

SECTION NUMBER 29

COURSE SPECIFIC PROCEDURES FOR THE PRACTICAL APPLICATION PHASE OF TRAINING

1. Type of Training

- a. Tactical analysis of door barriers as simulated breach points for forced entry operations such as Hostage Rescue/High Risk Warrant service/active shooter/counter-terrorist/other missions.
- b. Progressive sequence of tool setup and use of different combinations of munitions gram weigh contained in Command Initiated distraction devices
- c. Testing and documentation of detonation results based upon target analysis done by each team on assigned target.
- d. Use of "shot sheets" to record type of breach and test results for accumulative knowledge base to enhance the design of subsequent breaches.
- e. Standard munitions used were Command Initiated distraction devices consisting of flash powder munitions containing 15 grams/8 grams/4 grams loads in various combinations with shock tube or thermal tube firing systems.

2. Sequence of Training Events

- a. First sequence of Training Events consisted of three inward opening doors with dead bolt locks. Mission was to defeat deadbolt locks for positive entry through door. Each team was assigned tasking to set up door tool using Command Initiated munitions: 15 grams Team One, 8 grams for Team Two and 4 grams for Team Three (designated as Training Events 1/2/3).
- b. Second sequence of Training Events consisted of three inward opening doors secured with dead bolt locks and latch throw locks on exterior of door. Mission was to defeat both deadbolt lock and the latch throw lock for positive entry through door. Each team was assigned tasking to set up door tool using Command Initiated munitions with gram weight of their choice based upon target analysis and accumulated data from Training Events 1/2/3 (designated as Training Events 4/5/6).
- c. The third sequence of Training Events consisted of three outward opening doors secured with door knobs and latch throws in door frame. Mission was to defeat the door lock mechanism for positive entry through door. Each team was assigned tasking to set up door tool using Command Initiated munitions with gram weight of their choice based upon target analysis and accumulated data from Training Events 1/2/3/4/5/6 (designated as Training Events 7/8/9).

- d. The fourth sequence of Training Events consisted of three inward opening doors secured with dead bolt locks and latch throw lock on exterior of door. Mission was to defeat deadbolt locks and latch throw lock for positive entry through door. Each team was assigned tasking to set up the Remote Door Breaching tool with Command Initiated munitions using gram weight of their choice based upon target analysis and accumulated data from Training Events 1/2/3/4/5/6/7/8/9 (designated as Training Events 10/11/12).
- e. The fifth sequence of Training Events consisted of two plywood wall room dividers and one hollow core door secured with door knob and throw latch in door frame. Mission was to create port in wall for observation/weapon deployment position. Teams one and two were assigned tasking to set up the door tool with remote placement and Command Initiated munitions using gram weight of their choice based upon target analysis and accumulated data from training events 1/2/3/4/5/6/7/8/9/10/11/12.
- f. Team three mission was to defeat door lock mechanism with Remote Door Lock breaching tool. Team three was assigned tasking to set up the door tool with Command Initiated munitions using gram weight of their choice based upon targets analysis and accumulated data from Training Events 1/2/3/4/5/6/7/8/9/10/11/12 (designated as Training Events 13/14/15).

SECTION NUMBER 30

ITR SAFETY PROCEDURES FOR PRACTICAL APPLICATION PHASE OF TRAINING

1. **Staged Transport Van** – Non Public Safety vehicle.
2. **Staged Patrol Vehicles/Unmarked Public Safety vehicles** of course participants.
3. Carry **Litter**.
4. Two First **aid kits**.
5. One Safariland **Helmet Face Shield available** for use by course participants.
6. **POM Police Dispatch Center** notification of training events.
7. Classroom demonstration regarding **loading munitions with glove and eye protection**.
8. Classroom demonstration of **tool construction, rigging and handling techniques**.
9. **Practical application tool handling and positioning** outside of classroom in unloaded condition.
10. Demonstration and practical application **rigging of munitions firing system**.
11. Demonstration and practical application **of breacher procedures for looking away from tool and at firing device grip handle at time of firing munitions charge**.
12. Review of **video presentation of actual applications being done in prior courses for enhanced understanding of procedures prior to practical application training**.
13. All ITR **tools and firing system equipment were inspected** by Ben Tisa prior to classroom training and during practical application phase of training.
14. All Safariland **tools and firing system equipment were inspected** by Frank Harden prior to classroom training and during practical application phase of training.
15. All participants underwent a **four stage firearms** check for both handguns and shoulder weapons by Ben Tisa and Ron McCarthy prior to all practical application training prior to classroom and during practical application phase of training.
16. All instructors were **wearing red vest** other than Ron McCarthy who was operating the video camera.

17. Instructor Ben Tisa also carried medical pack on back of vest which contained basic inventory of supplies.
18. Specific equipment staging area for all teams to assemble tools and review design configuration.
19. Specific munitions staging area for control of munitions loading and review of firing systems.
20. Only one team allowed to execute application per event with all other placed in observer positions.
21. Designated Hospital/Emergency Treatment Facility – CHOMP
 - a. Community Hospital of Monterey Peninsula
 - b. 23625 Holman Highway
 - c. Monterey, Ca.93940
 - d. Main 831.624.5311
 - e. ER 831.625.4900
 - f. FAX 831.625.4904

SECTION NUMBER 31

POST FAILURE TO SHOW CAUSE FOR SUMMARY DECERTIFICATION OF ITR COURSES

1. To date, the totality of official POST response for justifying the decertification of all ITR courses, is contained in the three letters listed below, which are so factual deficient and devoid of minimally acceptable creditability, that no objectively reasonable and unbiased assessment by a neutral party, would come to the same conclusion regarding the sanctions imposed by POST.
 - a. Letter dated 10/24/11 to ITR from Assistant Executive Michael DiMiceli
 - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
 - c. Letter dated 2/23/12 to ITR from Assistant Executive Director Alan Deal
2. The alleged statement of facts referred to as "findings" as asserted by Assistant Executive Director Michael DiMiceli, regarding the causation of the injury accident to Officer Mike Short, are so significantly flawed as to factual foundation, they are totally without substantive merit.
3. These alleged statements of facts which are set forth in POST letter dated 10/24/11, consist of non-specific paragraphs reflecting the synopsis results of the investigative conclusions fabricated by consultant Don Lane.
4. ITR has produced no less than 170 separate informational documents contesting the assertions of fault as being without specific factual foundation regarding the direct and proximate cause of the injury accident sustained by Officer Michael Short.
5. Additional, ITR has also produced digital video, photographs and handouts used during the course which documented course events and training procedures.
6. The repetitive re-submission of the same information challenging the factually deficient allegations of the "findings" reflects a conscious disregard of the information provided and deliberate indifference to the ethical responsibility to show cause for the actions taken by POST in this matter, as evidenced by the following:
 - a. POST overt unwillingness to produce the Investigative Report of POST consultant Don Lane because there is no creditable justification for the "findings"
 - b. POST overt unwillingness for defending the fabricated allegations contained in the report resulting from the incompetent investigation of POST consultant Don Lane
 - c. POST overt unwillingness to produce the Investigative Report of POST consultant Don Lane because there is no creditable justification for the punitive, arbitrary and unreasonable sanctions against ITR and instructors.
7. The six "original findings" are so factually deficient and devoid of substantive content, the POST Executive Director in letter dated 1/23/12, had to create six more "new findings" which were never before asserted, as being additional contributory factors regarding this incident.

8. The six "original findings" and the six "new findings" which relate directly to the Distraction Device Breaching Instructor course, are also unbelievably offered by POST as justification for the decertification of all other unrelated ITR courses.
9. POST has yet to produce any other separate documents or reports to date, as to the justification for decertification of all other ITR courses whose curriculums are not even remotely related to the circumstances involved in the Distraction Device Breaching course.
10. Pending resolution of this matter, these "finding" do not, even in most abstract interpretation, show cause for disallowing all other ITR courses from being presented based upon the unsubstantiated and undocumented allegations.
11. 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 the "findings" asserted by POST have no merit based upon any objectively reasonable examination of the facts and circumstance involved in this accident.

SECTION NUMBER 32

POST FAILURE TO SHOW CAUSE FOR SUMMARY DECERTIFICATION OF ITR INSTRUCTORS

1. To date, the totality of official POST response for justifying the decertification of Ben Tisa and Dave Bliss, is contained in the three letters listed below, which are so factual deficient and devoid of minimally acceptable creditability, that no objectively reasonable and unbiased assessment by a neutral party would come to same conclusion regarding the sanctions imposed by POST.
 - a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
 - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
 - c. Letter dated 2/3/12 to ITR from Assistant Executive Director Alan Deal
2. None of the POST letter correspondence produced in response to the detailed reports submitted by ITR, contain any factual documentation justifying the decertification of ITR Instructors other than the collective allegations listed in the "findings" resulting from the investigation of consultant Don Lane.
3. These "findings" which relate directly to the Distraction Device Breaching Instructor course, do not even in most abstract interpretation, show cause for justifying the decertification of ITR instructors for all other POST certified courses, even those courses whose curriculums are not in any way, remotely related to the Distraction Device Breaching course presentations.
4. POST has not identified nor made reference to any section of the Post Administrative Manual, as to the authority and due process procedures for justifying the punitive, arbitrary and unreasonable decertification sanctions imposed upon ITR instructors
5. Additionally, POST has not produced any other documents, reports or POST administrative regulations as to specific factual authority/justification for restricting Dave Bliss and Ben Tisa from instruction, coordination or involvement with any future POST certified courses.
6. The six "original findings" are so factually deficient and devoid of substantive content, the POST Executive Director in letter dated 1/23/12, had to create six more "new findings" which were never before asserted, as being justification for the decertification of ITR Instructors.
7. The instructor resumes submitted to POST are listed below and which represent ITR instructor certification of subject matter expertise for comparison to resumes of POST staff or other individuals which POST has conferred with regarding the "findings" which allegedly substantiates the decertification of ITR Instructors.
 - a. Ben Tisa Resume/Special Munitions and Products Section 21
 - b. Dave Bliss Resume/Special Munitions and Products Section 22
 - c. Ben Tisa Resume/POST Courses Section 23
 - d. Dave Bliss Resume/POST Courses Section 24

SECTION NUMBER 33

POST FAILURE TO SHOW CAUSE FOR ARBITRARY OPINIONS OF UNIDENTIFIED STAFF MEMBERS

1. In POST letter dated 1/23/12, Executive Director Paul Cappitelli, made the following statements:
 - a. As a result of the totality of these circumstances and finding, POST staff is concerned that future presentations cannot or will not be conducted safely.
 - b. Further, POST staff is not confident that ITR is capable of complying with the conditions of certification that apply to each course.
 - c. I concur with the decision to decertify those courses.
2. Not only must ITR be continually forced to respond to the various "findings" for which POST refuses to provide the supporting Investigative Report, but now must respond to the subjective opinions of unidentified staff members whose motives as to "concerns and confidence" are without historical foundation nor justified by factual documentation.
3. None of the three POST correspondence letters produced in response to the reports submitted by ITR, contain any factual documentation justifying the "safety concerns and lack of compliance confidence" by POST staff as to future presentations other than the collective allegations listed in the six "original findings" and the six "new findings"
4. For POST to assert that these statements equate to justifiable cause for the total decertification of ITR courses and Instructors without substantiation as to veracity, is consistent with the other factually deficient and fabricated allegations of fault contained within the "findings"
5. As stated in the Appeal Report submitted to the Executive Director, ITR has been presenting a significant number of POST certified courses since January 1995.
 - a. 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 171,131,000 training hours.
 - b. 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.
 - c. This reflects an unparalleled record of safety and compliance with conditions of certification
 - d. POST to date, has never once mentioned this unparalleled record of compliance with conditions of certification in any of its correspondence with ITR, nor has POST considered this history when it imposed the unjustified and arbitrary sanctions.

6. POST has certified a total of 21 ITR courses, which represent one of the most extensive outreach programs of instruction in the state of California representing approximately 171 million of student hours of instruction.
 - a. The only time a POST consultant responsible for certification of ITR courses has conducted a field compliance audit/safety review of the curriculum presentation procedures by ITR instructors, was done by Senior Consultant Mario Rodriguez whose final report dated 3/31/2006, recommended recertification of the ITR Basis SWAT course.
 - b. The only other time an outside agency has conducted a field compliance audit/safety review of the curriculum presentation procedures by ITR instructors, was done by Michael Bainter, In-Service Training Coordinator of Monterey Peninsula College.
 - c. Mr. Bainter Report dated 11//142005, concerned the Tactical Commander Course presented 11/14-18/11 in Monterey, California, which contained the following comments:
 - (1) Excellent course rating
 - (2) For POST, it stands out for its quality
 - (3) Course participant rated the class as excellent, well above the average for POST training
7. Not once in 15 years of course presentations, has any POST consultant responsible for certification of ITR courses, conducted a field compliance audit/safety review of any other curriculum presentation procedures by ITR instructors.
8. Not once in 15 years of course presentations, has any POST Administrative Staff member representing the Executive Director, conducted a field compliance audited/safety review of any other curriculum presentation procedures by ITR instructors.
9. POST selected the ITR 80 Basic SWAT course as the model pilot course for all other presenters in the state of California as to compliance regarding curriculum content and presentation protocol:
 - a. This course was selected by the SWAT Subject Matter Expert committee whose proceedings were coordinated by Don Lane
 - b. This pilot presentation was evaluated in depth by other subject matter experts and adopted as the state Basic SWAT course model
 - c. Don Lane as SWAT Program Manager was directly involved in selection and evaluation of the ITR Basis SWAT course as the outstanding model course.
 - d. Ben Tisa was the Lead Instructor and coordinator for the entire course
 - e. The model pilot course was presented November 29 – December 2004

10. POST selected the ITR 40 hour Tactical Commander course as the POST model pilot course for all other presenters in the state of California as to compliance regarding curriculum content and presentation protocol.
 - a. This course was selected by Tami Evans, Senior POST consultant, as part of POST Standardized SWAT Guideline Project Program, to be evaluated for adoption as the State Tactical Commander model course.
 - b. This pilot presentation was evaluated in depth by other subject matter experts and adopted as the state Tactical Commander Model course.
 - c. Tami Evens as the SWAT Program Manager, was also directly involved in the evaluation and final selection of the ITR Tactical Commander course as the outstanding POST model course.
 - d. Ben Tisa was the Lead Instructor and coordinator for the entire course.
 - e. The model course was presented in February 2005 in Monterey, California.
11. In POST letter dated 1/23/12, Executive Director Paul Cappitelli, made the following statement:
 - a. I have received a number of letters from former students of ITR training.
 - b. I have also received correspondence to those individuals wherein you requested a communication with POST on your behalf.
 - c. None of those letters contained information that was directly relevant to this situation and they were not a factor in my decision.
 - d. It is unfortunate that the Executive Director has chosen to characterize the letters of support from the law enforcement officers who were actual ITR course participants as not being relevant to the decertification of ITR courses and instructors.
 - e. The dismissal of these opinions from fellow duty law enforcement officers as not being relevant as opposed to opinions of administrative staff members regarding the curriculum presentation procedures by ITR Instructors reflects a deliberate indifference to any supportive information that ITR provides regarding the unjustified sanctions by POST.
12. In POST letter dated 10/12/2001 to Ben Tisa from Alan Deal, Bureau Chief/Course Quality Assessment Program Manager, as a result of a quality assessment of a ITR POST certified course stated the following "we are looking forward to working with you in the future as a valued partner in law enforcement training"

13. Lastly, POST has failed to report the following telephonic comments which ITR understands were made to the Executive Director by Coleen Mestas, Chief of Police of the Visalia Police Department, which employs Officer Mike Short:

- a. ITR courses have always been excellent and presented both safely and professionally by its instructors, Ben Tisa and Dave Bliss.
- b. The sanctions imposed by POST on ITR as to decertification of all their courses and instructors Ben Tisa and Dave Bliss are unreasonable and unjustified.
- c. 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.
- d. 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.

SECTION NUMBER 34

POST FAILURE TO PROVIDE INVESTIGATIVE REPORT OF CONSULTANT DON LANE

1. The inability of the POST Executive Director's staff and consultant Don Lane to produce a valid report of any length or content as of the date of this report, reflects a deliberate indifference to reasonable due process procedures that is without precedence and ethical justification.
2. POST staff has established a pattern and practice of consistently not providing any factually supported reports or documents to ITR throughout this entire incident which is blatantly evident in the following administrative letters:
 - a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
 - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
 - c. Letter dated 2/03/12 to ITR from Assistant Executive Director Alan Deal
3. None of the POST letter correspondence produced in response to the detailed reports submitted by ITR, contain any factual documentation justifying the decertification of ITR courses and Instructors other than the collective allegations listed in the six original "findings" resulting from the investigative report of consultant Don Lane and the six new "findings" asserted in POST Executive Director letter dated 1/23/12.
4. The repetitive re-submission of the same information challenging the factually deficient allegations of the "findings" reflects a conscious disregard of the information provided and deliberate indifference to the ethical responsibility to show cause for the actions taken by POST in this matter, as evidenced by the following:
 - a. POST overt unwillingness to produce the Investigative Report of POST consultant Don Lane because there is no creditable justification for the "findings"
 - b. POST overt unwillingness for defending the fabricated allegations contained in the report resulting from the incompetent investigation of POST consultant Don Lane
 - c. POST overt unwillingness to produce the Investigative Report of POST consultant Don Lane because there is no creditable justification for the punitive, arbitrary and unreasonable sanctions against ITR and instructors
5. The alleged "findings" are so significantly deficient as to factual descriptive content in supporting the allegations, ITR has to respond by "best estimate Interpretation" of what each specific "finding" represents as to providing an informed response.
6. At the 11/4/11 meeting at POST Headquarter, Mr. DiMiceli advised that the Investigative Report of Don Lane was complete other than minor grammatical details and a copy of the report would be provided in the immediate future.

7. Per the Investigative Report of Cal/OSHA investigator Robert Smith dated 1/18/11, while in a meeting on 12/19/11 with consultant Don Lane at POST Headquarters, a partially completed POST investigative report of Don Lane was reviewed by him with John Dineen of POST and Steve Hart of Cal/OSHA Mining and Tunneling Unit.
8. Although ITR has not even been allowed to review a partially completed report of consultant Don Lane, POST has chosen to provide it other individuals who do not have a due diligence responsibility of having to respond to unsubstantiated allegations defined as "findings"
9. The ITR 11/4/11 Preliminary Response to the "findings" set forth in the POST decertification letter of Assistant Executive Director DiMiceli had to be submitted without any knowledge of the POST Investigation Report contents.
10. The ITR 11/23/11 Appeal Report had to be submitted to the Executive Director without any knowledge of the POST Investigation Report contents.
11. Per the letter of POST Assistant Executive Director Alan Deal, dated 2/3/12, Mr. Alan stated that "the POST investigative report on this matter is not yet available for release"
12. ITR is once again forced to submit the current POST Commission Appeal Report without any knowledge of the Investigative Report content of consultant Don Lane_ and must rely on a "best estimate interpretation" of each specific "finding"

SECTION NUMBER 35

POST FAILURE TO RESPOND TO ITR IN TIMELY MANNER PER PAM REQUIREMENTS

1. As of the direct result of POST inability to respond in a due diligence manner, ITR has been unjustly preventive from filing a timely appeal to the full Commission in response to the Executive Directors denial of the ITR Appeal Report submitted 11/23/12.
 - a. The inexcusable delay by POST was in violation of its own PAM regulations
 - b. The delayed response dated 1/23/12, consisted only of a two page letter restating the same six original "finding" that had already been presented in prior letter dated 10/24/11 and six "new findings" fabricated without any factual documentation as substantive content.
 - c. The Appeal denial letter also did not include the investigative report of consultant Don Lane which is critical to the ITR appeal to the full POST Commission and which POST still will not provide ITR.
2. The negligent failure of POST to respond to the ITR Appeal Report in a timely manner has unethically delayed the response of ITR to the last Commission meeting held 2/22-23/12 and now must unnecessarily wait until the next scheduled full Commission meeting June 28, 2012.
3. The failure of the POST staff to comply with its own Administrative Manual regulations is consistent with other investigative and due process misconduct issues imposed upon ITR during this appeal process.
4. POST Administrative Manual section 1058 " Appeals Process" as provided by Assistant Executive Director Michael DiMiceli on 11/4/11 reads as follows:
 - a. Any course certification/decertification decision may be appealed to the POST Executive Director.

Appeal, and all relevant course documentation, appellant believes supports the appeal, must be submitted in writing to the Executive Director within 30 days of the date of the certification/decertification notice.

Within 30 calendar days of receiving the appeal, the Executive Director shall respond to appellant in writing with a decision and the reasons for the decision.

- b. The Executive Director's decision may be appealed to the commission.

The Appeal, and all relevant course documentation the individual believes supports the appeal, must be submitted in writing to the commission within 30 days of the date of the Director's decision.

Appeals received at least 45 calendar days prior to the next scheduled commission meeting will be heard at that meeting.

Appeals received with less than 45 calendar days remaining prior to the next scheduled commission meeting will be heard at the subsequent meeting.

The commission will notify the appellant of the date, time and location of the hearing with 10 calendar days of the receipt of the appeal to the commission.

The appellants designated representative shall have the right to present evidence at the hearing.

The Executive Director shall notify the appellant in writing of the commission's decision within 10 calendar days following the conclusion of the hearing.
(Revised: 11-14-07)

5. Date of letter from Assistant Executive Director Michael DiMiceli as to decertification of ITR courses and instructors as of 10/28/11. 10/24/11
6. Submission date of ITR Appeal Report to POST Executive Director Paul Cappitelli by hand delivery to POST Headquarters 11/23/11
7. Date of Executive Director Paul Cappitelli letter sent via U.S. Mail regarding denial of appeal contained in ITR 11/23/11 Appeal Report 1/23/12
 - a. POST Executive Directors letter was dated 1/23/12 which is 60 calendar days from date of ITR Appeal Report of 11/23/11
 - b. POST Executive Directors response per the PAM was due 12/23/11.
 - c. POST Executive Directors response was no less than 30 days late.
8. Next scheduled full Commission meeting date subsequent to date of POST Executive Directors Paul Cappitelli 1/23/12 Appeal Denial letter subsequent to the missed 2/22-23/12 meeting 6/28-29/12
 - a. Required 45 day deadline date for submission of documents prior to the next scheduled meeting necessary for appealing the POST Executive Directors decision to the full POST Commission 5/14/12
 - b. It is critical that ITR have the POST investigative report of Don Lane to prepare an informed report to the full Commission prior to this date,
 - c. This purposely delayed response reflect a conscious disregard and deliberate indifference to the ethical responsibility of the POST to comply with own Administrative Manual guidelines

SECTION NUMBER 36

POST FAILURE TO CONFIRM VERACITY OF DON LANE INTERVIEW CONTENT OF BEN TISA

1. The POST Staff has a due diligence responsibility to conduct a prudent management review and verification of the alleged substantive foundation of facts produced by their investigator, consultant Don Lane, which validates the six "original findings" and the six "new findings" of fault.
2. Based upon inquiry of Ben Tisa transmitted via email 9/1/11 to consultant Don Lane, ITR requested an update as to the status of the investigation regarding the injury accident which occurred on 7/21/11.
 - a. ITR also requested advice as to any additional information and document requirements that ITR can provide to assist in the investigation.
 - b. Don Lane responded via email Thursday 9/1/20011 with the following information requests/questions regarding the following issues:
 - (1) Class safety policy and procedures
 - (2) Instructor certification documents and information
 - (3) Licensing documents/authority for possession of destructive devices
 - (4) Copies of all class instructional material
 - (5) Any additional video of the course and/or injury incident
3. Ben Tisa with permission of the Stockton Police Department, made arrangements to meet with Don Lane at the Stockton Police Department range on Tuesday 9/6/11
4. At the onset of the Tuesday 9/6/11 meeting, consultant Don Lane made the following comments:
 - a. Advised that he had little knowledge regarding actual Distraction Device Breaching procedures or the use of special munitions/explosives.
 - b. Confirmed he was the POST consultant who processed the certification request as to meeting all the criteria for approval by the POST Commission.
 - c. Had already received and reviewed the Preliminary ITR Incident Report, DVD disk and other supplemental information provided POST by direct submission via U.S. Mail.
 - d. Confirmed receipt of all class instructional material, class safety policy and procedures, instructor certification information, Safariland Training Group manuals and other training aids not already provided POST by direct submission.

- e. Saw video of Mr. Sandy Wall (master instructor and inventor of the Distraction Device Breaching System) and Dave Bliss using the distraction Device Breaching during an unspecified training course.
5. During the course of the meeting, Don Lane indicated that the investigation was still in progress and his report was nearing completion, but wanted to discuss the following matters as to finalizing the "findings of cause" regarding the accident.
- a. Needed more detailed information as to instructor certifications involving special munitions/distraction device products.
 - b. ITR awareness of requirement for possession of Blaster Licenses and permits to use explosives
 - c. Engineering studies and propriety information regarding the distraction tool design and manufacturing procedures.
 - d. Why the vendor representative Mike Bullion was allowed to address the participants for approximately 45 minutes
 - e. Awareness of any specific ATF and Cal/OSHA regulations regarding distraction device breaching procedures and munitions
 - f. What Instructor to student ratio of one on one was applied during the course.
 - g. Proximity of the instructors to participants as to distance during course of deploying the distraction device breaching tool
 - h. Gram weight of munitions used as to total amount based upon analysis of outward opening door target
 - i. Testing procedures verses known results of munition deployment
 - j. No record or documentation of Safariland Training Group instructor listed as guest instructors/product specialist
 - k. Authorization procedures for Safariland Training Group and Defense Technology to ship, transport and provide product to end users/class participants.
 - l. Difference between private presenter and a commissioned police agency as to certain regulations involving distraction devices.
6. All of the above matters, which subsequently formed the basis of the alleged six "Original Findings" and the six "New Findings" are documented in the following three letters which constitutes the total substantive production of factual documentation for the POST decertification of all ITR courses and Instructors:
- a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
 - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
 - c. Letter dated 2/3/12 to ITR from Assistant Executive Director Alan Deal
7. Any document information that was provided at the meeting by Ben Tisa, which did not fully address the issues raised by Don Lane, were to be the subject of further research and submission.

8. Per the letter of Executive Director Paul Cappitelli dated 1/23/12, the following statements were made regarding comments and a report attributed to Ben Tisa by POST consultant by Don Lane.
 - a. The written report of the incident you prepared and submitted to Senior Consultant Don Lane describes the decision of students to deploy the device in a "unusual position or manner"
 - b. Mr. Lane has reported his interview with you during which you described various "experiments" with charges (loads) and deployed to observe the results.
 - c. Explosive experiments are not a described or approved element of the course within the conditions of certification.
9. There is no written report in existence that was prepared and submitted by ITR to consultant Don Lane describing the decision of students to deploy the device in a "unusual position or manner"
10. The statement regarding the report is false and a deliberate self serving fabrication
In order to create another "new finding"
11. The only "report" that describes the specific incident training events regarding this statement is the document captioned "July 21, 2011 Accident Circumstances" contained in Section Three of this report to the full POST Commission, of which there is no mention of students deploying the device in an unusual position/manner.
12. The statement "various experiments with charged (loads) and deployed to observe the results" is another example of unsubstantiated assertions by Don Lane in an futile attempt to provide creditable to this "new finding"
13. The statement of Don Lane is a false and complete fabrication on his part which is consistent with other investigative misconduct of Don Lane, as is evidenced by his negligent ability to factually document quotes he claims are attributed to other individuals.
14. This self serving statement created by consultant Don Lane, and presented to support the factually deficient allegation contained in this "new finding" is categorically denied by Instructor Ben Tisa as an untruthful assertion.

SECTION NUMBER 37

POST FAILURE TO CONDUCT DUE DILIGENCE INVESTIGATIVE INTERVIEWS

1. ITR is not aware of all the interviews that were conducted by consultant Don Lane as part of his investigative efforts regarding the injury accident of Officer Mile Short on 7/21/11, in as much as ITR has never received the investigative report which allegedly substantiates the "findings" of decertification.
2. ITR is aware that contact has been made with Officer Mile Short by Don Lane, the results of which have not been made available to ITR for review.
3. ITR is aware that contact has been made with R.K. Miller by Don Lane, the results of which have not been made available to ITR for review.
 - a. R.K. Miller is the principal owner of National Training Concepts, a training presentation competitor of ITR and also a former instructor for ITR.
 - b. R.K. Miller also a board member of California Association of Tactical Officers, which is also a training presentation competitor of ITR
 - c. R.K. Miller is also the Training coordinator for the California Association Of Tactical Officers.
4. ITR is aware that contact has been made with Robert Smith – Cal/OSHA Inspector/Fremont District office by Don Lane on 12/19/11, the results of which have not been made available to ITR for review.
5. ITR is aware that contact has been made with Steve Hart – Principle Engineer Cal/OSHA Mining and Tunneling Unit by Don Lane on 12/19/11, the results of which have not been made available to ITR for review.
6. ITR is also aware that some members of the course were contacted by Don Lane, the results of which have not been made available to ITR for review.
7. What is of critical importance regarding the veracity of the investigation done by Don Lane, is the individuals that were purposely NOT interviewed as part of the alleged detailed investigation conducted by POST in support of the decertification "findings".
8. Any competent investigator involved in such a important matter such as this incident, would make every effort to conduct a due diligence effort to seek out and contact all individuals who, because of their on-scene knowledge can collectively establish the events and circumstances as they actually occurred.

9. Critical individual of significant importance who consultant Don Lane apparently felt were not of investigative importance as to their on-scene knowledge and/or subject matter expertise include the following individuals:

 - a. POST course instructor Dave Bliss – International Training Resources.
 - b. Guest instructor Product/Technical Specialist Ron McCarthy – Safariland Training Group
 - c. Guest instructor Product/Technical Specialist Frank Harden – Safariland Training Group
 - d. Sandy Wall, Training manager of the Safariland Training Group who is the individual who created and designed the distraction device breaching tool system to include developing all of the operational procedures, user manuals training aids and instructor certification process.
10. Other critical individual of signification importance who consultant Don Lane apparently felt were not of investigative importance as to their on-scene knowledge, were the members of Training Team 1.
11. Training Team 1 members, who with Officer Mike Short participated in all of the sequential training events to include the target analysis, breach point planning, munition selection, tool rigging, placement and positioning for the event during which Officer Short was injured. These individuals are indentified as follows:

 - 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 to Mike Short occurred.
12. Any competent investigator involved in such an important matter such as this incident, would make every effort to conduct a due diligence effort to seek out and contact all individuals who, because of their subject matter expertise, could provide information regarding the allegations of cause and the veracity of the “finding”
13. The failure of consultant Don Lane to interviewing the aforementioned Individuals is consistent with other investigative misconduct as to obtaining information that disputes the authenticity of the alleged ‘findings’ of fault for decertification for ITR courses and instructors.

SECTION NUMBER 38

POST FAILURE TO PROVIDE DUE DILIGENCE PRESERVATION OF INCIDENT SITE

1. The injury accident of Officer Mike Short occurred on 7/21/11 at the following Incident site:
 - a. Fort Ord, Monterey, California
 - b. Malmedy Street
 - c. Building # 4
 - d. Second floor
 - e. Room 210W/hallway area
2. Building # 4 is an unsecured and unguarded structure subject to occupation by transients and other unauthorized individuals who have had unrestricted access to the building and structural components to include the immediate incident site area, doors, walls, flooring, ceilings and windows.
3. Building # 4 and other building in the immediate area have continually been the subject of defacement and random vandalism/destruction by unauthorized individual who have unrestricted access to these structures, with these conditions still in existence as of the date of this document.
4. Building # 4 is also available to other agencies for training to include SWAT team training, patrol tactics, active shooter response and breaching procedures.
5. To the best of ITR's knowledge, these conditions of unrestricted access to the injury accident site with-in building # 4 are still in existence as of May 2012, which means that for approximately ten months, the incident site has been unprotected nor secured as to maintaining the integrity of the incident site.
6. California Commission on POST, having declared its intention for conducting a compliance investigation into this incident, is the lead agency accountable for conducting the investigation consistent with contemporary standards of conduct, procedures and practices, with Senior Consultant Don Lane being the primary investigator.
7. The inexcusable lack of fundamental investigative actions to protect the incident site by consultant Don Lane, as the designed investigator representing POST in this matter, is consistent with other investigative misconduct inherent in this investigation.
8. The inexcusable lack of fundamental due diligence concern as to immediately correcting this condition by POST investigator Don Lane, is consistent with other investigative misconduct inherent in this investigation.
9. The inexcusable lack of fundamental investigative procedures to protect the incident site by all other involved parties in this matter after approximately ten months, reflects a complete lack of due diligence concern for maintaining the integrity of the incident site.

10. The complex of buildings in which building # 4 is located, is property owned by the City of Seaside and permission for access or use as a training facility is obtained from the Seaside Police Department who is responsible for police services at that location in-conjunction with the Presidio of Monterey Police Department.
11. ITR is the only party to this matter, who after realizing the incident site was completely unsecured and subject to unauthorized visits by unknown individuals, agencies and transients, requested permission from the Seaside Police Department for authorization to at least obtain the door for protection as evidence.
12. On November 13, 2011, Dave Bliss of ITR, requested and received permission from Commander Chris Veloz of the Seaside Police Department, to remove the door from room 210W for protection as evidence in any subsequent examination or proceedings.
13. On Sunday, December 18, 2011, Dave Bliss and Ben Tisa removed the door from room 210W, Building 4, Malmedy Street, Fort Ord, California for retention in a secure storage facility with controlled access only by ITR staff.
14. While under the secured control of ITR, the door from room 210W was not altered, damaged, mishandled, exposed to weather nor allowed to be handled by any individual other than Dave Bliss and Ben Tisa as required to remove, transport and store.
15. The due diligence actions of ITR regarding protection of the door as evidence, was brought to the attention of Mr. George Mankiewicz on 2/6/12 by email with attached letter from Dave Bliss of ITR.
16. George Mankiewicz is the account supervisor for Carl Warren & Co., third party liability claims administrator for the City of Seaside,
17. On Monday March 7, 2012, the door from room 210W was as requested, returned to Commander Chris Veloz of the Sea Side Police Department by Ben Tisa, for storage in the department's evidence storage facility.
18. The due diligence actions by ITR regarding the good faith protection of the door as evidence, to include its return, was done in compliance with the stated request of Mr. Mankiewicz as set forth in his letter dated 2/28/12.
19. The only other time ITR staff has been to accident site subsequent to 7/21/11, was on 12/18/11 when Dave Bliss and Ben Tisa were on scene for removal of the door from room 210W which was the only item removed for protection as evidence.
20. To the best of ITR knowledge, there is no official record by the Sea Side Police Department as to presence or authorizing for POST consultant to be at the Incident site at building # 4, Fort Ord, Monterey, California.

SECTION NUMBER 39

POST FAILURE TO CONDUCT INVESTIGATION INTO EYE GLASS PROTECTION PERFORMANCE

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 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 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/fragmentation caused a complete failure of the protective glasses worn by Officer Short at the point of impact.
2. The catastrophic failure of the eye glasses as to protection is one of the most critical factors contributing to the proximate cause of the injury and to date, no performance evaluation/examination/testing/manufacture warranty review or any other due diligence investigation of this very important issue has been presented by POST Investigator Don Lane.
3. This inexcusable lack of due diligence forensic testing, technical analysis, measurement, reconstruction process, document examination or other investigative procedure as to evaluating the product impact performance of the protective glasses worn by the injured officer, in consistent with other investigative misconduct by POST investigator Don Lane.
4. ITR is not aware of any due diligence investigative effort on the part of POST Investigator Don Lane to obtain permission for examination of the medical assessment records of Officer Short's eye injury to determine whether there was any recovery of foreign debris located at the injury point.
5. ITR is not aware any forensic testing, technical analysis, reconstruction process, measurements, record examination or other investigative procedures which document, with any degree of medical certainty, any other factual assertions as to the direct and proximate cause of the eye injury other than those proffered by ITR.
7. ITR is not aware of any due diligence investigative procedures that were employed by the POST Investigator Don Lane, to identify the direct and proximate cause of the eye injury other than the collective allegations asserted in the "findings" set forth in the POST letters dated 10/24/11 and 1/23/12.

8. ITR does not have access to the protective glasses of Officer Short as to evaluating the product impact protection performance nor is ITR aware of any due diligence examination or testing done by any other parties to this matter.
9. 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, nor is ITR aware of any other party to this matter conducting such research.
10. On 7/21/11, subsequent to conclusion of the events involved with the course presentation and injury accident of Officer Mike Short, an incident site search for recovery of the protective glasses or any fragments was initiated at 1830H by:
 - a. Ben Tisa International Training Resources
 - b. Frank Harden Safariland Training Group
 - c. Deputy Andy Kobayashi Monterey County Sheriff
 - d. Deputy Al Martinez Monterey County Sheriff
11. Incident Site Search Results - Recovery of Protective Glass Fragments
 - a. A total of three pieces were found and were secured as evidence by Frank Harden
 - b. Item # 1 Frame piece 1/2 inch off wall at room # 217W
 - c. Item # 2 Partial lenses 4 inches off wall at room # 210W
 - d. Item # 3 Partial lenses 2 inches off wall/door room # 213W
 - e. No other protective glass parts/fragments were found during complete retrace of the medical extraction route of Officer Michael Short.
 - f. ITR has been advised that the remaining portions of the eye protection worn by officer Mike Short were contained in his helmet and are in the possession of the Visalia Police Department.
12. ITR has been advised by Frank Harden that the evidence recovered and in his possession, cannot be released by him for forensic evaluation and all issues regarding this matter are to be referred to legal counsel of Safariland Training Group.

SECTION NUMBER 40

POST FAILURE TO CONDUCT INVESTIGATION INTO BREACHING TOOL EFFECT ON DOOR

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 approximate cause of the injury to Officer 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 target door is what logically appears to be the source of the debris/fragment
 - c. The denotation of the breaching charge is what caused the separation of the debris/fragment from the target door
 - d. The debris/fragmentation caused a complete failure of the protective glasses worn by Officer Short at the point of impact.
2. ITR is not aware any forensic testing, technical analysis, reconstruction process, measurements, record examination or other investigative procedures which documents with any degree of medical certainty, any other factual assertions as to the direct and proximate cause of the eye injury other than that proffered by ITR.
2. injury accident of Officer Mike Short occurred on 7/21/11 at the following incident site:
 - a. Fort Ord, Monterey, California
 - b. Malmedy Street
 - c. Building # 4
 - d. Second floor
 - e. Room 210W/hallway area
3. Hallway Description
 - a. Distance from door to opposite wall 55 ½ inches
 - b. Wall is cinder block construction
4. 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
5. 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

6. 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
7. One of the critical factors contributing to the direct and proximate cause of the eye injury is the impact performance of the breaching tool and munitions on the door and the resulting separation of debris/fragments being projected outward toward Officer Mike Short.
8. POST has to date, not produced any documents or reports regarding any appropriate investigative effort being put into the examination of this very important issue by POST Investigator Don Lane.
9. This inexcusable lack of due diligence forensic testing, technical analysis, reconstruction process, measurement, document examination or other investigative procedure as to evaluating the impact performance of the breaching tool and munitions, in consistent with other investigative misconduct by POST investigator Don Lane.
11. ITR is not aware of any due diligence investigative procedures that were employed by POST Investigator Don Lane, to identify the direct and proximate cause of the eye injury other than the collective allegations contained in the "findings" which are allegedly documented in the Investigative Report of Don Lane which POST refuses to provide ITR.

SECTION NUMBER 41

POST FAILURE TO DISCLOSE AND CONFIRM VERACITY OF BLASTING OPERATION REQUIREMENTS

1. In email dated 9/8/11 sent by Don Lane to Ben Tisa, which in part, contained the following statements:
 - a. You are a private presenter not a commissioned police agency.
 - b. The rules differ between the two.
 - c. There are two primary items in question here, per federal law
 - d. In order to possess the explosive blend (magnesium, aluminum and perchlorate) you must be licensed for explosives, commonly referred to as a "Blaster License" It most certainly is not black powder. It's classified as an explosive.
 - e. To possess the device itself, each reload is , by law a destructive device, and you must have permit for that as well.
2. Per Cal/OSHA Report # 315364695 dated 1/18/12 prepared by inspector Robert Smith, a meeting was held at POST headquarters regarding the injury accident involving Officer Mike Short which occurred on 7/21/11 while participating in the POST certified Distraction Device Breaching Instructor course.
3. The date of this meeting was on 12/19/11 and present were the following individuals:
 - a. Robert Smith – Cal/OSHA inspector/Fremont District Office
 - b. Steve Hart – Principle Engineer/Cal/OSHA Mining and Tunneling Unit
 - c. Don Lane – POST consultant/Training and Delivery Bureau
 - d. John Dineen – POST Bureau Chief/Training, Delivery and Compliance
4. Per Inspector Robert Smith's report, the following applicable statements were extracted from a hand written document, which ITR believes to address issues discussed prior to and during the POST headquarter meeting on 12/19/11:
 - a. The injury as described exceeded the severity expected from the use of a Distraction device.
 - b. Contact with POST indicated that they were investigating the accident.
 - c. I discussed the accident with Steve Hart (issuer of blaster's licenses).
 - d. We agreed that POST would complete their investigation and share their finding with us.
 - e. If indicated we would move forward with our investigation.
 - f. On 12/19/11 @ 10:00 am we meet w/POST, at their Sacramento office, to review their incomplete report.
 - g. All parties agreed that the distraction device breaching tool was a blasting operation as used.
5. At no time has consultant Don Lane, POST Training, Delivery and Compliance staff or the Commission ever notified ITR verbally or in writing during the certification process, of the necessity for alleged compliance with Cal/OSHA guidelines relating to "blasting operations" for presentation of the Distraction Device Breaching Instructor Course.

6. The Distraction Device Breaching Instructor course was POST certified January 14, 2011 without any requirements by the Commission for compliance to Cal/OSHA "blasting operations" guidelines until the 12/19/11 meeting at POST headquarters where it was determined, almost one year after it was certified and 5 months after the injury accident on 7/21/11, that the "distraction device tool was a blasting operation as used"
7. The creditability of the aforementioned individuals regarding their training, experience and special qualifications concerning the distraction device breaching tool and their ability to make an informed assessment regarding the veracity of the following statement:
"All parties agreed that the distraction device breaching tool was a blasting operation as used" should minimally consist of the following reasonable standards of certification:
 - a. Qualification as to being a Distraction Device Instructor
 - b. Qualification as to being a Distraction Device Breaching Instructor
 - c. Qualification as to being a Explosive Breacher – Law enforcement
 - d. Current or prior possession of a Blasters License – Law enforcement/Other
 - e. Current or former law enforcement officer, years of duty and assignments
 - f. Current or former member of a SWAT Team, years of duty and assignments
 - g. Certification as to being a qualified instructor of breaching courses by POST.
8. POST and Cal/OSHA have to date, chosen not to provide any statements, resumes or reports that substantiates the credibility of these staff members or other advisers as to their subject matter expertise regarding blasting operations and the use of the distraction device tool.
9. As POST consultant Don Lane and Bureau Chief John Dineen were in agreement regarding their assessment that the distraction device tool as used was a "blasting operation" Don Lane was negligent in his due diligent responsibility to conduct a prudent and appropriate curriculum assessment during the initial processing of the certification documents as submitted by ITR.
10. The Distraction Device Breaching Instructor course was certified by the Commission based upon the alleged review process conducted by Don Lane with all modification as required by the POST reviewers, being resubmitted by ITR for final approval.
11. POST has not, in any of the following three administrative letters produced in response to the detailed reports submitted by ITR, presented any statements containing factual justification for decertification of the Distraction Device Breaching course because of non-compliance to POST or Cal/OSHA guidelines for "blasting operations".
 - a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
 - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
 - c. Letter dated 1/24/12 to ITR from Assistant Executive Director Alan Deal

12. To define the use of distraction devices and/or distraction device breaching as “blasting operations” requiring the presence of a qualified Licensed Blaster, would mean that every law enforcement agency in the state of California would have to cease enforcement operations and/or training that involved the use of these munitions.
- a. This critical law enforcement operational capability would have to be curtailed until every agency using distraction devices/distraction device breaching procedures came into compliance with this interpretation of CCR Title 8 Section 5238(a)
 - b. Additionally, this interpretation of CCR Title 8 Section 5238(a) could possible require every instructor/trainer/vendor involved in the presentation of distraction breaching courses and/or distraction device courses to obtain a Blasters License
13. This misinterpretation and unsubstantiated application of CCR Title 8 section 5238(a) requirements to distraction devices and distraction device breaching Instructor courses, is consistent with other investigative incompetence of consultant Don Lane.
- a. This requirement has been retroactive applied subsequent to the certification and presentation of these courses.
 - b. Don Lane as the POST consultant who originally processed the courses for certification by the Commission, negligently failed to conduct due diligence research as to the appropriateness of making these requirements part of the certification approval.
14. In response to a request by ITR to Cal/OSHA inspector Robert Smith, a meeting was held in the Cal/OSHA District office in Fremont, California on 1/5/12.
- a. The following individuals were present other then Robert Smith who failed to attend:
 1. Ben Tisa Instructor-International Training Resources
 2. Dave Bliss Instructor-International Training Resources
 3. Dave Becker Safety Engineer Cal/OSHA Fremont District Office
 4. Mike Horowitz Senior Safety Engineer Cal/OSHA Fremont District Office
 5. Steve Hart Principle Engineer Cal/OSHA Mining and Tunneling unit
 - b. Steve Hart made the following comments in front of Ben Tisa, Dave Bliss, Dave Becker and Mike Horwitz:
 1. Has never read the ITR Report submitted to Cal/OSHA regarding the 7/21/11 accident which detailed the extensive training procedures, practices and safety protocols developed and utilized for the POST certification process.
 2. Does no know what POST did as to course certification process regarding the Distraction Device Breaching Instructor course nor any other POST course.
 3. Has never seen the actual distraction device tool system components
 4. Has never seen the tool actually used in practical application conditions
 5. Has never seen the tool actually used except a on-line advertising presentation
 6. Has never personally used the tool in training or operational deployment
 7. Has not read nor seen the course instructor manuals, DVD or other training aids.

15. The distraction device munitions are manufactured, shipped and handled as a 1.4 Division Explosive Classification which are defined as follows:

Substances and articles which present no significant hazard: substances and articles which present only a small hazard in the event of ignition or initiation. The effects are largely confined to the package and no projection of fragments of appreciable size and range is to be expected. An external fire shall not cause virtually instantaneous explosion of almost the entire contents of the package.

16. 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 Special Munitions # 9-CA-059-26-3B-01482
 - 3. License/Permit – User of Special Munitions # 9-CA-059-33-3B-01481
 - 4. Notice of Clearance for Individuals transporting, shipping, receiving or possessing Special Munitions/material.
- b. **Mr. McCarthy possesses the following California Department of Justice license/permits:**
 - 1. Distraction Device Permit # 07916
 - 2. Centralized List of Exempt Federal Firearms Licensees
 - 3. Certificate of Eligibility as to acquiring or possessing firearms.
- c. **All munitions/distraction devices are shipped from the vendor via UPS/FedEx 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 42

REQUESTS AND RECOMMENDATION FOR POST COMMISSION MEMBERS

1. ITR has been presenting an extensive inventory of POST certified courses since January 1995 to October 2011.
2. 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 171,131,000 training hours.
3. 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.
4. This accident was a tragedy beyond words and was devastating to Officer Mike Short, his fellow course participants and especially to all of the instructors.
5. ITR instructor have dedicated both their extensive professional law enforcement careers as trainers and the last 15 years of ITR POST course presentations, to providing the highest quality, safe and contemporary POST certified law enforcement training courses to fellow officers, as evidenced by the extensive volume of courses presented and the extensive volume of repetitive attendance by officers throughout the state.
6. The extensive amount of documentation provided in the Commission Appeal Report is to ensure that all of the critical information available to ITR as of the date of this report has been presented in a format which establishes a reasonable and justifiable basis for the requests and recommendations.
7. The sanctions as currently imposed upon ITR by the POST staff, are without historical precedent as to justifiable reasonableness and to date, POST has failed in its ethical responsibility to show cause regarding the burden of proof for its actions
8. As of the date of this Commission Appeal Report, ITR still has not received the Investigative Report of consultant Don Lane which allegedly provides substantiation for the "findings" of cause regarding the injury to Officer Mike Short
9. It is requested that the POST Commission Members, upon a due diligence reading of this Appeal Report, evaluate the six original "findings" as listed in the POST letter of Assistant Executive Director Michael DiMiceli dated 10/24/11, and six "new findings" set forth in the letter of Executive Director Paul Cappitelli dated 1/23/12, which are specific only to the Distraction Device Breaching Instructor course, and implement the following administrative process:
 - a. The Distraction Device Breaching Instructor course remain decertified
 - b. POST staff review all presentation procedures
 - c. POST staff make any recommendations as to adjustments to course content
 - d. Upon completion of this process, consider recertification of the course.

10. It is requested that the POST Commission Members, upon a due diligence reading of this Appeal Report, evaluate the six original "findings" and the six new "findings which are specific only to the Distraction Device Breaching Instructor course, and implement the following recommendation:

- a. It is recommended that POST rescind the restriction regarding Ben Tisa being prohibited from participating in any POST certified training course as instructor, coordinator, safety officer, instructional aide or assistant.
- b. It is recommended that POST rescind the restriction regarding Dave Bliss being prohibited from participating in any POST certified training course as instructor, coordinator, safety officer, instructional aide or assistant.
- c. It is recommended that the inventory of ITR POST certified courses, other than the Distraction Device Breaching Instructor course, be re-certified for presentation by ITR in the state of California.

11. Any question or request for further information can be directed to:

- a. Ben Tisa
- b. Telephone numbers: 925.963.3984 or 415.567.0323
- c. Email: btisa.itr@comcast.net or www.itr-swat.com
- d. Office address: ITR at 2269 Chestnut Street, # 161, San Francisco, Ca. 94123
- e. Both Ben Tisa and Dave Bliss are also available for any additional meetings at POST Headquarters at your convinance.

12. Any questions or request for further information can be directed to:

- a. Mike Rains – Attorney at Law @ Rains Lucia Stern, PC
- b. Telephone 925.609.1699
- c. www.RLSlawyers.com