

IN THE MATTER OF THE FRANCIS M. HERNANDEZ INVESTIGATION

REPORT: FINDINGS OF FACT AND RECOMMENDATIONS

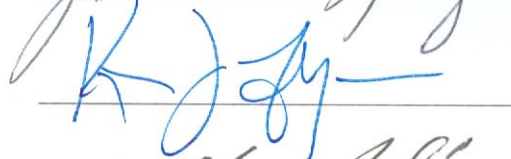
**TACTICAL REVIEW BOARD
AURORA POLICE DEPARTMENT
15001 EAST ALAMEDA PARKWAY
AURORA, CO 80012**

TRB Members:

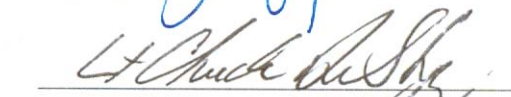
Commander John DaLuz, Chairperson



Commander Kevin Flynn, Cmd'r Dist.-II



Lieutenant Chuck Deshazer, Traffic Section



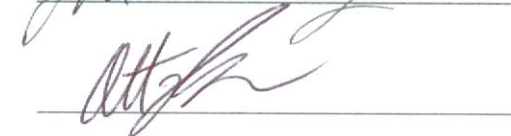
Lieutenant Eric Stewart, Executive Officer, D-3



Sergeant James Lesnansky, Patrol Sgt.



Officer Albert Graham, DART



Signed and dated this 23rd day of June, 2011

TABLE OF CONTENTS

	Page
I Introduction	3
II Executive Summary	4
III Officer Notes in Criminal Investigations	7
IV Recentralization of Traffic Unit	9
V Vehicle Evidence Handling & Processing Procedures	13
VI Conclusion	14

ADDENDUMS

A TRB 7.9	
B Resumes	
C SO 10-02: Officer Notes in Criminal Investigations	
D SO 11-04: Type A Crash	
E SO 11-05: Vehicle Evidence Handling & Procedures	
F Chief Oates TRB Formation Announcement	
G Internal Traffic memos	
H Traffic On-call Schedules	
I Agent Hardin and Agent Lee Affidavits	
J Photographs	
K On-Scene Personnel	
L News Articles	
M Case Law Citations	
N Recommended Equipment	

I. INTRODUCTION

On March 8th, 2010, Chief of Police Daniel J. Oates directed that a tactical review of the Francis Hernandez Case (2008-38038) be conducted. A Tactical Review Board (TRB) was impaneled as provided by Departmental Directive 7.9 (revised 03/01/2010).

Directive 7.9 states in part:

The TRB will review any incident that, in the opinion of the Chief, triggers the need for an inquiry into whether the Department's training, policies, tactics and/or procedures need to be modified....

The purpose of the Tactical Review Board is not to investigate misconduct or to impose discipline, as these functions are provided for in other Department processes. The Board's focus will be on training, policy, tactics and procedural issues and needs. However, when a TRB inquiry uncovers evidence of possible misconduct not previously known to the Department, that evidence will be subject to further investigation by the appropriate entity, consistent with existing Department policy.

(See Directive 7.9 attached as Addendum A)

On March 29th, the Board was convened to begin a discussion of the investigation and to set forth primary goals and objectives. The TRB for the Francis Hernandez case consists of the following sworn members:

- Commander Jack DaLuz, Investigations Bureau: Chairman of the TRB
- Commander Kevin Flynn, District-2 Commander
- Lieutenant Chuck Deshazer, Traffic Section
- Lieutenant Eric Stewart, Executive Officer, District-3
- Sergeant Jim Lesnansky, Patrol Supervisor
- Officer Al Graham, D.A.R.T. Team

(See Profile / Resume of the TRB members attached as Addendum B.)

The TRB was expected to complete its review of the incident and subsequent management / case assignment strategies employed by Department personnel involved in the investigation by March, 2011. The report is to contain an Executive Summary, a Statement of Facts, and Incident Analysis along with recommendations aimed at establishing “*Best Practices*” for the investigation of future fatality-involved crashes.

II. EXECUTIVE SUMMARY

On 09/04/2008 at about 8:02 P.M., multiple units of the Aurora Police Department were dispatched on a report of an unknown injury accident that occurred in the southbound lanes of South Havana Street, south of the intersection of East Mississippi Avenue and South Havana Street in the City of Aurora, Arapahoe County, CO.

The resulting investigation revealed that a 2004 Chevrolet Suburban, travelling southbound in the 1100 block of South Havana Street, later determined to be driven by Francis Maudaniel Hernandez (03/20/1985), struck a 1998 Mazda truck travelling northbound and attempting to turn left (west) into the driveway of Good Time Burgers at 1105 South Havana Street. As a result of this collision, an Xcel Energy box was struck and the box cover was projected through the east facing plate glass window of Baskin Robbins at 1155 South Havana St. The cover struck 3-year-old *Martin Kudlis* (08/22/2005), who was eating ice cream inside Baskin Robbins, killing him. The driver of the 1998 Mazda truck, *Patricia Guntharp* (12/06/1958) and her passenger *Debra Serecky* (09/01/1957) were pronounced dead at the scene as a result of the collision.

At about 9:00 P.M., on-call Traffic Operations Detective, Agent Johnny Lee, was summoned to the scene to begin an investigation of this fatal traffic crash. Other Traffic Unit officers responding to assist Agent Lee included Officer Brian Kelly, Officer Javen Harper and Officer Bill Collom, who later in the investigation constructed complex speed determination calculations.

Francis Maudaniel Hernandez fled the scene of the crash and was later located at 9600 E. Girard Avenue, #-5E, in Denver by Aurora Officer Erick Ortiz and Officer Marc Paolino. A “show-up” was conducted and witnesses to the fatal collision positively identified Hernandez as the driver of the Suburban and the person who earlier unlawfully fled the scene on foot.

On February 24th, 2010, Francis Maudaniel Hernandez was convicted and found guilty on 19-counts, including Vehicular Homicide, Child Abuse Resulting in Death, a Class-2 Felony by an Arapahoe County Jury. However, during the trial, questions/allegations were made regarding the assignment of the case and how it was managed by the Lead Detective Johnny Lee and other members of the Aurora Police Department. Agent Lee was continuously characterized as being “dishonest and deceptive” by the defense team. Additionally, during the trial, Officer Erick Ortiz made reference to notebook entries made by him the night of the crash. The trial was stopped, and the officer was ordered by Judge Wheeler to retrieve his written notes. It was subsequently discovered that a notebook entry made by Ortiz, “*I’ll take blame*” was not transcribed into the final report. Ortiz explained that he was uncertain who to attribute the statement to, as the reason why he had not included the statement in his final report. This late discovery resulted in

defense attorneys challenging the completeness of the investigation and then alleging that exculpatory statements were intentionally left out.

Ortiz later testified that the only reason he could think of to explain why he did not include the statement in his police report was because he was not sure who to attribute the comment to or what the context was. The defense asked, “*Could it refer to the defendant taking the blame for his cousin?*”. Ortiz answered in the affirmative.

Upon review of the entire incident, the Tactical Review Board determined several areas of inquiry, and a study of the same resulted in operational changes that led to a “*Best Practice*” recommendation on how future collision investigations that result in death or serious bodily injury should be conducted. Additionally, the TRB developed a standardized method for the collection and preservation of officer notes collected during felony type investigations, as well as a procedure to reasonably preserve crash-related evidence.

Other issues / questions / concerns considered by the TRB included:

Paperwork Issues

1. Affidavit preparation, training, and timely review/approval by supervisor.
2. Completion of all required officer reports before end of shift.
3. Officers not transcribing all pertinent information from on-scene written notes into their final report. This matter created great anxiety at trial and garnered extreme media attention.

Assignment of On-scene Personnel

1. The necessity to have a Traffic Sergeant on duty or on call.
2. Patrol Sergeants with previous Traffic Investigation experience were not utilized.
3. Why was the most junior and inexperienced traffic detective the only detective called out to the scene? What were his qualifications at the time? (*Addendum B*)

On-call Resources

1. The TRB questioned why additional Detectives were not called to assist.
2. The TRB questioned why the on-scene commander failed to recognize the magnitude of this triple death investigation and not request appropriate resources.

3. Should the Department assemble specialty crash response teams for future crashes?
4. Should an on-call Department PIO respond to death crashes if needed, relieving the duty from the supervising lieutenant / sergeant on scene?
5. Should Traffic Detectives and officers be physically recentralized?

Supervision / Leadership Issues

1. Fractured management of the incident.
2. Why was there not an assigned Traffic Sergeant on duty the night of the crash or called to the scene to provide supervision and/or expertise?
3. Concern that the Traffic Lieutenant was regularly scheduled to perform Traffic Sergeant duties in addition to his command function? Conversely, that the Traffic Sergeant would regularly have command duties when the lieutenant was off-duty.
4. Concern that by design, future failure in such investigations might be inevitable.
5. The TRB questioned why the on-scene commander failed to initiate use of the Incident Command System (ICS)?
6. Why did the on-scene commander not recognize that there were multiple scenes requiring direct supervision and leadership? These include:
 - a. Primary accident scene at 1155 So. Havana Street
 - b. Children's Hospital
 - c. Medical Center of Aurora South
 - d. Hernandez's residence
 - e. Hernandez's escape route from crash scene

Evidence Handling

1. What practice led to the failure to reasonably preserve the involved vehicles at the City Impound Lot? The vehicles were left to the outside elements as shown in addendum photos.

(See Addendum E, Proposed SO 11-05)

The TRB studied the following areas and developed best practices to be followed at future fatality and Serious Bodily Injury (SBI) collisions, to include:

1. Handling of officer notes in criminal investigations.
2. Recentralization of Traffic Investigations.
3. Establishment of a Crash Reconstruction Team.
4. Vehicle Handling and Processing procedures.
5. Acquisition of additional technology to assist investigators with the accurate and accelerated documentation of crash/crime scenes, improving quality and saving both time and money.

The first matter considered by the TRB concerned the processing of officer notes and retention of same in death and other criminal investigations.

III. OFFICER NOTES IN CRIMINAL INVESTIGATIONS:

On February 12th, 2010, Officer Erick Ortiz testified in the Hernandez Trial and made reference to “notes” he had personally written and retained but not included in the Discovery process. The trial was temporarily suspended and Officer Ortiz ordered to retrieve his notes and present them to the court and defense for judicial review. It was discovered in the assessment process that a statement therein, *“I’ll take blame”* was recorded and not included in the final police report. When questioned under oath, Officer Ortiz stated he couldn’t remember if the statement was made by Hernandez or Hernandez’s girlfriend, Brenda Aleman. Officer Ortiz stated that he probably failed to include the handwritten note in his official police report because he was confused concerning the proper attribution and its exact context.

Defense Attorney Chris Baumann claimed to Judge Wheeler that the notes contained *“exculpatory information”* that could clear defendant Hernandez of responsibility for the deadly crash. Baumann called it a particularly “egregious violation” because Officer Ortiz had twice been questioned about Hernandez and Aleman’s statements in pretrial hearings, but the officer never mentioned he had written notes that were not turned over until questioned about them on February 11, 2010. Baumann asked the judge to consider a range of sanctions, including: dismissal of all charges against Hernandez; dropping the most serious charge, Child Abuse Resulting in Death; or striking Ortiz’s entire testimony, requesting that it be ignored by the jury.

Prosecutor Karen Pearson argued that no sanction was warranted because Officer Ortiz made a mistake – “a technical violation” – but there was no “willful misconduct.” Judge Wheeler agreed and said the violation could be corrected by putting Officer Ortiz back on the stand for cross-examination so defense attorneys *“can have at Officer Ortiz”* about his failure to include the information from his handwritten notes in his typed police report.

However, Judge Wheeler instructed the jury that Officer Ortiz had *“failed”* to comply with legal rules and police department policy requiring Ortiz to turn over all witness statements to prosecutors for release to the defense team. *“You may view Officer Erick Ortiz’s failure to provide this information as additional evidence of the credibility of his testimony,”* the judge told the jury.

The testimony of Officer Erick Ortiz regarding the possession of officer-scribed notes not provided to prosecutors and the defense through the Discovery process highlighted a potential problem regarding how an investigating officer’s written notes should be processed and how those notes should be retained as evidence.

The practice of the majority of officers in the Department involves transcribing their written notes into their final report and then destroying the hand-written notes. In the matter of Homicide Investigations, it has been the practice of those detectives to retain all notes and to place same into their case filing through transcription, scanning and then placing the original notes into Property as evidence. Until the Hernandez trial, this practice served this agency, as well as other metro agencies, in a satisfactory manner. In fact, there is significant case law supporting the existing Department practice of note handling.ⁱ

The cited endnote cases concern an investigating officer's destruction of handwritten notes used to compile formal reports. Pursuant to standard operating procedures of the police agency, it did not require judgment of acquittal on the theory that the agent(s) intentionally destroyed material evidence which was particularly useful to the defendant. Additionally, there was no basis of record from which a reviewing court could conclude that loss of notes materially affected the defendant's ability to present a defense.ⁱⁱ

In the case of *Killian v. United States* involving a claim by the defendant that F.B.I. agents' destruction of their investigatory notes did not rise to the level of a constitutional violation. "*If the agents' notes...were made only for the purpose of transferring the data thereon..., and if, having served that purpose, they were destroyed by the agents in good faith and in accord with their normal practices, it would be clear that their destruction did not constitute an impermissible destruction of evidence nor deprive the petitioner of any right.*" *Id.*, at 242, 82 S.Ct., at 308.ⁱⁱⁱ

Based on a thorough review of all police reports, statements and numerous detailed media accounts of the Francis Hernandez Trial, *the Tactical Review Board developed and implemented on October 21st, 2010 Special Order SO 10-1* regarding the preservation of officer notes in criminal investigations.

(See Addendum C)

IV. RECENTRALIZATION OF TRAFFIC INVESTIGATIONS

Historically, the Traffic Section was a centralized entity. Under the recommendation of the Strategic Planning Committee, the Traffic Section was decentralized and components moved into separate Districts. The premise was that each District would have traffic assets to address localized traffic-related issues. For logistical reasons, the collision investigators were divided and reallocated with eight officers, two detectives and one sergeant assigned to District One and the remainder assigned to District Three. The Motorcycle Enforcement Team and Motor Carrier Safety Unit remained housed at District Two and continued to function as a specialized unit.

This deployment severely limited communication between the now separate teams of collision investigators and detectives. The collective amount of experience was limited to the eight officers and detectives on each individual team. The two traffic teams began to compete against each other for limited resources. Business practices became inconsistent between the two teams as each had a different chain of command with differing philosophical approaches to their mission.

As time passed, a strong sense of independence developed between the two teams. Each became reluctant to collaborate with the other and each functioned autonomously. Some officers from each team began to resent the other group and in some instances verbally degraded other team members. As it relates to this incident, Agent Johnny Lee was assigned as a District One collision investigator and subsequently moved to a District Three Traffic Detective position.

In 2007, the Aurora Police Department was identified for an efficiency study conducted by the Matrix Consulting Group. The study looked at a wide range of issues to include staffing, deployment, response times, workloads and organizational structure.

The Matrix Report, dated February 20, 2008, identified four recommendations surrounding traffic enforcement:^{iv}

1. Increase the number of hazardous citations issued by APD Officers with a goal of reducing the number of fatal and injury accidents.
2. Establish a greater emphasis on DUI enforcement in Aurora (for Patrol Officers and Traffic Units) and increase the number of DUI arrests with a goal of reducing the number of fatal and injury accidents. This includes training for Officers, communication as an organizational priority and establishing a Department goal.
3. Track the number of selective traffic enforcement contacts and establish a goal of at least one citizen driver contact per hour.

4. ***Reorganize the Traffic Section*** so that it would be responsible for all traffic safety services in Aurora, including investigation of major injury traffic accidents, follow-up investigations and selective traffic enforcement. Additionally, the Traffic Section should also have the initial responsibility for coordination of special event planning. Reassign the Traffic Units in Districts 1 and 3 to report to the Traffic Section Lieutenant.

Most importantly, the Matrix Study pointed out that the investigation of major injury and fatal accidents should be organized under one command structure, just as homicide investigations are currently managed. The study stated:

“The effective management of accident investigation function includes training of investigators, procuring necessary equipment, oversight of investigations, ensuring adequate evidence collection, managing civil liability issues and coordinated collection of necessary statistics.”^v

These steps work toward a goal of providing more efficient and effective delivery of services. The Matrix Study stopped short of recommending a physical recentralization of the traffic section. The TRB respectfully disagrees.

The TRB believes serious bodily injury (SBI) and fatal crashes should be coordinated and logistically managed to a similar degree as a homicide investigation. To facilitate the type of communication upon which detectives in the Major Crime Unit successfully rely, requires those charged with solving the crime to be in frequent face-to-face contact. This is best handled by having the investigators physically located in the same facility.

While understanding there are many forms of communication in the 21st Century, nothing compares to face-to-face contact allowing experienced investigators to exchange ideas, draw on each other as sounding boards and reach a consensus on the investigation. This type of idea exchange is invaluable to collision investigators, giving them insight and access to the cognitive processes of other seasoned examiners. Additionally, investigators sent to specialized collision investigation training are able to return to their duties and share with other team members what was learned.

Physical recentralization would also eliminate unnecessary competition for equipment. Each investigator would have access to all combined assets of the centralized traffic section. Currently, assets that were purchased by each District continue to be housed and maintained by the Traffic team at each District, limiting access by investigators. The procurement of needed equipment often adds unnecessary time delays in gathering and preserving critical evidence, thus hindering the complex investigative process.

An additional benefit of physical recentralization would likely result in a positive collaboration of the investigators' and their counterparts who would likely "team manage" significant accidents instead of unconstructively critiquing each others' work. The ability to round-table these collisions allows for open exchange of discussion and ideas and significantly increases the efficiency and effectiveness of services provided by the Centralized Traffic Section. This would replicate a proven practice already in effect in the Major Crime Unit and would result in numerous investigative efficiencies.

Previously, when a vehicular crash occurred that resulted in death or serious bodily injury, the investigation was handled by an on-duty traffic officer or the on-call investigator and/or Accident Reconstructionist. On-scene first responders assisted as needed with traffic control and CSI responded to photograph and collect evidence as necessary. The on-scene investigator independently determined filing charges and seldom, if ever, did so in immediate consultation with a district attorney.

In the Hernandez Case, Agent Lee acted independently in determining a singular charge of "*Hit and Run resulting in Death*" and establishing a minor \$10,000 bond. Had a defect in the original affidavit not been noted, Hernandez likely would have bonded out and become a fugitive of justice. Evidence presented at trial revealed that while in jail, Hernandez was scheming how to raise the money by putting his girlfriend's parents property up for bail (His apparent plan to leave the country to avoid prosecution.)

Hernandez was returned to Aurora from Arapahoe County and placed in the City Detention Center. The following day, a team of Agents assigned to Traffic rewrote the original arrest affidavit and determined appropriate charges for Hernandez who on February 24th, 2010, was convicted in Arapahoe County on 19-counts including Vehicular Homicide...Child Abuse Resulting in Death, a Class-2 Felony.

The Tactical Review Board Proposes Two Recommendations:

1. **Recentralize Traffic** As previously described, the Traffic Section should be physically recentralized into one facility or dedicated area appropriate to completing the variety of investigative tasks related to the functioning of a comprehensive Traffic Section. At a minimum, the TRB recommends the physical relocation of the current Reconstruction Investigators (15), Traffic Agents (6) and supervisors (2). The Motorcycle Enforcement Team (MET), Motor Carrier Safety Unit, Photo Red Light Unit and Administrative Support can be housed elsewhere if space is an issue.
2. **Establish a Crash Reconstruction Team (CRT)** When a homicide occurs, the Department's Major Crime Homicide Unit (MCHU) responds as a team to conduct the on-scene homicide investigation. The team studies the crime scene, identifies evidence, attempts to identify and arrest the suspect(s) and works in

concert with laboratory Crime Scene Investigators to collect and preserve evidence. The MCHU works collectively, in consultation with the appropriate judicial district attorney, to obtain search warrants as needed and determine appropriate charges.

The TRB proposes that the Crash Reconstruction Team be assembled and follow protocols similar to those followed in the MCHU. A CRT should be developed by the Bureau Captain/Commander and Traffic Lieutenant to respond as a team to fatality, SBI / horrific crashes. A CRT van should be deployed and /or the Department Command Post. Filing Agents are a crucial part of the team and should communicate from the incident with the On-call Assistant District Attorney (ADA). In some cases, the ADA should respond to the scene to consult with Traffic Detectives regarding charges to file.

(See Proposed Special Order 11-04 attached as Addendum D)

V. VEHICLE EVIDENCE HANDLING AND PROCESSING PROCEDURES

When a collision occurs resulting in either SBI or a fatality, and the driver of the vehicle is known, it is the lead investigator's responsibility to evaluate and preserve the vehicles for evidentiary purposes. This may include placing the vehicle(s) in the evidence bay(s), or if the evidence bay(s) are not available, to preserve any evidence by tarping the vehicle(s) as described above. In the event a vehicle is placed into the evidence bay(s) the vehicle(s) should be removed as soon as practicable and after consultation with the assigned Assistant District Attorney.

Note

Due to limited storage capacity and ever increasing need, it is necessary that the Department maintain an efficient process regarding the preservation and collection of forensic evidence related to crashes where charges are brought against a driver.

Therefore, once a case is filed, the prosecution and defense will be notified by the assigned investigator that the vehicle will remain available for inspection for a period not longer than 60 days from date of notification. At the end of 60-days, the involved vehicles, already processed for evidence by CSI, will be moved to general storage at the impound lot.

(See Proposed Special Order 11-05, attached as Addendum E)

VI. CONCLUSION

As a result of concerning issues raised during the Hernandez trial, Chief of Police Daniel Oates on March 08, 2010 announced to the Department the appointment of a Tactical Review Board to evaluate the entire case, what business practices were employed and determine what lessons could be learned. The Chief noted that the conviction of Francis Hernandez for the triple homicide “*was an important success for the Department.*” The evidence at trial raised questions about aspects of the traffic investigation process and served as the impetus for the TRB appointment.

The TRB examined many facets of the Hernandez investigation and a major portion of the review centered on the media attention that it garnered and in particular, the pointed inquiries and allegations concerning the manner in which the Department handled the investigation. The Hernandez Trial became a media event wherein the Department and its members were publically criticized for internal actions that took place before, during and after the investigation was completed. The TRB examined the most critical of these concerns. Specifically, comments attributed to detectives who testified during the trial alleged that Traffic Section detectives were at odds with each other and that this internal disruption was long standing.

The Denver Post reported (March 25, 2010, Sec. B, pg 1B) that:

“As Francis Hernandez was being tried for killing three people at an Aurora ice cream shop, police and prosecutors squabbled in e-mails and memos as the odds of winning the case appeared to be reversing”.^{vi}

The Post through an open-records request, obtained internal e-mails that revealed “*Aurora police higher-ups*” had questioned their own Department’s investigation. The Post also obtained e-mail sent to DA Carol Chambers from prosecutor Karen Pearson wherein Pearson stated her belief that Agent Pat Hardin “*was on a vendetta against Agent Johnny Lee.*” She also stated her belief that Agent Hardin was “*unstable*” when she took the stand to testify.^{vii}

An issue at trial focused on Agent Johnny Lee’s preparation of the initial affidavit, including deleting the original document from the police Records Management System. Agent Lee did reconstruct the affidavit but failed to include potentially exculpatory information regarding how an on-scene witness had reported two people inside the Chevy Suburban. The Hernandez defense team pounced on these procedural and evidentiary errors and then painted a sepia-like portrait of a Department in turmoil. Lost in the nearly non-stop reporting of the trial was the fact that three innocents lost their lives the evening of September 4th, 2008.

(The original Lee affidavit and Hardin affidavits are attached as Addendum I)

Case Assignment Concern

Past allotment practices of the Traffic Section led to a perceived disproportionate assignment of cases to investigators. Significant disagreements among on-call traffic detectives regarding who received overtime coupled with inconsistency in how cases were assigned contributed to unrest. In an e-mail dated March 21, 2008, authored by Sergeant M. Woodyard, the sergeant noted changes in the way On-call would be handled. He noted that:

“The purpose of these changes is to ensure the load is carried by all in the unit, that junior officers gain experience and skills, and that all officers can be evaluated in their performance at major accident scenes. I have been tasked with making an on-call roster that spreads out the wealth and ensures that all participate in the process.”

Department members were already aware of the budget crisis in the City of Aurora, and managers were tasked in proposing potential reductions in vehicles or programs to include the Traffic Section. In a memo dated June 25th, 2008 from Lt. Sopranuk to his Bureau Captain Jerry Hinkle, Lt. Sopranuk advised that the Hit and Run Unit needed one additional detective to handle the increasing case load. He further stated that *“Traffic Officers are not trained to complete the DA’s investigative steps necessary for successful prosecution.”* The TRB interpreted this to mean that traffic officers have several functions and responsibilities and likely, would be not available to do follow-up investigations and case filings. Clearly, this was a compelling fact amplified when Agent Johnny Lee, the least experienced investigator in the Unit, was assigned this high-profile triple homicide investigation.

In reviewing the many documents and public reports related to the Hernandez case, the TRB became concerned regarding the performance of Agent Johnny Lee and that of his Section Lieutenant. These concerns were shared with the Chief’s Office at the start of the TRB. However, per Directive 7.9, (*Addendum A*) *“the purpose of the TRB is not to review misconduct or impose discipline, as these functions are provided for in other Department processes”*. As a result of accusations made by Agent Hardin and other concerns related to Agent Johnny Lee stemming from the trial, the Chief of Police ordered an Internal Affairs investigation. Matters related to command level management/leadership issues at the crash scene, and subsequent faulty affidavit preparation and approval, were handled internally. These internal investigations are not a part of the TRB process. The IA investigation and any discipline imposed or recommended by the Chief of Police concerning this matter remain a personnel-related issue.

There was much excellent work completed the night of the incident and, in the days, weeks and months following this horrific event. At least 49 Department members participated in the crash investigation, location and preservation of multiple crime scenes,

evidence gathering and eventually locating and arresting Francis Hernandez in a timely fashion.

(See Addendum K for On-scene Personnel)

Agent Johnny Lee, clearly the most inexperienced investigator, made several errors while working this extremely complex case. However, expertly aided by other experienced detectives, including commendable work performed by Agent Pat Hardin and Officer Bill Collom, he also did an exceptional job in putting the case together. Following relentless questioning by the defense team, unprecedented media attention during the trial and strained testimony therein, an Arapahoe County jury returned a verdict of guilty against Francis Hernandez.

On February 24th, 2010, Francis Maudaniel Hernandez was convicted and found guilty on all 19-counts, including Child Abuse Resulting in Death, a Class-2 Felony, and Vehicular Homicide...by an Arapahoe County Jury. The Huffington Post reported on April 5th, 2010 that “*The case sparked calls for immigration reform after it became known Hernandez had avoided deportation despite a dozen prior arrests in Colorado*”.^{viii}

Hernandez is currently serving a 60-year prison sentence.

Policy and Procedure Change:

In addition to the already adopted Special Order (SO-10-02) (Officer Notes in Criminal Investigations) (*Addendum C*), the Tactical Review Board recommends the adoption of proposed Special Orders SO-11-04 (Type A Crash), (*Addendum D*) and SO-11-05 (Vehicle Evidence Handling and Procedures), (*Addendum E*).

Equipment Acquisition:

As part of the TRB review, members identified equipment and other options available to increase the efficiency of the Traffic Section and Crime Scene Investigation Unit. The TRB strongly recommends that following items be purchased by the Department likely acquired with future seizure board awards:

1. FARO 3-D Laser Scanner
2. iWitness Pro Photogrammetry Software
3. Olympus E-620 Digital SLR cameras
4. Tru-Angle Encoders

The above equipment and associated costs are described in detail in Addendum N.

Accident Reconstruction Ability:

The TRB believes that the technical accident investigation and reconstruction was thorough and complete. It is our finding, that current training standards are sufficient.

VII. CITATIONS / FOOTNOTES

ⁱ United States v. Harris, 543 F.2nd 1247 (9th Cir. 1976) See also Ortega v. People, 162 Colo. 358, 426, P.2d 180 (1967)
People v. Harms, Colo.App., 560 P.2d 470 (1976); See Brady v. Maryland, 373 U.S.83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

ⁱⁱ 40 Colo.App, 507, 580 P.2d 1263

ⁱⁱⁱ Killian v. United States, 368 U.S. 231, 82 S.Ct. 302, 7 L.Ed.2d 256 (1961)

^{iv} Report on the Organizational Study for the Police Department and Detention Center, Matrix Consulting Group, 20, February, 2008

^v Ibid above, Pg-130

^{vi} The Denver Post, Denver Post West, March 25th, 2010, Pg 1B-4B

^{vii} Ibid above, Pg 4B

^{viii} http://www.huffingtonpost.com/2010/04/05/francis-hernandez-gets-60_n_526324.html?vie...