State of California **Department of Justice**

M E M O R A N D U M

To : POST Commissioners **Date:** June 4, 2012

From : PAUL A. CAPPITELLI
Executive Director
Commission on Peace Officer Standards and Training

Subject: **Report on Appeal to Commission by International Training Resources**
June 28, 2012

ISSUE

Should the Commission grant the appeal by International Training Resources (ITR) of the staff decision to decertify 22 training courses previously approved for presentation by ITR and prohibit David Bliss and Ben Tisa from participating in any POST-certified training course as instructors, coordinators, safety officers, or instructional aides or assistants?

BACKGROUND

On July 27, 2011, POST staff learned of an injury to a student that occurred on July 21, 2011, during the presentation of a training course, Distraction Device Breaching – Instructor (CCN 1025-33566), certified to and presented by International Training Resources (ITR).

International Training Resources is a private company, based in San Francisco, co-owned by Benedict J. (Ben) Tisa, a retired FBI agent, and David W. Bliss, a retired Lieutenant from Mountain View Police Department. Over several years, ITR has developed and been certified by POST to present 22 courses. The courses included specialty firearms (sub-machine gun, tactical rifle), SWAT sniper, critical incident management, technical rope operations, and several instructor courses. A list of the courses previously certified to ITR is attached (see **Attachment A**).

The Distraction Device Breaching – Instructor course was initially certified and presented by ITR once during February 2011. It was recertified effective July 1, 2011. The course description provided by ITR was "designed to develop participants as law enforcement instructors in the use of distraction device breaching."

> Note: A distraction device, commonly described as a "flash bang" is a grenade-type device that produces bright light and loud noise upon detonation. It is primarily used to disorient the occupants of a room to enable the entry of law enforcement officers.

The certification of the course took several months to complete. Considerable effort was made during the review process to ensure that the safety plan developed by the presenter sufficiently

addressed the potential hazards students and instructors could encounter. Initially, not all of the instructors submitted in the course certification package met the POST Regulation 1070 requirements.

The course was approved on January 4, 2011 (See *POST Training Injury Investigation Report – International Training Resources*, P. 29). The first presentation of the course took place February 23 and 24, 2011 (FY2010-2011). The second presentation took place July 20 and 21, 2011 (FY 2011-12). Michael Short, Police Officer, Visalia Police Department, a student of the class, was injured July 21, 2011, participating in a training exercise during the course.

Upon becoming aware of the injury of Officer Short, staff initiated an investigation into the events surrounding the presentation of the Distraction Device Breaching – Instructor course. Senior Consultant Don Lane, Training Delivery and Compliance Bureau, was assigned to conduct the investigation. The investigation culminated in the completion of a report (see *POST Training Injury Investigation Report – International Training Resources* – hereafter referred to as the *Report*). The *Report* describes the investigation and was the primary source from which decisions were made by staff regarding courses certified to International Training Resources (ITR).

On August 2, 2011, POST staff sent a letter to Ben Tisa notifying him that two courses offered by ITR were suspended while POST conducted an investigation into the incident involving the injury of Officer Short (see **Attachment B**). The two courses were, Diversionary Devices – Instructor, CCN 1025-21920 and Distraction Devices Breaching – Instructor, CCN 1025-33566.

Following review of the *Report*, letters dated October 24, 2011, were sent to the course presenters, Misters David Bliss and Ben Tisa (see **Appendix O** of the *Report*). The letter advised Bliss and Tisa that effective October 28, 2011, all certified courses offered by ITR were decertified; that no training course listed in the letter could be started or presented after 5:00 p.m., October 28, 2011; and that they were prohibited from participating in any POST-certified training course as instructor, coordinator, safety officer, or instructional aide or assistant.

NOTE: The letter sent to David Bliss was returned to POST undelivered.

ALLEGATIONS

The decision to decertify courses presented by ITR was based on the following allegations:

Allegation #1 – It is alleged that ITR failed to adhere to provisions of the safety policy approved as a condition of certification of the course.

Allegation #2 – It is alleged that ITR used instructors who are not approved as a condition of certification of the course.

Allegation #3 – It is alleged that ITR departed from the content of the course specified in the approved expanded outline and hourly distribution for the course.

Allegation #4 – It is alleged that ITR improperly and incorrectly prepared distraction device munitions.

Allegation #5 – It is alleged that ITR allowed experimental use of explosive materials not approved within the certification of the course.

Allegation #6 – It is alleged that ITR engaged in experimental deployment of equipment and munitions that exceeded the experience and competence of all instructional personnel who were present at the scene.

SUMMARY

The content of the *POST Training Injury Investigation Report – International Training Resources* is the primary source from which staff made the decision to take the action described in the letter sent to Misters Bliss and Tisa dated October 24, 2011 (Appendix O of the *Report*). It is included by reference. No additional summary of the investigation is provided in this report.

CONCLUSION

Based on the *POST Training Injury Investigation Report – International Training Resources* (aka, the *Report*), it is concluded that the allegations should be classified as follows:

Allegation #1 – It is alleged that ITR failed to adhere to provisions of the safety policy approved as a condition of certification of the course.

Allegation #2 – It is alleged that ITR used instructors who are not approved as a condition of certification of the course.

Allegation #4 – It is alleged that ITR improperly and incorrectly prepared distraction device munitions.

Allegation #5 – It is alleged that ITR allowed experimental use of explosive materials not approved within the certification of the course.

Allegation #6 – It is alleged that ITR allowed experimental deployment of equipment and munitions that exceeded the experience and competence of all instructional personnel who were present at the scene.

NOTE: Allegations 1, 2, 4, 5, and 6 are combined.

These Allegations are classified as Sustained.

ITR violated the *POST Guidelines for Student Safety in Certified Courses* (Contained as Appendix N in the *Report*), which are designed to keep students and instructors safe. ITR failed to conform to the specific guidelines enumerated below:

Section 1: General Safety Guidelines:

1.7.2 Instructor to Student Ratios:

"…Maintenance of a safe training environment is the utmost consideration in POST's certification or recertification decision. Presenters must be able to explain the reasonableness of their established instruction staff-to-student ratios…,"

Detective Chris Jacoby, Redding Police Department, saw the instructor (Harden) leave the student (Short) alone in the hallway. The Team 1 operators were stacked outside the doorway next to Harden, away from the breach point. Jacoby said it isn't typical training to leave the breacher unprotected (without cover). Jacoby recorded the injury incident on his cell phone recorder.

Officer Paul Vandiver, Concord Police Department, was approximately 15 feet from Officer Short and recorded the injury incident on his cell phone recorder. He saw Short positioned at the breach point with the WallBanger. Someone (possibly Harden) remotely detonated the device around a corner out of harm's way. Vandiver felt that Short didn't know exactly when the device was going to detonate.

Ben Tisa, co-owner of ITR and one of the authorized instructors, witnessed the activation of the WallBanger device by Officer Short a few feet down the hallway. Tisa said that Harden was right there and that he and Bliss were both close by and observing. When asked why Harden left the student (Officer Short) alone, Tisa said he didn't know, but he was glad Harden wasn't standing next to Short or he would have been injured too.

*Video recordings (*see **Appendix L** of the *Report) show that Officer Short was left alone at the breach point during the device detonation. After giving instruction to Officer Short concerning the deployment of the WallBanger device, the primary instructor (Harden) took cover in another room, out of sight. All other instructors seen in the video recordings were at various distances (15-20 feet) from Short.*

1.8.2 Course Curricula:

"Presenters shall ensure that the instructional staff follows the expanded course outline as filed with POST.

Vandiver felt the advertising for the class was misleading for the actual subject matter covered. He described the course as having a singular focus in the use of the WallBanger breaching system (i.e., a proprietary Safariland product). There was no other use of the device as a window breach bang pole or as a gas deployment system during the course. He felt the course was one big sales course for the WallBanger, as opposed to a variety of breaching ideas, techniques, and systems. On the first day of the course, the class started with a two-hour presentation by a representative of TASER about new features of the electronic weapon. He said the TASER had

nothing to do with the purpose of the course, and the class was a captive audience to another "sales job" by the representative. He said that Tisa consistently brings a vendor "buddy of his" to give a sales presentation during ITR classes.

Jacoby said the class flyer described the course as a distraction device breaching course where he thought he would learn about distraction devices and how to operationally plan and deploy them. Instead the course was limited to a single device, the WallBanger, and how to do explosive breaching with that tool. He felt the course was a "sales job" for the WallBanger.

Short learned of the course and knew ahead of time that it was primarily on how to use the WallBanger breaching device. The first day of training began with a presentation about the new TASER device. Asked if the presentation was training or a sales presentation, he said he viewed it as a sales presentation for TASER.

ITR did not follow the approved course curriculum or lesson plan when it allowed a vendor to make a presentation to the students that was unrelated to the course.

NOTE: In a packet of appeal materials (titled, POST Commission Appeal Report - see **Attachment C**) provided to POST by ITR for distribution to members of the Commission, under Section 10, there are three entries that reflect a vendor was allowed by ITR to make a presentation on content not relevant to the course (Items 3, 5, and 6).

Section 7: Destructive Devices:

7.1.2 Facility Guidelines:

"The location selected for deployment of destructive devices shall be reasonably free of loose gravel, rocks, or other debris which could become secondary missiles increasing the potential for injury."

7.1.4 Facility Guidelines:

"The Deployment…of…diversionary devices in a confined environment shall be restricted to areas of adequate size and appropriate construction so as to limit the hazard caused by over-pressure. The actual blast effect is increased considerably by deployment in an enclosed or confined environment."

7.1.6 Facility Guidelines:

"When deploying sound/light and related diversionary devices in training, students shall be positioned to avoid flying debris.

Deployment of sound/light devices can break or shatter articles such as glass, ceramic objects, or other frangible materials.

It is recommended that diversionary devices be deployed in the open or in a windowless enclosure free of frangible objects.

Caution shall be taken to ensure that blast ports or vents of the devices are not obstructed in order to reduce the risk of shrapnel from the device body, and/or to prevent the device from becoming a projectile of lethal potential."

NOTE: The responses relevant to Sections 7.1.2, 7.1.4, and 7.1.6 Facility Guidelines are combined below.

Vandiver said that throughout the course, deployment of the breaching device resulted in fragmentation, rebound pressures, and blowback from virtually every initiation. It was an obvious hazard. On one occasion, he applied the WallBanger using a combined total of 12 grams of explosive. He was struck by peppering shrapnel from rebound fragmentation. In describing the injury event, he said that he positioned himself behind a doorway about 15 feet away from the breach point with his body and face behind a wall, and only his forearm and cell phone in the open. Upon detonation, he felt the concussive effects of the force wave and took shrapnel in his forearm, bloodying his arm. The blast caused a large projection of debris, into the hallway that resulted in a hanging electric EXIT sign about 12 feet from the blast point to be knocked to the floor. He said all observers in the hall took hits from debris and shrapnel.

Detective Mark Souza, Concord Police Department, said the best way to deploy the device was remotely due to the risk of blast fragmentation. The instructors told the students to be in a "position of safety" when detonating the device. That instruction was contradictory since the operator had to stand in front of, or near the breach point to place the device. He said the safest place was to be in another room since the device consistently produced explosive fragmentation. The course did not include instruction on how to calculate overpressures or fragmentation hazards. When Short detonated the device, the glass EXIT sign above Souza's head came crashing down and the hallway filled with smoke and debris. He was struck by the pressure wave and small fragmentation. He didn't see the instructor(s) perform a breach point inspection, analysis, discuss the size of the room, or door configuration.

Sergeant Randy Sterett, Orange County Sheriff's Department Bomb Squad and members of the Bomb Squad and SWAT Team reviewed the incident at the request of POST staff (Lane). One team member performed a calculation using the gram weight of the charge and several other factors to measure the energy released when the device was deployed resulting in the injury of Short. The calculation led to the conclusion that the charge was too large to be used in such a location. The gram weight calculations revealed the strength of the explosive at approximately .36 pounds of TNT. The minimum distance an operator should stand when activating a standard diversionary device charge (8 grams of photoflash powder) is six feet. The design of the WallBanger put the officer within three feet of the blast. Use of 30

grams of explosive load in the device at the short standoff distance was unsafe. Standard training safety protocol is to deploy (fix) any experimental charge on practice targets then remotely activate them from behind cover.

Agents Parker and Morgan, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, reviewed the incident at the request of POST staff (Lane). They concluded from the review that the charges deployed were too large for the size of the room that was breached. This resulted in overpressure that caused fragmentation.

R. K. Miller, POST-certified distraction device trainer, reviewed the incident at the request of POST staff (Lane). He offered the opinion that the charge that resulted in the injury to Short was too large for the target room; he said fragmentation should have been anticipated.

Jacoby observed consistent fragmentation ejecting from the breaching point, but it was mostly grit and dust; not large fragments. Asked the purpose of having students stand in the hallway to observe activation of the device, he said students were supposed to learn from watching the shots and damage done to various locks. Tisa said it was part of the conditioning of officers to be exposed to noise and pressure.

Short said that fragmentation was not emphasized in the course as a special hazard. He said that during previous deployments of the device, he didn't see any fragmentation that could have caused serious injury until he was injured. Most of the fragmentation throughout the day, prior to his injury, was dust and small debris generated by activation of the device.

Tisa said he witnessed the injury of Short and thought a piece of veneer from the door hit him in the eye. He said it was impossible to anticipate something like the injury of Short could occur. Asked whether he specified the level of eye protection students should bring to and wear during activation of the device, he said no; they just had to have it. It was up to the student to provide appropriate safety glasses. Asked about fragmentation as a safety issue during the training, he said that fragmentation never affected him. He described it as minor debris and dust. He said fragmentation was not a problem. Asked why students were allowed to be in the hallway observing the activations of the device, he said it is important for the conditioning of the officers to get used to the blasts and know that the blasts weren't going to hurt them.

The "other debris" at issue is the fragmentation caused by the repeated use of destructive devices activated during the exercises. Review of the videos and witness statements reflected that fragmentation was a consistent hazard with each application of the device. The narrow, enclosed, hard-surfaced hallway and outward opening door to which the device was applied put the operator and other students in close proximity to potential injury due to fragmentation and reflective pressure waves.

Students experienced flying debris from each application of the device. The device was placed on the frangible surface of the veneered door. The device was deployed in an enclosed hallway. The risk of exposure to pressure, shrapnel, and flying debris was unreasonably high. Witnesses said the application of the device resulted in fragmentation, rebound pressure and blowback from virtually every detonation. Two witnesses observed that the explosion that resulted in the injury to Officer Short shattered and knocked a hanging electric EXIT sign about 15 feet away from the breach point, and that all observers in the hall were struck by debris and shrapnel.

7.2.1 Equipment Guidelines:

"Safety glasses…shall be of sufficient quality to protect students from the…flash. This generally suggests protection levels exceeding those of…standard shooting glasses."

Vandiver said that after Short was injured, Bliss provided students with a safety helmet with a bullet/blast resistant face shield.

Short said they were told to use both eye and ear protection, but nothing was specified. He used his department's tactical safety glasses issued to the SWAT team. They were Oakley M-Frames; he was sure the lenses had some type of ballistic rating. He saw some trainees wearing what appeared to be regular sunglasses, so he felt well equipped.

Jacoby said the instruction included the need to wear helmets, ballistic vests, and eye protection.

*The safety glasses worn by Officer Short were insufficient for the type of blast encountered. According to one witness, ITR did produce a "bullet/blast resistant face shield for students to use following the injury of Officer Short. Until the injury occurred, ITR had not required students to use a face shield, blast shield, or other protective device to mitigate the risk of injury. Tisa, when asked during his interview whether he specified any particular rating or ballistic resistance level of safety glasses, said "no". He said that the students had to have eye protection, and it was up to them to bring it to the class. In the document provided to POST dated November 23, 2011 (*see **Attachment C**), there is a section titled: Course Participant use of Safariland Face Shield During Training Events on 7/21/11. It states in part, "...virtually all course participants on their own volition, elected not to wear the face shield during the practical application detonation phase of the various Training Events." Other narrative in the same document reflects that Short was offered the use of the face shield on more than one occasion but declined.*

7.4.2 Instructional Staff-to-Student Ratios:

"The instructional staff-to-student ratio shall be lowered when a student is actually deploying a diversionary device or is exposed to its effects.

The instructional staff shall be low enough to enable the instructor to immediately stop action when a safety breach is observed or other problems occur."

Souza saw Harden guide and supervise the loading of two 15-gram charges into the device (WallBanger) and position Officer Short near the door. Team 1 was stacked nearby; most of the class was in the hallway observing. Tisa and Bliss were within 30 to 40 feet, watching. The device was placed on the door by Short under the guidance of Harden. Harden left the blast zone and went out a door and behind a wall before the devise was activated.

Jacoby saw the instructor (Harden) leave the student (Short) alone in the hallway. He said the Team 1 operators were stacked outside the doorway next to Harden, away from the breach point. He said it isn't typical training to leave the breacher unprotected (without cover).

Vandiver saw Short positioned at the breach point with the WallBanger. Someone (possibly Harden) remotely detonated the device around a corner out of harm's way. He felt that Short didn't know exactly when the device was going to detonate.

Tisa witnessed the activation of the WallBanger device by Officer Short a few feet down the hallway. Tisa said that Harden was right there and that he and Bliss were both close by and observing. When asked why Harden left the student (Officer Short) alone, he said he didn't know, but he was glad Harden wasn't standing next to Short or he would have been injured too.

Parker and Morgan, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, reviewed the incident at the request of POST staff (Lane). They expressed concern that the instructor (Harden) left the student (Short) alone at the breach point and took cover. They said the in the bomb technician culture, the instructor stays with a student at all times.

The ITR instructor cadre was at standoff distances (i.e., 15 to 20 feet away) during the actual deployment of the device. The video of the application of the device where Officer Short was injured shows that the individual (Frank Harden) who was providing instruction to Short left him alone in the hallway and took cover in a room off of the hallway. The video reflects that Harden was out of view of the officer when the device was activated. When asked during the investigation, Tisa said that he saw Officer Short apply the device to the center of the door and knew that it wasn't supposed to be placed in the center; it was supposed to be placed on the doorknob.

When asked why he didn't stop the action and correct the student, he said he didn't think it was a hazard. He said the students decided to do a center shot as part of a series of experimental breaches.

7.5.4 Presentation Guidelines:

"Sound/light diversionary devices, sting ball grenades, and related diversionary devices have unique characteristics that must be considered prior to and during use. Instructors must be aware of the particular hazards associated with each device used in training and deploy each accordingly."

*Parker and Morgan expressed the opinion that the charges deployed were too large for the size room that was breached, resulting in overpressure that caused fragmentation. The device (WallBanger) is classified as a Destructive Device because of its configuration as a shaped charge explosive tool designed and intended to explosively breach doors and walls. The instructors (non-peace officers) in possession of the reloads must have a user permit in accordance with federal explosives licensing rules and possess a current California Blaster's License. Each person who possesses and deploys such a device must be specifically listed by name on the permit. The author of the ITR Training Injury Report (*see **Attachment C**) *referred to the reloads as containing explosive "black powder." This is inaccurate and may be indicative that the writer is not knowledgeable about the product. The device does not contain black powder. It contains an active deflagrating formulation of magnesium powder, aluminum powder, and potassium perchlorate (*see **Appendix B** in the *Report).*

Miller said the charge used by Short was too large for the target room and that fragmentation should have been anticipated. The target analysis was insufficient and the safety protocols were too risky. The instructors appeared not to know how the charges would perform. The unpredictable flow patterns of overpressure in confined spaces put the students observing the exercises at risk of injury.

Sterett and members of the Bomb Squad and SWAT Team provided technical assessment of the physics of the deflagration (i.e., the results of initiating the distraction device). The conclusion was that the charge and size and shape of the breach point room and hallway was too large to be used in such a location. The strength of the explosive was approximately .36 pounds of TNT and oversized for the breach point. It was inevitable that the operator (Short) standing in front of the breach point approximately three feet away would be injured or killed. Most of the explosive pressure was released on the exterior of the breach point (outward opening door) during the deflagration event. The trial and error approach to developing expertise in the students was both dangerous and inappropriate. Standard protocol in training is to place any experimental charge on practice targets then remotely deploy it from behind cover. Instructors should know ahead of time, from prior testing, what the results of any student "experiment" will be.

Vandiver said the course seemed ad hoc. There was no manual or written reference materials issued to the class other than a copy of the Safariland, WallBanger system material. Tisa said he would mail the Breaching Instructor's Manual and companion DVD to the students after the class was completed. Vandiver has yet to receive any materials from ITR. With regards to training concerning overpressure, pressure limitations for infants, children and elderly, Tisa talked about target analysis with regard to team deployment, approach to the objective, the types of door (e.g., metal v. wood), and what factors to consider if the door was barricaded. He said there was no discussion and "no math" on how to calculate human factors. The objective of the course was for trainees to experiment with different gram weight explosive loads of 4-, 8-, and 15-grams in different combinations, to assess breaching capabilities. Short was positioned at the breach point with the WallBanger centered on the door, not on the door lock. Following the injury of Short, Vandiver feared for his safety; he was unwilling to engage in further operator experimentation with the device. He resorted to standoff and shielded detonation thereafter. Additional deployments of the WallBanger were done remotely with all trainees behind cover. The device was fixed or propped against the breach point. Vandiver described the class as unprofessional, subpar quality, and unsafe training.

Souza said there was no course manual, other than a copied manual from Safariland on how to operate the WallBanger Explosive Breaching device. Tisa didn't provide a student manual but said it would be mailed to students after the class. Souza had not received the manual at the time of the interview (8-25-11). He said the design of the class was for the students to mix and match explosive loads when using the breaching device. The process was for students to discover the breaching capabilities of the loads performing a series of trial and error experimentations. Souza felt the best way to deploy the device was remotely due to the risk of blast fragmentation. Overpressure and associated risks were discussed in class, but he didn't recall being made aware of the "physics" of overpressure or ways to calculate pounds per square inch or any "math" on how to perform those calculations. They were told to be in a "position of safety" when detonating the device; however, the instruction was contradictory since the operator had to stand in front of, or near the breach point to place the device. The safest place was to be in another room since the device consistently produced explosive fragmentation. The class was to analyze locks, barricades, and whether the door was either wooden or metal. There was no method, checklist, system, or instrument to support such an analysis, or to perform calculations of overpressure or fragmentation hazards. Souza didn't recall any safety briefing prior to the deployment of the device. He didn't see the instructors perform a breach point inspection, analysis, discuss the size of the room, or door configuration.

Jacoby initially thought the classroom training was well organized. However, there was no ITR instructor manual nor charts, numeric tables, or other information on how to do the calculations or make judgments about performing explosive breaching. In hindsight, he realizes the training was insufficient and especially deficient for an instructor level class on explosive breaching. There was discussion in class about

safety when deploying the device. Factors regarding PSI, overpressure limitations, fragmentation, and how to make the judgments and calculations weren't covered enough in the class. Tisa talked about a formula that could be used, but it was just touched on and not emphasized as a learning point. Fragmentation danger was not a serious concern raised by the instructors. He didn't recall a discussion concerning the hazard of veneer covered walls and doors. The instruction included the need to wear helmets, ballistic vests, and eye and ear protection. During the second day of training he applied the lowest 4-grams charge and felt it was powerful and sufficient for most doors. He was unwilling to deploy a greater charge. He said he was exposed to about 10 explosive exposures as an observer. Tisa said it was part of the "conditioning of the officers" to be exposed to the noise and pressure. The class was designed for the students to conduct a series of experiments with the charges to determine how much explosive was needed for various targets. His opinion was that 30-grams of explosives used by Short was too much for the target.

Short said the instruction seemed pretty good. The written material was a copy of the Safariland manual. There was discussion about different types of doors and door breaching techniques for the device. The device was designed to be placed over the door locking mechanism or could be placed in the center of the door. He didn't recall discussion about the characteristics of veneer-covered doors or walls. He didn't recall discussion about using the tool to make a gun port or hole in the wall. The subject of danger or characteristics of fragmentation didn't seem to be a major concern of the training. Fragmentation was not emphasized as a special hazard during training. Short didn't see fragmentation that could have caused serious injury until he got injured. He understood the concept of overpressure from previous training and from the ITR demonstration. He wasn't sure how to make a determination about hazards from the generation of pressures when using the various mixes of charges, other than trying to judge the resistance strength of the breach point door or wall. He didn't learn any "math" about how to judge overpressure levels. The instructors seemed to have very little knowledge of the breaching tool and the materials. During previous ITR tactical training courses, the instructors had been confident and thorough in the training. In the course where he sustained the injury, he felt they didn't really know what they were doing. The class wasn't as organized as the other classes he had taken. He agreed the course was a "trial and error" learning format of using the device on various obstacles to see what it would do and thereby build expertise. He concluded the format was not the best approach for teaching use of the device by having students within the blast radius of explosions, unprotected by shields or barriers.

Tisa said it was impossible to anticipate that Short would be injured in the way that the injury occurred. He didn't think overpressure to the door was the cause of the injury. He looked in the room where the breaching action to the door had been taken and saw an overhead light bulb still intact. He said an excess overpressure would have shattered the bulb. The amount of "black powder" used by Short could not generate enough overpressure to harm anyone. He concluded Short was injured by a fragment, not overpressure. Tisa saw Short place the WallBanger device on the

center of the door and knew if wasn't supposed to be placed on the center; it was supposed to be placed on the doorknob. He didn't think it was a hazard. The team of students decided to do a center shot. They were conducting a series of experimental breaches. He felt this was the best way for the students to gain experience in deploying the device. This was the first time they used the combination of 4-, 8-, and 15-gram reloads, and the purpose was to see what they would do. Tisa admitted he had not conducted prior controlled testing of the explosives and placements so that he knew the capabilities; he didn't know what would happen. He didn't know what kind of safety glasses was worn by Short; they may have been of inferior quality, but he didn't have any way to tell. He hadn't specified to the students any particular rating or ballistic resistance level for the safety glasses. They had to have eye protection. It was up to the students to bring them. He said he was knowledgeable about overpressure considerations. He said that one must calculate the Net Explosive Weight of each charge to get an idea of the pressure generated by a particular charge using the industry standard of a Baseline Explosive Rating. To calculate incorporating 30-grams of explosives on the room in question without windows or other venting pathways couldn't be done without a conversion table. He couldn't provide an informal estimate without the table. He said overpressure is calculated using charges initiated outside in open areas. It wasn't done relative to interior rooms. Tisa didn't know if any of the instructors were licensed or permitted to possess, transport, and use explosives and destructive devices. Tisa said the Safariland "The WallBanger Instructor Course" manual was the only manual for the course.

The instructors did not adequately take into account the characteristics of the maximum charge (30 grams) applied to an outward opening veneer-covered door in a narrow, reflective hallway, nor did they consider the application of the device on the center of the door instead of near the door lock. They did not consider the potential impact of having the student (Short) position the device and his body at 90 degrees to, or directly in front of the door.

Chapter 18: Arson and Explosive Training:

18.1.2 Facility Guidelines:

"A comprehensive site survey shall be conducted of any location where explosives will be used... "

The site survey shall minimally address the factors listed:

…Presence of items that could become projectile or shrapnel during explosives training ..."

18.1.4 Facility Guidelines:

"The instructional staff shall continuously monitor site conditions to ensure perceived safety hazards can be eliminated or mitigated.

The need for continuous assessment of site conditions is fundamental to safety in …explosives training."

> NOTE: The responses relative to Sections 18.1.2 and 18.1.4 Facility Guidelines are combined below.

Souza said the best way to deploy the device was remotely, due to the risk of blast fragmentation. They were told, as operators, to be in a position of safety when detonating the device. This was contradictory since the operator had to stand in front of, or near the breach point to place the device. The safest place was to be in another room since the device consistently produced fragmentation. The class was not provided with a method, checklist, system, or instrument to generate or support analysis, nor to calculate overpressures or fragment hazards of locations to be breached. He didn't see the instructors perform a breach point inspection, analysis, or discuss the size of the room, or door configuration.

Vandiver observed fragmentation, rebound pressures and blowback from virtually every initiation of the device. It was an obvious hazard.

Jacoby said that the factors to be considered in deploying the device (e.g., PSI overpressure limitations, fragmentation, and how to make the judgments and calculation) weren't covered enough in the class. No written materials or charts or other information on how to do the calculations or make judgments about deployment of the device were provided. There wasn't specific information provided to the students about fragmentation danger.

Parker and Morgan expressed the opinion that placing the device on the center of a wooden door would cause fragmentation.

Miller said that fragmentation should have been anticipated since the charge used in the device was too large. Target analysis was insufficient and the safety protocols too risky. The unpredictable flow patterns of overpressure in confined spaces put the students observing the exercises at risk of injury.

Sterett, and members of the Bomb Squad and SWAT Team expressed the opinion that the charge applied in the device was too large to be used in the location it was applied. It was inevitable that the operator standing in front of the breach point approximately three feet away would be injured or killed. Based on the composition of the structure and confines of the hallway, the only exit path created when the device was activated pointed directly at Short.

Short said the course addressed how to assess the type of structure and breach points, different types of doors, and door breaching techniques for the device. He didn't recall specific discussion about the characteristics of veneer-covered doors or walls. He didn't recall a discussion concerning the tactic of using the device to make a gun port or hole in a wall or door. Fragmentation was not emphasized as a special hazard in applying the device. Before his injury, he didn't see any fragmentation that could cause serious injury.

Tisa said this was the first time they used combinations of the 4-, 8-, and 15-gram reloads and the purpose was to see what they would do. He had not previously conducted controlled testing of the explosives and placements. He didn't know what would happen when the device was deployed.

The video and witness statements reflect that the shrapnel and flying debris was a problem, and it was not properly addressed by the presenter of training as an issue of student and instructor safety.

The presenter failed to recognize and take corrective action to mitigate the threat presented by shrapnel and pressure waves to the students and instructors. Tisa said that the exposure to the effects of the explosions was part of the conditioning of officers to get them used to the blasts and to know that they weren't going to hurt them.

18.2.1 Equipment Guidelines:

"Instructors shall ensure that students actively participating in…explosives training have access to serviceable and appropriate safety equipment as required by the task to be performed.

Short said the students were advised to use both eye and ear protection but nothing in particular was specified. He saw some trainees wearing what appeared to be regular sunglasses, not safety glasses.

Vandiver observed that subsequent to the injury sustained by Short, a safety helmet with a bullet/blast resistant face shield was produced. It was suggested that the class members use it.

Jacoby said, the instruction in the class included the need to wear helmets, ballistic vests, and eye and ear protection.

Tisa didn't know what kind of safety glasses Short was using but they might have been of inferior quality. He didn't specify to the students any particular rating or ballistic resistance level of safety glasses required for participants of the course. He said they had to have eye protection, and it was up to the student to bring them. In previous training, Bliss applied the WallBanger to the center of a sheetrock wall. The explosion resulted in a piece of sheetrock nearly striking Bliss in the head;

smaller fragments bloodied and bruised his face. This incident was video recorded and used during the classroom portion of the July 21, 2011 course. Tisa acknowledged the video recording and said he tightened up safety after that and made sure everyone had helmets, eye protection, and vests.

The students were not provided nor required to use body shields or face shields during initiation of the device, resulting in a serious injury to a student.

18.3.1 Instructor Qualifications:

"…explosives instructors shall be appropriately qualified based upon their education, experience, and instructional ability."

Tisa acknowledged that neither McCarthy nor Harden was authorized by POST to teach in the class. He said they were Safariland trained instructors of the WallBanger. They were cleared by Safariland and were working with the device as technicians. He didn't know if they were qualified to teach breaching in any other capacity.

Harden and McCarthy were not authorized by POST as instructors of the course. The presenters of the course were not authorized to use Harden or McCarthy in any capacity during the presentation of the course. Neither Tisa nor Bliss has a valid blaster's license. Whether McCarthy may have a valid blaster's license is not material since he is not approved as an instructor of the course.

NOTE: The Distraction Device Breaching – Instructor course was certified January 4, 2011. It was recertified June 30, 2011. A presentation of the course by ITR occurred July 20 and 21, 2011. Ron McCarthy and Frank Harden were added to the course certification record as "Other Instructors" on July 28, 2011. Each is referred to as Product Specialist – Guest Lecturer – Additional Safety Officer (see **Attachment F**).

Allegation #3 – It is alleged that ITR departed from the content of the course specified in the approved expanded course outline and hourly distribution for the course.

This allegation is classified as Sustained.

ITR violated the *POST Commission Regulations* (see **Attachment G**) that address POST training course certification requirements. ITR failed to conform to the specific regulations enumerated below:

1052 (a) (2) – Course Content:

"Each instructor-led training (Web-based, classroom, or other) course certification request shall be evaluated in accordance with the following factors…

… Course content…"

Commission Regulation 1052 (a) (4) Instructor Led-Training:

"Each instructor-led training (Web-based, classroom, or other) course certification request shall be evaluated in accordance with the following factors…

…Qualification of instructors, coordinators, and/or academy staff (Reference Regulations 1070 and 1071 for minimum training standards)…"

> NOTE: The responses relative to POST Commission Regulations 1052 (a) (2) – Course Content and 1052 (a) (4) -- Instructor Led-Training are combined below.

Vandiver felt the advertising for the course was misleading; he was unaware that the singular focus of the course was the use of the Wallbanger breaching system. He also said that the first day of the course began with a two-hour presentation by a representative of TASER regarding the newest features of the electronic weapon. The TASER presentation had nothing to do with the purpose of the course.

Short learned about the Explosive Breaching Course and knew ahead of time that it was primarily a course on how to use the WallBanger breaching device. Short described the first day of training beginning with a presentation about the new TASER device. The presentation had nothing to do with the subject of breaching, and he viewed it as a sales presentation for TASER.

Jacoby said the class flyer called the course a distraction Device Breaching course; he thought he would learn about distraction devices and how to operationally plan and deploy them. He was surprised to find out the course was limited to a single device, the WallBanger, and how to do explosive breaching with the particular tool.

Tisa said that McCarthy and Harden were Safariland trained instructors on the WallBanger. They were cleared by Safariland, and were working with the device as technicians. He didn't know whether they were otherwise qualified to teach breaching in any other capacity. When Tisa presented Don Lane with a copy of "The WallBanger Instructor Course" manual, he told Lane it was the only manual for the course.

> NOTE: Attachment C, Section 8, reflects that "Drop in Equipment/Product Technical Specialist Mike Bullian, was allowed to make a 'short' presentation [approximately 45 minutes] to the participants as to being a source of distraction device breaching equipment and munitions purchases."

*Parker and Morgan concluded the charges deployed by Short were too large for the size room that was breached, resulting in overpressure that caused fragmentation. The device (Wallbanger) is classified as a destructive device because of its configuration as a shaped charge explosive tool designed and intended to explosively breach doors and walls. The reloads used in the device were applied with the intent to forcibly breach, not distract (which is the intended use of these charges). Non-peace officers in possession of the reloads must have a user permit in accordance with federal explosives licensing requirements and possess a current California Blaster's License issued by the Department of Mining and Tunneling. Each person who possesses and deploys such a device must be specifically identified and listed on the permit. The Training Injury Report prepared by ITR (*see **Appendix A** of the *Report) describes the distraction devices used in the course as consisting of "black powder." This is inaccurate and may reflect that the author is not knowledgeable about the product.*

Miller's opinion is that the charges applied by Short were too large for the target room and that fragmentation should have been anticipated. The target analysis was insufficient and the safety protocols were too risky. The unpredictable flow patterns of overpressure in confined spaces put the students observing the exercises at risk of injury. The instructors appeared not to know how the charges would perform.

Sterett, and members of the Bomb Squad and SWAT Team concluded the charge was too large to be used in the location where Short was injured. Calculation of the diversionary devices (two, 15-gram diversionary devices) discharged during the exercise resulting in the injury of Short reflected that the total gram weight was the equivalent of exploding four standard diversionary devices at once. The strength of the blast was the equivalent of .36 pounds of TNT, and most of the blast pressure was released within less than three feet of Short. The minimum standoff distance for a standard diversionary device charge (8-grams of photoflash powder) is six feet. The approach used to teach the course was dangerous and inappropriate. The instructors should know from prior testing what the results of any student "experiment" will be.

On the first day of the course (July 20, 2011), ITR allowed a product vendor to make a presentation to the students about equipment that was not related to the course content approved by POST.

The course certification material submitted to POST by ITR was for a Distraction Device Breaching – Instructor course; no mention of the WallBanger device is contained in any documentation submitted by ITR, nor mentioned in follow-up phone calls as part of the discussion associated with gaining certification of the course. Using distraction device loads applied through the use of the WallBanger by non-peace officer instructors requires additional federal and state licensing (i.e., a Blaster's License).

None of the POST approved instructors had sufficient training, knowledge, and licensing to conduct an explosives breaching course using a shaped-charge device. They were certified only to provide instruction for Distraction Device Breaching – Instructor, using flash-sound diversionary devices deployed into a breach point by hand or attached to an extended pole device ("bang pole").

> NOTE: The expanded course outline (ECO) submitted to POST by ITR (see **Appendix J** of the *Report*) is misleading and does not describe the course as being solely about the WallBanger device. Tisa admitted to POST investigator Don Lane that the only manual for the course is the Safariland publication *The WallBanger, Instructor Course* (see **Appendix M** of the *Report*). Bliss and Tisa are shown as having attended a 16-hour instructor course presented by Safariland Training Group (see **Appendix A** of the *Report*) in 2010; however, the attendance of the course is not listed in their respective POST Instructor Development Training profiles (see **Appendix G** – Bliss and **Appendix H** of the *Report* – Tisa).

Commission Regulation 1053 (a) (2) (V) & (W) Course Instructor Resume:

"…Instructor training specific to this course – initial training and any update training (e.g., driver instructor course, driver instructor update course): course titles – non post-certified, presenter, total hours, completion date

Professional license certificates relevant to this course (e.g., EMT, NAUI, R.N.)…"

Parker and Morgan were of the opinion that the WallBanger is a destructive device because of its configuration as a shaped charge explosive tool designed to explosively breach doors and walls. The flash powder reloads are used in flash/ sound diversionary devices and are intended to disorient and distract suspects to allow officer time to make entry and subdue a suspect. Here, the reloads were used with the intent to forcibly breach, not just distract. As such, the (non-peace officer) person(s) in possession of the reloads must have a user permit as required by federal explosives licensing rules and possess a current California Blaster's License, issued by the Department of Mining and Tunneling. Each person who possesses and deploys such a device must be specifically listed by name on the user permit.

Tisa didn't know if he or anybody associated with ITR or Safariland was licensed or permitted to possess, transport, and use explosive substances and destructive devices. He was unable to produce a copy of his license or any authority to possess explosive substances and destructive devices.

Both Bliss and Tisa listed distraction device training in their respective course instructor resumes; however, neither Bliss nor Tisa included instructor training specific to the WallBanger device in the course instructor resumes submitted to

*POST during 2010 (*see **Appendix G** – *Bliss* and **Appendix H** – *Tisa* of the *Report. In a document submitted to POST (*see **Appendix A** of the *Report) subsequent to the injury incident, information was provided that reflects Bliss and Tisa attended training presented by Safariland Training Group. Neither Bliss nor Tisa had a current California Blaster's License at the time of the injury incident. Possession of the license should have been documented in their respective instructor resumes.*

> NOTE: Subsequent to the investigation, POST received material from attorney, Michael Rains to be provided to each POST Commissioner (see **Attachment F**). In that material there is information that states Mr. McCarthy possesses licenses/permits issued by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives for dealer of high explosives, user of high explosives, notice of clearance for individuals transporting, shipping receiving or possessing explosive material and by the California Department of Justice a permit to possess a destructive device.

Commission Regulation 1053 (d) (1) Changes to Course Certification:

"After a course is certified by the Commission under the conditions specified in the Course Certification Request, the course shall not be changed or modified, as described below, without POST approval. Course presenters must report any change(s) to the conditions of course certification or to the elements of the course: budget, course content, hours of presentation, instructors, location, number of presentations, hourly schedule, and scheduled times.

> (1) Modifications are changes to a Course Presentation Request submitted to POST and approved by POST prior to the course presentation."

*Don Lane, the POST investigator also reviewed the course certification request materials in 2010, spoke to Bliss regarding required elements of the certification and ultimately approved the course. He said at no time during the review process was any reference to training in the use of the WallBanger device ever disclosed. The investigating consultant concluded in conversation with Bliss that the "distraction device breaching tool" referred to in the ECO (*see **Appendix J** of the *Report) was a "Bang Pole" commonly used to introduce a standard diversionary device subsequent or simultaneous to breaching a door, window or wall.*

> NOTE: The *Report* provides written excerpts of discussions between Bliss and the investigating consultant (maintained in the EDI system) during the course certification approval process. On August 18, 2010, POST investigator Lane notified Bliss that each instructor of the course must be a qualified diversionary device instructor as required by Commission Regulation 1070. Lane advised that Bliss and Tisa met the requirement, but he explained other instructors submitted for the course

didn't meet the requirement. Lane also informed Bliss that each instructor must be identified in Section VII of the resume. On September 9, 2010, Bliss responded to Lane via the EDI system and advised that the instructors that had not completed the Diversionary Device Instructor course were removed from the course certification package.

Tisa admitted that the only manual for the course was "The WallBanger Instructor Course." He described Harden and McCarthy as Safariland training instructors on the WallBanger; they were cleared by Safariland and were working with the device as technicians. He didn't know whether they were otherwise qualified to teach breaching.

NOTE: *The WallBanger Instructor Course* manual is divided into three sections; the last section applies to the use of the device as a "doorkey" (breaching device). The material consists of 16 pages of PowerPoint slides with photographs and limited narrative material. There is little relationship between the instructional content of this document and the ECO.

The Distraction Device Breaching – Instructor course certification was not approved by POST to be a course dedicated to training of the WallBanger device. Two of the instructors (Harden and McCarthy) involved in the Distraction Device Breaching – Instructor course on July 20 and 21, 2011 were not submitted to POST for approval as instructors of the course as required by Commission regulation.

Review of EDI transactions concerning the course reflect that Bliss accessed the course administrative section and performed the following tasks:

- July 20, 2011 (the first day of the course) – 18 Trainee updates on course roster worksheet for presentation 001 ending on 07/21/11.
- July 22, 2011 (the day after the course was completed) – 18 Trainee updates on course roster for presentation 001 ending on 07/21/11.
- July 28, 2011 (a week after the injury incident occurred) – Presentation Instructors (Saved) – Other Instructors: Ron McCarthy, Frank Haden.*
- July 28, 2011 Roster Sent to POST.

*The two instructors were added to the roster as "Other Instructors". They were not added or submitted to POST for approval through a course modification request before the course was presented, as required by Commission Regulation 1053 (d) (1).

Commission Regulation 1057 (b) & (c) – Decertification (of Courses):

"Courses may be decertified by action of the Commission when:

(b) There is failure to comply with the requirements set forth in Regulations 1052-1055; or

(c) There are other causes warranting decertification as determined by the Commission."

As presenter of the Distraction Device Breaching Course, Bliss and Tisa failed to comply with the requirements set forth in Commission Regulations 1052 (a) (2) – Course Content, 1052 (a) (4) Instructor Led-Training, 1053 (a) (2) (V) & (W) Course Instructor Resume, and 1053 (d)(1) Changes to Course Certification. For the reasons cited previously in this report, POST staff decertified the course. Additionally, effective October 28, 2011, staff decertified all courses certified to ITR, prohibited starting or presenting any training courses previously certified by POST to ITR, and prohibited Bliss and Tisa from participating in any POST-certified training course as instructor, coordinator, safety officer, or instructional aide or assistant.

This is not the first instance where ITR has modified a course without first obtaining approval from POST to do so; applied unsafe training practices; disregarded adherence to specific written direction; failed to adhere to POST requirements after being previously sanctioned; allowed instructors not approved by POST to instruct in courses; and used courses certified to ITR as a forum to invite equipment vendors to provide sales pitches to trainees unrelated to the course.

NOTE: In 2005, POST received a complaint concerning unsafe training practices in an 80-hour Special Weapons and Tactics (SWAT) course. Two of the instructors of record for the course were Bliss and Tisa, doing business as ITR. The findings of the investigation were essentially the same as those found in the current investigation:

- ITR conducted unsafe live fire exercises as part of the SWAT course and exposed students and instructors to unnecessary hazards.
- ITR permitted unsafe live fire exercises to be presented as part of the SWAT course without ensuring proper safety equipment was used by students and instructors.
- ITR allowed instructors that were not approved to instruct SWAT course curriculum.
- ITR permitted an unsafe live fire exercise to be presented as part of the SWAT course that was not approved in the certified curriculum.

- ITR presented a suspended course.

As a result of the investigation, ITR was sanctioned (see **Attachment I**).

RECOMMENDATION

Consistent with the requirements of Commission Regulation 1058, consider the appeal of International Training Resources and render a decision.

ATTACHMENTS

Attachment A – List of Courses Previously Certified to ITR
Attachment B – Suspension of ITR Courses (8-2-11)
Attachment C – Appeal Report from ITR (11-23-11)
Attachment D – Response to Appeal (1-23-12)
Attachment E – Appeal to Commission (5-08-12)
Attachment F – ITR Appeal Materials (5-10-12)
Attachment G – Email Describing EDI Entries (5-23-12)
Attachment H – Commission Regulations 1052, 1053, & 1057
Attachment I – Letter to Ben Tisa (10-06-05)