

RLS RAINS LUCIA STERN, PC

Attachment F

Michael L. Rains
Attorney at Law
MRains@RLSlawyers.com

May 10, 2012

VIA HAND DELIVERY

Paul A. Cappitelli, Executive Director
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Re: Appeal from Decertification Decision by POST Executive Director Paul A. Cappitelli and Request for Hearing Before the Full Commission, International Training Resources

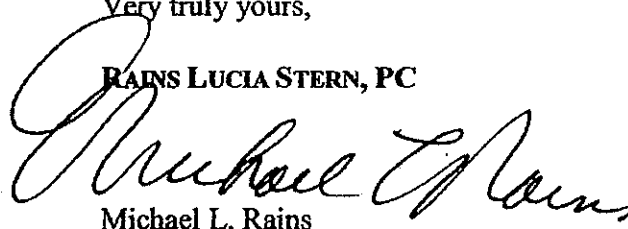
Dear Mr. Cappitelli:

As a follow-up to my letter dated May 8, 2012, enclosed are fifteen separate packets of documents relating to this appeal and request for hearing. We are providing these packets to you to distribute to the Honorable Commissioners who may hear this appeal on June 28, 2012.

Thank you for your continuing courtesy in this matter.

Very truly yours,

RAINS LUCIA STERN, PC



Michael L. Rains

MLR:jl

Enclosures

cc: Ben Tisa
Dave Bliss

POST COMMISSION APPEAL REPORT
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- Section 17 **New POST Finding/Allegation of Cause # 10 as of 1/23/12 and ITR Response Students Deploying Devices in Explosive Experiments**
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- Section 36 **POST Failure to Confirm Veracity of Don Lane Interview Content with Ben Tisa**
- Section 37 **POST Failure to Conduct Due Diligence Investigative Interviews**
- Section 38 **POST Failure to Conduct Due Diligence Preservation of Incident Site**
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- Section 40 POST Failure to Conduct Investigation into Breaching Tool Effect on Door**
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SECTION NUMBER 1

DISTRACTION DEVICE BREACHING INSTRUCTOR COURSE INFORMATION

1. Date certified – January, 4, 2011
2. POST coordinator for certification – Don Lane
3. Certification # 1025-33566 - 16 hours for maximum of 24 participants
 - a. Safariland Training Group standard instructor course is 8 hours
 - b. ITR doubled the training hours to 16 hours for the POST course.
4. Operational needs and justification is to provide SWAT teams the capability to enhance their existing forced breaching ability for critical missions such as hostage rescue, active shooter and counter-terrorist incidents.
5. The tool system provides the capability to use denotation energy of standard distraction devices for forced breaching applications without having to resort to very specialized and extensive explosive breaching training, equipment, storage requirements and special certification process.
6. Some of the more important advantages of the Distraction Device Breaching Tool system over standard explosive breaching procedures are as follows:
 - a. No standard industrial/blasting explosive products are used in any breaching procedure.
 - b. No requirement for exposed surface attachment of high explosive charges to target.
 - c. No high explosive blasting caps and firing systems required.
 - d. Failures to detonate procedures are significantly safer with command initiated munitions.
 - e. Detonation pressure conditions normally associated with exposed high explosive charges, including secondary pressure effects of reflection, focusing and shielding are significantly less because all of the munitions are contained inside a carbon steel chamber.
7. Instructional Material/ Documents used in course.
 - a. Safariland Training Group manual "The Wallbanger Instructor Course" designed 2010-012910A-0210 with disclaimer and safety guidelines.
 - b. Safariland Training Group manual "Distraction Device Instructor Course" designated as 2009 Safariland with disclaimer and safety guidelines.
 - c. Safariland Training Group power point DVD for the "Distraction Device Breaching Instructor Course"
 - d. Safariland Training Group written test "Wallbanger System Instructor Final Exam"
 - e. California POST authorized Expanded Course Outline for the Distraction Device Breaching Instructor course.
 - f. California POST authorized Hourly Training Schedule for the Distraction Device Breaching Instructor course.
 - g. California POST authorized Safety Procedures and Equipment requirements for the Distraction Device Breaching Instructor course.

SECTION NUMBER 2

DISTRACTION DEVICE BREACHING TOOL SYSTEM

1. The tool system is a multi-purpose tactical tool with the ability to be configured for forced breaching operations, single and multiple distraction device deployment and chemical agent insertion applications.
2. The tool system breaching configuration consists of special components and attachment which utilize the command initiated distraction device munitions to shape and form detonation pressure to act as the force to defeat locking mechanisms and create ports in doors, windows and wall.
3. Components and attachments consist of the following:
 - a. Fixed extension poles consisting of steel and aluminum square tubing
 - b. Fixed 45/90/180 degree straight attachment for placement of detonation chamber
 - c. Carbon steel detonation chamber with two loading ports
 - d. Wheel handle
 - e. Firing Device handle
 - f. Single and double distraction device attachment
 - g. Chemical agent attachment
 - h. Firing system mechanisms
 - i. Hitch pins for assemble of poles, components and attachments.
4. The tool breaching system uses the Defense Technology Corporation command initiated munitions configured in 15, 8 and 4 gram flash powder charges which are loaded into the detonation chamber.
5. The breaching charge can consist of a single 15/8/4 gram munition load or any combination based upon target analysis by the breacher.
6. The tool system can be hand held by a single officer during the denotation phase of the breaching operation or in some applications, mechanically set into a door frame and remotely detonated.
7. The firing system consists of shock tube or thermal tube initiated by shotgun primers and firing device or electric match initiation.
8. During the breaching application, the officer holds the chamber with extension poles and wheel handle, pressing the chamber firmly against the target surface to minimize any pressure leaks at the contact point.
9. The breaching tool can be fired by the breacher or remotely fired by an assisting officer on order from the breacher officer.

10. The Distraction Device Breaching tool system is designed and engineered to provide operational flexibility as to tool operator positioning for execution of specific forced breaching procedures.
11. The tool system extension pole attachments allows for distance variations in the tool operator positioning.
12. The tool system angle attachment for 45 degree, 90 degree and 180 degree straight placement of the denotation chamber allows for variations in tool operator positioning.
13. The straight on placement of the chamber to the target surface, generally provides the most effective seal of the chamber edges while minimizing detonation pressure leakage.
14. Detonation pressure leakage which is projected outward from the sides of the chamber may cause debris/fragments being projected outward toward the cover and entry officers who could be positioned parallel to the breach point.
15. The specific position selected by the Distraction Device Breaching tool operator will depend on the operator's assessment of operational conditions, including but not limited to the following factors:
 - a. Target configuration – door/window/wall/fence/etc
 - b. Target location
 - c. Approach route
 - d. Tool/equipment being employed
 - e. Capability to establish a positive chamber seal from 45/90/straight position
 - f. Tactical positioning of cover officers
 - g. Tactical positioning of entry officers
 - h. Operational use of tool as to safe positioning of the cover and support officers
 - i. Environmental effects resulting from denotation of the breaching tool munitions.
 - j. Movement and repositioning of breaching officer upon execution of breach.
 - k. Review of Breacher Log information as to prior operational/training breaches
 - l. SWAT Team Leader mission planning requirements
 - m. Other operational circumstances
16. The breaching officer will take control of the assembled tool at the Wheel handle and the Firing Device handle for movement to the breach point.
17. At the appropriate location, the breaching officer will prepare the firing system for final control of the command initiated munitions.
18. When at the breach point, the breacher will confirm placement of the chamber and then look at the Firing Device handle.

19. When the breacher is in the final position, the firing system will be initiated by the breacher or assistant breacher on order of the lead breacher or Team Leader.
20. Upon detonation, the breacher will maintain control of the tool assembly and move to a secondary position or drop the tool assemble in an appropriate location for re-assignment to entry team duties.
20. The breacher will conduct Post Breach Analysis of the breaching procedures for documentation of the results in the Breachers Log.
21. Specific positions used by the Breaching Tool operator are consistent with procedures as taught and recommended by Mr. Sandy Wall, inventor of the Distraction Device Tool System and documented in digital videos of practical application training events.
22. Mr. Sandy Wall is the National Training Manager of Safariland Training Group and the Master Instructor for certification of participants in Distraction Device Breaching Instructor courses presented independently by the Safariland Training Group and in conjunction with the California POST certified Distraction Device Breaching courses presented by International Training Resources.

SECTION NUMBER 3

JULY 21, 2011 ACCIDENT CIRCUMSTANCES

1. Incident Location

- a. Fort Ord, Monterey, California
- b. Malmedy Street
- c. Building 4
- d. Second floor
- e. Room 210W/hallway area

2. Hallway Description

- a. Distance from door to opposite wall 55 ½ inches
- b. Wall is cinder block construction

3. Room Description

- a. 61 ½ inches deep
- b. 103 inches ceiling to floor
- c. 47 ½ inches wall to wall
- d. Ceiling light bulb in place and intact

4. Target Door 210W Description

- a. Weight Approximately 100 pounds
- b. Height: 83 ¾ inches
- c. Width: 35 ¾ inches
- d. Thickness: 1 ¾ inches
- e. Door knob plate: 15 7/8 by 4 inches
- f. Door knob in place
- g. Solid wood fiber/board composition
- h. Exterior veneer covering on front and back sides
- i. Outward opening left to right

5. Breach Team One Members

- a. Officer Mike Short Visalia Police department
- b. Sgt. Manual Morales CDCR Salinas Valley State Prison
- c. Officer Tony Virrueth CDCR Salinas Valley State Prison
- d. Officer Ramon Diez CDCR Salinas Valley State Prison
- e. Officer T.C. Wittmann CDCR Salinas Valley State Prison
- f. Officer Alan Meyer CDCR Salinas Valley State Prison
- g. Officer Meyer was assigned as student Instructor/Coordinator for the specific Training Event during which the injury occurred.

6. Specific Training Event during which injury to Officer Short was sustained:

- a. Mission was to defeat/removal of door knob/locking mechanism to allow positive entry through door.
- b. Team to develop tool set-up/tool positioning/firing system and munition gram weight amount

7. All Team members participated in the scouting assessment of the target door and came to an agreement as to the tool rigging configuration and munitions gram weight which was to be two 15 gram command initiated devices.
8. As opposed to placing tool on door knob to defeat the locking mechanism, Team One decided to place tool in center of door to test forcing the center of the door to release the locking mechanism and/or create port opening for interior access.
9. Tool placement was positioned midpoint of door with door knob and centered in middle of long axis as opposed to being placed over door knob.
10. Tool rigging was a straight on placement of chamber on door center with Officer Short positioned alongside the left side of pole handle and behind the chamber with his head above the chamber placement point.
11. The straight on placement of the chamber was chosen by Team One as the best position to establish a positive seal of the chamber and minimize the risk of pressure leakage and potential debris/fragment from being projected to the immediate left and right sides of the tool placement position.
12. Officer Short was holding the wheel grip with his left hand and the firing device handle with his right hand
13. Guest Product/Technical Specialist Frank Harden assisted Officer Short in positioning the tool for the test breach.
14. Office Short, upon confirming he had control of the tool, nodded to his team mates to fire the munitions
15. At the time of nodding to his Team mates that he had control of breaching tool, Officer Short was looking directly at the tool as it was positioned on the door
16. A member of Team One activated the ignition device upon the "Fire in Hole" notification by guest Product/Technical Specialist Frank Harden and the munitions detonated.
17. At the time of munition denotation, Officer Short was still looking directly at the tool as it was positioned on the door.
18. At the time of munitions detonation, Officer Short was wearing protective eye glasses.
19. Upon detonation of the two 15 gram munitions load, smoke and debris were projected outward from breach point door.

20. Officer Short immediately dropped the breaching tool, turned approximately 180 degrees to the right at which time it became evident he was injured.
21. Upon becoming aware of injury to Officer Short, instructors and other officers in close proximity made an immediate assessment of observable injuries and moved Officer Short outside building #4 to the equipment staging area.
22. Participants involved in moving Officer Short were members of Team One, Ron McCarthy and Ben Tisa.
23. After a re-evaluation outside in the daylight, it was decided to conduct immediate extraction and transportation of Officer Short to CHOMP for emergency treatment with this transportation being supervised by Ron McCarthy.
24. Results of Detonation:
 - a. 7.5 inch by 16 inch hole 32.5 inch from top of door/25 inches from bottom of door/10.5 from left side and 17 inches from right side of door
 - b. Evidence of missing door composition and veneer covering on front side outward from breach point hole
 - c. Back side of door did not reflect any significant separation of material
 - d. Door locking capability was defeated due to sufficient disruption of door throw mechanism.
 - e. Ceiling light bulb in place and intact.
25. This type of door is common throughout the complex of buildings at Fort Ord and has been used for training by numerous other agencies and trainers for at least 38 years.
26. The complex of buildings/doors/walls that were used for the 7/20-21/12 Distraction Device Breaching Instructor course have been used by local law enforcement and military agencies for at least 12 years.
27. In compliance with the safety procedures as required by California POST for the Distraction Device Breaching course, and in addition to the requirements noted in Title 8 section 3323(a), California Code of Regulations, ITR had in place mandatory protective apparel and equipment requirements.
28. The clothing, equipment and other safety apparel requirements including eye protection devices were mandatory for participation in the practical application phase of training.
29. Additionally, ITR had on scene and made available for use by all course participants, a full face shield provided by the Safariland Training Group.
30. On 7/21/11 while at the CHOMP, waiting for the results of Officer Mike Short's examination and treatment, guest instructor Product/Technical Specialist Frank Harden advised both Ben Tisa and guest Product/Technical Specialist Ron McCarthy that he offered the use of the face shield to Officer Short at the Team One equipment staging area.

31. Frank Harden stated that he made the offer more than once and that Officer Short declined the offer for use of the face shield during Training Event # 7.
32. The offer to use the face shield was made by Frank Harden in the presence of Team One members during the tool set-up and rigging procedures for Training Event # 7.
33. Frank Harden made the same statement to Ben Tisa on 7/21/11 subsequent to the actual incident and during the follow-up events regarding the injuries to Officer Short.
34. On 11/20/11, Ben Tisa contacted Sgt. Manual Morales, SVSP/CDCR and was advised that Officer Mike Short was offered the use of the Safariland Face shield by Frank Harden more than once prior to the execution of the Training Event 7, however these offers were declined by Officer Short.
35. It should be noted that virtually all course participants on their own volition, elected not to wear the face shield during the practical application denotation phase of the various Training Events.

SECTION NUMBER 4

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING



EDMUND G. BROWN JR.
GOVERNOR

KAMALA D. HARRIS
ATTORNEY GENERAL

October 24, 2011

Mr. Ben Tisa
International Training Resources
2269 Chestnut Street, #161
San Francisco, CA 94123

Dear Mr. Tisa:

We have completed the review and investigation of the incident that occurred during the ITR presentation of the POST- certified training course, Distraction Device, Breaching – Instructor, Course Control Number 1025-33566, on July 21, 2011, causing the significant injury to Officer Michael Scott, Visalia Police Department.

After reviewing all of the information available to us, including interviews with you, Officer Scott, and other persons who were present in the training course and at the scene, we conclude the incident occurred as a result of:

1. Violation of the provisions of the safety policy approved as a condition of certification of the course;
2. Use of instructors who are not approved as a condition of certification of the course;
3. Departure from the content of the course specified in the approved expanded outline and hourly distribution for the course;
4. Improper and incorrect preparation of distraction device munitions;
5. Experimental use of explosive materials not approved within the certification of the course; and
6. Experimental deployment of equipment and munitions that exceeded the experience and competence of all instructional personnel who were present at the scene.

Further, POST staff is aware of the incident that occurred in 2005 in the SWAT course certified to ITR that resulted in the suspension of that certification for the period of one year.

As a result of these findings, the following actions are effective on October 28, 2011:

October 24, 2011

Page 2

A. The following courses are decertified:

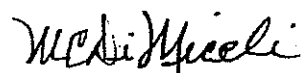
| Course No. | Course Title | Hours |
|------------|---|-------|
| 24015 | Canine/SWAT Deployment | 36 |
| 24204 | Critical Incident Instructor | 32 |
| 12250 | Critical Incident Mgmt & Tactic | 40 |
| 21635 | Defensive Tactic Instructor | 80 |
| 21665 | Defensive Tactic Instructor Update | 24 |
| 30869 | Dispatcher/Tactical Ops Adv | 24 |
| 30922 | Dispatcher/Tactical Ops | 40 |
| 33566 | Distraction Device Breaching Instructor | 16 |
| 21920 | Diversiory Devices - Instructor | 16 |
| 31990 | Firearms/Sub-Machine Gun | 32 |
| 32112 | Firearms/Tactical Rifle Instr. | 48 |
| 30985 | Less Lethal Weapon Instr. | 24 |
| 23020 | Rifle Marksmanship and Sniper | 48 |
| 23040 | Rifle Marksmanship-Sniper, Adv | 48 |
| 24271 | Search Warrant/Arrest High-Risk | 40 |
| 23000 | Special Weapons & Tactics | 80 |
| 23030 | Special Weapons & Tactics, Cmdr | 48 |
| 23034 | SWAT Commander, Adv. | 48 |
| 30862 | Tactical Operations, Adv. | 48 |
| 33579 | Technical Rope Operations Instructor | 48 |

B. No training course listed above may start or be presented in any manner after 5:00 p.m., October 28, 2011.

C. Ben Tisa is prohibited from participating in any POST-certified training course as instructor, coordinator, safety officer, or instructional aide or assistant.

If you wish additional information or you wish to discuss these actions, you may contact me at 916-227-2808 or by e-mail at mike.dimiceli@post.ca.gov.

Yours truly,


MICHAEL C. DIMICELI
Assistant Executive Director

MCD:mlb

SECTION NUMBER 5

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING



POST

EDMUND G. BROWN JR.
GOVERNOR

KAMALA D. HARRIS
ATTORNEY GENERAL

January 23, 2012

Mr. Ben Tisa
International Training Resources
2269 Chestnut Street, #161
San Francisco, CA 94123

Dear Mr. Tisa:

I received the materials you submitted, dated November 23, 2011, in support of your appeal of the staff decision to decertify the courses for which certification was active during Fiscal Year 2011-2012. Those courses are listed in the letter to you, dated October 24, 2011, announcing the decertification action that is Attachment A to this letter.

Accordingly, the decision is upheld and the appeal is denied. For the reasons summarized below, I support the staff decision to decertify the training courses:

- The decision to decertify the courses followed a preliminary investigation by POST staff into the injury to Officer Michael Short during a training course certified to ITR at which you were present as an instructor. The decision was based upon 6 findings of the preliminary investigation.
- Those findings included violation of the course safety policy involving the student-instructor ratio and the use of instructors who were not approved in the certification. The representatives of Safariland who were present during the course and serving as instructors or instructor assistants are not approved within the conditions of the certification and are not listed in any of the certification documents. As we know, a Safariland representative assisted Officer Short in placing the device that caused his injury. Further, none of the instructors named and approved in the certification were within close physical proximity to Officer Short during the deployment or detonation of the device or at the time of his injury. The materials you submitted do not state otherwise.
- Other findings include departure from the content as specified in the expanded course outline, and experimental deployment of the equipment and munitions that exceeded the experience and competence of the instructional personnel.

- The written report of the incident and injury you prepared and submitted to Senior Consultant Don Lane describes the decision of "students" to deploy the device in an unusual position or manner. Mr. Lane has reported his interview with you during which you described various "experiments" with charges (loads) and deployments to observe the results. Explosive experiments are not a described or approved element of the course within the conditions of certification.
- We know that Mr. Bliss was injured, however slightly, during the deployment of the munitions in a manner similar to the deployment that resulted in injury to Officer Short.
- As stated in the October 24, 2011 letter signed by Assistant Executive Director Mike DiMiceli, POST staff is aware of the incident that occurred in 2005 that resulted in the suspension of your certification to present a SWAT course for one year. That incident also involved unsafe practices in a high risk, dangerous training course.

I have received a number of letters from former students of ITR training. I also received a copy of your correspondence to those individuals wherein you request a communication with POST on your behalf. None of those letters contained information that was directly relevant to this situation and they were not a factor in my decision.

As a result of the totality of these circumstances and findings, POST staff is concerned that future presentations cannot or will not be conducted safely. Further, POST staff is not confident that ITR is capable of complying with the conditions of certification that apply to each course. I concur with the decision to decertify those courses.

If you have questions or wish to discuss this matter further, please contact Assistant Executive Director Alan Deal at (916) 227-2809, or alan.deal@post.ca.gov.

Yours truly,



PAUL A. CAPPITELLI
Executive Director

PAC:abd:mlb

Attachment

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING

Attachment A



EDMUND G. BROWN JR.
GOVERNOR

KAMALA D. HARRIS
ATTORNEY GENERAL

October 24, 2011

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International Training Resources
2269 Chestnut Street, #161
San Francisco, CA 94123

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October 24, 2011

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C. Ben Tisa is prohibited from participating in any POST-certified training course as instructor, coordinator, safety officer, or instructional aide or assistant.

If you wish additional information or you wish to discuss these actions, you may contact me at 916-227-2808 or by e-mail at mike.dimiceli@post.ca.gov.

Yours truly,


MICHAEL C. DIMICELI
Assistant Executive Director

MCD:mlb

SECTION NUMBER 6

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING



POST

EDMUND G. BROWN JR.
GOVERNOR

KAMALA D. HARRIS
ATTORNEY GENERAL

February 3, 2012

Mr. Ben Tisa
International Training Resources
2269 Chestnut Street, #161
San Francisco, CA 94123

Dear Mr. Tisa:

POST is in receipt of your letter, dated January 24, 2012. In it you mention that POST had not responded to the appeal to the Executive Director submitted by International Training Resources (ITR), and you requested to know the status of the investigation on the matter that resulted in the decertification by POST of all courses previously certified to ITR.

By now, you should have received the letter from the Executive Director that denied the appeal by ITR. Additionally, the POST investigative report on this matter is not yet available for release.

If you have further questions, please contact me at (916) 227-2807 or by email at Alan.Deal@post.ca.gov.

Yours Truly,

Alan B. Deal
Assistant Executive Director
Standards and Development Division

ABD:mlb



SECTION NUMBER 7

STATEMENT OF FACTS AS TO DIRECT AND PROXIMATE CAUSE OF ACCIDENT INJURY

1. Based upon an objectively reasonable examination of the information available to ITR at the time of this Report, the following conclusions have been reached within a significant degree of factual certainty as to the direct and proximate cause of the injury to Officer Mike Short's eye.
 - a. An unidentified piece of debris/fragment struck the right eye of Officer Short
 - b. The separation of the veneer/laminate coating or material composition of the of the target door is what logically appears to be the source of the debris or fragment.
 - c. The denotation of the breaching charge is what caused the separation of the debris/fragment from the target door.
 - d. The debris/fragment caused a complete failure of the protective glasses worn by Officer Short at the point of impact
2. The totality of the information contained in the documents and material provided in this report, substantiates the factual conclusion that the cause of the accident was such an unpredictable event that was so unusual and extreme in the manner of its occurrence, that no objectively reasonable examination of the facts and circumstance involved in this accident, can or will support:
 - a. Allegations of improper training procedures
 - b. Allegations of wrongful acts
 - c. Allegations of willful cause
 - d. Allegations of negligence on the part of instructor staff
3. Based upon any objectively reasonable examination of the totality of facts and circumstances contained in this report, it is blatantly apparent that the "findings" asserted by POST are so significantly flawed, they are without pragmatic merit as to substantive justification for the allegations of fault.
4. There is no reasonable way, with any degree of calculated certainty, that breaching instructors can accurately predict the following:
 - a. That there will be any debris/fragments
 - b. The actual composition of the debris/fragment as to being target material
 - c. The actual composition of the debris/fragment as to being target hardware
 - d. The direction of movement/travel of the debris/fragment
 - e. The velocity of the debris/fragment
 - f. The kinetic energy of the debris/fragment
 - g. The size of the debris/fragment
 - h. The weight of the debris/fragment
 - i. The impact point of debris/fragment upon contact with an object/person

5. During the course of presenting forced breaching courses, there will always be the actual or potential possibility for debris/fragments of the target composition being separated from the breach point upon execution of a specific breaching procedure.
6. Because of the inherent hazards of breaching courses, it is with reasonable certainty, based upon extensive years of accumulate experience of the instructors, that some breaching instructors and course participants will on rare occasions, be struck by debris/fragment during the practical application phase of breaching courses
7. ITR Instructors have extensive training, experience and course presentation history in the following law enforcement breaching tools and procedures used for forced entries or the porting of doors, windows walls, fences and other barriers:
 - a. Explosive Breaching munitions and firing systems
 - b. Distraction Device munitions and firing systems
 - c. Distraction Device breaching munitions and firing systems
 - d. Less Lethal extended range impact munitions
 - e. Hydraulic Jam spreaders
 - f. Hydraulic Door spreaders
 - g. Shotgun breaching
 - h. Ram breaching
 - i. Pry Bay breaching
 - j. Cutting Saw breaching
 - k. Tactical vehicle breaching – push/pull
 - l. Exothermic tool breaching
 - m. Razor/Barbed wire breaching
 - n. Chain link fence breaching
 - o. Glass cutting techniques
 - p. Window Port breaching
 - q. Bolt cutter techniques
 - r. Lock system defeating procedures
 - s. Other similar breaching procedures involving special skills
8. All breaching and special munitions courses, because of subject matter content and practical application procedures, inherently involve potentially at risk conditions which the participant voluntary engages in as part of the course.
9. All Special Weapons and Tactics courses, because of subject matter content and practical application procedures, inherently involve potentially at risk condition which the participant voluntary engages in as part of the course.
10. ITR does not have access to the protective glasses of Officer Short as to evaluating the impact protection performance nor is ITR aware of any due diligence examination or testing done by the POST Investigator.

11. ITR does not have access to the medical treatment records from COMPS or Stanford Medical Center as to the medical assessment/diagnosis of Officer Short's eye injury and whether there was any recovery of foreign debris.
12. ITR is not aware of any due diligence investigative effort on the part of the POST Investigator to obtain permission for examination of the medical assessment/diagnosis of Officer Short's eye injury and whether there was any recovery of foreign debris.
13. ITR is not aware of any forensic testing, measurements, photographs, technical analysis, reconstructive procedures or other investigative procedures that were employed by the POST Investigator to identify the direct and proximate cause of the eye injury.

SECTION NUMBER 8

**FINDING # 1 – VIOLATION OF THE PROVISIONS OF THE SAFETY POLICY APPROVED AS
CONDITION OF CERTIFICATION OF THE COURSE**

1. This alleged “finding” is so significantly vague and deficient as to factual content, ITR is forced to respond by “best estimate Interpretation” of what the statement represents in providing an informed response.
2. ITR Instructors have reviewed the safety policies and procedure guidelines for this course in depth and are not aware of any specific procedural violations during the presentation of this course during the period 7/20-21/11.
3. The safety policies and procedure guidelines in effect, reviewed and complied with by all instructors present in the course are as follows:
 - a. ITR Course Safety Equipment Requirements
 - b. ITR Operational Deployment Procedures for the Distraction Device Tool System
 - c. ITR Course Specific Procedures for the Practical Application Training Phase
 - d. ITR Safety Procedures for the Practical Application Training Phase
 - e. ITR Instructor to Student Ratio Safety Guidelines
 - f. ITR Instructor to Student /Close Physical Proximity Guidelines
 - g. ITR Guidelines for Tool Operator Positioning during Deployment of Munitions
 - h. ITR Procedures for use of Command Initiated Distraction Device Munitions
 - i. ITR Guidelines for use of Face Shield during Practical Application Training
 - j. POST Course Certification /Safety Procedures and Equipment
 - k. POST Course Certification/ Diversionary Device Safety Brief
 - l. POST Course Certification/ Diversionary Device Safety Protocol
 - m. ITR Instructor Training, Experience and Competence regarding Safety Policies
 - n. Guest Instructor Training, Experience and Competence regarding Safety Policies
4. ITR history of POST course presentations and safety record.
 - a. ITR began presenting POST certified courses in January 1995
 - b. Since that time, ITR has accumulated a documented course presentation history of approximately 20,250 hours of training with over 8,460 participants for a total of approximately 171,315,000 training hours.
 - c. In over 171 million hours of documented training, the incident Involving Officer Mike Short is the only accident directly attributable to a specific training event.
5. All ITR instructors and guest Product/Technical Specialist have extensive experience as trainers, and would not knowingly in any circumstances, jeopardize the safety of any course participant.

6. ITR Instructors have extensive experience in training procedures, practical application events, equipment and safety protocols for an significant inventory of special skill breaching courses to include but not limited to the following:
 - a. Explosive breaching munitions and firing systems
 - b. Distraction Device munitions and firing systems
 - c. Distraction Device breaching munitions and firing systems
 - d. Less Lethal extended range impact munitions
 - e. Hydraulic jam spreaders
 - f. Hydraulic door spreaders
 - g. Shotgun breaching
 - h. Ram breaching
 - i. Pry bar breaching
 - j. Cutting saw breaching
 - k. Tactical vehicle breaching- pull/push
 - l. Exothermic tool breaching
 - m. Razor/barbed wire breaching
 - n. Chain Link fence breaching
 - o. Window Port breaching
 - p. Bolt cutter breaching
 - q. Lock system defeating procedures
 - r. Other similar procedures involving special skills
7. All breaching and special munitions courses, because of subject matter content and practical application procedures, inherently involve potentially at risk conditions which the participant voluntary engages in as part of the course.
8. All Special Weapons and Tactics courses, because of subject matter content and practical application procedures, inherently involve potentially at risk conditions, which the participant voluntary engages in as part of the course.
9. In letter dated January 23, 2012, even the Executive Director Paul Cappitelli, described SWAT training as a "high risk dangerous training course.

SECTION NUMBER 9

**FINDING # 2- USE OF INSTRUCTORS WHO ARE NOT APPROVED AS A CONDITION
OF CERTIFICATION OF COURSE**

1. This alleged "finding" is so significantly vague and deficient as to factual content, ITR is forced to respond by "best estimate Interpretation" of what the statement represents in providing an informed response.
2. Instructors approved as a condition for certification of course:
 - a. Ben Tisa
 - b. Dave Bliss
 - c. Russ Barcelona
3. Guest Product/Technical Specialist listed in the POST online Electronic Data Entry system(EDI) for the 7/20-21/11 course:
 - a. Ron McCarthy
 - b. Frank Harden
4. Because Distraction Device Breaching is such a unique, specialized and equipment specific course as to curriculum content and operational application, ITR by design, reaches out to the very limited number of Product/Technical Specialist who are qualified to enhance the course presentation for the following reasons:
 - a. Provide information as to current design changes and accessories.
 - b. Provide information as to other agencies that have similar breaching capabilities for regional SWAT team mission support and co-training.
 - c. Provide equipment ordering and pricing information
 - d. Provide additional technical presence as to assisting students regarding equipment set-up/munitions design/rigging questions
 - e. Provide additional technical support and safety oversight as to classroom and practical phases of the training sequence.
 - f. Increases the Instructor to student ratio with qualified individuals who have the equipment and practical application experience with the specialized procedures involved in Distraction Device Breaching.
5. The ITR policy for allowing the presence of qualified individuals during specific courses, represents a due diligence responsibility for excellence in training and to disregard these specially qualified individuals would be detrimental to the overall safety and quality of education provided the participants.
6. For POST to assert that this issue equates to a contributing cause for the eye Injury sustained by Officer Mike Short, defies any rational relevance and is consistent with the factually deficient and fabricated allegations of fault contained within the other "findings"

7. The presence of the two Product/Technical specialists, also allowed ITR to have at the training site, another full set of distraction device breaching tool for the course participants to use, which maximized the effective training time and minimized the down time waiting for tool sets to become available for use.
8. POST EDI System for Presentation Instructor and other Instructor Listing.
 - a. In 2010, the POST EDI system began capturing instructor participation in
In the presentation of certified courses.
 - b. In the "Presentation Instructors" section of the EDI, preapproved and
vettted Instructors were listed and could be simply checked if they
participated in the presentation of a particular course.
 - c. Also in this section of EDI, is a section to include "Other Instructor" and a
place to document the reason for the instructor being at the course.
 - d. ITR has used this section of EDI to inform POST of other instructors
beginning in April 2010 when it was first available, and has done so a
minimum of 11 different times for no less than 8 different courses.
9. Because of the significant number of ATF Requirements/Regulations regarding
transporting, shipping, receiving or possessing Distraction Devices, ITR is
supported by Mr. Ron McCarthy who is a vendor and Product/Technical
Specialist for Defense Technology/Safariland Equipment Company.
 - a. Mr. McCarthy possesses the following U.S. Department of Justice-ATF
licenses/permits:
 1. Federal Firearms License # 9-33-059-09-2M-01419
 2. License/Permit – Dealer of High Explosives # 9-CA-059-26-3B-01482
 3. License/Permit – User of High explosives # 9-CA-059-33-3B-01481
 4. Notice of Clearance for Individuals transporting, shipping, receiving or
possessing explosive material.
 - b. Mr. McCarthy possesses the following California Department of Justice
license/permits:
 1. Destructive Device Permit # 07916
 2. Centralized List of Exempt Federal Firearms Licensees
 3. Certificate of Eligibility as to acquiring or possessing firearms.
 - c. All munitions/destructive devices are shipped from the vendor via UPS
directly to the certified facilities of Mr. McCarthy.
 - d. All of the munitions ordered for each course are transported to the training
site by Mr. McCarthy and are handled/used/consumed by the participants
during the 16 hour course.

SECTION NUMBER 10

**FINDING # 3 – DEPARTURE FROM THE CONTENT OF THE COURSE SPECIFIED IN THE APPROVED
EXPANDED OUTLINE AND HOURLY DISTRIBUTION FOR THE COURSE**

1. This alleged “finding” is so significantly vague and deficient as to factual content, ITR is forced to respond by “best estimate Interpretation” of what the statement represents in providing an informed response.
2. The only departure from the approved expanded course content and hourly distribution for the course that ITR instructors are aware of, occurred on 7/21/11 at 0800H.
3. Drop in Equipment/Product Technical Specialist Mike Bullian, was allowed to make a “short 45 minute” presentation to the participants as to being a source of distraction device breaching equipment and munition purchases.
4. For POST to assert that this issue equates to a contributing cause for the eye Injury sustained by Officer Mike Short defies any rational relevance and is consistent with the factually deficient and fabricated allegations of fault contained within the other “findings”.
5. Mr. Bullian is a former San Rafael Police Department Officer and is retired from the California Department of Justice, currently employed by “ProForce”, a major vender of law enforcement equipment throughout the United States.
6. Due to comments/statements and questions by both Mr. Bullian and course participants, the “short” presentation became side tracked for approximately 45 minutes into another equipment area not compatible with the course content.
7. Although there was active interest in the subject matter being discussed, ITR instructors were at fault for not stopping the discussion and redirecting the material presentation back to the approved expanded course outline and hourly distribution schedule.
8. The Distraction Device Breaching Instructor course is certified for 24 participants.
 - a. The hourly course content is structured to provide sufficient instructional time for the maximum allowed participant to meet the course objectives.
 - b. As there were only 18 participants enrolled in the course, the additional allocated time for 24 participants was used to absorb the time lost during the 45 minute presentation of Mr. Bullian.

9. It is the collective experience and opinion of both ITR Instructors, that there was absolutely no significant loss of instructional time and that all course content material was thoroughly covered in the allocated time frame set forth in the hourly distribution schedule.
10. It is the collective experience and opinion of both ITR Instructors, that there was absolutely no effect on any safety procedures /guidelines during the presentation of this course because of Mr. Bullians' limited presentation.