

Sunday, December 20, 2015

A NEWSDAY AND NEWS 12 SPECIAL REPORT

# The 7th precinct vs. Jack Franqui

In 2013, Jack Franqui landed in a jail cell.  
He left in a body bag.

BY GUS GARCIA-ROBERTS | gus.garcia-roberts@newsday.com

Newsday

On Jan. 23, 2013, one of Long Island's coldest nights in years, Jack Franqui shivered in a Suffolk County Police Department holding cell wearing only his socks and underwear, his bruised body soaked in toilet water. He had been ranting for hours that the cops had unfairly targeted him and that he planned to leave his cell in a body bag.

He fashioned a noose from a pair of bluejeans knotted to the bars of his cell. It was the third time in a matter of hours that Franqui — a 26-year-old man from Rocky Point booked on misdemeanor charges — had tied something to the bars. Officers on duty at the Seventh Precinct in Shirley had already confiscated a blanket and Franqui's T-shirt in separate incidents. But officers ignored protocol and failed to put Franqui under closer supervision or transport him to a hospital.

A medical examiner would later state that it takes roughly 10 minutes for somebody to suffer irreversible damage from hanging the way Franqui did. During that time, the only other prisoner in the cellblock said he faced a surveillance camera, made frantic gestures toward Franqui's cell and screamed for officers to come save the dying man.

When nobody came, he gave up. He heard gasping, bones cracking and then silence.

An officer eventually noticed Franqui's dangling body on a closed-circuit monitor.

"What is this guy doing now?" the officer, Joseph Simeone, remarked.



Franqui's body was cold to the touch by the time officers made it to the cellblock. Deciding there was no point in trying to resuscitate him, officers left Franqui's body hanging in his makeshift noose.

The homicide detectives who arrived soon after began to piece together what had gone wrong. The officers on duty kept records documenting prisoner checks that may not have actually occurred. The officers failed to act not only after Franqui had tied two items to the bars, but also despite obvious signs of erratic behavior witnessed by the other prisoner including banging his head repeatedly against the wall, drenching himself in toilet water and begging to be taken to the hospital.

# The 7th precinct vs. Jack Franqui

Detectives found that an intercom system that pipes in sound from the cellblock to where officers were stationed 70 feet away had been switched off. And officers had turned up the volume on a TV they were watching loud enough to drown out the other prisoner’s screams for help.

Suffolk County’s law enforcement officials did not tell the public this story of failure and neglect. Instead, the department contradicted its own internal documents in saying that Franqui was calm, at ease and showed “no indication” that he was suicidal before he took officers by surprise and suddenly killed himself.

Franqui’s family got the same story, and for months, they had no choice but to assume it was the truth.

There’s an increasing burden on police officers to deal with mental health issues requiring a law enforcement response. Suffolk officers transported 4,273 people, most of them involuntarily, to a psychiatric ward in 2014. The number has risen steadily every year since 2008, when Suffolk officers transported 2,524 people for psychiatric care.

SCPD cadets receive hours of training on how to handle encounters with the mentally ill, and the department’s rules and procedures call for “compassionate, safe and effective handling” of

those dealing with “possible mental/emotional issues.”

“You’re dealing with good people, but they’re suffering from this illness,” said SCPD Sgt. Colleen Cooney, speaking in general and not about Jack Franqui. “And the officer has to realize that they may not be behaving in their best way because they’re dealing with this illness, which might make them dangerous to themselves or others.”

Before Franqui’s clash with local law enforcement in December 2011, he led what was on the surface an unremarkable life. After attending Rocky Point High, he lived in a rented 720-square-foot, cream-colored duplex on Xylo Road, drove a Honda and owned a dog named Dog.

Franqui’s friends said he liked to unwind after work by playing Xbox while smoking marijuana. He worked as a chef at the American Red Cross, where he cooked meals for the elderly. After his death, some of the older women who worked with him there would take the time to write remembrances of the goofy, lanky young man who called them “Auntie” and was famous for his “egg in a boat breakfasts.”

An only child whose parents had divorced when he was a teenager, Franqui spent time on the nearby Long Island Sound, kayaking or putting on a

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## TOP STORIES

### A NEWSDAY AND NEWS12 SPECIAL REPORT

(PART 1)

## SUICIDE IN A SUFFOLK POLICE LOCKUP

# The lonely death of Jack Franqui

When a prisoner hanged himself, nobody came to help

BY GUS GARCIA-ROBERTS

garcia-roberts@newsday.com

On Jan. 23, 2013, one of Long Island’s coldest nights in years, Jack Franqui averted in a Suffolk County Police Department holding cell wearing only his socks and underwear, his bruised body soaked in toilet water. He had been ranting for hours that the cops had unfairly targeted him and that he planned to leave his cell in a body bag.

He fashioned a noose from a pair of blue jeans knotted to the bars of his cell. It was the third time in a matter of hours that Franqui — a 35-year-old man from Rocky Point booted on misdemeanor charges — had tied something to the bars. Officers so busy at the Seventh Precinct in Shirley had already confiscated a blanket and Franqui’s T-shirt in separate incidents. But officers ignored protocol and failed to put Franqui under closer supervision or transport him to a hospital.

A medical examiner would later state that it takes roughly 10 minutes for somebody to suffer irreversible damage from hanging the way Franqui did. During that time, the only other prisoner in the cellblock heard Franqui gasp for air and then bones cracking. That prisoner faced a surveillance camera, made frantic gestures toward Franqui’s cell and screamed for officers to come save the dying man.

“What is this guy doing now?” the officers Joseph Simone remarked.

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PART 2 TOMORROW



Jack Franqui is shown on Christmas Day 2012.

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Details on the suicide of Jack Franqui

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Franqui. “And the officer has to realize that they may not be behaving in their best way because they’re dealing with this illness, which might make them dangerous to themselves or others.”

Before Franqui’s clash with local law enforcement in December 2011, he led what was on the surface an unremarkable life. After attending Rocky Point High, he lived in a rented 720-square-foot, cream-colored duplex on Xylo Road, drove a Honda and owned a dog named Dog.

Franqui’s friends said he liked to unwind after work by playing Xbox while smoking marijuana. He worked as a chef at the American Red Cross, where he cooked meals for the elderly. After his death, some of the older women who worked with him there would take the time to write remembrances of the goofy, lanky

young man who called them “Auntie” and was famous for his “egg in a boat breakfasts.”

An only child whose parents had divorced when he was a teenager, Franqui spent time on the nearby Long Island Sound, kayaking or putting on a 12-foot motorboat owned by his father, Joaquin Franqui, who like five generations of men dating back to Spanish roots also gone by Jack.

“He was my fishing buddy,” the elder Franqui, a facilities manager at Stony Brook University, said of his son. “He was my constant companion. We did everything together.”

When he learned that Franqui had killed himself in a precinct holding cell, he recalled an incident from when his son was 17. One day his son came home with a puncture wound to his stomach and told his father that some guys

These are the holding cells at the Suffolk County Police Department’s Seventh Precinct, where Franqui hanged himself.

had jumped him. But the elder Franqui always suspected the wound was self-inflicted.

Kristy Regg, Franqui’s one-time girlfriend, said he had untreated mental problems and had threatened suicide “at least five or six” times when she attempted to break up with him.

“Anybody who’s taken Psych 101 would tell you that he was bipolar,” Regg said.

Regg said she finally decided to call the authorities on the morning of Dec. 1, 2011. She was with Franqui at his home as he threatened suicide.

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PHOTOGRAPH BY GUS GARCIA-ROBERTS FOR NEWSDAY

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When he learned that Franqui had killed himself in a precinct holding cell, he recalled an incident from when his son was 17. One day his son came home with a puncture wound to his stomach and told his father that some guys had jumped him. But the elder Franqui always suspected the wound was self-inflicted.

Kristy Repp, Franqui’s onetime girlfriend, said he had untreated mental problems and had threatened suicide “at least five or six” times when she attempted to break up with him.

“Anybody who’s taken Psych 101 would tell you that he was bipolar,” Repp said.

Repp said she finally decided to call the authorities on the morning of Dec. 1, 2011. She was with Franqui at his home as he threatened suicide while “loading a shotgun and putting it into his mouth.”

Repp said she expected an ambulance. “I didn’t expect the police force

to show up like he had just robbed the bank,” Repp said.

Officers flooded a narrow Rocky Point road before noon on a Thursday, making for a chaotic scene and perhaps explaining why officers later filed statements that were inconsistent on two key claims: whether Franqui stepped outside his house with a gun, and whether he fired it at an officer.

In charging documents, two officers at the scene attested that Franqui was outside his house brandishing a loaded .38 Special. However, a third officer alleged only that she witnessed Franqui announce that “he had a gun in his pocket” when he exited his house.

Repp said she watched the incident unfold from a nearby driveway, roughly 200 feet away. She denied that Franqui brought a gun outside, although that was ultimately the charge for which he would be convicted. She said Franqui stood in the middle of the street, unarmed and wearing only his boxer shorts, yelling at the officers.

Franqui then ran inside, and Repp said she watched through the ajar front door as Franqui grabbed a gun. Officers reported that as Franqui was “kicking and wrestling” with police Officer Douglas Libonati, he fractured the officer’s hand. Franqui was finally subdued, but not be-

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### SUICIDE from A3

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Franqui then ran inside, and Repp said she watched through the ajar front door as Franqui grabbed a gun. Officers reported that as Franqui was “kicking and wrestling” with police Officer Douglas Libonati, he fractured the officer’s hand. Franqui was finally subdued, but not before he “shot a loaded firearm” at Officer Kevin Corrigan, according to complaints filed by two officers.

Repp disputed that, saying that after Franqui ran inside his house, he put a revolver to his own face as the officers surrounded him. They then charged a handgun into the ceiling during the ensuing struggle with police.

Franqui was charged with several felonies, including menacing a police officer, reckless endangerment, second-degree assault and criminal possession of a weapon in the second degree. An officer also claimed in a misdemeanor charging document that Franqui possessed a 20 Beretta inside his house.

Franqui shows his injuries after a December 2011 arrest in which he was accused of shooting at a police officer.

The house in Shoreham where Franqui was arrested on Jan. 23, 2013, while visiting a friend, Simon Earl, to show off his car.

### VIDEOS

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gating Franqui’s 2013 suicide. They are not identified by name, but their testimony as to what happened that day, as summarized by a grand jury report, does not contradict Repp’s version of events.

The report does not describe Franqui having a gun outside of the house, or firing on an officer. It only states that the officers “were able to get Franqui out of the house, but he attempted to go back into the house. Police officers gave chase and Franqui discharged a handgun into the ceiling during the ensuing struggle with police.”

Repp said officers kicked Franqui in the head and stomach, and “took turns beating the crap out of him.”

According to Repp, who has no known criminal convictions, the 1A investigators rewrote her statement “in the way they wanted it to sound.” She said, for example, that they refused to in-

clude in her statement that police had used electrical tape to hogtie Franqui.

Each time, “they either told me I was fabricating it, my words were wrong, or they just changed my words for me,” Repp said.

Anthony Grandinette, an attorney representing Franqui’s family in a civil rights lawsuit filed in federal court against Suffolk County and its police department, said Franqui spent three weeks in the hospital after his arrest due to injuries inflicted by police officers took Franqui into custody at John T. Maher Memorial Hospital in Port Jefferson on Dec. 22, 2011, three weeks after his arrest. In applying for the warrant, a detective stated that Franqui was at the hospital for a “psychological evaluation.”

Franqui spent roughly a year after his arrest at the Suffolk County Jail in Riverhead because he was unable to post a \$40,000 bond. He mailed to Repp from jail more than a dozen handwritten letters, which provide a manic portrait of his psyche while locked up.

“Maybe finally having you in my life did make me crazy but then I should be in a (psy-) ward not in jail,” Franqui wrote in one letter spotted with blood, which he said came from cutting his hand in flight. He said while in jail he had been forced to join a gang, “as much as I hate them.”

And he repeatedly accused the police of beating him up and lying about it.

“I know you were just scared and I don’t blame you but the people you called are even more (repulsive) than I am,” Franqui wrote of the police. “They had just been waiting for the chance to beat me up and put me behind bars and that’s why they are lying to me.”

Franqui wrote that the officers had “tried to kill me” during the arrest, officers shot Franqui with a laser multiple times, “hogtied” him with black electrical tape and dragged him down the front steps of his house, “allowing his chin to hit every step.”

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A Google Images photo shows a Cadillac, owned by Jack Franqui, parked in front of his father's home on Magnolia Drive in Rocky Point in January 2013.

boy, Dionisio said the weapons charge is evidence that Franqui’s paranoia was justified and that officers set out to harass her nephew as payback for the 2011 shooting.

“It would be different if this was a hardened criminal that would cause them to rid him like that,” Dionisio said. “What did they find? A sling shot, from when he was 10 to 12 years old.”

Four days after getting out of jail, Franqui again found himself strung out the barrel of a service weapon brandished by an officer of the SCPD’s Seventh Precinct.

On Jan. 23, 2013, a Wednesday morning in the midst of a brutal cold snap in which the temperature dipped to 10 degrees, Franqui drove with Doe to Shoreham in a rented 1972 Cadillac Eldorado. He had recently acquired the car, his father said, for \$300 and a crucifix necklace, and he wanted to show it off to his friend Simon

Earl.

A fellow resident of Earl’s upscale neighborhood would later tell the special grand jury that he had a feeling “something was not right” as he watched the driver of the old Cadillac move slowly through the neighborhood. Seeing a young man wearing a hoodie get into the vehicle, the resident said he feared potential burglaries. He called a retired police officer who lived nearby, and they called 911 to report a suspicious vehicle in the neighborhood.

Earl, in a hooded sweatshirt, was checking out his friend’s new ride as contractors worked on his parents’ home. From her patrol car, Suffolk Officer Karen Genta ran the license plate number on the gold Cadillac parked in front of Earl’s home on Cornwood Path. A dispatcher responded that the car belonged to Franqui.

Genta would later testify before the special grand jury that she recognized Franqui’s

name, characterizing him as the person who had discharged a firearm at other Seventh Precinct police officers.

She pulled her gun and ordered Franqui out of the Cadillac, she told the special grand jury. “For fear that Franqui may have had another weapon,”

Darryl Moore, a contractor remodeling the Earl family’s home, recalled during a legal deposition that Genta yelled, “Hurry! Fin move as she pointed her gun at Franqui. Genta was “dropping F bombs, four-letter words,”

Asked if he had ever witnessed such a scene, Moore responded, “Just on TV.” (According to court records, Genta has been the subject of “at least 10” civilian complaints, most for “unprofessional language.”)

Genta was “yelling extremely loud and giving inconsistent orders,” according to a sworn statement from Moore’s carpenter, Jay

then-commander of the Suffolk homicide squad, told Newsday when recounting Franqui’s arrest for an article published the next day. “She’s so alert, she slams the door back closed.”

Dog is neither a Doberman nor a pit bull. He’s a Manchester terrier, small enough to stand on the bow of Franqui’s kayak as he paddled around Long Island Sound.

By Genta’s count, 15 to 20 officers streamed to Cornwood Path to assist her arrest of Franqui, including an off-duty officer who lived nearby. At least two of the officers had also been on the scene during Franqui’s 2011 altercation.

Earl, a 22-year-old geology student with no criminal record, said he was just looking at the engine of Franqui’s Cadillac when Genta unloaded her gun and pointed it at him.

“He has a Doberman in the car and he said ‘get her,’” Det. Lt. John “Jack” Fitzpatrick

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fore he “shot a loaded firearm” at Officer Kevin Corrigan, according to complaints filed by two officers.

Repp disputed that, saying that after Franqui ran inside his house, he put a revolver to his own face as the officers surrounded him. “They kicked the door in and the gun shot off behind him and went in the ceiling,” Repp said.

Corrigan himself filed a report reinforcing the narrative that Franqui had taken a shot at him. In a criminal complaint, Corrigan stated that Franqui “fired a functioning handgun in close proximity and in the direction of your deponent and striking the ceiling.”

Two of the officers who were at the scene of that 2011 arrest would be called to testify before grand jurors investigating Franqui's 2013 suicide. They are not identified by name, but their testimony as to what happened that day, as summarized by a grand jury report, does not contradict Repp's version of events.

The report does not describe Franqui having a gun outside of the house, or firing on an officer. It only states that the officers “were able to get Franqui out of the house, but he attempted to go back into the house. Police officers gave chase and Franqui discharged a handgun into the ceiling during the ensuing struggle with police.”

Franqui was charged with several felonies, including menacing a police officer, reckless endangerment, second-degree assault and criminal possession of a weapon in the second degree. An officer also claimed in a misdemeanor charging document that Franqui possessed a .22 Derringer inside his house.

He was never charged with attempted murder of a police officer.

Yet within the Seventh Precinct, Franqui would be remembered as the guy who tried to shoot a cop.

**F**ranqui filed a notice of claim against the Seventh Precinct in February 2012, alleging that he was physically beaten during the arrest at his home. He sought \$7.2 million for personal injuries.

Repp said that Internal Affairs Bureau officers investigating the excessive force allegations visited her while Franqui was in jail.

She said she told them that during the arrest, officers shot Franqui with a Taser multiple times, “hogtied” him with black electrical tape and dragged him down the front steps of his house, “allowing his chin to hit every step.” Repp said officers kicked Franqui in the head and stomach and “took turns beating the crap out of him.”

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Franqui spent roughly a year after his arrest at the Suffolk County Jail in Riverhead because he was unable to post a \$40,000 bond. He mailed to Repp from jail more than a dozen handwritten letters, which provide a manic portrait of his psyche while locked up.

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And he repeatedly accused the police of beating him up and lying about it.

“I know you were just scared and I don’t blame you but the people you called are even more up than I am,” Franqui wrote of the police. “They had just been waiting for the chance to beat me up and put me behind bars and that’s why they are lying so much.”

Franqui wrote that the officers had trumped up the charges against him by falsely accusing him of exiting his house with a gun. The officer with the fractured hand, Franqui wrote, injured himself by punching Franqui unconscious. “I wasn’t trying to hurt the cops just myself,” Franqui wrote.

Franqui would plead guilty on Dec. 5, 2012, to second-degree felony attempted

criminal possession of a weapon, resulting in a sentence of 6 months’ imprisonment and 5 years of probation, which included psychiatric and psychological conditions. Because Franqui had already spent a year at the Suffolk County jail, he was ordered released. A judge warned him that he faced 7 years in an upstate prison if he violated probation.

Franqui left jail certain that police would come up with a “brilliant plan” to set him up because he had filed the legal claim and accused them of brutality, according to his friend Kyle Fox, of Rocky Point. “He came out more looking over his shoulders because he was afraid the cops were going to get him,” Fox said.

Suffolk police and a probation officer raided Franqui’s dad’s house on Jan. 9, 2013, less than two months after Franqui had been released from jail. Franqui was living in his father’s garage because he had lost his job, his car and his home during his stint in jail.

Franqui’s father, Joaquin, said he was present when the raid occurred and that officers “stormed in the house yelling, with guns out.” Though Franqui’s sentence subjected him to random visits and searches by police and probation officers, available police documents do not explain the show of force that Joaquin Franqui said occurred.

A search of Franqui’s de facto bedroom resulted in two more criminal charges. One, for unlawful possession of marijuana, was for two clear plastic bags of the drug. Though an arrest report does not state the amount of marijuana, the charge is typically punishable by a fine not exceeding \$100. Franqui — who had a cartoon of a pot leaf tattooed on his back — told officers that he smoked marijuana “because it helps me with my anxiety.”

The more serious charge against Franqui was for third-degree felony criminal possession of a weapon. As described in a police report, the confiscated weapon was a “wrist-brace type slingshot.”

“I actually didn’t even know it was there,” Franqui would tell the judge of the slingshot. He spent nine more days in Suffolk County’s Riverhead jail.

Franqui’s aunt, Michelle Dionisio, said her nephew got the slingshot when

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he was a boy. Dionisio said the weapons charge is evidence that Franqui's paranoia was justified and that officers set out to harass her nephew as payback for the 2011 shooting.

"It would be different if this was a hardened criminal that would cause them to raid him like that," Dionisio said. "What did they find? A slingshot, from when he was 10 to 12 years old."

**F**our days after getting out of jail, Franqui again found himself staring at the barrel of a service weapon brandished by an officer of the SCPD's Seventh Precinct.

On Jan. 23, 2013, a Wednesday morning in the midst of a brutal cold snap in which the temperature dipped to 10 degrees, Franqui drove with Dog to Shoreham in a rusted 1972 Cadillac Eldorado. He had recently acquired the car, his father said, for \$200 and a crucifix necklace, and he wanted to show it off to his friend, Simon Earl.

A fellow resident of Earl's upscale neighborhood would later tell the special grand jury that he had a feeling "something was not right" as he watched the driver of the old Cadillac move slowly through the neighborhood. Seeing a young man wearing a hoodie get into the vehicle, the resident said he feared potential burglaries. He called a retired police officer who lived nearby, and they called 911 to report a suspicious vehicle in the neighborhood.

Earl, in a hooded sweatshirt, was checking out his friend's new ride as contractors worked on his parents' home. From her patrol car, Suffolk Officer Karen Grenia ran the license plate number on the gold Cadillac parked in front of Earl's home on Cordwood Path. A dispatcher responded that the car belonged to Franqui.

Grenia would later testify before the special grand jury that she recognized Franqui's name, characterizing him as the person who had discharged a firearm at other Seventh Precinct police officers.

She pulled her gun and ordered Franqui out of the Cadillac, she told the special grand jury, "for fear that Franqui may have had another weapon."

Darryl Moore, a contractor remodeling the Earl family's home, recalled dur-

ing a legal deposition that Grenia yelled, "Don't F'in move" as she pointed her gun at Franqui. Grenia was "dropping F bombs, four-letter words," Moore said.

Asked if he had ever witnessed such a scene, Moore responded, "Just on TV." (According to court records, Grenia has been the subject of "at least 10" civilian complaints, most for "unprofessional language.")

Grenia was "yelling extremely loud and giving inconsistent orders," according to a sworn statement from Moore's carpenter, Jay Moshier. "It was a volatile situation but both Simon and the person in the car remained calm and obeyed the female officer's orders."

Police reports, however, do not describe Franqui as compliant. Grenia later claimed in an arrest report that, with her gun trained on him, Franqui opened his door and told Dog: "Go get her."

Grenia, referring to Franqui's dog as a "pinscher," wrote that the animal's release was "only prevented" when she "slammed the vehicle door shut before the animal could exit."

In his affidavit, carpenter Moshier stated of the claim that Franqui had ordered his dog to attack the officer, "I never observed that ever happen." However, Grenia would be lauded by department brass for her quick instincts in thwarting the potential dog attack.

"He has a Doberman in the car and he said 'get her,' " Det. Lt. John "Jack" Fitzpatrick, then-commander of the Suffolk homicide squad, told Newsday when recounting Franqui's arrest for an article published the next day. "She's so alert, she slams the door back closed."

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Earl, a 27-year-old geology student with no criminal record, said he was just



# The 7th precinct vs. Jack Franqui

looking at the engine of Franqui's Cadillac when Grenia unholstered her gun and pointed it at him. Moshier and Moore corroborated that account, and Grenia did not deny the allegation during a court appearance.

Moshier said he watched as Earl was handcuffed and put in the backseat of a police car, although he would not be charged with any crime.

According to Grenia's deposition, police Officers Nicholas Robbins and Janine Lesiewicz — one of the officers at the 2011 incident — then entered Earl's home. The house is owned by Earl's parents, who were not there.

The officers walked throughout the house, riffling through ashtrays, mail and cabinets, the contractor, Moore, later said in sworn testimony. Moore said he asked one of the officers whether they had permission to enter the house, and the officer responded: "What, are you hiding something?"

Grenia, during her own deposition, said Earl invited an officer into the house while he searched for identification, which the officers needed as proof that he lived there. "We did not know, in fact, they did not just burglarize that house," Grenia said.

In a joint lawsuit filed with Franqui's estate, Earl's family claims officers never had permission to enter their home and illegally searched it without a warrant. The suit alleges that Earl was wrongfully handcuffed, searched and detained despite no evidence that he had done anything illegal. The suit also claims Grenia continued to harass Earl because he was "a witness to the initial police misconduct against himself" and Franqui. Court records show that in April 2014, Suffolk County attempted to settle the lawsuit with the Earl family for a judgment of \$5,001. The family did not accept.

Grenia said in court testimony that after Franqui's arrest, she drove into the Earls' driveway and recorded the license plate number of Simon Earl's gold 2000 Volvo. She gave no reason for that in court.

On April 9, 2013 — less than three months after arresting Franqui — Grenia stopped Earl's Volvo about a half-mile from his house, at North Country Road and Norman Drive in Shoreham. Accord-

ing to her court testimony, she had passed the car and then watched in her rearview mirror as Earl made a right turn without signaling.

Grenia testified that she did not recognize the vehicle as Earl's and only kept her eye on the car because there is a lot of "drug traffic" on the "backcountry winding roads."

"I don't know if somebody's doing drugs or trafficking drugs until I pull them over," she said.

Upon recognizing Earl, Grenia said, she called for backup to prevent him from making false allegations against her. "If we think there's going to be a problem, we have another set of eyes," she explained.

Earl informed her that he would be recording video of the traffic stop with his phone, and Grenia took the phone, turned it off and put it on top of Earl's car. Grenia explained in court that "cell phones have been used as Tasers or different weapons."

Officers instructed Earl to exit his vehicle, and he was patted down. Earl claimed that despite explicitly denying the officers permission to search his car, "they searched my vehicle down to the floor mats."

Grenia acknowledged entering the back of Earl's vehicle, but only to help find his insurance card.

Grenia ticketed Earl for not producing an insurance card and for failing to signal before turning. He pleaded not guilty in a September 2014 traffic court appearance, where a judge dismissed the violation and ruled that the government had "not proved their case."

**F**ranqui was placed under arrest at Earl's house for allegedly ordering Dog to attack Grenia, for which he would be charged with obstruction of governmental administration and, after allegedly admitting to Grenia that he had smoked marijuana 30 minutes earlier, for driving while under the influence of drugs.

Grenia also charged Franqui with resisting arrest because she alleged that he "flailed his arms and legs and refused to put his hands behind his back until he was eventually subdued."

# The 7th precinct vs. Jack Franqui

Franqui suffered several injuries during the arrest, according to police records and special grand jury testimony. He had a large scrape across his left cheek, which would still be visible at his open-casket funeral. A medical examiner's report described blunt impact injuries to his body, including his torso and upper and lower extremities. The medical examiner's office found that Franqui's injuries, including the cheek wound and "injuries on the front of his body," were consistent with "having occurred during time he was placed under arrest by police."

Franqui was booked at the Seventh Precinct at 12:28 p.m. The morning shift supervisor noted the scrape on Franqui's cheek and wrote in a prisoner log that he "appears intoxicated unsteady slurred speech." The supervisor also wrote that Franqui said "he's being treated for anti-anxiety but doesn't need medication at this time."

Franqui entered a holding cell at 2:25 p.m. In conversations with a prisoner locked up two cells away, Franqui exhibited wild mood swings, at times speaking calmly and then breaking into angry, paranoid rants or uncontrolled sobs of anguish. He insisted that police had "roughed him up and that he shouldn't have been arrested."

About three hours after he was locked up, Franqui's mother called the Seventh Precinct and spoke to the supervisor, Sgt. Kevin O'Reilly.

"My son is being harassed and I'm really at the end of my rope," Phyllis Daily told O'Reilly in the recorded phone call. She asked to speak to her son and the precinct commander.

O'Reilly denied both requests. "Ma'am, I'm going to hang the phone up right now on you," he said. "If you want to see your son, you can go to first district court tomorrow morning."

Jack Franqui was dead within the hour.



Monday, December 21, 2015

A NEWSDAY AND NEWS 12 SPECIAL REPORT

# The 7th precinct vs. Jack Franqui

## Cops misled dad about troubled son's jail-cell suicide

BY GUS GARCIA-ROBERTS | [gus.garcia-roberts@newsday.com](mailto:gus.garcia-roberts@newsday.com)

Newsday

John Burke entered Male Cell #3 at the Suffolk County Police Department's Seventh Precinct in Shirley on the afternoon of Jan. 23, 2013. There are eight units on the cellblock, each one 6-foot-1 across by 7-foot-9 long and furnished only with a metal sink-toilet and a wooden bench.

Through the bars and up near the ceiling, surveillance cameras eyed each cell. A tinted plastic shell protected each camera, and in its reflection Burke could see another prisoner locked up two doors away in Male Cell #1.

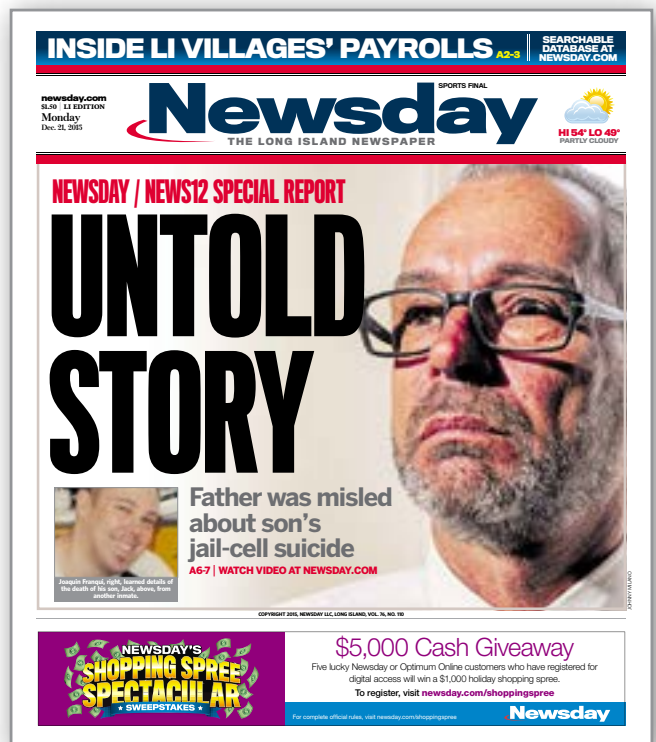
"I'm sorry you got arrested for whatever you got arrested for," said the other prisoner, who introduced himself as Jack. "I'm kind of glad you did though, because now I have some company."

Over the next few hours, Burke, 35, and Jack Franqui were the only prisoners on the precinct cell block, typically an overnight way station for recently arrested people awaiting arraignment the next morning.

The temperature outside was below freezing and cold enough inside that Burke could see his own breath. He ripped off a piece of his blanket and tossed it to Franqui, who had none of his own.

Franqui explained to Burke why he was there: He'd been unfairly targeted and roughed up by police, who wrongfully arrested him and accused him of things he'd never done — like ordering his dog to attack an officer.

He was less than three months removed from a lengthy jail stint during



which he had been attacked by inmates, left with stitches and resorted to protecting himself with a spoon sharpened to a point. As Franqui told Burke he couldn't do any more time in jail, his friendly demeanor turned dark.

"I'm going to hang up," he said.

Franqui began screaming that he was having chest pains and needed medical attention or he would be leaving his cell in a body bag. He banged his head against the cell walls and soaked himself in toilet water.

Police officers, who were 70 feet away in a separate part of the building, appeared in the cellblock on two occasions an hour apart, according to Burke. On the first visit, they denied Franqui's request for medi-

# The 7th precinct vs. Jack Franqui

cal attention, Burke said. On the second, they removed a T-shirt Franqui had fashioned into a noose and tied to the bars.

Burke said that after they had caught Franqui making a noose, he figured the officers would no longer ignore the clearly disturbed prisoner. “OK, they’ll do something now,” he said.

He was wrong. The officers never returned for Franqui, who grew even more despondent and made preparations for his death. He talked about his dog and his dad and gave Burke permission to go fishing on his family’s 12-foot motorboat. He repeated seven digits for Burke to remember — the phone number for Franqui’s father in Rocky Point — and had him recite the numbers back to ensure they’d been memorized.

Franqui asked Burke to tell his dad that his arrest was bogus and that he was sorry but couldn’t go back behind bars. He said to “please tell his dad that he loved him, and not to let him die in vain,” Burke later stated in a sworn affidavit.

Then, after a short period of silence, Franqui uttered his last words: “That’s it.”

SCPD homicide detectives responded to the precinct shortly before 7 that night to investigate Jack Franqui’s suicide. A later homicide report identified five detectives as

being a part of the investigation.

Among them were Charles Leser and Ronald Tavares, homicide veterans who have attracted legal scrutiny for their role in the alleged cover-up of a 2011 police shooting of unarmed cabdriver Thomas Moroughan in Huntington Station. They obtained from Moroughan a since-discredited statement that initially justified intoxicated off-duty Nassau County police Officer Anthony DiLeonardo’s decision to fire at Moroughan. At least one other homicide conviction has since been vacated because it hinged on Tavares’ detective work.

At the precinct, the homicide squad found the trio of officers who had been responsible for Franqui’s life.

Sgt. Kevin O’Reilly was the desk supervisor and the officer in charge of the precinct. He had worked the desk only once or twice before and had been promoted about two and a half weeks earlier. He had not yet completed the supervisory training required of every sergeant in the department.

The desk officers working under O’Reilly were George Oliva, who had been stationed at that desk about fifteen times, and Joseph Simeone, who had been stashed there for more than a decade after superiors deemed him “less than adequate” as a police officer. Simeone had

A6

## TOP STORIES

A NEWSDAY AND NEWS12 SPECIAL REPORT

(PART 2)

### THE SEVENTH PRECINCT VS. JACK FRANQUI

# Cops misled dad about troubled son’s jail-cell suicide

Among Jack Franqui’s last words was a plea: Tell my dad the real story of what happened today.

BY GUS GARCIA-ROBERTS

garcia-roberts@newsday.com

John Burke entered Male Cell #3 at the Suffolk County Police Department’s Seventh Precinct in Shirley on the afternoon of Jan. 25, 2013. There are eight units on the cellblock each one 6-foot-9 inches by 5-foot-9 inches long and furnished only with a metal sink-volant and a wooden bench.

Through the bars and up near the ceiling, surveillance cameras eyed each cell. A tinted plastic shield protected each camera, and in its reflection Burke could see another prisoner locked up two doors away in Male Cell #1.

Over the next few hours, Burke, 35, and Jack Franqui were the only prisoners on the precinct cellblock, typically an overnight way station for recently arrested people awaiting arraignment the next morning.

The temperature outside was below freezing and cold



Jack Franqui in a family photo on Christmas Day in 2012.



John Burke, in a nearby cell, heard Franqui’s last words.

feet away in a separate part of the building, appeared in the cellblock on two occasions an hour apart, according to Burke. On the first visit, they denied Franqui’s request for medical attention, Burke said. On the second, they removed a T-shirt Franqui had fashioned into a noose and tied to the bars.

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## TOP STORIES

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**TIMELINE**  
Details on the suicide of Jack Franqui  
newsday.com

O’Reilly’s decision to make no effort to save Franqui’s life a failure worthy of disciplinary action.

The detectives also spoke with Burke. The Brooklyn incident had been locked up that day on charges that he’d attempted to arrange to have sex with a 10-year-old girl by offering her mother \$4,500 — a background that would typically make for an imperfect witness. But Burke ultimately testified under oath about Franqui’s death at least three times, including before a special grand jury, and the critical elements of his account have not been challenged. In fact, Burke’s story has been corroborated by evidence and the testimony of several police officers.

Burke also told his story with the belief that he would be backed by the perfect witness: The surveillance cameras trained on the cell.

“Again, the tape will show it all,” Burke said.

The homicide detectives would find, however, that the surveillance cameras at the precinct did not record any footage. The lack of a

video record made Burke’s account vital to ascertaining what occurred.

Though Burke’s story would be echoed by officers when they testified under oath before a special grand jury, a homicide report filed a month after Franqui’s suicide presented a more sanitized version of what happened.

Burke reportedly referred to Franqui making his T-shirt into a “noose,” and that officer advised Franqui to stop doing stupid (expletive) as they removed the shirt from the bars. Burke said Franqui’s request for medical attention was denied by an officer who said, “If we bring you to the hospital, we’ll just end up bringing you back here.”

In sworn testimony, Burke said Franqui repeatedly threatened to kill himself. “And he just kept on saying — like he was screaming to them, ‘If you don’t get me medical attention, I’m going to leave here in a body bag,’” Burke said. “I mean, he screamed that.”

The homicide report noted Burke’s claim that Franqui was ignored when he asked an officer for medical assistance. But the detectives did not report that Burke said the fellow pris-

oner was yelling suicidal threats for the guards to hear, only that he “mentioned” to Burke “what he was going to hang himself.”

The report shows O’Reilly told homicide detectives that Franqui tied his T-shirt to the bars in “an apparent attempt to obstruct the vision of the surveillance camera,” not to make a noose, as Burke insisted.

When Franqui finally hanged himself with his jeans and could be heard gasping for breath, Burke told the detectives he screamed for officers to come help until he realized it was a futile effort.

“It got to the point where I just gave up and I was just standing there just in shock,” Burke later testified. “Like I could hear his bones cracking and stuff, you know.”

There’s no way to know at what point Franqui still could have been saved. But at least

See FRANQUI on A14

# The 7th Precinct vs. Jack Franqui

health problems that limited him to light duty status and barred him from contact with prisoners.

When the officers found Franqui hanging in his cell wearing only white socks and camouflage underwear, O'Reilly told the detectives, the prisoner had no pulse and was “purple, blotchy and cold.” O'Reilly declared Franqui “gone” and in an effort to preserve the crime scene, had stopped Oliva from untying Franqui and attempting to resuscitate him.

A state investigatory commission would later call O'Reilly's decision to make no effort to save Franqui's life a failure worthy of disciplinary action.

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The homicide report noted Burke's

A14

## LONG ISLAND

FRANQUI from A7

three times that year, Suffolk County precinct officers noticed prisoners attempting to hang themselves with shirts tied to holding cell bars and reached them in time to rescue them. Burke, however, said it took roughly five to 10 minutes for officers to arrive too late to save Franqui, as O'Reilly decided.

The homicide detectives learned how Burke's screams could have gone unheard. Oliva acknowledged that the volume on a television they were watching made it difficult to overhear sounds from the cellblock.

In addition, detectives discovered that an intercom system installed to transmit sound from the cellblock to the precinct desk had been switched off, according to a grand jury report. The homicide squad's own report, however, states that the intercom system was “operational and at a low volume setting.” There were other key facts found in the homicide report that would prove central to the grand jury investigation.

On the night of Franqui's suicide, Det. Tavers obtained and reviewed phone recordings to and from the precinct. The homicide report does not note that the phone calls contained evidence that Simeone

based withheld information from his supervisor, and then later from detectives, concerning yet another incident earlier in the day when Franqui's blanket was confiscated after he tied it to the bars of his cell. The homicide squad also did not report that an inspection log showed that Simeone, who was responsible for checking on prisoners during that shift, did not make those checks as required.

In his own interview with the detectives, Simeone said “at no time did the prisoner indicate that he needed medical attention or that he was a threat to himself.”

Despite the evidence to the contrary, the police department's public statements mirrored Simeone's account, said “at no time did the prisoner indicate that he needed medical attention or that he was a threat to himself.”

There was no indication he



Jack Franqui is shown with his father, Joseph, in an undated family photo.

was suicidal,” Fitzpatrick said in a Newsday article published the morning after Franqui's death. Fitzpatrick retired last March 20, 2011, after pleading guilty to charges that included failing for discriminating unfairly to material to minors. He received a sentence of time served and immediately upon his release searched online for news about Franqui's suicide.

He found the Newsday article, claiming what he called Fitzpatrick's “ridiculous” characterization of Franqui's calm demeanor before the suicide. “I was angered by that,” Burke said in sworn testimony.

On the day he was set free, Burke dialed the phone number Franqui had added in his memorandum.

When Franqui's father — who also goes by Jack — answered, Burke told him what happened and that “the reports in the news were lies.”

Franqui's family had received no information from law enforcement officials about the suicide other than what Fitzpatrick had said to the media. Burke told Franqui's father, “I will be there to

support you because your son seemed like a nice guy.” “I got to know him for a couple hours,” Burke later testified. “And I just felt like what happened wasn't right.”

After speaking with Burke, Franqui's father hired Mineola attorney Anthony Grandinette. In a recent interview, Grandinette called the suicide in police custody the result of officers' “catastrophic failure to follow their own rules and regulations” and criticized the homicide

squad's findings, which were “directly opposite” of what the evidence showed. “That is not by mistake,” Grandinette said. “That is by design and it's nothing short of fraud and corruption.”

In April 2013, Jack Franqui's estate filed a notice of claim — a precursor to a lawsuit — against Suffolk County and its police department. The claim alleged that Suffolk officers violated Franqui's civil rights when they falsely detained him, used excessive force during the arrest, ignored his suicidal intentions, and then covered up their failings.

The circumstances of his arrest today if we had people behind that desk who were willing to serve and protect,” Franqui's father said. “They lied about it and hid the fact that they didn't do their job.”

A state investigatory commission that Franqui's family moved ahead with their lawsuit, a state commission that over-

sees correctional institutions criticized Suffolk County's district attorney's office and police department for mishandling a case similar to that of Franqui. The state Commission of Correction found in a report released June 2013 that District Attorney Thomas Spota's office had been negligent in failing to criminally investigate the homicide of Daniel McDonnell, a carpenter with mental and physical health problems who died in a 2001 struggle with officers at the First Precinct. Suffolk County ultimately paid \$2.25 million to settle a wrongful death lawsuit filed by McDonnell's family.

The commission found that officers conducted prisoner checks via security monitors rather than making required visits to the cellblock, ignored McDonnell's screams for medical attention and failed to place him under one-on-one supervision despite his noted state.

The commission report stated that homicide detectives performed a “curious and incomplete” investigation into McDonnell's “questionable” death, the medical examiner's office “failed to adequately identify and cir-

uminate the blunt force injuries” to his body and Spota's office “failed to conduct any investigation” of the death in custody even after it had been ruled a homicide.

Spota, in a defiant response written on June 27, 2013, called the commission's report “baseless and inaccurate.”

Meanwhile, nearly six months had passed since Franqui's death, and Spota's office had not covered a grand jury to investigate the incident.

After Law School Professor and former Manhattan prosecutor Bennett Gershman said it's highly unusual for a district attorney to allow so much time to elapse before opening a grand jury probe.

“It's incomprehensible that they would wait so long, especially if you're talking about events that rely on people's memories,” Gershman said. Peter Davis, a recently retired professor at Tufts Law Center who previously probed the homicide of Daniel McDonnell, a carpenter with mental and physical health problems who died in a 2001 struggle with officers at the First Precinct. Suffolk County ultimately paid \$2.25 million to settle a wrongful death lawsuit filed by McDonnell's family.

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## LONG ISLAND

A15

### SEVENTH PRECINCT STATION



**1. Front Desk**  
Officers Joseph Simeone and George Oliva returned the front desk at the time of the suicide. Directly behind their desk was that of supervisor on duty, Sgt. Kevin O'Reilly.

**2. Video Monitors**  
The front desk has 10 video monitors showing footage of the cellblocks where prisoners are kept. Though an intercom was installed, during Franqui's death the sound was muted and the officers' television audio was turned up.

**3. Male holding cells**  
The male holding cells where Franqui was locked up are situated 70 feet from the front desk.

**4. Male Cell 1**  
Franqui was locked in Male Cell 1 at 2:25 p.m.

**5. Male Cell 3**  
See officer John Burke was locked in Male Cell 3 roughly 20 minutes after Franqui was locked up.

**6. Video camera on Franqui's cell**  
According to Burke, Franqui could see each other through reflectors in a security camera encasement.

**7. Video camera on Burke's cell**  
Burke testified that as Franqui hung from a pair of pants, Burke hoisted a camera, pointed toward Franqui's cell, and screamed for help.

as interested only in “the arena of future retirement planning.” The evaluation stated that Simeone's “performance began to deteriorate” in 1988, his seventh year on the job. In years since, a supervisor reported problems motivating Simeone, who “purportedly incurred a back injury” when he fell out of his chair at a police precinct in 1996. A year later, Simeone had a heart attack and was placed on permanent limited duty.

The deputy inspector's evaluation concluded that the officer “seems to be lacking those qualities we expect of potential supervisors,” including “interest in one's career, needs of the public, development of subordinates and attainment of Department goals and objectives.”

Though Simeone called the evaluation “unfair,” he acknowledged under oath that he had difficulty with good physical activity as walking through a mall, “wearing his case, vacuuming, hanging or traversing a flight of stairs. A phone call to his desk at the precinct once agitated him so badly that he suffered an angina attack and had to call his wife to take him home,” Simeone testified.

My batteries run low and

then I have to rest,” Simeone said in a deposition for his lawsuit, which was ultimately dismissed before trial. “After putting in an eight-hour day, I'm exhausted.”

Simeone's limited duty status allowed him to carry a gun but not have any physical contact with suspects. Nevertheless, the department stated since 2000 at the Seventh Precinct front desk, where his duties included checking on prisoners in the cellblock.

Special grand jury testimony called into question whether Simeone had been making those checks. Simeone kept an activity log indicating that from 3 p.m. through 5 p.m. during Franqui's time locked up, he had checked on four prisoners.

Simeone was reluctant to state during his testimony that the inspections were actually occurring at the recorded times,” a special grand jury report stated. “He admitted during his testimony that some of the inspections may not have occurred as written on the



Officer Joseph Simeone was on duty the night of the suicide.

log.”

Though the homicide detectives did not note it in their report, their investigation uncovered recordings of two precinct phone calls in which Simeone could be heard speaking about a blanket that also been confiscated from Franqui.

“He was tying the blanket,” Simeone said. “That's why we don't give them blankets. I don't know why they give them blankets.” At another point he could be heard saying “tying a blanket... to the bars” and stating that “we took the blanket away

from him.”

Simeone did not tell the homicide detectives about the blanket incident, which occurred before Burke was locked up in the cellblock.

Both Simeone and O'Reilly refused to answer questions when subpoenaed by the commission, invoking their Fifth Amendment right to not incriminate themselves.

Attorney Brian J. Davis, who represents O'Reilly, defended his client's actions on the day of Franqui's death by noting his inexperience as a supervisor.

“There were certain things procedurally that he had never been trained in,” Davis said in a recent interview, adding that the lack of training was “not his fault.”

After Law Professor Gershman reviewed special grand jury reports and other documents, he said Franqui's suicide at Newsday's request.

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# The 7th precinct vs. Jack Franqui

In his own interview with the detectives, Simeone said “at no time did the prisoner indicate that he needed medical attention or that he was a threat to himself.”

Despite the evidence to the contrary, the police department’s public statements mirrored Simeone’s description of events. Then-homicide commander Det. Lt. John “Jack” Fitzpatrick, who signed his unit’s report detailing their investigation of the suicide, described Franqui as calm and at ease with officers before unexpectedly taking his own life.

“There was no indication he was suicidal,” Fitzpatrick said in a Newsday article published the morning after Franqui’s death.

Fitzpatrick retired last year and declined to comment for this article, citing the ongoing litigation.

**T**he only civilian eyewitness who could contradict the homicide commander’s account spent the next two months in Suffolk County jail cells.

Burke was released on March 22, 2013, after pleading guilty to charges that included a felony for disseminating indecent material to minors. He received a sentence of time served and immediately upon his release searched online for news about Franqui’s suicide.

He found the Newsday article containing what he called Fitzpatrick’s “ridiculous” characterization of Franqui’s calm demeanor before the suicide. “I was angered by that,” Burke said in sworn testimony.

On the day he was set free, Burke dialed the phone number Franqui had asked him to memorize. When Franqui’s father — who also goes by Jack — answered, Burke told him what happened and that “the reports in the news were false.”

Franqui’s family had received no information from law enforcement officials about the suicide other than what Fitzpatrick had said to the media. Burke told Franqui’s father, “I will be there to support you because your son seemed like a nice guy.”

“I got to know him for a couple hours,” Burke later testified. “And I just felt like what happened wasn’t right.”

After speaking with Burke, Franqui’s father hired Mineola attorney Anthony Grandinette. In a recent interview, Grandinette called the suicide in police custody the result of officers’ “catastrophic failure to follow their own rules and regulations” and criticized the homicide squad’s findings, which were “directly opposite” of what the evidence showed.

“That is not by mistake,” Grandinette said. “That is by design and it’s nothing short of fraud and corruption.”

In April 2013, Jack Franqui’s estate filed a notice of claim — a precursor to a lawsuit — against Suffolk County and its police department. The claim alleged that Suffolk officers violated Franqui’s civil rights when they falsely detained him, used excessive force during the arrest, ignored his suicidal actions and pleas for medical attention, and then covered up their failings.

“He would still be here today if we had people behind that desk who were willing to serve and protect,” Franqui’s father said. “They lied about it and hid the fact that they didn’t do their job.”

**A**s Franqui’s family moved ahead with their lawsuit, a state commission that oversees correctional institutions criticized Suffolk County’s district attorney’s office and police department for mishandling a case similar to that of Franqui.

The state Commission of Correction found in a report released June 2013 that District Attorney Thomas Spota’s office had been negligent in failing to criminally investigate the homicide of Daniel McDonnell, a carpenter with mental and physical health problems who died in a 2011 struggle with officers at the First Precinct. Suffolk County ultimately paid \$2.25 million to settle a wrongful death lawsuit filed by McDonnell’s family.

The commission found that officers conducted prisoner checks via security monitors rather than making required visits to the cellblock, ignored McDonnell’s screams for medical attention and failed to place him under one-on-one supervision despite his agitated state.

The commission report states that homicide detectives performed a “cursory and incomplete” investigation into the

# The 7th precinct vs. Jack Franqui

circumstances of McDonnell's death, including the use of excessive force by officers.

The commission also determined the police department had "failed to conduct a comprehensive internal investigation" into McDonnell's "preventable" death, the medical examiner's office "failed to adequately identify and examine the blunt force injuries" to his body and Spota's office "failed to conduct any investigation" of the death in custody even after it had been ruled a homicide.

Spota, in a defiant response written on June 27, 2013, called the commission's report "baseless and inaccurate."

Meanwhile, nearly six months had passed since Franqui's death, and Spota's office had not convened a grand jury to investigate the incident.

**F**ranqui's family filed its lawsuit in U.S. District Court for the Eastern District in Central Islip in late October 2013. In January 2014 — nearly a year after Franqui's death — Spota convened a special grand jury to investigate the matter.

Pace Law School professor and former Manhattan prosecutor Bennett Gershman said it's highly unusual for a district attorney to allow so much time to elapse before opening a grand jury probe.

"It's incomprehensible that they would wait so long, especially if you're talking about events that rely on people's memories," Gershman said.

Peter Davis, a recently retired professor at Touro Law Center who previously probed police misconduct as special counsel to a Suffolk County Legislature committee, agreed that the lag before convening the grand jury was unusual.

"The general rule is that a delay is bad for the district attorney's case and good for criminal defendants," Davis said. "You don't want a delay if you can avoid it."

During the nine-month special grand jury session, prosecutors called 24 witnesses and presented 45 exhibits of evidence, much of it materials that homicide investigators had access to on the night of the suicide.

The brunt of the blame would fall on Simeone, whose contentious history with the department is contained in a separate

civil court case that was not noted in the grand jury report.

Simeone unsuccessfully sued the SCPD in 2000, claiming that he had been rejected for promotion to sergeant due to discrimination on the basis of disability and age.

The department countered that the rejection was based largely on a deputy inspector's evaluation depicting Simeone as interested only in "the arena of future retirement planning."

The evaluation stated that Simeone's "performance began to deteriorate" in 1988, his seventh year on the job. In years since, a supervisor reported problems motivating Simeone, who "purportedly incurred a back injury" when he fell out of his chair at a police precinct in 1996. A year later, Simeone had a heart attack and was placed on permanent limited duty.

The deputy inspector's evaluation concluded that the officer "seems to be lacking those qualities we expect of potential supervisors," including "interest in one's career, needs of the public, development of subordinates and attainment of Department goals and objectives."

Though Simeone called the evaluation "untruthful," he acknowledged under oath that he had difficulty with such physical activity as walking through a mall, washing his car, vacuuming a rug or traversing a flight of stairs. A phone call to his desk at the precinct once aggravated him so badly that he suffered an angina attack and had to call his wife to take him home, Simeone testified.

"My batteries run low and then I have to rest," Simeone said in a deposition for his lawsuit, which was ultimately dismissed before trial. "After putting in an eight-hour day, I'm exhausted."

Simeone's limited duty status allowed him to carry a gun but not have any physical contact with suspects. Nevertheless, the department stationed him since 2000 at the Seventh Precinct front desk, where his duties included checking on prisoners in the cellblock.

Special grand jury testimony called into question whether Simeone had been making those checks. Simeone kept an activity log indicating that from 3 p.m. through 5 p.m. during Franqui's time locked up, he had checked on him every



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half-hour, as required. However, the log showed no inspection until 5:40, when it is noted that Franqui's T-shirt was confiscated.

The officer acknowledged during his special grand jury testimony that his log may have been inaccurate. "Simeone was reluctant to state during his testimony that the inspections were actually occurring at the recorded times," a special grand jury report stated. "He admitted during his testimony that some of the inspections may not have occurred as written on the log."

Though the homicide detectives did not note it in their report, their investigation uncovered recordings of two precinct phone calls in which Simeone could be heard speaking about a blanket that had also been confiscated from Franqui.

"He was tying the blanket," Simeone said. "That's why we don't give them blankets. I don't know why they give them blankets." At another point he could be heard saying "tying a blanket . . . to the bars" and stating that "we took the blanket away from him."

Simeone did not tell the homicide detectives about the blanket incident, which occurred before Burke was locked up in the cellblock. Simeone's supervisor, O'Reilly, also said he had not been told about the blanket.

Simeone acknowledged to the grand jury that "anytime you see somebody doing something by the bars, that's a red flag, you take a look." But Simeone testified he did not believe confiscating Franqui's blanket was a significant event of the sort that would merit action.

Sgt. O'Reilly disagreed, testifying before the special grand jury that if he had known about the blanket incident when officers later removed the T-shirt from Franqui's cell, he would have put the prisoner under one-on-one supervision. "Franqui's suicide would not have occurred and was preventable," a special grand jury report stated.

The Commission on Correction, which completed its own report on Franqui's death in September, agreed with the special grand jury's findings but found that Simeone was not the only officer at fault. The commission also stated that O'Reilly's failure to put Franqui under iso-

lated supervision or send him to a hospital after the T-shirt incident was "a fatal mistake" that led to Franqui's death.

Both Simeone and O'Reilly refused to answer questions when subpoenaed by the commission, invoking their Fifth Amendment right to not incriminate themselves.

Attorney Brian J. Davis, who represents O'Reilly, defended his client's actions on the day of Franqui's death by noting his inexperience as a supervisor.

"There were certain things procedurally that he had never been trained in," Davis said in a recent interview, adding that the lack of training was "not his fault."

Peace Law Professor Gershman reviewed special grand jury reports and other documents detailing Franqui's suicide at Newsday's request. The former prosecutor said criminal charges against Simeone and other officers could have included conspiracy, official misconduct, filing a false instrument, tampering with evidence, obstructing governmental administration and perjury.

Retired Touro Professor Davis, who also reviewed the documents, said that the officers involved "certainly" could have been charged with some of those crimes, comparing the Franqui situation to the ongoing prosecution of Baltimore police officers blamed for prisoner Freddie Gray's death in custody.

But the grand jurors in Franqui's case did not have the option to indict either Simeone or O'Reilly, because both received from district attorney Spota what is known as "transactional immunity." In New York, if a grand jury witness is allowed to testify without waiving the right to automatic immunity, the witness is shielded from prosecution in the case.

A special grand jury report justified the decision to allow Simeone and O'Reilly to receive immunity because their "testimony was key to determining what occurred" and "in order to learn the truth, prosecutors were forced to give up the ability to criminally prosecute any police officer."

Gershman said with other willing witnesses — such as Burke and Officer Oliva, who agreed to waive his right to immunity before testifying — "you don't have

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to give immunity to any of these officers.”

State criminal justice statistics show that Suffolk County prosecutors are normally unencumbered by the transactional immunity law and are among the most successful in the state during typical grand jury proceedings. Between 2008 and 2014, Spota’s office won over 314 indictments to each “no bill” — meaning a proceeding that ended without an indictment due to insufficient evidence — in grand juries stemming from felony arrests. The statewide average in the same kind of cases over that span was just over seventeen indictments to every no bill.

Spota has also blamed the transactional immunity law for his inability to prosecute police in the special grand jury convened to investigate the cabdriver shooting in Huntington Station by intoxicated off-duty Nassau Officer DiLeonardo. Spota claimed in that case that his prosecutors could not proceed at all for fear of granting immunity to other officers at the scene of the shooting who may have broken the law.

Gershman noted that Spota’s handling of transactional immunity in the DiLeonardo and Franqui cases were at odds. But “in both cases it appears he’s protecting the police,” Gershman said.

**T**he special grand jury that investigated Franqui’s death released two reports, one calling for Simeone to be disciplined and the other proposing recommendations for widespread reform to prevent another tragedy.

Among the 19 recommendations, grand jurors in the Franqui case called for the formation of a county task force to investigate ways in which Suffolk police can improve “prisoner safety, security, humane treatment and medical treatment” for detainees.

Grandinette, the Franqui family’s attorney, said that he relayed to the district attorney’s office a request from Franqui’s father that he be involved in the proposed task force inspired by his son’s death. Grandinette said he received no response.

The report also recommended that the police department improve screening so that officers are aware of an arrestee’s past suicidal or psychiatric behavior; that precincts employ “detention attendants”

to “maintain close physical observation of prisoners”; that light-duty officers like Simeone not be permitted to perform prisoner inspections; that supervisors be ranked higher than sergeant in order to be in charge of a precinct; and that each desk have more than two officers and a supervisor per shift.

And the special grand jury reports called for all precinct video cameras to record and be positioned to monitor the officers as well as the prisoners.

Special grand jury reports are public records under New York State law, and Spota has touted many of those reports on his office’s website. But in the matter of Franqui’s suicide, he did not have the report posted and made no public announcement that an investigation had occurred. Spota would not make himself available for an interview with Newsday, which first contacted his office about this story in September.

Former Touro Professor Davis said he found the lack of promotion of the grand jury’s findings troubling considering the high expense and public importance of grand jury proceedings.

“The recommendations then need to be communicated to the people involved and they should be published to the general public as well,” Davis said. “If they don’t do that, then I’m not quite sure what the point is.”

At least one lawmaker who would be central to implementing the recommended reforms said although she knew of Franqui’s suicide, she had “heard nothing” about a probe being convened to investigate it.

Legis. Kate Browning (WF-Shirley), who is chair of the Suffolk County Public Safety Committee and whose district includes the Seventh Precinct, said she had not seen copies of the special grand jury reports until a Newsday reporter provided them in September.

“It’s a little disturbing when you call me about something and I don’t have that information,” Browning said.

The police department cited the ongoing litigation in denying Newsday an interview with any officials about the Franqui case, but said in an emailed statement that it “continues to implement and maintain the best police practices” in ensur-

# The 7th precinct vs. Jack Franqui

ing the safety of arrestees and had made changes in mental health screening, prisoner monitoring and training.

The grand jury reports also noted that some changes had already been implemented in the immediate wake of Franqui's death. Steel doors to cellblocks are now operated by a key card that tracks which officer is checking on prisoners, and how often. And officers must now keep their precinct's intercom in the "on" position so that a prisoner's screams for help can be heard.

Although not requested by the grand jury, the officers' television has been removed from the Seventh Precinct.

Court records show that Simeone was not interviewed by the department's Internal Affairs Bureau until July 2014, nearly a year and a half after Franqui's suicide.

The records reveal that administrative charges were filed against at least three officers: Simeone, Sgt. O'Reilly, and Lt. John McHugh, who oversaw the previous shift

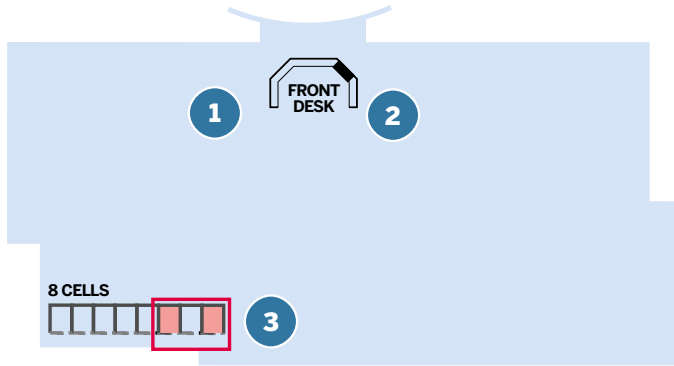
and booked Franqui. The records do not specify the charges against the officers or whether any discipline was administered. In its statement, which did not name any officers, the SCPD said that the adjudication of discipline was "still pending."

O'Reilly's attorney, Davis, said that his client had not been disciplined and that he did not expect any discipline to be meted out until the conclusion of the civil action by Franqui's family.

The special grand jury recommended Simeone's "removal or disciplinary action as prescribed by law." In January 2015, Spota wrote in a letter to then-SCPD Commissioner Edward Webber that it was his "recommendation and hope" that the department fire Simeone and implement the special grand jury's recommendations "so that another tragedy is prevented."

Simeone, who earned \$168,344 in 2014, has not been fired in connection with Franqui's death. He has been transferred to the police department's Yaphank-based property bureau, where he is responsible for evidence.

## SEVENTH PRECINCT STATION



**1. Front Desk**

Officers Joseph Simeone and George Oliva manned the front desk at the time of the suicide. Directly behind their desk was that of supervisor on duty, Sgt. Kevin O'Reilly.

**2. Video Monitors**

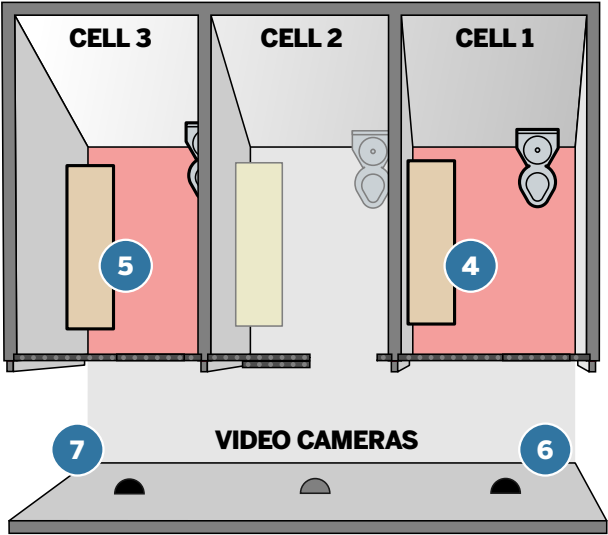
The front desk has 16 video monitors showing footage of the cellblocks where prisoners are kept. Though an intercom was installed, during Franqui's death the sound was muted and the officers' television audio was turned up.

**3. Male holding cells**

The male holding cells where Franqui was locked up are situated 70 feet from the front desk.

**4. Male Cell 1**

Franqui was locked in Male Cell 1 at 2:25 p.m.



**5. Male Cell 3**

Sex offender John Burke was locked in Male Cell 3 roughly 20 minutes after Franqui was locked up.

**6. Video camera on Franqui's cell**

According to Burke, he and Franqui could see each other through reflections in a security camera encasement.

**7. Video camera on Burke's cell**

Burke testified that as Franqui hung from a pair of jeans, Burke faced a camera, pointed toward Franqui's cell, and screamed for help.