

# BLOOD: Drunken-driving suspects say they were denied their choice of alcohol tests

FROM 1

Plus, White said, many suspects choose the blood tests on their own because the department has a contract with a blood-testing firm that allows many suspects to be released quickest if they take a blood test.

In his motions to Munoz on Walker's behalf, Simons contends that Irvine police statistics confirm their bias toward blood tests.

More than 75 percent of DUI suspects arrested by Irvine police in 1994 had their blood-alcohol content determined by a blood test, according to documents filed at the sheriff's crime lab, which analyzes the tests.

But statewide, fewer than 30 percent of suspects who had their driving privileges suspended for drunken driving chose blood instead of breath or urine tests, according to state Department of Motor Vehicles statistics.

"The Legislature provided for three tests," Simons said. "They should be neutral in administering them."

Irvine police officials say the statistics, even if true, do not prove a thing.

"It's a jump in logic that because we give people more blood tests that we're forcing people to give blood," said Irvine police Sgt. Jeff Love.

Deputy District Attorney Elizabeth Otter, who is prosecuting Walker, said she is confident Munoz will refuse to throw out evidence of Walker's 0.13 percent blood-alcohol level. A person is deemed to be under the influence if his or her level is .08 or higher.

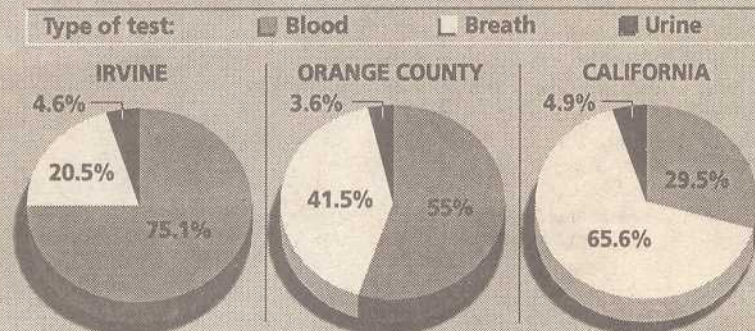
"The data is incomplete and inaccurate," Otter said. "I wasn't impressed with his conspiracy theory. ... He's going to lose the motion."

Walker contends that he was not offered a choice of tests and agreed to a blood test only after he was told that blood would be forcibly drawn from him.

"The officer insisted that he submit to a blood test, forcibly held Mr. Walker's arm and advised him, 'Look, you're going to take a blood test or I'm going to wrestle you to the ground and forcibly take blood from you,'"

## ALCOHOL TESTING

Under California law, drunken-driving suspects can choose whether to have their blood-alcohol level tested by blood, breath or urine sample. Following is an analysis of tests selected by suspects in Irvine, Orange County and California in 1994.



Note: Pie charts exceed 100% due to rounding of numbers.

Source: Steven L. Schandler, professor of psychology and research at Chapman University, from Department of Motor Vehicle and Orange County Sheriff's Department records.

The Orange County Register

## IT'S THE LAW

"If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood, breath, or urine and the officer shall advise the person that he or she has that choice."

— The California Vehicle Code, Section 23157

Simons contends in a motion.

But Otter said the evidence will show that Walker refused to take any of the three tests, enabling officers to then threaten to forcibly draw blood from him.

"I do cases all the time and I see just as much breath, urine, blood," Otter said.

In Heil's case, Irvine police said they had a legal right to demand blood because the officer noted in his report that he thought Heil, 34, was under the influence of methamphetamine. The test showed he had no illegal drugs in his system.

Heil said he drank three cans of beer over several hours the day after Thanksgiving in 1994 and decided to drive from his Garden Grove home to pick up some overtime at his Irvine factory job.

He never made it to work.

Officers arrested him, made him take a blood test and seized his driver's license, Heil said.

"The officer said, 'I'll bring in four of my buddies, we'll hold you down, we'll take your blood and you'll spend the weekend in jail,'" Heil recalled. "Or you can give blood and you'll be out of here in an hour."

Test results that arrived weeks later showed his blood-alcohol level was 0.06 percent, below the legal limit.

While he waited for the blood results, Heil said he was forced to endure the humiliating experience of showing a temporary license — indicating he was a DUI suspect — to cash a check at his local market.

"It was very embarrassing," he said. "I know all the checkers by first name. I had to say, 'I don't have a license, I got arrested. Here's a sheet of paper.'"

Even though blood tests, at \$42 apiece, are more expensive than breath tests, Bröbeck said they are well worth the expense.

"I'm absolutely comfortable at how we're taking care of business," the chief said. "I think our conviction rate is over 90 percent. That's the bottom line I look at."