truancy court case begins

High court begins hearings on ACLU suit that alleges justice and school officials violated civil rights of students

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PROVIDENCE — The state Supreme Court on Wednesday heard arguments in a class-action lawsuit filed by the American Civil Liberties Union and its Rhode Island affiliate against the former chief justice of the Rhode Island Family Court and the state officials who run its truancy court.

The suit alleges that former Chief Justice Jeremiah S. Jeremiah Jr., five magistrates, and school officials in Burrillville, East Providence, Providence, Smithfield and South Kingstown operated a truancy program in secrecy and violated the civil rights of students and their parents. (Burrillville no longer participates in the truancy court program, according to a court spokesman.)

The issue before the Supreme Court was whether the suit can be heard in the Superior Court, where it was filed in March 2010.

Beyond the jurisdictional matter, the hearing raised questions about whether the students in truancy court, some as young as 12, under-

stood they had the right to appeal, whether their claims remain valid and whether the new rules in place today would prevent the alleged violations from being repeated.

The truancy court program currently operates in 20 of the state's 36 school districts. Two of the school districts — Newport and Providence — have expressed an interest in expanding the program to additional schools in their districts, said Craig N. Berke, a spokesman for the judiciary.

The plaintiffs are students with learning disabilities or medical conditions who say they were punished by magistrates for medically related absences or having problems completing their school work.

Truancy court is supposed to be an alternative for students facing "wayward" or delinquency charges in Family Court. At the time the suit was filed, students and their parents had to sign two forms — one admitting to the truancy offenses and another waiving the student's right to a trial before a judge in Family Court.

Michael B. Forte, a lawyer for the defense, argued at Wednesday's hearing that the proper place to appeal truancy court cases is Family Court.

"Didn't they give up their right to

appeal?" Justice Gilbert V. Indeglia said.

The participants would be expected to know that they have a constitutional right to a lawyer, Forte responded.

"They're 12," Justice Francis X. Flaherty said. "There's a 12-year-old who had an arrest warrant issued against them."

The ACLU's lawyer, Thomas W. Lyons III, said that if students or their parents complained about their treatment or said they wanted to speak with a lawyer, the truancy charges against the student were promptly dropped.

Since Jeremiah retired in June 2010, Forte said, Family Court Chief Judge Haiganush R. Bedrosian has issued an administrative order that addressed most of the issues raised in the ACLU's suit.

Lyons disagreed, saying the suit alleges a "systemic problem" and that the administrative order itself doesn't solve the problem.

Four of the five justices presided at the hearing; Justice Maureen McKenna Goldberg has recused herself from the case, without specifying a reason, said Berke, the judiciary spokesman.

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