

## SOUTH BAY

## Torrance Police Suit

By GEORGE STEIN, Times Staff Writer

## Looks Headed for Trial

After battling for five years to avoid trial, the city of Torrance appears headed for a jury trial in a suit alleging that police officers covered up for an off-duty sergeant who had been drinking before a fatal traffic accident.

The city, which denies the allegations, lost a motion for summary judgment in a decision released Tuesday. A conference to set a trial date is scheduled for mid-May. "It is definitely heading for trial," said Casey Yim, an attorney representing Torrance. Lawyers for the plaintiffs agree.

The case—already noteworthy for the access given the plaintiffs to confidential Police Department records—will be the first involving accusations of Torrance police misconduct to reach a jury in at least 10 years, said attorney Brian Panish, who represents the family of the man killed in the accident.

Torrance City Atty. Ken Nelson said he is unaware of any similar case going to trial. "We are not in a posture to talk settlement," he said, adding that the legal combat so far has been "very hard fought."

The civil case grew out of a late-night collision on Rolling Hills Road on Aug. 30, 1984. Kelly Rastello, 19, of San Pedro, was killed when his motorcycle slammed into a pickup truck making a left turn. The truck was driven by Torrance Police Sgt. Rallo Green.

The Torrance Police Department maintains the accident was caused

by Rastello, who it said was speeding. Green was not charged.

Rastello's parents—John and Geraldine—filed suit on Sept. 15, 1984, alleging wrongful death, a cover-up by the police and that the department habitually protected officers involved in wrongdoing.

In a ruling released Tuesday, Superior Court Judge Miriam A. Vogel denied the city's motion for dismissal, saying a jury should decide what happened. She said, "There are disputed facts regarding whether there was a cover-up," in particular, whether Green was intoxicated at the time of the accident, whether he made a left-hand turn, causing Rastello's death, and whether police "altered, fabricated or destroyed evidence."

Vogel's ruling is the latest in a series of setbacks for the city in the case.

In November, Torrance officials complained about the California Supreme Court, which upheld an order by retired Superior Court Judge John K. Trotter requiring Torrance police to disclose vast amounts of information on police misconduct. The material was released after attorneys for the Rastello family argued that it was needed to prove their allegation that Torrance police habitually covered up for officers.

About the same time, Trotter, who was presiding over pretrial proceedings, became increasingly impatient with attorneys for the city, scolding them for "obstruc-

tionist" behavior during pretrial discovery. He twice imposed sanctions, with the fines totaling \$15,000.

"I have never seen a case where one side has been so unwilling to provide what it should," Trotter said in November when he imposed the first sanction. "There is a difference between good advocacy and obstructionism, and you've passed the line," he told Torrance attorneys, according to court papers.

In January, just before the second sanction was imposed, Trotter again chastised the city, saying, according to court papers, that he was "shocked at the conduct of the attorneys; the obstructionist position must stop."

In addition to the fines for being uncooperative, the city also was recently ordered to pay the future costs of a second deposition with Lt. David Marsden, one of the Police Department's senior supervisors. Marsden had urged Green to attend a meeting of Alcoholics Anonymous a month before the accident, according to a sworn statement by Green, in which he also acknowledged he had been drinking the night of the accident.

During the first question-and-answer session with Marsden, the attorney for the city prevented the officer from answering a number of questions about how widely known Green's drinking problem was within the Police Department.

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In her ruling, Vogel wrote that the city and other defendants, while disputing many of the allegations in the suit, "offer no evidence to dispute . . . 68 additional facts" cited by attorneys for the Rastello family in support of their case. The statements are contained in a motion that sets out the plaintiffs' version of "disputed facts."

The "additional facts"—and supporting documents and court papers—provide additional details about the plaintiffs' case that stem from five years of investigation by the firm representing the Rastello family, Greene, O'Reilly, Broillet, Paul, Simon and Wheeler.

## Report Disputed

Citing medical records, interviews with alcohol treatment personnel and Green's deposition, the attorneys claim in their "statement of disputed facts" that Green had an alcohol problem since age 13 to 14 that continued in military service and had increased "to the point of his drinking a quart of whiskey a day, usually Seagram's 7." As a police officer, Green was late for work and had other job-related problems because of alcoholism, according to the court paper.

In asserting that at least four Torrance police officers tried to cover up for Green at the accident and afterward, the attorneys allege that one of the senior traffic officers on the scene "knew" that Green was at fault—even though the traffic collision report said otherwise.

## Eye-Gaze Test

In supporting court papers, the attorneys say they checked all other fatal and major traffic-injury collision reports involving left-hand turns or violations of the right of way for the three months preceding the accident. The attorneys determined that, contrary to the report on Green, Torrance police had "universally" found that the left-turning person violated the right of way of the other and was responsible for the collision.

"This was true even where the person having the right of way was speeding," the attorneys said.

In the "additional facts" cited by Vogel and supporting court papers, the attorneys say they analyzed a year's worth of drunk-driving cases handled by the two senior traffic officers who arrived on the scene. "Each officer promptly administered a series of field sobriety tests

to each DUI suspect," the attorneys wrote.

But Green was not tested for more than an hour after the accident and then was given only an eye-gaze test by an officer who had been called to the scene later.

Analyzing all of the drunk-driving arrests made by that officer in August, 1984, the attorneys concluded—in the statements cited by Vogel—that contrary to the single eye-gaze test given Green, the officer routinely gave a battery of tests to suspects, including tests involving eye-gaze, one-legged balance, finger-to-nose coordination, heel-to-toe balance during alphabet recitation and heel-to-toe walking.

The attorneys also allege in the same documents that the follow-up investigator altered and fabricated portions of witness statements, ignored skid marks and misinterpreted other information about the crash to make it appear that Rastello was traveling at 68 m.p.h. An expert for the Rastello family said in a sworn statement that he estimated that Rastello crashed

into Green's pickup truck at 21 m.p.h.

The attorney for Torrance, Yim of the law firm Lewis, D'Amato, Brisbois and Bisgaard, said he did not know why the judge said in her ruling that the 68 "additional facts" were undisputed.

## Claims Addressed

"We addressed each of the claims" in statements of disputed facts, said Yim. "Everything was in the police report."

Yim said the city continues to object to the sweeping disclosure required by the court.

"We are not obstructing anything," he said, adding the city disputes whether "plaintiffs are entitled to discover confidential documents involving hundreds of people, Torrance police officers who have nothing to do with this case. We have a right, I believe, to object to the production of these documents on the grounds that they violate . . . privacy."

Panish, who represents the Rastello family, said he is "anxiously" waiting to take the case to a jury.