

THE BISARD CRASH

A REVIEW OF THE INCIDENT / INVESTIGATION

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From the investigative reports of Detectives Rick Burkhardt and Tom Lehn, and Professional Standards Division Investigators Sergeants David Hofmann and Sandra Storkman.

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INTRODUCTION

On Friday, August 6, 2010 IMPD Officer David M. Bisard traveled westbound on E. 56th St. across I-465 driving his semi-marked police vehicle with red/blue lights and sirens activated at a high rate of speed (73 mph in a 40 mph zone). Officer Bisard was weaving in and out of traffic. Officer Bisard crashed into three people on two motorcycles that were stopped at a red light at Brendon Way Parkway.

Mr. Eric Wells, 30, died as a result of injuries sustained in the crash. Ms. Mary Mills, 47, was seriously injured. Mr. Kurt Weekly, 44, was critically injured.

To comply with state law pertaining to mandatory blood draws for drivers involved in fatal crashes, Officer David Bisard consented to a blood draw. The blood draw was conducted at the Methodist Occupational Health Center, 1101 Southeastern Avenue, by Michelle Maga, a medical assistant and phlebotomist who had been assisting the attending physician Dr. Alex Sajiv while he treated Officer Bisard's injuries.

Three days later, on Monday, August 9, 2010, one of the two vials of Officer Bisard's blood was tested for alcohol at the Indianapolis Marion County Forensic Services Agency ("Crime Lab"). Those tests showed Bisard's blood contained .19 grams of alcohol per 100 milliliters of blood (.19% BAC). Marion County Prosecutor Carl Brizzi was advised of the results. The next day, Tuesday, August 10, the test results were made public. A warrant was issued for Bisard's arrest. Prosecutor Brizzi filed the following charges against Officer Bisard:

Reckless Homicide/FC

Operating a Motor Vehicle w/ a BAC of 0.15 or Higher Causing Death/FB

Operating a Motor Vehicle While Intoxicated Causing Death/FC

Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury/FD

Operating a Motor Vehicle w/ a BAC of .08 or higher Causing Serious Bodily Injury/FD

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On the following day, Wednesday, August 11, 2010, IMPD Chief of Police Paul R. Ciesielski suspended Officer David Bisard pending formal termination proceedings by the Merit Board.

Bisard left the meeting with Chief Ciesielski and turned himself in at the Arrestee Processing Center (APC), to be booked. He posted the required \$10,000 bond and was released shortly thereafter.

On Thursday August 19, 2010, Prosecutor Brizzi announced his decision to dismiss the alcohol-related charges against Officer David Bisard. Brizzi said he decided to drop

charges because the blood draw was improperly taken and would not be admissible. He said, *"It wasn't conducted at a hospital, as it's defined under the statute, and it wasn't performed by someone who has the legal requirements necessary."* He explained a 'lab tech' at the clinic performed the draw.

In the wake of the dismissal of alcohol-charges, Public Safety Director Frank Straub, PhD., requested the FBI assign agents to conduct an independent investigation. FBI Special Agents Bradley Bookwalter (of Merrillville, IN) and Russell Warlick (of Bloomington, IN) were assigned and were assisted by IMPD Detectives Rick Burkhardt and Tom Lehn.

This investigation determined that Officer Bisard violated several IMPD General Orders on the day of the crash. The investigation determined that due to poor crash/crime scene control, and a lack of supervision, evidence was lost and/or seriously compromised. There is no evidence to suggest that Officer Bisard's blood was improperly secured, entered into evidence improperly, or that the blood test results were altered. In fact, all of the tests confirm that Officer David Bisard's blood alcohol content (B.A.C) was .19%.

This report supports Chief of Police Paul Ciesielski's recommendation for Officer David Bisard's termination, and the demotions and re-assignments of senior IMPD personnel. The report also identifies IMPD policies and procedures that must be corrected to ensure the integrity and professionalism of IMPD crash and/or crime scene investigations.

INDIVIDUALS INTERVIEWED

Sixty-seven (67) individuals were involved in this incident, or the subsequent investigation of it. They were formally interviewed by FBI agents and/or IMPD Professional Standards Division Investigators:

IMPD Sgt. Jeff Peterson	IMPD Sgt. Doug Heustis	IMPD Sgt. Mark Fagan
IMPD Sgt. Steve Randall	IMPD Lt. Larry Jahnke	IMPD Ofcr. Jason Cottey
IMPD Lt. Benny Diggs	Lisa Moyer (accident witness)	IMPD Ofcr. Dan Ryan
IMPD Chaplain Phil Bacon	Timothy Griffith (accident witness)	IMPD Sgt. Allen Tuttle
IMPD Ofcr. Brian Jennings	Jennifer Westphal,(accident witness)	IMPD Ofcr. Joseph Maxey
IMPD Ofcr. Christine King	April Sohn (Wishard Medic)	IMPD Ofcr. Brian Dixon
IMPD Ofcr. Bradley Millikan	Barbara Miller (Wishard Medic)	IMPD Ofcr. Mark Archer
IMPD Ofcr. Jonathan Koers	Dr. Sajiv Alex (Director, MOHC)	IMPD Lt. George Crooks
Barbara Belt (accident witness)	IMPD Ofcr. Thomas Stout	Kathy Walton (Crime Lab)
IMPD Lt. Ron Hicks	IMPD Lt. Darryl Pierce	IMPD Lt. John Conley
IMPD Ofcr. David Whitesell	IMPD Ofcr. Marlon Minor	George Burt (accident witness)
IMPD Ofcr. Brad Bolling	IMPD Ofcr. Scott Baker	IMPD Sgt. Kim Jointer
IMPD Ofcr. Greg Brinker	Kenny Simpson (Municipal Garage)	Frank Evans (accident witness)
Ed Zych (Deputy Prosecutor)	IMPD Sgt. Craig Heddon	IMPD Ofcr. Mike Hegg
IMPD Ofcr. Kevin Stickford	IMPD Ofcr. Ron Shelnutt	IMPD Ofcr. Ron Santa
IMPD Major Tom Koppel	IMPD Ofcr. Paul Spall	IMPD Sgt. Craig Patton
IMPD Ofcr. Mark Rand	Samantha Daniels (accident witness)	Jane Meadows (CVS employee)
Lawrence PD Lt. Stan Stephens	Lawrence PD Ofcr. Stacey Perkins	Lawrence PD Lt. Ray Anderson
Michelle Maga (MOHC)	MSD Wash. Twp. Ofcr. Eric Trost	IMPD Lt. Jeff Decker
IMPD Sgt. Linda Jackson	IMPD Sgt. Bill Owensby (FOP)	IMPD Ofcr. Rod Wallace (FOP)
IMPD Ofcr. David Moore	IMPD Ofcr. Greg Davis	

IMPD Civilian Senobia Pervine (Victim Assistance)

Gerald Griffin (CVS store witness and an attorney in law firm that represents one accident victim)

IMPD Civilian Becky Hardin (Property Room)

IMPD Chief of Police Paul Ciesielski

Director of Public Safety Frank Straub, Ph.D.

Pre-Crash

Officer Bisard's unit history for Friday, August 6, 2010, shows he logged on duty at 08:36 hours and put himself in "out-of-vehicle" status at 08:44 hours.

Officer David Bisard started his day at Shortridge Municipal Garage located at 7403 E. 30th Street for a scheduled P.M. (preventative maintenance) for his marked brown 2005 Ford Crown Victoria police K9 car. Kenneth Simpson was the automotive technician that worked on Officer Bisard's assigned police car. Simpson stated he completed an oil change and replaced the front brake pads on the vehicle after he (Simpson) determined the pads needed to be replaced. According to Simpson, Officer Bisard never mentioned any problems with the vehicle's brakes or ABS system. Vehicle maintenance records document "brake light flashing" under repair notes in the garage maintenance log. (Fleet Services documents) Simpson maintains that Officer Bisard never reported any brake problem. Sgt. Doug Heustis determined, during the reconstruction he performed, that the ABS system had failed on the 2005 Crown Victoria sedan and was a factor in the crash. (Fatal Crash Packet)

During the entire time he worked on the vehicle, Simpson stated he carried on a conversation with Officer Bisard and did not note any indicators (smell, bloodshot eyes, and unsteady balance) that Officer Bisard had either been consuming alcohol or was under the influence of alcohol. Simpson stated Officer Bisard left the garage a short time after 09:00 hours.

Canine Unit Commander, Lieutenant Benny Diggs, corroborated Officer Bisard's visit to the municipal garage the morning of the incident in his statement based on a conversation he had with Officer Bisard after the crash occurred. Diggs stated, *"He (Bisard) repeated to me exactly what he said had happened that morning. He did say that he had gotten up at 8:00 o'clock in the morning and ate breakfast, from breakfast he went to the garage on the east side...And he goes out and gets a PM (preventative maintenance). And then he said after the PM, he comes back to his house. He gets...takes a shower. He drives his daughters to soccer camp. Then he comes home and gets his uniform on and goes to work."*

Officer Bisard refused to be interviewed. Therefore, it is unknown what other activities Bisard engaged in between 09:00 hours and 11:17 hours.

At 11:08 hours, Special Deputy Herman (unit 5538), Marion County Probation Department, received a tip that "wanted" subject Terrance Malone was back in the area of East 42nd Street and Priscilla Avenue riding a bike. Deputy Herman advised the control operator (Lisa Myers IM17) and asked for a couple of IMPD officers to respond to assist in finding Malone. Deputy Herman stated he made no special request for a K9 officer to respond. At 11:09 A.M., Lisa Myers (IM17), the control operator handling the request from Deputy Herman, dispatched the run to Officers Jon Koers (A134) and Shannon Harmon (A151). The following is the radio

traffic as Myers dispatched the run (MECA Communications tape):

Control Operator Myers: “Adam one thirty-four, one fifty-one, Adam one thirty-four, one fifty-one, start for 42nd and Priscilla in that area there is supposed to be a black male, Terrance Malone, he’s five-two, one hundred ten pounds wearing a white t-shirt, dew rag, shorts on a bicycle. He’s wanted for felony D possession. Fifty-five thirty-eight is also en route to that location.”

Officer John Koers: “One thirty-four, roll call.”

Officer Shannon Harmon: “One fifty-one, seventy-fifth and Binford.”

Koers: “One thirty-four, One fifty-one.”

Koers: “One thirty-four, One fifty-one.”

Harmon: “Go ahead one thirty-four.”

Koers: “I know you’re not close. I just checked the query units and there’s like three fifty-five hundred units (the probation officers) on this run. I don’t know what kind of detectives those are but you can probably disregard since you’re coming from that far away.”

Harmon: “Oh, I’m roughly seven one and Shadeland. I can be there in probably five or six. It’s up to you.”

Koers: “I’m almost ten twenty-three, I’ll just uh...I’ll just advise you. They’re probably not on the same channel as us anyway.”

Harmon: “Ten four”

Officer David Bisard: “One thirty-four to K-seventeen”

Koers: “Go ahead, sir.”

Bisard: “Uh, do you think they’ll need me over there?”

Koers: “I don’t know. I’m like a minute away. It just says he’s on his bike so I don’t even know if this guy is still there. I don’t have any further information from those detectives at all.”

Bisard: “So, when you get there, let me know. I’ll roll that way.”

Koers: “Ten four”

Bisard: “Control K-seventeen, back me to one thirty-four for now.”

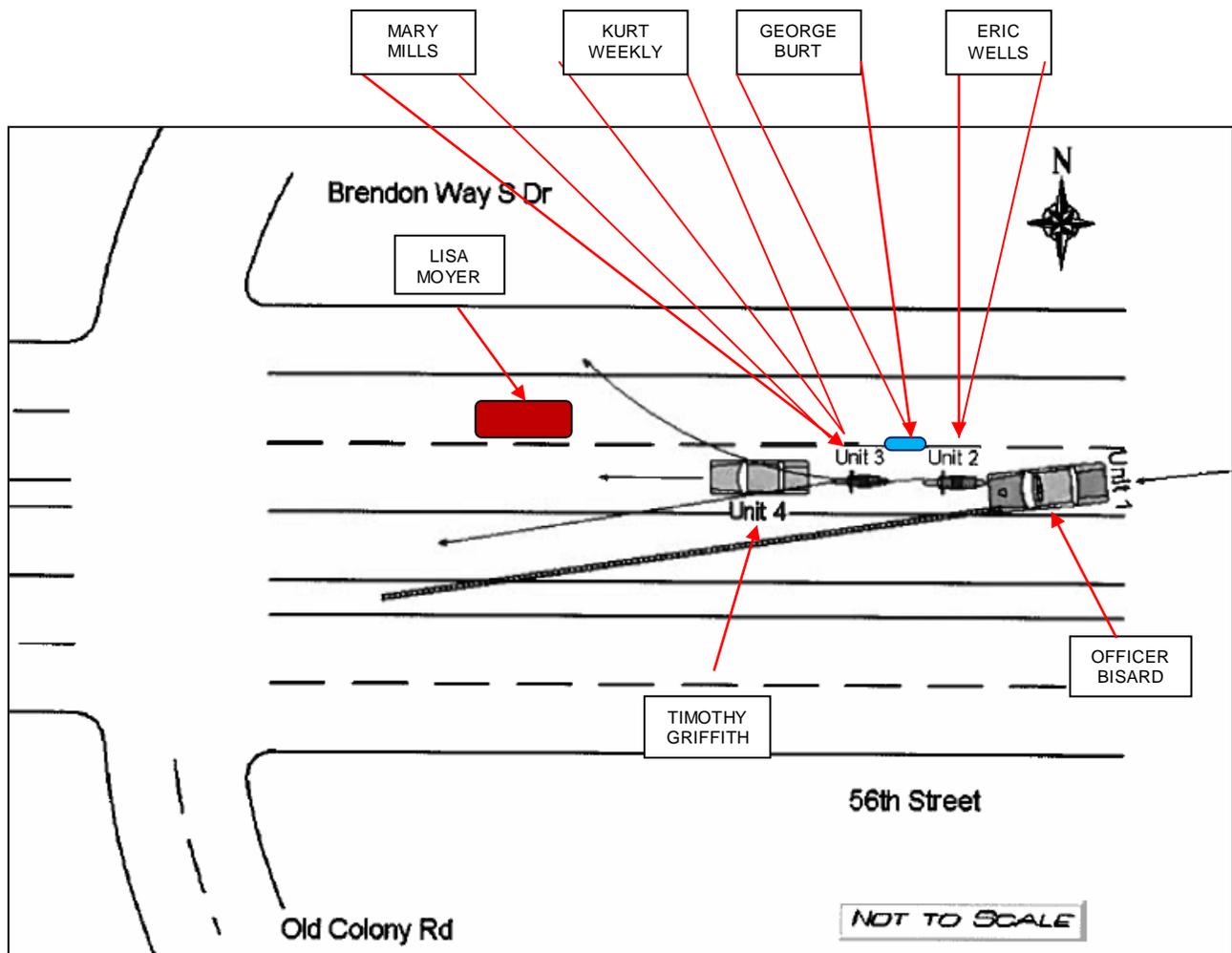
Control operator: “Eleven seventeen”

At 11:17 hours, K9 Officer David Bisard volunteered to assist North District officers Jon Koers (A134) and Shannon Harmon (A151) who were dispatched to East 42nd Street and Priscilla Avenue to help Marion County Probation Department Special Deputy Joshua Herman (unit 5538) and his team of two other probation officers attempt to locate a subject with a felony warrant for felony marijuana possession.

Crash

Officer David Bisard self dispatched himself on the run at 11:17 hours as documented in the CAD. Officer Bisard was traveling westbound on East 56th Street, operating his vehicle with emergency lights and siren activated. Witness Lisa Moyers, who was also travelling westbound on E. 56th Street, described what she witnessed as Officer Bisard approached the intersection of E. 56th and Brendon Way S. Drive. Lisa Moyers, LPN, heard and saw a police vehicle with emergency lights and siren behind her, traveling at a high rate of speed on E. 56th St., weaving in and out of traffic. Miss Moyers was in the outside lane going westbound and pulled over further to the right to allow other motorists room to move over.

At the intersection of Brendon Way South Drive and East 56th Street, Timothy Griffith was driving the first vehicle, a 2005 tan Ford Taurus 4-door, stopped at the red light in the left-hand straight through lane facing westbound. Mr. Griffith stated he was stopped five to six car lengths back from the intersection.



Stopped in traffic in the same lane behind Griffith (unit 4 on the diagram), were three motorcycles, the first (unit 3 on the diagram) was operated by Kurt Weekly, George (Roland) Burt was operating the unit indicated in blue and the motorcycle positioned behind Kurt Weekly (indicated as unit 2 on the diagram) was operated by Eric Wells. Mary Mills was a passenger on the back of Kurt Weekly's motorcycle. George Burt described their positioning in the left-hand lane of traffic as **"staggered."** The diagram is scanned from Sergeant Doug Heustis' preliminary crash report.

Officer Bisard approached the intersection and made impact with Eric Wells' motorcycle. (George Burt's vehicle was originally not placed in the crash report diagram because his motorcycle was not struck. For clarity, he has been added to this diagram and is represented by the blue oval shape. Witness Lisa Moyer was in her vehicle in the right hand lane and slightly ahead of the motorcycles when the accident occurred.)

From witness statements and examination of physical evidence (reconstruction data) from the crash scene, Officer Bisard attempted to stop and swerve to his left approximately 61 feet prior to striking Eric Wells' motorcycle. The impact caused Wells' motorcycle to strike the rear of Weekly's motorcycle and then strike the back of Griffith's Ford Taurus. Data gathered from the Crown Victoria's Powertrain Control Module indicates Officer Bisard was travelling 73 mph prior to braking.

George (Roland) Burt, Kurt Weekly and Mary Mills gave a taped statement after the crash to Sergeant Doug Heustis. George Burt stated he had been stopped on East 56th Street next to Eric Wells, Kurt Weekly and Mary Mills. He further stated he heard the siren from Officer Bisard's car and then saw the emergency lights. Burt stated he looked to his right to see if he could move over but that there was a vehicle to his right so he did not move. Burt stated he saw Bisard's car strike Wells' and Weekly's motorcycles. After the crash, Burt stated he saw Weekly's motorcycle on top of Weekly so he stood Weekly's motorcycle up to free Weekly.

Witness Lisa Moyer, during her interview with Sergeant Heustis, described what she saw stating, ***"That's when I saw him (Bisard) fly um, around a couple of cars and then he was approaching the stopped cars. Um, at that time I saw him hit uh, the motorcycle in the very back which was um, the only one that had died and then he, he was attempting, it looked to me, to swerve around traffic but I think he misjudged how much room he actually had and hit them instead."***

Witness Samantha Daniels stated she had been westbound on 56th Street and had turned right (north) onto Brendon Way South Drive and was heading back eastbound when she saw the patrol car (Bisard) traveling with the emergency lights and siren activated. Ms. Daniels stated she saw the motorcycles being struck but did not see any other vehicle beside them.

At 11:21:42 hours, Officer Bisard advised Sandra Triblet (IM06), the North District control operator, he was involved in a personal injury accident and he needed an ambulance right away. The following is the radio traffic immediately after the accident (MECA Communications tape):

11:21:42 **Officer David Bisard:** "Control K seventeen"
 Control Operator Triblet: "K seventeen"
 Bisard: "I need a medic **rush** to...uh, five six and Brendon Park Way. I've been involved in a PI accident. I've hit a motorcycle...and there's two people down, actually there's three people down."
 Control: "Clear."

11:21:51 **Officer Bradley Millikan:** "Back one thirty-six on that please."
 Officer Christine King: "Back one twenty-two also."
 Bisard: "Rush, please rush."
 Control: "Eleven twenty-one"

11:22:04 **Koers:** "One fifty-one, I closed this out, I didn't see them. I'm going to go to K seventeen."
 Harmon: "Ok, control Adam one-five-one I'm ten-eight as well. Back me up to K seventeen."
 Control: "One fifty-one."
 Bisard: "Control, I need them rush, please." (moaning in background)
 Control: "I'm clear. You're fifty-six and Brendon Park?"
 Bisard: "Yes."
 Control: "They've been ordered. They're en route."
 Bisard: "People are critical here."
 Koers: "K seventeen do you need us to shut down anything?" (siren in background)

11:23:00 **Bisard:** "Yeah, shut it down from four sixty-five and shut it down back to Arlington."
 Koers: "K, shut it down eastbound Arlington?" (siren in background)
 Bisard: "...yes...and westbound from four sixty-five."
 Harmon: "I'll take westbound four sixty-five, control." (siren in background)
 Koers: "Control, I have eastbound Arlington." (siren in background)
 Control: "Clear."

11:24:24 **Bisard:** "Control, if we have a K-nine supervisor on duty I'm going to need him here too."
 Control: "Clear."
 Sergeant Jeffrey Peterson: "Control one fourteen."
 Control: "One fourteen."

11:25:00 **Peterson:** "I'm busy. Will you page Adam one of what we have."

Control: "Clear."
11:25:15 Millikan: "Control one thirty-six, this is a possible."
Control: "Clear."
Officer John (Mark) Archer: "K seventeen K nineteen, do you need me to come get your dog?"
Bisard: "...I don't know Mark I, I...come here if you would...please." (Peterson can be heard in background giving directions to Tom Stout)
11:27:18 Archer: "I'm en route."

This is the last radio traffic from Officer Bisard on August 6, 2010.

Mobile Data Terminal records indicate that Officer Bisard was communicating (typing) on his laptop with Officer Joe Maxey on the way to assist with the warrant and just prior to the crash. The laptop transmissions were not related to the run. Officer Bisard sent his last laptop transmission at 11:19 hours. Officer Bisard received his last transmission at 11:20:04 hours. The crash occurred between 11:19 hours and 11:21:42 hours. (CAD terminal history)

Crash Scene

Officers backed-up to the run, either via laptop computer or via police radio. Within a minute, North District Officers Shannon Harmon (A151), Christine King (A122) and Bradley Millikan (A136) were the first to be assigned to the run (CAD).

At 11:21 hours, when the run was dispatched several officers responded from close proximity (less than 2 miles away), Sergeant Jeffrey Peterson (A114) along with Officers Keith Jennings (A150), Bradley Millikan (A136) and Washington Township School Police Officer Eric Trost just sat down to eat lunch at the Blarney Stone located at East 56th and North Emerson Avenue. Officers Thomas Stout (A123) and Christine King (A122) were finishing an alarm run in the 5300 block of Emerson Way. All of the officers immediately responded to the crash scene.

At 11:22 hours, IFD and ambulances were ordered by Control Operator Essteen Smith (Console: IM13).

Officers Keith Jennings (A150), John Koers (A134), Sgt. Jeffrey Peterson (A114), Thomas Stout (A123), and Michael Darst (A143), were on the run within two minutes.

At 11:23 hours, Officer Millikan arrived on the scene from the west and parked his vehicle so that it would block traffic. He took his first aid kit to the area where the victims were laying. He yelled at other arriving officers to grab their first aid kits. He had a box of latex gloves and began passing them out to other officers. He assisted a civilian witness, Lisa Moyers (a Licensed Practical Nurse) with the assessment of the most serious victim, Eric

Wells. Millikan observed Wells' devastating injuries. At 11:25 hours, he advised Communications the accident was a "possible," which is abbreviated language to describe an accident so serious that a death is a possibility.

At 11:36 hours, Communications sent a page to the North District Commander (A1) Koppel, the PIO (Public Information Office) staff, the Chaplain's Staff, FAT (Fatal Accident Team) and to (CR1) Chief Ciesielski, (CR2) Assistant Chief Pierce and (CR3) Deputy Chief Hicks, advising them of Millikan's assessment: "A 136 CALLING THIS PI A POSSIBLE FATAL." It is protocol for communications to page the PIO, Chaplain, and FAT team on all possible fatal crashes.

IFD Engine 8 and Lawrence Medics 38 and 40 responded (dispatched at 11:22 hours on scene at 11:27 and 11:29 hours respectively – IFD CAD), (A136) Millikan advised them of the location of the victims and he told them who he believed was in the worst condition. (Millikan identified Eric Wells as the most critical) When medics began administering aid, he and Ms. Moyers stepped aside. All victims were transported to Methodist Hospital, 1701 N. Senate Boulevard. Medics 38 and 40 marked enroute to Methodist Hospital at 11:37 and 11:40 hours (IFD CAD) respectively.

Officer Millikan (A136), is also a fatal-certified accident investigator, and was part of the crash investigation. Officer Millikan had direct contact with Officer Bisard on the scene. Officer Bisard told him that he looked down at his laptop, looked up, and the motorcycles were "right there". Bisard told him that he tried to swerve but was unable to do so. Officer Millikan said he did not make any observations of Officer Bisard that indicated the involvement of alcohol.

At 11:43 hours, (A136) Millikan requested an evidence technician (ET) respond to take photographs of the scene. (A121) Officer Marlon Minor was the documented ET on the scene. Officer Minor took still photographs.

Officer Jason Cottey (A185) was the on-duty North District Accident Investigator. He responded enroute to the run at 11:29 hours and arrived at 11:40 hours (according to MDT records). At 11:43 hours, Cottey requested the assistance of Sgt. Doug Heustis (TR40), the IMPD Crash Coordinator. Cottey, is a "fatal-certified" member of the FAT (Fatal Accident Team) team and the FACT Team (Fatal Alcohol Crash Team), and recognized this incident would require the assistance of several fatal-certified reconstructionists. CAD history indicates a page was erroneously sent to (TR44) Detective Tim Abrams instead of (TR40) Sgt. Heustis. However, Sgt. Doug Heustis was sitting with Det. Abrams during lunch at a restaurant located at 10th and Indiana Avenue, and immediately responded to the scene as a result of the page. (TR40) marked enroute to the scene at 11:47 hours. Heustis's on scene arrival time is not documented however, he responded directly from his previous location.

On-duty K9 officers from various districts responded to determine what, if anything, Bisard may have needed. They knew Bisard's assigned police service dog and related equipment would need special attention. K9 Officers John Archer (K19) and David Whitesell (K27) arrived at 11:33 hours and 11:35 hours, respectively. Officer Dan Ryan (K31) arrived shortly thereafter. Officers Ryan, Whitesell, and Archer stood by and monitored Officer Bisard's K9 partner "Bricks" who was still in the crashed vehicle in his kennel. The kennel was damaged in the crash and the exit hatch unsecure. K9 Officer Mike Diehl responded with an empty K9 car to secure the dog.

(A114) Sgt. Jeff Peterson was the highest ranking person on the scene during the initial phase of the investigation. Upon his arrival (exact time not documented in the CAD; he responded directly from less than 2 miles away) he located Officer Bisard, who was attempting to communicate to one of the male victims. Peterson heard Bisard saying to the man, *"Stay with me buddy! Stay with me buddy!"* According to Peterson there was a look of panic on Bisard's face. Sgt. Peterson grabbed Officer Bisard and walked him over to his (Peterson's) patrol car and had Bisard sit-down. Sgt. Peterson requested an additional medic to check out Officer Bisard at 11:40 hours. Medic 20 was dispatched at 11:42 hours.

Wishard Medic Barbara Miller was assigned to Medic 20 and examined Officer Bisard on the scene. Officer Bisard, suffered minor abrasions to his forearms and forehead during the crash. Miller said she interacted with Bisard for ten to fifteen minutes. When asked if she suspected the presence of alcohol in Bisard, Miller replied, *"I smelled nothing. Honest to God, I smelled nothing. I was shocked when I heard it."* She continued, *"Nothing that day indicated that he was under the influence of anything to me. And outside of being shaken up... everyone reacts differently, but I assumed his subdued manner was his way of taking it to heart. I'm not trying to stand up for him, but everybody acts different. Some people can be calm, other people are crying, other people are running around the scene, on different scenes. So for him to act that way --to evaluate it later-- I figured he was just shook up that day. I think that's in my report, that he admitted to being shaken. And I didn't...I didn't take it as an indication that he was under the influence of anything. He didn't indicate to me in any way. He didn't...None of his speech was slurred. I think I talked to a few people that have been under the influence over the years so I could tell. You think I would be able to smell it at 11:30 in the morning. I didn't smell a thing."*

Sgt. Peterson managed the incident scene by giving direction to the traffic control units (where to set-up road blockages for scene security). Sgt. Peterson identified (A185) Cottey and (A136) Millikan as crash investigators. Sgt. Peterson established a staging area for media at 11:43 hours, and requested a Police Officer Support Team (POST) response at 11:45 hours. Sgt. Peterson requested a page be sent to A1 (North District Commander Thomas Kopple) and K1 (Lt. Benny Diggs) and asked that the PIO be notified. Peterson

then made a follow-up cellular call to commander Koppel to make sure he was aware of the incident. (IMC Communications Tape) Sgt. Peterson briefed with Major John Conley once Conley arrived on the scene.

There was a lot of evidence on the roadway (tire marks, blood, vehicle parts and debris). Sgt. Doug Heustis (TR40), Officer Jason Cottey (A185), and Officer Brad Millikan (A136) processed the scene (gathering witness statements and measurements for reconstruction). Sgt. Heustis led the crash reconstruction. In the course of the reconstruction Sgt. Heustis used a digital measurement system which required the use of cone markers and digital photography. Sgt. Heustis took his own photographs for the measurements.

At 11:50 a.m., Deputy Chief Ron Hicks (CR3) marked-out on the run using his in-car laptop computer. He had been attending a supervisor's class at the training academy at the time. Other department members who left the class to respond include Major John Conley (CR8), Commander Tom Kopple and Sgt. Kim Young (1481). Sgt. Young, an Internal Affairs investigator, received a page about the crash because she is also a member of POST. Sgt. Young was the only person who responded from the academy as a result of being requested. The others responded voluntarily.

Assistant Chief Darryl Pierce (CR2) also responded voluntarily, from the downtown area. He was on his way to a community meeting at the Scottish Rite Cathedral, 600 N. Meridian Street, when he learned of the crash. He arrived at 56th Street and Brendon Way at about 11:55 hours based on his recollection (no official CAD documented time). Assistant Chief Pierce spoke directly to officer Bisard on the scene. In statements given to investigators, Pierce said he did not make any observations of Officer Bisard that indicated the involvement of alcohol.

Based on their statements, Assistant Chief Pierce, Deputy Chief Hicks, and Major Conley all arrived at approximately the same time. Assistant Chief Pierce arrived from the west. Deputy Chief Hicks and Major Conley from the east. Pierce, Hicks, and Conley all stated Officer Bisard was seated in a vehicle (determined to be Sgt. Peterson's car) when they arrived.

Major Conley requested FACT6 as documented in the CAD history at 12:11 hours. The request was made via a cellular call to communications. The CAD incorrectly identifies the requestor as (CR3) which is Deputy Chief Hicks. However, it was Conley who requested FACT6. Conley used to be (CR3) at one time and it is believed the control operator simply made an error.

At 12:17 hours Northwest District Officer Gregory Brinker (F129) was on scene at Methodist hospital to ascertain the conditions of the patients. At 12:21 hours, Officer Brinker reported to Communications that one victim, Eric Wells, had been pronounced

dead and requested a Chaplain respond to the hospital for the Wells family. At 12:31 hours, an IMPD staff page was sent out confirming the fatality.

A decision was made to transport Officer David Bisard to Methodist Occupational Health Center, 1101 Southeastern Avenue for treatment of his injuries and the blood draw required to comply with I.C. 9-30-6-6. There are conflicting accounts as to who exactly made the decision. Consensus is that the decision was made jointly by three primary officials: (1) Sgt. Jeff Peterson (A114), who was concerned about the potential for conflict among officers and family members arriving at Methodist Hospital; (2) Sgt. Doug Heustis (TR40), IMPD Crash Coordinator and FACT team member, and (3) Major John Conley, who was assigned to the Homeland Security Branch (which includes the K9 Unit).

At 12:24 hours, Sgt. Jeff Peterson left the crash scene and transported Officer David Bisard to MOHC with K9 Officer Dave Whitesell following. They took I-465 south to the Washington Street exit and then proceeded west on Washington Street. Officer Whitesell needed gas for his vehicle, so they exited I-465 at East Washington Street. Whitesell, Peterson, and Bisard all stopped at the Speedway Gas Station at 5103 E. Washington Street, where Whitesell purchased gas using his IMPD Fleet Services charge card. Digital surveillance video shows the officers arrived at 12:33 p.m. and Bisard got a fountain drink. Officer Whitesell bought chewing tobacco. As the officers stood around, there was no visible indication on video of impairment exhibited by Bisard – fumbling, swaying, imbalance, etc. In fact, Bisard can be seen on video holding his cup and standing next to Whitesell at the cash register. Bisard was standing up straight, motionless. All three officers left the Speedway at 12:41 hours and drove directly to Methodist Occupational Health Center. Sgt. Peterson, with Officer Bisard as his passenger, marked on scene at Methodist Occupational Health Center (MOHC), 1101 Southeastern Avenue, at 12:48 hours.

FACT6 members Lt. Stan Stephens (LK18) and Officer Stacy Perkins (LP65), both members of the Lawrence Police Department, responded to the page requesting assistance. Both are members of the Fatal Alcohol Crash Team #6 (FACT6), which is the countywide, multi-agency, federally-funded team of officers called upon to respond to fatal crashes in which there are no apparent signs of impairment among the involved drivers. FACT6 members respond to witness the requisite blood draws and transport the evidence blood to the Property Room for Crime Lab analysis.

Lt. Stephens and Officer Perkins had originally been paged by communications to meet Officer Bisard at Methodist Hospital for the blood draw, at 12:20 hours and 12:26 hours, respectively. However, with the decision to send Bisard to MOHC, Lt. Stephens changed his location to MOHC (at 12:31 hours) and met Bisard there. Officer Perkins continued to Methodist Hospital to witness the required blood draw of Mr. Wells and Mr. Weekly. But upon her arrival at 12:59 hours, it was clear neither Mr. Wells or Mr. Weekly were capable

of consenting to the draw due to injuries.

Prior to leaving the scene, Officer Bisard had a conversation with Major Conley regarding concern over his patrol rifle and tactical gear that was in the trunk of his crashed vehicle. Major Conley approved and watched the removal of the gear including a black bag from the trunk of the vehicle. Officer Bisard removed the black bag and placed it in Sgt. Peterson's vehicle. No one at the scene examined the contents of the bag removed or inventoried the items from the vehicle which was part of the crime scene.



Officer Bisard's Vehicle

Officer Bisard's assigned 2005 Crown Victoria police vehicle was towed from the crash scene to the Indianapolis Municipal Garage, 1651 W. 30th Street, for the purpose of assessing damage and obtaining an estimate for repairs. The vehicle was not inventoried prior to towing. On August 16th, the vehicle was towed to the IMPD vehicle storage facility at 3000 W. Washington Street, the grounds of the former Central State Hospital.

Sgt. Doug Heustis, the assigned reconstructionist / detective, never requested Crime Lab to process the vehicle as is required within 72 hours of impounding the vehicle (IMPD G.O. 7.3 Towing / Impounding). Detectives Tom Lehn and Rick Burkhardt requested Crime Lab process the vehicle as part of their internal investigation and review of the incident. On September 13, 2010, Crime Lab Specialist Don Toth conducted a search of Bisard's assigned vehicle. Specialist Toth recovered one *Dasani* water bottle (**no alcohol - tested / confirmed**) from the passenger floorboard, one bottle of *Cepacol* cough suppressant (14% alcohol) from the glove compartment and he removed the airbag from the steering wheel.

Officer David Bisard refused to give a statement, so there is no way of determining if he had a cough/cold or if he had used the Cepacol found in the vehicle on the day of the crash.

Blood Draw

Those present for some or all of the time were Sgt. Peterson, off. Whitesell, Off. Mark Archer, Lt. Diggs, Sgt. Bill Owensby (FOP President), Off. Rod Wallace (POST Team), Sgt. Steve Randall and FOP attorney Ed Merchant. The examination room was small and not everyone was able to stand in the room. Sgt. Peterson and Lt. Diggs stood just outside the doorway. The examination room door remained open so even the officers that stood in the hall just outside the doorway were able to see Officer Bisard as he was examined and had his blood drawn. Lawrence P.D. Lt. Stan Stephens (LK18), supervisor of FACT 6, responded to Methodist Occupational Health Center (MOHC) for the blood draw and marked on scene at MOHC at 12:58 hours.

Dr. Sajiv Alex, Director of the Methodist Occupational Health Center facility, examined David Bisard's injuries and also performed some neurological examinations (pupil response, reflex response). He was very close to Off. Bisard's person when he looked into his eyes with a light, checking for pupil reaction. He further checked his ears and mouth, tested his strength and motor skills, and assessed his injuries to his arms and head. Dr. Alex released Bisard to full-duty status at the conclusion of the examination. When interviewed, Dr. Alex said, "I was shocked" when I learned of the .19% B.A.C. blood test results.

Michelle Maga is a medical assistant at Methodist Occupational Health Center. She performed the initial examination and treatment of the abrasions to Bisard's arms, and spent time with him. Miss Maga is a phlebotomist who often draws blood throughout the course of her duties, and though she has never done this for a criminal case, she has drawn blood countless times for other reasons (random screenings, suspicion-based tests, post-accident tests, etc) at work. The registered nurse who would normally have been working was sick that day, leaving Maga as the only phlebotomist available. Lt. Stephens then questioned Miss Maga about her qualifications for drawing blood and was satisfied she was capable. Lt. Stephens was not aware of the law change which excluded Maga from a list of eligible persons to draw blood under I.C. 9-30-6-6 when outside of a hospital.

Lt. Stephens read the Indiana Implied Consent Statement to Bisard, from a laminated card, at 13:09 hours with his FOP attorney (Ed Merchant) at his side, Bisard consented to the blood draw. FOP President Sgt. Bill Owensby was present when Officer Bisard was read the Implied Consent. However, Owensby left and did not witness the blood draw. Stephens retrieved two empty vials from his FACT team blood draw kit, but noticed that they had expired in May, 2010. He then asked Miss Maga if she had vials they could use. Miss Maga returned with two vials but she saw they had also expired – on July 31, 2010. The vials, manufactured by Baxter Laboratories, contain two substances -- an anti-coagulant and a preservative -- which have a shelf life. Therefore, using 'expired' vials was not an option.

A call was made to Beverly Thatcher, the supervisor of the Park Fletcher MOHC at 5603 W Raymond Street. She arranged for a supply of valid vials to be delivered right away. Nearly a half hour passed before the acceptable vials arrived from the Park Fletcher clinic. They were delivered by MOHC employee, Rhonda Gallagher. During that time, the officers and clinic staff members made small talk.

At 13:48 hours, with the valid vials in her possession, Miss Maga began the blood draw procedure as she had done numerous times in the past, with one notable exception: Miss Maga inadvertently started the process by using an 'alcohol' swab to clean Bisard's inner left arm, rather than a 'Betadine' swab (used to avoid a tainted alcohol test). Lt. Stephens spotted the use of the alcohol swab and instructed Miss Maga to switch arms. Miss Maga then used Betadine on Bisard's *right* arm and drew two vials of blood which she immediately handed over to Lt.



Stephens. Lt. Stephens wrote Bisard's name on the vials and placed them in a plastic bag sealed by Lt. Stephens. Lt. Stephens left MOHC at 14:20 hours. (CAD)

Lt. Stephens maintained custody of the vials putting them in his side cargo pants pocket and went to the Hardee's restaurant at E. Washington St. and Southeastern Av., and ate lunch. He stayed for approximately 15-20 minutes (verified by a security video) and then went to the IMPD property room, 50 N. Alabama St, where he filled out the necessary paperwork and entered the blood vials into evidence in the IMPD property room. Lt. Stephens arrived at the IMPD Property Room at 14:44 hours.(CAD)

A local television news station incorrectly reported Lt. Stephens stopped at the APC for a period of time to have lunch, delaying the arrival of the blood to the Property Room. Video from the APC confirms Lt. Stephens did not enter the APC front doors between 14:00-16:00 hours. However, Lt. Stephens did sign-in at the APC earlier that same day (at 03:00 hours on August 6, 2010) due to his regular duties on another, unrelated case.

Civilian IMPD Property Room employee, Becky Hardin received the blood from Lt. Stephens and immediately placed the blood in a refrigeration unit. Due to other duties, she did not log the entry into the IMPD property/evidence system until 15:52 hours. There is no current method at the IMPD property room to record the actual time of transactions.

Lt. Stephens maintained the proper chain of custody regarding the vials containing Officer Bisard's blood, and properly transferred the vials to the IMPD Property Room.

The Crime Lab Blood Analysis

Forensic Scientist Kathy Walton, a 25-year veteran of the Indianapolis-Marion County Forensic Services Agency (“Crime Lab”) at 40 South Alabama Street, is a certified expert in her field. On Monday, August 9, 2010, at 13:15 hours, she performed the blood alcohol testing on David Bisard’s blood sample.

Kathy Walton picked up the blood sample at 09:14 hours on August 9, 2010, from the IMPD Property Room. The Bisard sample was one of six blood samples she picked up. Each of the six samples were separate and sealed in individual “evidence” envelopes.

One of the six samples included a lab-request form which had “Fatal” on it. (The Bisard Case) Kathy Walton tested this sample first, knowing only it was blood from a fatal crash. Walton said she had no idea it was evidence from a fatal police crash because although she was aware of the incident, she didn’t know an “Officer David Bisard” and didn’t remember his name from the weekend media reports. Walton had been out of town on the day of the crash. She wasn’t aware of it until Saturday, after seeing television news.

Even though the vials had “David Bisard” written on them, she did not make the connection with “Officer” David Bisard being involved in the crash. None of the paperwork available to her at the time identified the blood as being from a police officer.

Because of speculation that the blood may have been switched or compromised, all of the other samples submitted on August 9, 2010 were reviewed. The other five blood samples tested that day were from unrelated routine DUI arrests made over the weekend. During his investigation, Detective Burkhardt discovered the BAC results from each of those five samples. He then contacted the arresting officers from each case. He asked each officer if the Crime Lab test results were consistent with the officer’s on-scene observations of the arrested person from whom each blood sample was drawn. Each officer confirmed that their observations matched the reported laboratory results.

Walton explained that she treated this blood examination exactly as she would any other. She laid-out the necessary paperwork on a work table in the lab. She removed the vials and kept them separate from any other vials. She placed the vials in a special plastic rack and prepared the equipment she would use, including a series of small glass tubes which would be used to test the blood several times. She prepared a “gas chromatograph which is the hydrogen-based instrument used for all blood-alcohol testing in Marion County.

At 13:15 hours, Walton began the tests. As part of her normal procedure, she ran a blank test on the gas chromatograph instrument to ensure it was calibrated. She then ran three separate “whole blood” tests of Bisard’s sample. The three test results came back,

expressed as “grams of ethyl alcohol per 100 milliliters of blood,” or, in more common terms, “blood alcohol content.” **Those results were: .19g/100mL; .19g/100mL; and .19g/100mL.**

Walton then ran a BAC test on a sample of Bisard’s blood that had been centrifuged. This sample is also known as a “Plasma Serum” test, which typically results in a higher BAC than the ‘whole-blood’ tests, for a variety of highly scientific reasons which would be difficult to explain here. The result of the plasma-serum test showed it to contain .214g/100mL. Following a mathematical formula to convert plasma into real-whole-blood, the plasma result was the equivalent of .19g/100mL.

Per protocol, Walton then ran final tests on a “known sample” of two chemically-known liquids, certified to be precisely equivalent to a .20g/100mL (t-butanol) and a .08g/100mL (Cerilliant). The “known sample” quality control tests results were .20% and .08g/100mL, respectively. Walton concluded the testing procedure on Bisard’s blood, which included meticulous documentation along the way, at 1:53 p.m.

Walton later read news accounts of the Bisard case and realized she just had tested the Bisard blood. She understood the significance and impact of these findings and notified her supervisor, Bob McCurdy.

McCurdy recognized the unique importance of this particular case and ordered Walton to re-run the blood tests from the same vial of blood. From 15:46 hours until 16:15 hours, she re-tested the blood and concluded the same results. The tests followed the same protocol she always uses. Following confirmation of the matching results, Walton requested a peer-review of her procedures, documentation and results. Peer reviews are not uncommon. In this case, fellow chemist Dirk Shaw performed the review and found no abnormalities.

Blood Test Results / Dismissal of Alcohol Related Charges

On Tuesday, August 10, 2010, Officer David Bisard's blood test results were made public in a statement to the media from Prosecutor Carl Brizzi's office. IMPD Major John Conley advised K9 Commander Benny Diggs that Officer Bisard should be relieved of his duties and his IMPD property be retrieved. Several K9 officers (Lt. Diggs, Sgt. Allen Tuttle, Sgt. Craig Hedden, Sgt. Mark Fagan, and Officer Kevin Stickford) went to Officer Bisard's house and they took control of his weapons, IMPD vehicle and IMPD issued property.

On Wednesday, August 11, 2010, the Marion County Prosecutor's Office filed the following charges against Officer David Bisard:

Reckless Homicide/FC

Operating a Motor Vehicle w/ a BAC of 0.15 or Higher Causing Death/FB

Operating a Motor Vehicle While Intoxicated Causing Death/FC

Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury/FD

Operating a Motor Vehicle w/ a BAC of .08 or higher Causing Serious Bodily Injury/FD

Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury/FD

Operating a Motor Vehicle w/ a BAC of .08 or higher Causing Serious Bodily Injury/FD

August 11, 2010, IMPD Chief of Police Paul R. Ciesielski met with Officer Bisard and suspended David Bisard pending formal termination proceedings by the Merit Board. Bisard left the meeting and turned himself in at the Arrestee Processing Center, to be booked. He posted the required \$10,000 bond and was released shortly thereafter.

On Thursday, August 12, 2010, David Bisard had his initial hearing on the seven charges. Bisard entered a plea of not guilty. Bisard's defense attorney, John Kautzman, also entered a motion to preserve and maintain all evidence (including blood) pertaining to the case. The motion was granted by Judge Grant Hawkins.

On Thursday, August 19, 2010, Prosecutor Carl Brizzi announced his decision to dismiss all of the alcohol-related charges against David Bisard. Reckless Homicide remained as the lead charge. Prosecutor Brizzi said his decision was based on an improper blood draw that would not be admissible in court. Prosecutor Brizzi stated publicly "it wasn't conducted at a hospital, as it's defined under the statute, and it wasn't performed by someone who has the legal requirements necessary." (IC 9-30-6-6 amended March 12, 2010) Therefore, by going to Methodist Occupational Health, which is not a hospital, and by the person who drew the blood (Michelle Maga certified medical assistant trained in phlebotomy); it necessitated the charges to be dismissed.

IMPD Re-assignments and Demotions

On Thursday, August 19, 2010, Lt. George Crooks was removed from his position as the FACT Team coordinator when the alcohol-related charges against David Bisard were dismissed because of an improper blood draw according to Prosecutor Brizzi. A FACT Team S.O.P. (Standard Operating Procedure) requires that Team protocol and procedures are consistent with current statutes and case law. At the time of the crash, FACT Team protocol and procedures were inconsistent with current statutes and case law, as they were not updated to reflect the changes to IC 9-30-6-6 that occurred in March 2010. (See additional information on the background of the FACT Team on page 24)

On Saturday, August 21, 2010, Assistant Chief of Police Darryl Pierce, Deputy Chief Ron Hicks, and then Commander John Conley (he was promoted from the rank of Major to the rank of Commander on August 12th) were all demoted to their merit rank of Lieutenant. Chief of Police Paul Ciesielski announced the demotions at a press conference citing a failure of leadership. In a message sent to IMPD sworn members Chief Ciesielski said:

"I will hold everyone accountable for their actions as we move this department forward...Members of my leadership team failed me, the department, and the public by not providing the leadership and scrutiny that this investigation merited...proper leadership would have ensured that all aspects of the investigation were conducted properly...senior leadership failed to make sure the scene was preserved, processed and supervised with the seriousness that every crime scene deserves."

This investigation identified a series of failures to follow existing department policies regarding crime scene preservation, management, and processing. These failures resulted in the loss or compromising of critical evidence and are detailed starting on page 30 of this report.

Chief of Police and Director of Public Safety

At the time of the crash, Chief of Police Paul Ciesielski was meeting with Director of Public Safety, Frank Straub Ph.D.. The meeting in the Director's office was held to discuss the recent union vote to reject the contract with the city. It was at this time that Chief Ciesielski received the pages regarding the crash. Chief Ciesielski was planning an afternoon press conference in response to the contract vote and to address concerns that recent decisions to reorganize the investigations division were not the Chief's idea, but rather the Director's idea. The Chief and the Director believed it was important to publicly address these issues in a timely manner because of IMPD morale and public concerns.

Chief Ciesielski communicated with then Assistant Chief Darryl Pierce regarding the crash. Chief Ciesielski knew that Assistant Chief Pierce and Deputy Chief Hicks were on the scene. Chief Ciesielski had confidence that with two members of his Executive staff on the incident scene everything was being managed, and that it was not necessary for him to respond. Chief Ciesielski received updates from Assistant Chief Pierce via cell phone calls. Assistant Chief Pierce called Chief Ciesielski, and Chief Ciesielski also initiated calls to Assistant Chief Pierce for updated information regarding the crash. Chief Ciesielski did send out a reminder page regarding a meeting in his office to discuss the afternoon press conference. Neither Assistant Chief Pierce nor Deputy Chief Ron Hicks ever communicated a need to stay at the crash scene rather than attend the meeting.

Director of Public Safety Frank Straub Ph.D., also received the department staff pages regarding the crash. Director Straub received updated information regarding the crash from Chief Ciesielski.

Neither Chief Ciesielski or Director Straub responded to the scene because Assistant Chief Pierce and Deputy Chief Hicks were present and provided regular briefings to the Chief.

No one at the crash scene requested or suggested that either Chief Ciesielski or Director Straub respond.

The FACT Team and FACT6 – History and Response

The Marion County Fatal Alcohol Crash Team (FACT) was formed in 2002 as a multi-agency specialized team of law enforcement officers trained to detect and arrest drivers who are intoxicated. FACT was the first program of its kind in the United States. The purpose of the FACT team is to investigate all alcohol and drug-related serious bodily injury fatal crashes in Marion County. Additionally, FACT investigates all crashes involving a driver who flees the scene if the crash involves serious bodily injury or a death. These are investigated by the FACT team because these types of crashes often involve impaired drivers.

Prior to the Bisard incident, no evidence collected by FACT members has ever been suppressed in court.

The FACT team is broken into six separate squads of officers, any of whom may be on call, depending on the time of day. FACT Teams One - Four handle incidents that occur on specific shifts. FACT Team Five is an alternate. Each team includes a prosecutor, a team supervisor, a crash reconstructionist, a DUI expert and an interview specialist. **FACT Team Six (FACT6), created in 2007, responds to serious bodily injury or fatality crashes where “impairment by either drugs or alcohol is *not* suspected” to collect samples from all drivers involved.** FACT6 officers take responsibility for the collection of blood evidence as required by IC9-30-6-6. FACT6 officers have no on scene responsibility; they simply oversee the collection of the blood sample and maintain chain of custody on the sample until it is properly submitted as evidence for testing.

Because there was no evidence, observations, or signs of impairment in Bisard, FACT 6 was called to respond. Also, because intoxication was not suspected, the prosecutor was not summoned to the scene. With no corresponding criminal drunk driving charges, it would be unnecessary for the FACT Team prosecutor to respond on a FACT6 call out. The job description for the FACT Team Prosecutor only states that the prosecutor will respond to the scene of a “FACT qualified crash,” which is defined as “any vehicle crash in Marion County that involves an impaired driver with a death or injury to someone other than the impaired driver.”



Sergeant Doug Heustis and Officer Jason Cottey were on scene and responsible for the crash investigation report and the crash reconstruction report in the Bisard case. Sergeant Doug Heustis and Officer Jason Cottey are FACT Team members however; their function that day was as FAT (Fatal Accident Team) members. The FACT Team members of record on the Bisard incident were Lt. Stan Stephens and Officer Stacey Perkins from Lawrence

Police Department. Stephens and Perkins responded to function as FACT6. Lt. George Crooks was also paged as the FACT Team coordinator. Lt. Crooks responded to the page by calling Major Conley, who was on scene of the incident. Major Conley told Lt. George Crooks that he could disregard responding to the incident. Lt. Crooks never went to the crash scene.

Since alcohol related charges against David Bisard were dismissed by Prosecutor Brizzi who based his decision on an improper blood draw, FACT6 team members were questioned by Detectives Burkhardt and Lehn and Investigators Hofmann and Storkman regarding their training and procedures. Lt. Stephens, Officer Perkins, and Lt. George Crooks each stated the prosecutor's office was responsible for providing their legal training and updates. According to the law as he knew it, Lt. Stephens believed that Michelle Maga was a qualified person to do the blood draw on August 6, 2010 at the Methodist Occupational Health Center. In fact, prior to the amendment of IC 9-30-6-6 in March 2010, a blood sample drawn by Michelle Maga, a medical assistant trained in phlebotomy, at Methodist Occupational Health Center would have been proper.

(See page 26 , History of SEA 342 and the Amended Law IC 9-30-6-6 for additional details)

A BRIEF HISTORY OF S.E.A. 342 AND THE AMENDED LAW -- I.C. 9-30-6-6

I.C. 9-30-6-6, the Indiana law which defines the acceptable personnel to conduct post-crash blood draws and the suitable location for them, was altered by the Indiana General Assembly and signed into (amended) law by Governor Mitch Daniels on March 12, 2010. This alteration came as a result of the 2009 Indiana Court of Appeals case, *Brown v. State* (911 N.E. 2d 668).

The abbreviated facts of the Brown case include the following: On August 19, 2006, (defendant) Roger L. Brown left Lebanon, driving north toward Frankfort on State Road 39. At the same time and on the same road, Tonya Mongonia and her five-year-old daughter were driving southbound. The two vehicles collided in the northbound lane about one mile south of State Road 39 and County Road 430 South. Skid marks from Brown's truck indicated that he was driving north in the southbound lane at nearly seventy miles per hour. Brown nearly drove off the road before moving back into his proper lane just before impact.

The accident resulted in serious bodily injuries to Mongonia and her daughter. Brown's intoxication was obvious from his first contact with ISP Trooper Richard Kelly, who responded to the accident at about 4:00 p.m. Trooper Kelly made observations of impairment in Brown and immediately secured Brown in his police car and then he went to check on the other crash victims. Once sufficient backup arrived, Kelly conducted a DUI investigation and administered Standardized Field Sobriety Tests to Brown. Brown failed all tests. He submitted to a certified breath test, but was too intoxicated to deliver a valid sample.



Trooper Kelly took Brown to St. Vincent's Hospital – Frankfort for a consensual blood draw. A certified lab technician performed the blood draw on Brown. Subsequent testing showed Brown to have a blood alcohol content of .14% BAC. On August 25, 2008, the State charged Brown with two counts of class D felony operating a vehicle with a blood alcohol content of .08% or more resulting in serious bodily injury, two counts of class D felony operating while intoxicated resulting in serious bodily injury, one count of class A misdemeanor operating while intoxicated, and one count of class C misdemeanor operating with a blood alcohol content of .08% or more. On October 10, 2008, the trial court convicted Brown of both counts of class D felony operating a vehicle while intoxicated resulting in serious bodily injury.

Brown appealed his conviction. Why? First, Brown argued that the State failed to comply with Indiana Code section 9-30-6-6(a), which provided that blood samples collected at the request of a law enforcement officer as part of a criminal investigation must be obtained by "[a] physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician."

Brown contended that the State failed to establish that a certified lab technician was acting under the direction of, or under a protocol prepared by, a physician. The foundation for the admission of laboratory blood drawing and testing results, by statute, involves technical adherence to a physician's directions or to a protocol prepared by a physician.'

The appeals court agreed with Brown. They pointed out that the lab technician testified that she performed the blood draw in accordance with what she had been taught in school, but not in accordance with St. Vincent's protocol. She was not even able to recall how many steps are in St. Vincent's protocol. She used a cotton ball soaked with water instead of using Betadine as required by St. Vincent's protocol. In sum, the State failed to lay a proper foundation for the admission of Brown's blood test results pursuant to Indiana Code Section 9-30-6-6(a).

Brown also argued that the State failed to comply with Indiana Code Section 9-30-6-6(j), which (at the time) provided,

A law enforcement officer may transport the person to a place where the sample may be obtained by any of the following persons who are trained in obtaining bodily substance samples and who have been engaged to obtain samples under this section:

- (1) A physician holding an unlimited license to practice medicine or osteopathy.
- (2) A registered nurse.
- (3) A licensed practical nurse.
- (4) An emergency medical technician-basic advanced (as defined in IC 16-18-2-112.5).
- (5) An emergency medical technician-intermediate (as defined in IC 16-18-2-112.7).
- (6) A paramedic (as defined in IC 16-18-2-266).
- (7) A certified phlebotomist.

Brown contended the "certified lab technician" was not a person who is "trained in obtaining bodily substance samples" for purposes of this statute.

The appeals court agreed, saying, *"It is not within the province of this Court to expand or contract the meaning of a statute by reading into it language which will, in the opinion of the Court, correct any supposed omissions or defects therein."* The lab technician testified that she was a certified medical lab technician who was trained to draw blood, but was *not a certified phlebotomist*. *"If the General Assembly intended subsection (j) to include 'certified lab technicians' instead of, or in addition to, 'certified phlebotomists,' it easily could have done so. It did not do so, however, and therefore we must conclude that the trial court abused its discretion in admitting the results of Brown's blood test pursuant to Indiana Code Section 9-30-6-6(j)."*

(The court refused to overturn Brown's conviction, based on this appeal, because "The State presented overwhelming evidence of Brown's intoxication, including his failure of the HGN test, the odor of alcohol, his admission of consuming several beers, glassy and bloodshot eyes, unsteady balance, defecating in his pants, and the failure of the walk-and-turn test. They concluded that given this substantial independent evidence of guilt, there was no substantial likelihood that the erroneously admitted evidence contributed to Brown's convictions.")

When word of this August 21, 2009 decision reached the Indiana General Assembly, discussions of an *amendment* to 9-30-6-6 started quickly. It was known as Senate Enrolled Act 342.

After months of debate as to how the new law would read, the General Assembly decided to remove "a certified phlebotomist" from the list of acceptable persons who can draw blood. However, the General Assembly also specifically said, "The list of persons qualified to take a bodily substance sample is not a limitation to 'ONLY THOSE PERSONS' when the sample is taken in a *licensed hospital*."

SEA 342 was signed into law with little, if any publicity or media attention.

This law amendment was communicated to all law enforcement officers in the State of Indiana, in the monthly publication released in the April 2010, (Issue #221) "Police Prosecutor Update (PPU)." Each paragraph of this particular PPU addresses various Indiana Codes, Senate Enrolled Acts, House Enrolled Acts, all pertaining to new laws. SEA 342 was listed near the bottom, with a brief, incomplete, one-sentence explanation of the new law amendment. No officers on the scene of the Bisard incident received any additional training/education about the law change, nor its applicability to their assigned duties. It remains unclear whether any of them even saw this issue of the PPU (see PPU on page 29).

Interviews indicated that no one involved in the Bisard investigation, sworn or civilian, knew about the March 12, 2010 law amendment. Therefore they believed that Methodist Occupational Health Center (MOHC) was an approved facility and Medical Assistant Michelle Maga was a person authorized by law to draw Bisard's blood.

Police Prosecutor Update

Issue No. 221
April 2010

While there was not much legislation of interest to law enforcement that passed this year, we'll look at what is of interest.

IC 35-42-1-4 was amended by SEA 71 to provide that a person commits involuntary manslaughter if the person causes the death of a fetus while committing or attempting to commit operating a vehicle while intoxicated.

Resisting law enforcement, IC 35-44-3-3, was amended by SEA 81 to provide that the driver's license of a person convicted of resisting law enforcement while using a vehicle and (1) exceeding the speed limit by at least 20 miles per hour, (2) committing criminal recklessness, or (3) engaging in reckless driving may be suspended for one year for a first offense and two years for a second or subsequent offense. If the person

SEA 342 amended IC 9-30-6-6(j) to clarify that the list of persons qualified to take a bodily substance sample is not a limitation to only those persons when the sample is taken in a licensed hospital.

amended IC 9-30-3-3 to make operating a vehicle while intoxicated a Class D felony if it causes the death of a law enforcement animal. Also amended was IC 35-44-3-3 to make resisting law enforcement a Class A felony if a person operates a vehicle in manner that causes the death of a law enforcement officer.

HFA 1100 created a new law, IC 35-44-3-9.6, making it a Class A misdemeanor for a person incarcerated in a county jail to possess a cellular telephone or other wireless or cellular communications device.

SEA 75 amended IC 7.1-5-10-1 to remove the prohibition against selling alcoholic beverages on primary, general, or special election days. Also allows holders of retailer's permits to sell alcoholic beverages on Sunday from 7:00 a.m. until 3:00 a.m. the following day.

SEA 93 amended IC 9-21-8-35 to provide that the failure to use due caution when approaching a stationary utility service vehicle that is being used to perform utility services or a stationary road, street, or highway maintenance vehicle is a Class A infraction that may also result in the loss of driving privileges. Current law applies only to using due caution when approaching a stationary recovery vehicle or stationary highway maintenance vehicle.

SEA 342 amended IC 9-30-6-6(j) to clarify that the list of persons qualified to take a bodily substance sample is not a limitation to only those persons when the sample is taken in a licensed hospital.

HFA 1008 amended IC 35-47-2-3 to provide that, for purposes of the law concerning access to public records: (1) information submitted by a person to obtain or renew a license to carry a handgun; (2) information obtained by a federal, state, or local government entity in the course of an investigation concerning a person who applies to obtain or renew a license to carry a handgun; and (3) the name, address, and any other information that may be used to identify a person who holds a license to carry a handgun, may not be published and is not open to public inspection.

This is a publication of the Marion County Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to David Wyser of the Marion County Prosecutor's Office.

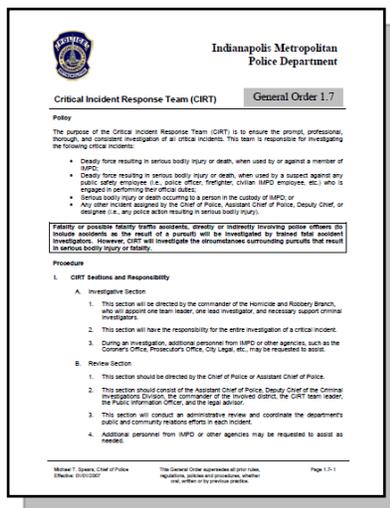
The following note is posted at the bottom of each PPU:

This is a publication of the Marion County Prosecutor's Office which will cover various topics of interest to law enforcement officers. Please direct any suggestions you may have for future issues to David Wyser of the Marion County Prosecutor's Office.

IMPD POLICIES INVOLVED

The following IMPD General Orders are pertinent to the investigation of the Officer Bisard crash. The relevant portions of each General Order will be identified and notes will be included regarding whether officers followed or violated the order, suggested revisions will also be noted. If the General Order was violated, the officer in violation will be identified. The orders are in numerical sequence.

General Order 1.7 – Critical Incident Response Team, states:



Policy

The purpose of the Critical Incident Response Team (CIRT) is to ensure the prompt, professional, thorough, and consistent investigation of all critical incidents. This team is responsible for investigating the following critical incidents:

- Deadly force resulting in serious bodily injury or death, when used by or against a member of IMPD;
- Deadly force resulting in serious bodily injury or death, when used by a suspect against any public safety employee (i.e., police officer, firefighter, civilian IMPD employee, etc.) who is engaged in performing their official duties;
- Serious bodily injury or death occurring to a person in the custody of IMPD; or
- Any other incident assigned by the Chief of Police, Assistant Chief of Police, Deputy Chief, or designee (i.e., any police action resulting in serious bodily injury).

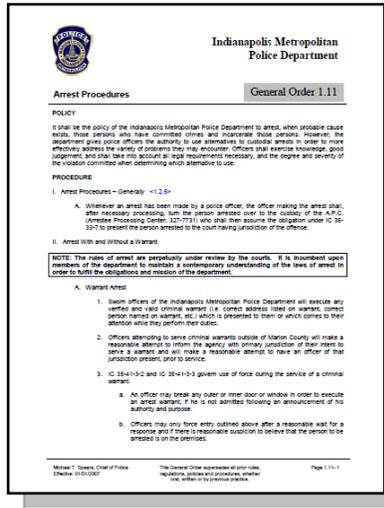
Fatality or possible fatality traffic accidents, directly or indirectly involving police officers (to include accidents as the result of a pursuit) will be investigated by trained fatal accident investigators. However, CIRT will investigate the circumstances surrounding pursuits that result in serious bodily injury or fatality.

Followed? Yes. There were three fatal-trained accident investigators on the scene with active participation in the investigation.

Violated? No. As worded in the current General order the Bisard crash could have been a CIRT incident based on - *Any other incident assigned by the Chief of Police, Assistant Chief of Police, Deputy Chief, or designee (i.e., any police action resulting in serious bodily injury).* However, it is not a violation because they did not make it a CIRT call up.

Recommended Revisions: Eliminate the contradiction based on the judgment call of the Chief, Assistant Chief, or Deputy Chief and make all fatality accidents involving police officers a CIRT callout. This would require the addition of a FAT to the CIRT team.

General Order 1.11 – Arrest Procedures, states:



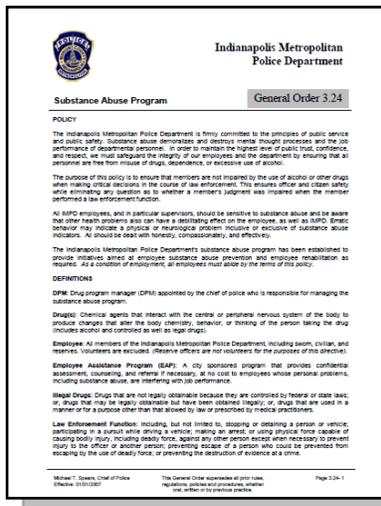
“It shall be the policy of the Indianapolis Metropolitan Police Department to arrest, when probable cause exists, those persons who have committed crimes and incarcerate those persons. However, the department gives police officers the authority to use alternatives to custodial arrests in order to more effectively address the variety of problems they may encounter. Officers shall exercise knowledge, good judgment, and shall take into account all legal requirements necessary, and the degree and severity of the violation committed when determining which alternative to use.”

Followed? Yes. Probable cause to arrest Bisard did not exist at the scene of the accident. Probable cause was established on Monday, August 9, 2010 when the Crime Lab confirmed the blood sample tested positive .19% blood alcohol.

Violated? No.

Recommended Revisions: None

General Order 3.24, Substance Abuse Program, states:



All IMPD employees, and in particular supervisors, should be sensitive to substance abuse and be aware that other health problems also can have a debilitating effect on the employee, as well as IMPD. Erratic behavior may indicate a physical or neurological problem inclusive or exclusive of substance abuse indicators. All should be dealt with honestly, compassionately, and effectively. The Indianapolis Metropolitan Police Department’s substance abuse program has been established to provide initiatives aimed at employee substance abuse prevention and employee rehabilitation as required. *As a condition of employment, all employees must abide by the terms of this policy.*

IV. Alcohol

Members are prohibited from having any alcohol or other intoxicant or controlled substance in their blood while on-duty, or off-duty while in uniform or while employed by any employer to perform a security or law enforcement function. *(See IMPD Rules and Regulations)*

E. Employees on-duty may be required to submit to a test for alcohol when there is evidence amounting to *reasonable suspicion* that he or she is under the influence.

Followed? No. (relative to IV. Alcohol) Based on the blood test, Officer Bisard had a blood alcohol content of .19%.

Yes. (relative to E.) Nobody (sworn, civilian, IMPD employee, or non-employee) stated they suspected or detected the presence of alcohol in or around Officer Bisard.

Violated? Yes, as it relates to officer Bisard. No, as it relates to the other individuals on the scene.

Recommended Revisions: A Department of Public Safety-wide alcohol policy is being implemented.

General Order 3.28, On-duty Illness and Injury, states:

PROCEDURE

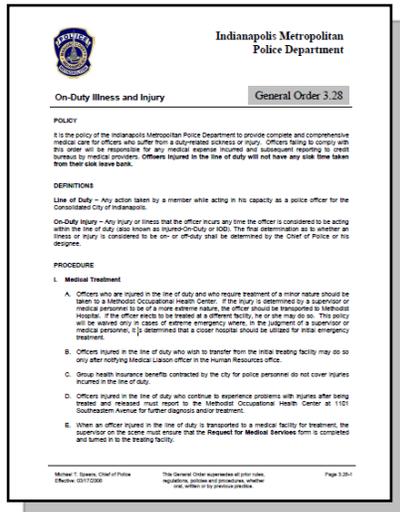
I. Medical Treatment

A. Officers who are injured in the line of duty and who require treatment of a minor nature should be taken to a Methodist Occupational Health Center. If the injury is determined by a supervisor or medical personnel to be of a more extreme nature, the officer should be transported to Methodist Hospital. If the officer elects to be treated at a different facility, he or she may do so. This policy will be waived only in cases of extreme emergency where, in the judgment of a supervisor or medical personnel, it is determined that a closer hospital should be utilized for initial emergency treatment.

Followed? Yes. The officer only had minor injuries (scratches and abrasions to both arms) therefore by consensus of Sgt. Peterson, Sgt. Heustis, and Major Conley, Officer Bisard was sent to Methodist Occupational Health Center.

Violated? No.

Recommended Revisions: A Revision should exclude taking officers involved in Serious Bodily Injury / Fatality accidents to Methodist Occupational Health Center for treatment regardless of the severity of their injuries. This General Order should mirror a revised General Order 7.4, Police Vehicle Crashes and Damage, and mandate sworn police personnel be sent to Methodist Hospital for treatment.

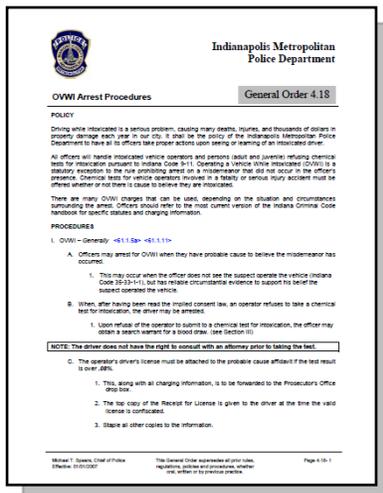


General Order 4.18, OWVI Arrest Procedures, states:

Chemical tests for vehicle operators involved in a fatality or serious injury accident must be offered whether or not there is cause to believe they are intoxicated.

III. Blood Samples – Generally

- D. Any blood drawn for the purpose of a chemical test must be done in the presence of the officer, as this may be a fact in which the officer will have to testify about in court. During the blood draw, the officer must ensure that:
1. An alcohol-based swab is NOT used to prepare the area prior to drawing the blood;
 2. An anti-coagulant, EDTA, is included in the blood drawn into the vacutainer; and
 3. He witnesses the drawing of the blood from the driver



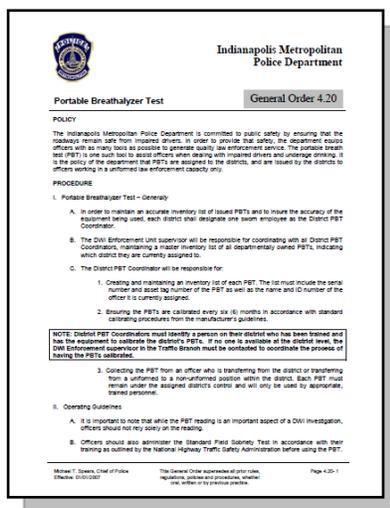
E. The tube is labeled with all of the following information:

1. Case number;
2. Name of person from whom the blood is being drawn for analysis;
3. Date and time blood sample taken; and
4. Initials of the officer who witnesses the blood draw.

Followed? Yes. Lt. Stan Stephens offered Bisard a blood test by reading him the Indiana Implied Consent statement for Serious Bodily injury / Fatality Crashes directly from a laminated card.

Violated? No.

Recommended Revisions: There is no mention in this General order or any other policy of the “timeliness” of transporting a subject involved in a SBI / Fatality crash for a blood draw. In this case, Sgt. Peterson stopped at a gas station en route to MOHC and allowed Bisard to consume a fountain drink. This action is *not prohibited* by current policy. A recommended policy revision should include an acceptable time frame for “direct” transportation to a hospital, and the prohibition of food / beverage consumption until blood testing is complete.



General Order 4.20, Portable Breathalyzer Test, states:

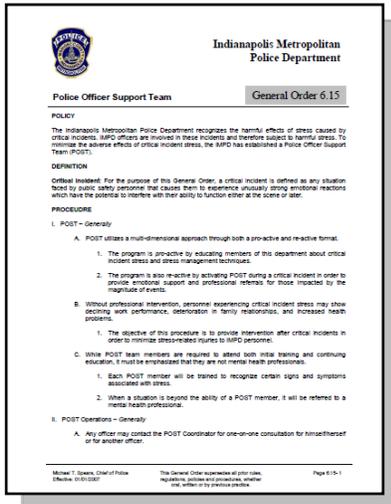
The Indianapolis Metropolitan Police Department is committed to public safety by ensuring that the roadways remain safe from impaired drivers. In order to provide that safety, the department equips officers with as many tools as possible to generate quality law enforcement service. The portable breath test (PBT) is one such tool to assist officers when dealing with impaired drivers and underage drinking. It is the policy of the department that PBTs are assigned to the districts, and are issued by the districts to officers working in a uniformed law enforcement capacity only.

Followed? Yes. Currently there is no requirement for IMPD officers to submit to a PBT when involved in a crash.

Violated? No.

Recommended Revisions: Require all IMPD members to submit to a PBT when involved in a crash while driving a department owned vehicle.

General Order 6.15, Police Officer Support Team, states:



POLICY

The Indianapolis Metropolitan Police Department recognizes the harmful effects of stress caused by critical incidents. IMPD officers are involved in these incidents and therefore subject to harmful stress. To minimize the adverse effects of critical incident stress, the IMPD has established a Police Officer Support Team (POST).

PROCEDURE

I. POST – Generally

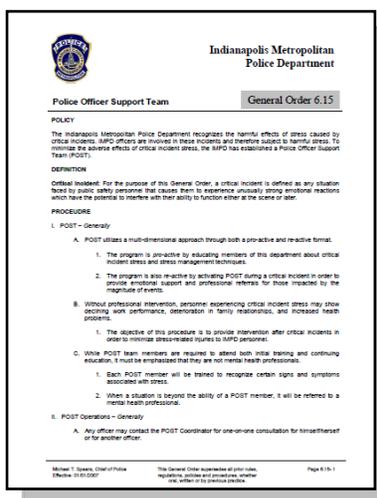
A. POST utilizes a multi-dimensional approach through both a pro-active and re-active format.

1. The program is *pro-active* by educating members of this department about critical incident stress and stress management techniques.
2. The program is also *re-active* by activating POST during a critical incident in order to provide emotional support and professional referrals for those impacted by the magnitude of events.

Followed? Yes. Three (3) on-duty POST team members responded to the scene of the Bisard incident. Officer Michael Hegg spoke to Bisard directly, while Lt. Larry Jahnke and Sgt. Kim Young offered support to other responding officers and civilian witnesses.

Violated? No.

Recommended Revisions: A future policy review should include a discussion as to whether POST Team members assigned to sensitive investigative units, such as Internal Affairs or Homicide, should attempt to talk to an IMPD member who has experienced a traumatic incident; the concern being a potential conflict of interest or task/job assignments. Lt. Larry Jahnke and Sgt. Kim Young were assigned to Internal Affairs on August 6, 2010.



General Order 7.1, Traffic Crash Investigations, states:

- G. Responding officers should be alert to the presence of drivers who appear to be impaired, intoxicated, or under the influence of alcohol or drugs. If any type of impairment is suspected, the officer will adhere to department directives outlining proper procedures for investigating and testing the individual involved. At a minimum, the officer should properly and safely detain the individual and ensure they do not smoke, eat or drink anything until a proper breath test or blood test can be administered. Refer to directives involving OMVWI arrests for further procedures and information on handling these situations.

II. Crash Scene Response

- A. Officers arriving on the scene of a vehicle crash will position the patrol car(s) in such a way as to protect the crash scene, victims, and any evidence, (including vehicle and pavement

markings. If the officer's vehicle is to remain in the roadway, all emergency lights will remain on.

- B. The first arriving officer will determine whether there are any injured persons and/or fatalities. This officer will contact Communications and request any necessary services, such as the fire department, ambulance, wrecker service, etc. If necessary, the officer may administer first aid treatment for any life-threatening injuries until relieved by emergency medical or fire department personnel.

III. Crash Scene Officer Responsibility and Reporting

A. Crashes Involving Death of Serious Injury

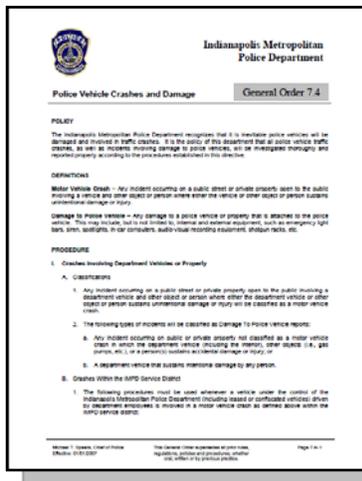
1. The crash scene is considered a crime scene; therefore all debris and/or property are considered evidence and shall not be disturbed unless absolutely necessary;
2. Officers will notify Communications that a serious injury or fatality is involved so a supervisor and accident investigator may be dispatched to the scene.
3. A certified reconstructionist will be called to the scene of any serious or fatal accident involving city liability, as well as crashes involving multiple deaths, hit-and-run fatalities, or when requested by the on-scene accident investigator.

Followed? Yes- regarding Section I - G. There was no indication from any witness civilian or sworn that Officer Bisard was impaired or intoxicated. Therefore, Officer Bisard was not detained, handcuffed, or handled as a criminal offender.

No- regarding Crime Scene Management. Many officers not involved in the crash investigation were observed in and around the crash scene. The scene was not secured and non-essential personnel were allowed access.

Violated? Yes – There was poor crime scene management resulting in the loss of valuable evidence. The General Order specifically states the crash scene is considered a crime scene; therefore all debris and/or property are considered evidence and shall not be disturbed unless absolutely necessary. Sgt. Doug Heustis and Officer Jason Cottey were completely involved in crime scene processing (statements, measurements, and photos) and it would be unreasonable to hold them accountable for overall scene management and security. Major John Conley, based on officer interviews and statements was the identified supervisor of the scene. Major Conley also admitted to approving and overseeing the removal of gear including a black bag from the trunk of the vehicle. Major Conley was present as Officer Bisard removed a black bag (unknown contents) from the crime scene and placed it in Sgt. Peterson's vehicle. No one at the scene examined the contents of the bag removed or inventoried the items removed from the vehicle which was part of the crime scene. Major John Conley violated General Order 7.1.

Although present at the crash scene, neither Assistant Chief Pierce or Deputy Chief Ron Hicks determined who was in charge of the overall crime scene management nor did they establish



General Order 7.4, Police Vehicle Crashes and Damage, states:

3. When injuries are involved:

a. If injured and under arrest, civilians must be sent to Wishard Hospital for treatment unless medical personnel on the scene determine it is necessary to transport the individual to the nearest hospital for immediate medical attention. Individuals refusing treatment should be requested to sign a medical release.

b. Sworn police personnel will be sent to Methodist Hospital for treatment unless otherwise requested by the officer. Civilian personnel of the department must be sent to the nearest Methodist Health Care Center for examination unless medical personnel on the scene determine it is necessary to transport the individual to the nearest hospital for immediate attention.

Followed? No. Officer Bisard was not sent to Methodist Hospital, as required by this directive. His treatment at MOHC was in conflict with this General Order.

Violated? Yes, but the violation of this General Order was because General Order 3.28 was followed:

“Officers who are injured in the line of duty and who require treatment of a minor nature should be taken to a Methodist Occupational Health Center.”

No one should be sustained with a violation of this General Order because of the conflict between General Order 3.28 and 7.4.

Recommended Revisions: A revision of General Order 7.4, Police Vehicle Crashes and Damage, should mandate sworn police personnel be sent to Methodist Hospital for treatment when injured in vehicle crashes while operating a department owned vehicle.

Additional Recommendations for IMPD Policy / Procedure Revisions:

The implementation of an IMPD policy that requires all property / evidence to be time-stamped upon submission to the property room.

Additional Investigative Notes

On August 20, 2010, the prosecutor's office received a letter from Mr. Bruce Kehoe, of the law firm, Wilson, Kehoe and Winningham, who represents one of the victim's (Kurt Weekly). Mr. Kehoe stated he had a witness (Gerald Griffin) who observed Officer Bisard purchasing alcohol from a northeast side CVS drugstore, within 48 hours before the crash. Local media stations also reported a possible witness to officer Bisard purchasing alcohol at a CVS. Within a couple of days of the media coverage, a cashier from the CVS store at E.71st St. and Binford Blvd., Jane Meadows stated she was the clerk that sold the alcohol to Officer Bisard.

Gerald Griffin was interviewed by Detectives Burkhardt and Lehn. Mr. Griffin is an attorney and physician, and also an associate in the firm Wilson, Kehoe and Winningham. Mr. Griffin said he observed Officer Bisard purchase the alcohol at the CVS sometime between 14:30-15:00 hours on August 5, 2010. Mr. Griffin said he was in line behind the officer (Bisard), who purchased a large bottle of vodka. A check of Officer Bisard's work activity on August 5, 2010, shows he assisted on a run at 13:50 hours at 3328 E. Michigan Street. Bisard immediately cleared that run for another at 14:08 hours at 428 W. 46th St., on a burglary. The burglary run resulted in a dog bite by Officer Bisard's K9 partner and Bisard remained on scene on W. 46th until marking in service at 1453 hrs. Officer Bisard marked off duty at 1837 hrs on August 5, 2010. (CAD History)

CVS surveillance tapes were reviewed by Detectives Burkhardt and Lehn for the date of August 5, 2010, the alleged date of the alcohol purchase, and Officer Bisard was not seen in the store (nor were there any other uniformed IMPD officers seen purchasing alcohol). Ms Meadows' register transactions were also reviewed by Detectives Burkhardt and Lehn and confirm that Ms. Meadows made only one alcohol sale on her shift at 00:24 hours on August 6, 2010. The sale made was Hennessy cognac, a brown colored alcohol. Video shows Ms. Meadows selling the alcohol to two black males.

Conclusion

In summary, on Friday, August 6, 2010 IMPD Officer David Bisard recklessly operated his semi-marked police vehicle, weaving in and out of traffic, with red/blue lights and sirens activated at a high rate of speed (73 mph in a 40 mph zone), while intoxicated. Officer Bisard's use of his emergency equipment was without sufficient cause or need. Officer Bisard crashed into three people on two motorcycles that were stopped at a red light at Brendon Way Parkway and E. 56th Street. One of the motorcyclists died as a result of injuries sustained in the crash, a second was critically injured, and a passenger on one of the motorcycles was also seriously injured.

IMPD officers along with officers from Lawrence Police Department, and Washington Township School Police responded to the crash. IMPD was the lead investigative agency. An IMPD FAT (Fatal Accident Team) lead by Sgt. Doug Heustis was tasked with the crash investigation and subsequent crash reconstruction. The investigation determined the crash scene on E. 56th Street was not properly managed and protected. The scene was not handled professionally. Officers walked freely on the debris covered street. No formal Incident Command was established and no supervisor clearly identified himself as being in charge. Major John Conley was the consensus supervisor in charge of the scene. The vehicle involved (Officer Bisard's vehicle) was not treated as a crime scene. Major John Conley allowed officer Bisard to remove items from the vehicle without inventorying them. As a result, critical evidence was lost.

Lt. Stan Stephens, Lawrence Police Department, responded as the FACT6 representative to collect the mandatory blood sample as required by IC 9-30-6-6 from Officer David Bisard. Lt. Stephens responded to Methodist Occupational Health Center, 1101 Southeastern Avenue, to obtain the sample. Officer Bisard had been transported by Sgt. Jeff Peterson from the crash scene to MOHC for treatment of minor injuries sustained as a result of the crash. At MOHC, Lt. Stephens observed medical assistant Michelle Maga use a betadine prep to clean the inner right arm of Officer David Bisard and draw two vials of blood. Lt. Stephens then took possession of the two vials and labeled each tube with David Bisard's name. Lt. Stephens maintained custody of both tubes until he logged them into the IMPD Property room.

One vial of David Bisard's blood was tested at the Marion County Forensic Services Crime Lab on August 9, 2010. Forensic Chemist Kathy Walton conducted a blood alcohol concentration test on David Bisard's blood and determined that David Bisard's blood alcohol concentration was .19%. Prosecutor Brizzi filed the following charges against Officer Bisard:

Reckless Homicide/FC

Operating a Motor Vehicle w/ a BAC of 0.15 or Higher Causing Death/FB

Operating a Motor Vehicle While Intoxicated Causing Death/FC

Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury/FD

Operating a Motor Vehicle w/ a BAC of .08 or higher Causing Serious Bodily Injury/FD

Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury/FD

Operating a Motor Vehicle w/ a BAC of .08 or higher Causing Serious Bodily Injury/FD

All alcohol related charges against Officer David Bisard were dropped on August 19, 2010. Prosecutor Carl Brizzi cited an “improper blood draw” for his decision to drop the charges. Brizzi said, “It (the blood draw) wasn’t conducted at a hospital, as it’s defined under the statute (IC9-30-6-6), and wasn’t performed by someone who has the legal requirements necessary.” The blood draw on David Bisard did not satisfy the legal requirements of IC 9-30-6-6 as amended on March 12, 2010. However, the blood draw did satisfy IC 9-30-6-6 prior to amendment. Lt. Stan Stephens was not aware of the change in IC 9-30-6-6 that eliminated “certified phlebotomist” from the list of authorized persons to draw blood.

The investigation determined that the first responding IMPD officers did a good job. Sgt. Jeff Peterson (A114) made sure the scene was blocked off, that there were ambulances enroute for the injured, and that notification had been made to his commander (Tom Koppel) and Officer Bisard’s supervisor (Lt. Diggs).

Sgt. Heustis (TR40), despite violating IMPD General Order 7.3 – Towing / Impounding Vehicles specific to vehicle inventory and scheduling of after the fact Crime Lab processing, did a professional job with the on scene crash reconstruction and investigation of fatal crash report (Fatal Crash Packet). Sgt. Heustis’ primary responsibility was the crash reconstruction not the overall crash scene management.

The investigation determined that Assistant Chief Darryl Pierce and Deputy Chief Ron Hicks failed to determine / identify who was in command of the crash scene. While on the scene of the crash neither Assistant Chief Pierce or Deputy Chief Ron Hicks engaged in the management of the scene, and failed to clearly identify or designate an on scene commander. Deputy Chief Hicks did confirm that Major John Conley was staying on the scene prior to his (Hicks) departure. The failure of Assistant Chief Pierce and Deputy Chief Hicks to engage in the management of the crime scene, specifically related to protection and security of evidence (the vehicle and contents), and the failure to ensure someone was in command of the scene resulted in unprofessional crime scene management and loss of valuable evidence.

The investigation determined that Major John Conley had the most involvement of any of the command staff on the scene. Conley was briefed by Sgt. Jeff Peterson on his arrival

and took part in the decision to transport Officer David Bisard to Methodist Occupational Health Center. The investigation also determined that Major John Conley violated IMPD General Order 7.1 – Traffic Crash Investigations specifically allowing poor crime scene management that undermined the integrity of the overall investigation. As a result, critical evidence was not obtained. Specifically Officer Bisard’s vehicle (crash vehicle) was removed from the scene without being properly inventoried.

As of November 10, 2010, the only remaining Marion County criminal charges against Officer David Bisard are: Reckless Homicide/FC, and two counts of Criminal Recklessness/FD. Officer David Bisard faces several administrative violations and a formal recommendation to the merit board from Chief of Police Paul Ciesielski that he be terminated from the IMPD.

The FBI has referred their investigation to the United States Department of Justice (DOJ), Civil Rights Division. The Department of Justice Civil Rights Division review of this matter is an open investigation.

Officer Bisard has declined to be interviewed by IMPD Professional Standards Division Investigators.

The findings of the IMPD Professional Standards Division investigation are that Officer David Bisard is **SUSTAINED** as to the allegations concerning violation of:

IMPD RULES AND REGULATIONS:

Section I. – Violation of any Rule, Regulation, or Order of the Department

- A. Members shall obey all written and oral orders, rules, regulations, policy, and standard operating procedures of the department.

Section III. – Insubordination

- C. Members shall promptly obey any lawful order of a supervisor or appointed police administrator.

Section VI. – Conduct Unbecoming an Officer

- E. Members shall not partake of any intoxicating beverage while on duty, except in the performance of their duty, nor shall any member report for duty under the influence of intoxicants to any degree whatsoever.

Section VIII. – Violation, with the determination by the Chief based on a preponderance of the evidence, of any Federal, State, or local laws.

A. Members shall obey all federal, state, or local laws.

IC 9-30-5-5

Operating a Vehicle While Intoxicated Causing Death With a BAC 0.15 or Higher Causing Death;

Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood;
commits a Class B felony.

IC 9-30-5-5

Operating a Vehicle While Intoxicated Causing Death;

Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood;
commits a Class C felony.

IC 35-42-1-5

Reckless Homicide

Sec. 5. A person who recklessly kills another human being commits reckless homicide; a Class C felony.

IC 9-30-5-4

Operating a Vehicle While Intoxicated causing serious bodily injury;

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(3) while intoxicated;
commits a Class D felony.

IC 9-30-5-4

Operating a Vehicle While With a BAC 0.08 or Higher Causing Serious Bodily Injury;

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood;
commits a Class D felony.

IC 9-30-5-4

Operating a Vehicle While Intoxicated Causing Serious Bodily Injury;

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(3) while intoxicated;
commits a Class D felony.

IC 9-30-5-4

Operating a Vehicle While With a BAC 0.08 or Higher Causing Serious Bodily Injury;

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood;
commits a Class D felony.

IMPD GENERAL ORDERS:

General Order 4.16 – Police Vehicle Operations

POLICY

All Indianapolis Metropolitan Police Department personnel must operate department vehicles (city/county owned or leased) with due regard for safety of others. Employees shall obey all traffic laws when operating department vehicles. State and local exemptions will not protect an employee from consequences of any act involving a reckless disregard for the safety of the employee or others.

V. Emergency Operations

A. Emergency Operation

1. Department vehicles must be operated under emergency conditions only when the officer is responding to a reported or confirmed emergency situation, or when properly operating under pursuit conditions. Officers should refer to general order regarding **Vehicle Pursuits**.
3. An officer may disregard an automatic traffic control signal or stop sign only when responding to an emergency situation or when properly operating a department vehicle under pursuit conditions may. In both instances, the officer must approach the intersection with caution and be prepared to stop. The officer may proceed only when it is safe by clearing the intersection lane by lane.
4. Police vehicles approaching an automatic traffic control signal or intersecting street controlled by a stop sign must be prepared to take evasive action and brake, if necessary. The police vehicle operator must proceed with caution.

VII. Use of a City-Owned Vehicle After Consuming Intoxicants

- A. Department personnel, in both an on-duty and off-duty status, are prohibited from operating any city-owned vehicle after taking any restrictive prescription medication or

chemical intoxicant.

- B. Department personnel, in both an on-duty and off-duty status, are strictly prohibited from operating any city-owned vehicle with any traceable amount of alcohol as determined by a chemical test.
- C. The following **Zero Tolerance Policy** will be administered for any violation:
Involvement in any preventable accident in a **city-owned** vehicle with BAC of .08% or above
 - 1st violation: **45 – Day Suspension**
 - 2nd violation: **DISMISSAL**

General Order 9.2 – Communications, Radio, MDC and Pager

POLICY

All police runs are dispatched on the authority of the Chief of Police, and may be dispatched by voice radio, mobile data terminal (MDT), mobile data computer (MDC) or MECA pager. All personnel will use the police radio, pager, and MDT/MDC only for authorized business.

VI. MDT/MDC Message Procedure

- A. When using the free-form message function, transmissions are to be limited to official business only.
 - 1. Messages sent over the data channels are recorded.

NOTE: Vehicle operators must not allow the use of an MDT/MDC to interfere or distract from the safe operation of the vehicle.

Friday, August 6, 2010

	1117	K17 Officer Bisard backs up to the warrant
CRASH	1121	K17 Officer Bisard advises he is involved in a crash
	1122	Ambulance is started - documented K17 involved in crash
First officer to mark on scene as indicated in the CAD. However the following also arrived at the sametime: A114 Sgt. Peterson, Stout, King, Trost(WTSP), Jennings	1123	A136 Officer Millikan marks on scene
	1127	Staff PG - Possible Fatality (A1, FAT, PIO, CHPLN, CR1, CR2, CR3)
	1131	A114 Sgt. Peterson requests PIO
	1140	A114 Sgt. Peterson requests another medic for K17
	1141	Communications Supervisor sends out FOP page
	1143	A114 Sgt. Peterson identifies Media Staging
	1143	A136 Officer Milliken requests an ET for Photos
	1143	A185 Officer Cottey noted TR44 paged to respond
	1145	A114 Requests POST
Sgt. Huestis put on the run	1147	TR40 Sgt. Huestis backed out on the run
	1148	POST Team Paged
	1150	CR3 Deputy Chief Hicks backed himself out on the run
	1151	ET A121 10-23
	1154	A143 Officer Darst requests Victim Assistance
	1155	POST Team members enroute
	1200	CHP1 Bacon
	1203	POST members on scene
Chief Ciesielski did not contact Communications A/C Pierce said he contacted Communications by phone and made the request on behalf of CR1	1204	Authority CAR1 page FOP CR86 or rep respond to scene
FACT6 requested	1211	FACT6 requested authority CR3
	1215	A1 Commander Koppel on scene
	1217	POST sent to MOHC
	1219	F474 Officer Rod Wallace identified as FOP representative
	1220	LK18 Lt. Stan Stephens Identified as responding FACT6
	1221	F129 Officer Brinker at Methodist advises of 10-0 call
	1221	F129 requests a chaplain at Methodist Hospital
Officer Bisard leaves the scene as a passenger in vehicle driven by A114 Sgt. Peterson. Followed by K19 Whitsell. Route: I465SB to Washington St exit / WB Washington to Speedway gas stationWashington/Emerson.	1224	A114 Sgt. Peterson changes locations to MOHC
	1225	CR1, CR2, CR3 and PIO paged - Fatality

	1227	CHP1 changed location to Methodist Hospital
	1231	Staff paged 10-0 call - confirmed fatality
Lt. Stephens responds enroute to MOHC - He was never on scene of the crash.	1231	LK18 Lt. Stephens changed location to MOHC
Sgt. Peterson marks out of vehicle. Speedway gas station video confirms they were 10-23 at the station from 1233 to 1241 hours.	1232	A114 Sgt. Peterson marks out of vehicle status
	1236	CR3 Deputy Chief Hicks marks 10-23 from his MDT
	1242	K1 Lt. Diggs Backs out to K17
	1245	CHP1 10-23 at Methodist Hospital
Officer Bisard arrives at MOHC	1248	A114 Sgt. Peterson marks on scene MOHC
	1248	CR3 DC Hicks marks 10-8 in service
	1251	LP65 Officer Perkins identified as FACT6 unit responding to Methodist Hospital
	1252	A121 Officer Minor ET marks 10-8
	1255	A1 marks 10-8
Lt. Stephens arrives at MOHC	1258	LK18Lt. Stephens on scene at MOHC
	1259	LP65 Officer Perkins on scene at Methodist Hospital
Implied Consent Given 1309hrs	1309	Interstate ordered for PV, Zores for motorcycles x2
	1316	Coroner en route to scene from Methodist -ETA 30 minutes
	1332	CHP1 inservice
Blood Draw at 1348hrs		
	1353	A185 Officer Cottey - IFD ordered to flush the scene
	1409	A185 Advises TR40 RPT, A121 Photos, A185 DHC
	1411	Traffic opened up
Lt. Stephens changes location to the Property Rm Lt. Stephens left MOHC and stopped at Hardees for a sandwich. Confirmed on video.	1420	LK18 Lt. Stephens changed location to HQ
Sgt. Peterson marks in-service.	1422	A114 Sgt. Peterson 10-8 in service
Lt. Stephens arrives at Property Rm	1444	LK18 Lt. Stephens on scene 10-23 at HQ
	1445	LK18 Lt. Stephens changed location to LPD HQ
	1455	TR40 Sgt. Heustis marks 10-8 in service report

Lt. Stephens had expired tubes. MOHC had expired tubes. Contacted MOHC - Park Fletcher. Rhonda Gallagher delivered unexpired tubes. Different shaped because different size (ml). Same preservatives - gray top. Took about 45mins to get the correct tubes delivered.

Officer Bisard leaves MOHC with Ofc. Whitesell and Lt. Diggs. Went to K9 roll call to speak with FOP rep Wallace (approx. 30 mins). Lt. Diggs and Whitesell took Bisard to lunch at Shapiro's and then to the garage to pick-up a pool car.

Monday, August 9, 2010

Blood tested by Crime Lab

Tuesday, August 10, 2010

Blood test results made public / Ofc. Bisard relieved of duties

Wednesday, August 11, 2010

Charges filed by Marion County Prosecutor's Office

Thursday, August 12, 2010

David Bisard initial hearing

Monday, August 16th, 2010

Ofc. Bisard's vehicle towed from City Garage to Central State

Thursday, August 19, 2010

Charges related to blood test dismissed by Prosecutor's Office