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Officers' Drug Tests Barred From Release

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RIVERSIDE — Saying the constitutional rights of a veteran police officer were probably violated, a judge has barred the city of Riverside from gaining access to the results of drug tests taken from the officer after a suspect died in custody.

In an order issued Monday, Superior Court Judge Stephen P. Cunnison granted a preliminary injunction preventing disclosure of the results pending a trial on the legality of the Riverside Police Department's drug-testing policy.

The ruling was a victory for Detective Vernon Bryant, a 25-year veteran whom Chief Ken Fortier had accused of getting drunk in order to foil the drug tests. Bryant was involved in the arrest of Hector Islas, who died Jan. 2 shortly after being taken into custody.

Cunnison also granted a similar injunction for another officer, Mario Quesada, who took part in the arrest. "I am encouraged by the judge's ruling," said Robert M. Wexler, an attorney for both officers and the Riverside police union. "I think it recognizes the constitutional rights of the officers."

But lawyers for the city were still hopeful of prevailing. "When we go forward to a trial on the merits, I think at least some of the issues [cited by the judge] will change," said Paul R. Coble, a Long Beach attorney.

Islas, 33, was subdued by five officers in a high school parking lot after being seen running across both directions of traffic on a Riverside freeway. According to court documents, he died of a heart attack.

Three of the officers voluntarily gave blood samples to investigators and Quesada supplied a urine sample after reading a copy of the department's drug-testing policy. But Bryant only consented to a urine sample the next day, doing so, Fortier alleged, after drinking heavily at home to mask the results of any tests.

On Feb. 6, the chief promised community activists a complete investigation of Islas' death. But a week later, the police union obtained a temporary restraining order blocking disclosure of the Bryant and Quesada results. *Riverside Police Officers' Association v. City of Riverside*, RIF292595.

At a hearing on the union's petition for an injunction last week, attorneys did not focus on the constitutionality of drug testing, an area now fairly settled by case law. Instead, the key issue was whether Chief Fortier followed legally valid procedures in expanding his testing policy last year.

According to a policy adopted in April 1995, an officer who discharges a weapon is required to submit to a drug test. Last August, however, the policy was changed to cover any officer who witnessed or was involved in a deadly use of force.

The police association argued Fortier made that change unilaterally without conducting the required "meet-and-confer" negotiations with the union. "We are vehement in our position that the 1996 policy was illegally adopted," Wexler, a Santa Monica attorney, said in court.

The city, on the other hand, maintained it had an "established past practice" of ordering drug testing of officers in cases of death resulting from police use of force. Moreover, the city claimed testing of Bryant was warranted because investigators had a reasonable suspicion that he had used drugs.

"The interest we have is a legitimate one," Coble, a name partner in Mayer, Coble & Palmer, argued last week. "We are trying to determine whether or not the continued trust of the community in the Police Department is warranted."

But in a written ruling, Judge Cunnison said the Police Department had failed to cite any negotiated policy requiring an officer reasonably suspected of drug use to submit to testing. Nor had it shown the existence of an established past practice. "[P]etitioners have demonstrated the probable unlawfulness of the order given to Officer Bryant," Cunnison concluded.

In Quesada's case, the judge noted that while the officer provided a sample in response to an order given under the 1996 policy, that policy was a new "term and condition" of employment which had not been negotiated as required. A status conference in the matter has been set for April 1. Coble said he was confident that trial evidence "will establish that [the city] had an established practice of testing when there is reasonable suspicion" of drug use by an officer.