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JUNE 25, 2012

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Section 1

**POST FAILURE TO PROVIDE INVESTIGATIVE REPORT DATED OCTOBER 17, 2011 IN
TIMELY MANNER**

1. POST failure to produce the POST Investigative dated 10/17/11, until May 29, 2012 when the report was received ITR, reflects an deliberate and overt effort to hinder ITR capability to provided an informed and due diligence report to the POST Commission members.
2. The unwillingness of the POST Executive Director's staff and consultant Don Lane to produce the report until May 29, 2012, reflects a deliberate indifference to reasonable due process procedures that is without precedence and ethical justification.
3. All of the investigative interviews in the October 17, 2011 report were completed well before the end of 2011 with the latest interview provided in the report being completed 10/6-7/11.
4. Not only was the completed October 17, 2011 report not released to ITR until June 1, 2012, none of the POST "finding" of fault are specifically addressed as to creditable justification for substantiating the fabricated allegations.
5. Not only has POST repeatedly ignored requests for the investigative report regarding this incident by ITR, POST has also repeatedly ignored requests from Cal/OSHA for the report regarding validation of statements made by Don Lane during meeting held 1/19/12 at POST headquarters.
6. So blatant was the unresponsive actions by POST regarding the Cal/OSHA request for a copy of the investigated report, Cal/OSHA issued a subpoena duces tecum dated April 3, 2012 to John Dineen, POST Bureau Chief, which to date, POST still has not complied with.
7. 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 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
8. 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" asserted in Assistant Executive Michael DiMicieli letter dated 10/24/11 and the six new "findings" asserted in POST Executive Director letter dated 1/23/12.

9. 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.
10. Per the Investigative Report of Cal/OSHA investigator Robert Smith dated 1/18/12, 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.
11. Although ITR has never 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"
12. 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"

Section 2

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY & HEALTH

SAN MATEO DISTRICT OFFICE

39141 CIVIC CENTER DRIVE, SUITE 310

FREMONT, CA 94538

Telephone: (510) 794-2521 / fax: (510) 794-3889



ADDRESS REPLY TO:
39141 CIVIC CENTER DRIVE,
SUITE 310
FREMONT, CA 94538

IN THE MATTER OF THE INVESTIGATION OF:)

International Training Resources LLC)

SUBPOENA DUCES TECUM

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

John M. Dineen, Bureau Chief
Training, Development and Compliance
California Commission on Peace Officer Standards and Training
1601 Alhambra Blvd.
Sacramento, CA 95816-7083

Pursuant to the authority vested in me by the laws of the State of California (Labor Code, Section 6314),

I hereby command you to appear before the Chief of the Division of Occupational Safety and Health, or his designee, at the Fremont District Office, Division of Occupational Safety and Health, 39141 Civic Center Drive, Suite 310, Fremont, CA 94538 on Monday the 30th day of April, 2012 at 9:00 o'clock a.m., and to continue in attendance before him or her at such times and places as may be necessary, and to testify in the above-entitled matter.

You are also ordered to bring with you:

1. Any accident reports, accident investigations or accident summaries, concerning the August 8, 2011 breaching incident at Ford Ord, CA at a POST certified training session coordinated by contractor International Training Resources, LLC.
2. Any writing, photographs or other items which are relevant to the August 8, 2011 incident mention above.
4. Any investigative reports about the above accident made by POST or on behalf of POST by any consultant, failure analysis expert or any other investigator about the August 8, 2011 incident.
5. The accident investigation report concerning the above accident produced pursuant to POST's Injury and Illness Prevention Program.
6. Any other accident investigation or report about the above accident produced for an entity other than Alamillo Steel but in the possession of POST.
7. The names and addresses of persons to the extent known of those who have material information about or were witnesses to the above accident.

For failure thus to attend and testify, and otherwise comply with the provisions of this subpoena, or for obstructing or hampering the investigation in the above-entitled matter, you will be subject to penalties provided by law. (Labor Code, Section 6314).

Dated: April 3, 2012 at Fremont, California

By order of the Chief
Division of Occupational Safety and Health

Michael Horowitz
Michael Horowitz, Acting District Manager

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Sent To
 John M. Dineen, Bureau Chief
 Training, Development and Compliance
 CA Commission on Peace Officer
 Standards and Training
 1601 Alhambra Blvd.
 Sacramento, CA 95816-7083

PS Form 3800, July 2002

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Section 3

DIRECT AND PROXIMATE CAUSE OF ACCIDENT INJURY

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

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

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

Section 4

Cal/OSHA INSPECTOR ROBERT SMITH EXAMINATION OF ITR TRAINING PROCEDURES AND PRACTICES FOR THE DISTRACTION DEVICE BREACHING INSTRUCTOR COURSE

1. On June 12, 2012 at the Fremont District office of Cal/OSHA, Inspector Robert Smith was interviewed by Ben Tisa and Dave Bliss of ITR regarding his Investigative Report dated 1/19/12 as to the 7/21/11 accident involving Officer Mike Short.
2. Also present was District Manager Mike Fry who was also part of the interview.
3. Inspector Smith was specifically asked, based upon his review of the course documents submitted to Cal/OSHA per his request, if there were any Cal/OSHA findings which were citable as violations involving ITR procedures and practices relating to the Distraction Device Breaching Instructor course.
4. Inspector Smith, advised that all of the submitted training procedures, practice and guidelines were valid and acceptable by Cal/OSHA as to compliance with safe presentation standards for the POST certified/ITR training course.
5. The ITR training course information, procedures, practices and guidelines submitted to Cal/OSHA Inspector Smith for his examination, which are included in his Investigative Report, are as follows:
 - a. Distraction Device Breaching Instructor Course Information
 - b. Distraction Device Breaching System
 - c. July 21, 2011 Accident Circumstances
 - d. Direct and Proximate Cause of Accident Injury
 - e. Participant use of Eye Protection Equipment during Training Events
 - f. Safety Equipment Requirements Listed in Course Announcement
 - g. Safety Equipment/Uniform worn by Injured Officer on 7/21/12
 - h. ITR Safety Procedures for Practical Application Phase of Training
 - i. Diversionary Device/Student Safety Guidelines
 - j. Diversionary Device/Instructor Safety Guidelines
 - k. Use and Operational Deployment of the Distraction Device Breaching Tool
 - l. Preparation of Command Initiated Distraction Device Munitions
 - m. Course Specific Training Procedures/Practical Application Phase
 - n. Instructor to Student Ratio
 - o. Instructor Guidelines for Positioning/Distance to Participants
 - p. Location of Breaching Tool Operator during Deployment Munitions
 - q. Instructor Training, Experience and Competence
 - r. Ben Tisa Instructor Resume/Special Munitions
 - s. Dave Bliss Instructor Resume/Special Munitions

Section 5

ITR RESPONSE TO INTERVIEWS OF SUBJECT MATTER EXPERTS-ADVISORS

1. POST failure to disclose the statements of the alleged Subject Matter Experts which are contained in the POST Investigative dated 10/17/11, until May 29, 2012 when the report was received ITR, reflects an deliberate and overt effort to hinder ITR capability to provided an informed and due diligence report to the POST Commission members.
2. The interview of alleged Subject Matter Expert-Advisors ATF agent Brian Parker and Mike Morgan, Bomb Technicians/explosive breaching instructors, was done 8/15/11
3. The interview of alleged Subject Matter Expert-Advisor R.K. Miller, certified Distraction Device presenter, was done 10/6-7/11
4. The interview of alleged Subject Matter Expert-Advisor Sgt. Randy Sterett, Orange County Sheriff's Department Bomb Squad Leader, was done on 10/5/11
5. Competent and contemporary procedures for investigative reports containing opinions or statements which allegedly address statement of facts, minimally present the following:
 - a. Resume which reflects the specific training, experience and qualifications relating to the matter on which the SME is offering opinions or statements
 - b. Documents/reports/manuals and other competent factual sources which support the opinions or statements.
 - c. Valid test documentation, forensic evaluation, technical analysis, reconstruction process, measurements, record examination or other investigative procedures which document with a significant degree of certainty, the opinions and statements of the SME.
6. None of the SME-Advisers interviewed by Don Lane are POST, Safariland Training Group or International Training Resources certified Instructors in the Distraction Device Breaching Tool system.
7. Additionally, there is no documentation provided as to specific qualifications of these individuals to be recognized as having the expertise to provide opinions or statements of any validity regarding the procedures for providing and conducting training involving the distraction device breaching tool system.
8. The contemporary course curriculums and certifications for bomb technicians, explosive breaching and distraction device presenter, do not contain nor address any of the specialized tools and procedures associated with distraction device breaching procedures and specialized techniques of instruction.

Section 6

BEN TISA INSTRUCTOR RESUME – SPECIAL MUNITIONS

| <u>Law Enforcement Training</u> | Hours | Date | Presenter |
|---|--------------|-------------|----------------------|
| 1. Explosive Breaching Course | 16 Hours | 06/75 | SFPD Police Training |
| 2. Explosives and Booby Traps | 8 Hours | 10/76 | US ARMY-EOD |
| 3. Explosive Breaching Instructor Course | 80 Hours | 01/93 | USMC-SOTG |
| 4. Explosive Breaching Course | 80 Hours | 10/94 | USMC-SOTG |
| 5. Explosive Handler Safety Course | 40 Hours | 05/95 | LSU Police Training |
| 6. Explosive Breaching Course | 80 Hours | 07/98 | Cal-POST/ ITR/ACSO |
| 7. Explosive Breaching Course | 80 Hours | 01/99 | Cal-POST/ ITR/LASO |
| 8. Explosive Breaching Course | 80 Hours | 10/00 | ITR/LASO |
| 9. Explosive Breaching Course | 80 Hours | 04/03 | Cal-POST/ ITR/SCSO |
| 10. Diversionary Device Instructor Course | 16 Hours | 05/07 | Cal-POST/ ITR/STG |
| 11. Diversionary Device Instructor Course | 16 Hours | 09/07 | Cal-POST/ ITR/STG |
| 12. Diversionary Device Instructor Course | 16 Hours | 03/08 | Cal-POST/ ITR/STG |
| 13. Diversionary Device Instructor Course | 16 Hours | 12/08 | Cal-POST/ ITR/STG |
| 14. Diversionary Device Instructor Course | 16 Hours | 11/09 | Cal-POST/ ITR/STG |
| 15. Diversionary Device Instructor Course | 16 Hours | 06/10 | Cal-POST/ ITR/STG |
| 16. Diversionary Device Instructor Course | 16 Hours | 12/10 | Cal-POST/ ITR/STG |
| 17. Diversionary Device Instructor Course | 16 Hours | 05/11 | Cal-POST/ ITR/STG |
| 18. Distraction Device Breaching Course | 16 Hours | 11/09 | Safariland Training |
| 19. Distraction Device Breaching Course | 16 Hours | 02/11 | Cal-POST/ ITR/STG |
| 20. Distraction Device Breaching Course | 16 Hours | 07/11 | Cal-POST/ ITR/STG |
| 21. Less Lethal Instructor Course | 24 Hours | 09/07 | Cal-POST/ITR/STG |
| 22. Less lethal Instructor Course | 24 Hours | 04/10 | Cal-POST/ITR/STG |
| 23. Less Lethal Instructor Course | 24 Hours | 06/11 | Cal-POST/ITR/STG |
| 24. Chemical Agent Instructor Course | 40 Hours | 1978 | FBI Academy |
| 25. Chemical agent instructor Course | 40 Hours | 1992 | FBI Academy |

POST Course Control number-Explosive Breaching issued to ITR 1025-33576

POST Course Control number-Diversionary Device Instructor issued to ITR 1025-21920

POST Course Control number-Distraction Device Breaching Instructor issued ITR 1025-33566

**Copies of Certificates are available upon request for courses which a certificate was issued.
(California POST – International Training Resources – Safariland Training Group – USMC – LSU)**

Cal/OSHA Certifications and Explosive Breaching Course Development

1. Cal/OSHA Blaster License-Limited: Tactical Breaching for Law Enforcement Only # 8177 Issued 4/19/99 expired 4/19/04 – Electric and Non-Electric Shock Tube and Cap/Fuse Initiation.
2. The very first California POST Certified 80 Explosive Breaching course was researched, developed and presented by Ben Tisa during 1998 at Alameda County Sheriff's Office Training facility in Dublin, California.
3. This initial course was originally certified through the ACSO based upon documentation, lesson plans, student manual, training protocols, training aids and safety procedures developed and prepared by Ben Tisa.
4. Additionally, through extensive coordination with CAL-OSHA's Mining and Tunneling Division, obtained the first ever Law Enforcement Blaster License category for Explosive Breaching by law enforcement officers.
5. In-conjunction with Cal-OSHA staff, developed approximately 75% of the test questions and testing procedures used for course participants to obtain their special category Blaster License.

Military Training and Experience

1. U.S. Marine Corps Infantry Officer, 1966-1970 with extensive training in the use of plastic explosives, detonation cord, electric ignition systems, time fuse and rendering safe booby traps.
2. As an infantry platoon Leader, obtained extensive field demolition experience during combat operations, 1968 and 1969 in the Republic of Vietnam – Northern I Corps area.

Section 7

DAVE BLISS INSTRUCTOR RESUME – SPECIAL MUNITIONS

| <u>Law Enforcement Training</u> | Hours | Date | Presenter |
|--|--------------|-------------|------------------|
| 1. Diversionary Device Instructor Course | 16 | 05/07 | Cal-POST/ITR |
| 2. Diversionary Device Instructor Course | 16 | 09/07 | Cal-POST/ITR |
| 3. Diversionary Device Instructor Course | 16 | 03/08 | Cal-POST/ITR |
| 4. Diversionary Device Instructor Course | 16 | 12/08 | Cal-POST/ITR |
| 5. Diversionary Device Instructor Course | 16 | 11/09 | Cal-POST/ITR |
| 6. Diversionary Device Instructor Course | 16 | 06/10 | Cal-POST/ITR |
| 7. Diversionary Device Instructor Course | 16 | 12/10 | Cal-POST/ITR |
| 8. Diversionary Device Instructor Course | 16 | 05/11 | Cal-POST/ITR |
| 9. Diversionary Device Breaching Course | 16 | 11/09 | S/T Group |
| 10. Diversionary Device Breaching Course | 16 | 07/11 | Cal-POST/ITR |

Law Enforcement experience

1. Continuous and ongoing use/deployment from 1977 to November 1999 involving training events.
2. Continuous and ongoing use/deployment from 1977 to November 1999 involving operational events.

Section 8

SME Review #3

Orange County Sheriff's Department (OCSD) Bomb Squad and SWAT

On October 5, 2011, Senior Consultant Don Lane, met with OCSD Bomb Squad Leader Sergeant **Randy Sterett and the six members OC Bomb Squad** who agreed to review the information and materials regarding this incident. Two additional SWAT personnel, the **SWAT Team Breacher and SWAT Team Leader**, also attended to provide further tactical insight and assistance.

Senior Consultant Don Lane gave an overview of the facts collected regarding the incident, including summaries of the witness statements. He provided information regarding the Wallbanger device, and showed two video segments.

The team provided technical assessment of the physics of the deflagration. One team member was provided the gram weight specifications of the charge and the size and shape of the breach point room and hallway. He calculated that the charge was too large to be used in such a location. The gram weight total equivalent of the charges used in the incident was the same as using four standard diversionary devices at one time.

The gram weight calculations revealed the strength of the explosive at approximately .36 pounds of TNT. In lay summary, TNT is the baseline explosive substance used in the industry to calculate the standardized Relative Effect of all other explosives.

The team's conclusion was that the charge was oversized for the breach point, and it was inevitable that the operator (Officer Short) standing in front of the breach point approximately three feet away would be injured or killed.

This conclusion was based on analysis of the room at the breach point (room approximately 3 x 4 x 8 feet), and the highly reflective concrete floor and hallway surfaces described earlier. Again the surfaces were military style construction, concrete block walls and ceilings, both in the hallway and in the room. Further, the officer was approximately three feet from the breach point and directly in front of the door.

Briefly, explosive pressure moves in waves that follow largely unpredictable paths depending on a variety of factors. Chief among those factors is reflective pressure. This occurs when pressure waves strike objects in a room, or bounce off walls and ceilings. Waves also strike each other as they reflect (much like cross currents occurring in water) and create momentary pockets of extremely high pressure when they collide. These collisions happen at very high speed, measured in thousands of feet per second.

Pressure waves from expanding gases can fill a room, and in combination with reflective phenomena can create overpressure. These pressures can be injurious and destructive. Pressure waves also tend to follow the path of least resistance, moving from high-pressure areas to areas of low pressure. Thus, pressure will commonly flow

towards open doors, windows, hallways, larger attached rooms, and ventilation ducts. In the instant case, the hallways were low, narrow, and highly reflective concrete block construction. The door to the target room was outward opening. The target room, concrete block, had no windows, vents, doors, or other exit paths for pressure to escape. The only exit path created was the explosive breach point created by the charges. This path pointed directly at Officer Short.

Despite the pressure wave introduced to the interior of the room by the initiation of the device, the bomb squad personnel said most of the explosive pressure was released on the exterior of the breach point during the deflagration event. This means most of the blast pressure was released within less than three feet of Officer Short. The equivalent of approximately .36 pounds of TNT exploded in his face.

The minimum recommended standoff distance for a standard diversionary device charge (8 grams of photoflash powder) is six feet. Here, the design of the pole and handle on the device, combined with instructor guidance and approval, positioned the officer within three feet of the blast. The subsequent initiation of the equivalent of four diversionary devices (30 grams) in simultaneous deflagration at that short standoff distance was unsafe.

Note: In California, the minimum licensing requirement for explosive breaching is a Blaster's License. A record check by Cal OSHA investigators through the California Department of Mining and Tunneling disclosed that Benedict Tisa had a Blaster License that expired April 19, 2004.

The team also addressed instructional design and safety. The SMR's reviewed ITR's trial and error approach to developing expertise in the students. The ITR approach had each student team configuring a mix of different gram weights to deploy on different targets to "see what would happen." The team was unanimous that the approach used to teach the course was both dangerous and inappropriate.

The team said the standard protocol is to deploy (fix) any experimental charge on practice targets, then remotely deploy (initiate) from behind cover. The instructor should know ahead of time from prior testing what the results of any student "experiment" will be. It should be an experiment for the student only, not for the instructor.

Section 9

SME Review #1

Agents of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

On August 15, 2011, Agents **Brian Parker** and **Mike Morgan** of the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) reviewed the Training Injury Report, the videos of the incident, and "company" video from the Safariland website.

Their observations included the opinion the charges deployed were too large for the size of the room that was breached, resulting in overpressure that caused fragmentation. A fragment from the door caused Officer Short's injury.

Their opinion was had overpressure alone been the cause, the injury would have been more evenly spread over a greater area of the officer's face. The blunt, penetrating, injurious character of the wound indicated impact from fragmentation.

Their opinion was that the device was 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 flash powder reloads are used in flash sound diversionary devices and are intended to disorient and distract suspects to allow officers 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 in accordance with federal explosives licensing rules and possess a current California Blaster's License (California Department of Mining and Tunneling). 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 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.

The specific formulation is identified in the Material Safety Data Sheet prepared by ChemTel, Inc., for Defense Technology under the product name: 7001C1-Distracton Device Command Initiate Reload. In this case, it is manufactured for Safariland LLC, Jacksonville, Florida 32218.

The agents evaluated the use of the device on the center of a wooden door as opposed to placement on the doorjamb. The opinion was that such placement on the center of a wooden door would cause fragmentation, as evidenced in this incident.

The agents, as instructors in explosive breaching, were concerned that the instructor (Harden) left the student, Officer Short, alone at the breach point and took cover. They said that in the bomb technician's culture, it is a point of honor and confidence that the

instructor stays with a student at all times. They would not leave a student alone to experiment with an explosive charge.

Section 10

SME Review #2

RK Miller

On October 6-7, 2011, Senior Consultant Don Lane, met with RK Miller at the Criminal Justice Training Center in Huntington Beach, California.

RK Miller has a background in SWAT and is a certified Distraction Device Presenter. In his opinion the charge was too large for the target room, and he said that fragmentation should have been anticipated.

In his opinion the target analysis was insufficient and the safety protocols were too risky. His opinion was based upon the witness statements that students were told to experiment with various charges to see what would happen. In addition, the instructors appeared not to know how the charges would perform.

Further, in his opinion, the unpredictable flow patterns of overpressure in confined spaces put the students observing the exercises at risk of injury.

Section 11

**GROSS ERRORS IN EXPLOSIVE MATERIAL COMPUTATIONS BY POST SUBJECT
MATTER EXPERT-OC SO**

1. The following statements/opinions regarding the distraction device munitions used in the distraction device tool chamber deployed by Officer Mike Short were quoted by Don Lane in the POST Investigation Report dated 10/17/11.
 - a. The gram weight total equivalent of charges used in incident was the same as using four standard diversionary devices at one time
 - b. The gram weight calculations revealed the strength of the explosive at approximately .36 pounds of TNT.
 - c. TNT is the baseline explosive substance used in the industry to calculate the standardized Relative Effect of all other explosives.
 - d. The equivalent of .36 pounds of TNT exploded in his face
 - e. The minimum recommended standoff distance for a standard diversionary device charge (8 grams of photoflash powder) is six feet.
 - f. The subsequent ignition of the equivalent of four diversionary devices (30 grams) in simultaneous deflagration at that sort standoff distance was unsafe.
2. The above statements regarding the .36 pounds of explosives, eight grams of flash powder per standard diversionary devices and the use of four standard diversionary devices (30 grams) are completely inaccurate and false as to computation of explosive weight and munitions loading standards as provided by the manufacturer.
3. The correct net explosive weight is .036 pounds of TNT equivalent material which equates to .576 ounce.
4. The design and construction of the chamber shell which housed the diversionary device will only allow two reloads maximum to be used in any Operation
5. The standard gram weight of reload munitions is 15 grams of flash powder and if chamber tool is loaded with two reloads which is the only amount possible, the total flash powder amount is 30 grams.
6. The POST Subject Matter Expert computation/calculations stating the that the amount of explosive material used in this incident was .36 pounds of TNT Equivalent is a significant and negligent error which consistent with the other incompetent investigative procedures conducted by Don Lane

Section 12

INTERNATIONAL TRAINING RESOURCE CALCULATION OF NET EXPLOSIVE MATERIAL

1. The carbon steel chamber is used to contain and direct the detonation pressure directly into the breach point target, and by engineering design, can only be loaded with two standard distraction device reloads at any one time.
2. There are only two treaded ports for loading minimally one and as required, another reload of 15, 8, or 4 grams of flash powder depending on the target assessment.
3. Standard computations/calculations for determine the amount of standard explosive matter contained in breaching operations requires that gram weight be converted to grains and subsequently into pounds of TNT equivalent amounts so that various charge design can be compared, recorded and the results of detonation documented for future use in other events.
4. Explosives vary in detonation rate or velocity (feet per second), as well as other characteristics, such as density and energy production. These characteristics determine their effectiveness for breaching charges.
5. The shattering effect of a explosive compound is related to is detonating velocity which varies by chemical composition
6. To compare various explosive materials, the amount of explosives used are adjusted by a relative effectiveness factor (RE) which is based upon the shattering effect of trinitrotoluene – TNT as the base line RE of 1.00
7. **NET explosive Weight Calculations**
 - a. One gram = 15.43 grains
 - b. 15 grams (flash powder in one reload) times 15.43 = 231.45 total grains
 - c. 231.4 grains times two reloads equals 462.9 grains for two reloads
 - d. By design and configuration, it is only possible to have two reloads in the carbon steel chamber at any one time
 - e. Total grains divided by 7000 converts grains to pounds
 - f. Grains divided by 7000 = pounds
 - f. 462.9 total grains for two reloads divided by 7000 = .066 lbs explosive weight
 - g. No available RE factor available for flash power
 - e. RE for black powder is .55 @ 1,300 ft per second detonation rate
 - k. .066 pounds times .55 RE= .036 pounds net explosive weight – TNT equivalency
 - m. .036 pounds TNT equivalency times 16 ounces per pound equals .576 ounce
 - n. .576 ounce is the total possible explosive weight possible for the chamber to be loaded with on any one breach.
8. **SAFE DISTANCE CALCULATION FOR EXPLOSIVE CHARGE PLACED ON TARGET SURFACE AS OPPOSED TO INSIDE CARBON STEEL CHAMBER**
 - a. Safe distance = K (constant) times cube root of NEW (TNT equivalency)
 - b. $D = K \text{ times cube root of NEW}$
 - c. $D = 18 \text{ times cube root of .018}$
 - d. $D = 18 \text{ times cube root of .020 rounded up}$
 - e. $D = 18 \text{ times } 0.27144176165949066$
 - f. $D = 4.86 \text{ feet @ } 4/5 \text{ PSI}$
 - g. $D = 9.72 \text{ feet for two CI 15 gram reloads}$

9. THE SAFE DISTANCE CALCULATIONS ARE NOT VALID FOR THE DISTRACTION DEVICE BREACHING SYSTEM BECAUSE OF THE FOLLOWING OPERATIONAL CONDITIONS
- a. The calculations are for explosive charge/material placed on the target surface
 - b. The calculations are for explosive charges which the denotation pressure front is not contained in a chamber
 - c. The calculations are for explosive charge/material which uses blasting caps as part of the exposed firing system
 - d. The calculations are for explosive charge/material which upon detonation, the blast pressure wave is reflected both outward from the charge and into the target composition.

Section 13

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 14

**INSTRUCTOR POSITIONS/CLOSE PROXIMITY LOCATION TO PARTICIPANTS DURING
MUNITIONS DEPLOYMENT**

1. For POST SME to assert that this issue equates to a contributing cause for the eye injury sustained by Officer Short defies any rational justification as to what the definition of “within close physical proximity” means and is consistent with the other factually deficient and fabricated allegations of fault.
2. There are no written guidelines/procedures as to recommended physical proximity distances or positioning of instructors in relation to a course participant contained in any of the following Distraction Device Breaching Instructor course documents:
 - a. California POST Course Certification Requirements
 - b. California POST Approved Safety Requirements
 - c. California POST Instructor to Student Ratio Requirements
 - d. Safariland Training Group Procedures and Practices
 - e. Safariland Training Group Participant Manual and Power Point disk.
3. The only written guidelines/procedures as to recommended physical proximity distances and positioning of instructors in relation to a course participant during any specific training event involving Distraction Device Breaching tools are those developed and used by ITR instructors as part of its training protocols.
4. The proximity as to distance and positioning of one or all instructors in relation to Officer Short at the time of the accident would not in any manner be a preventive factor as to the eye injury based upon:
 - a. The type/location of injury as to direct and proximate cause.
 - b. The unpredictable pattern as to the type of potential debris/fragmentation.
 - c. The unpredictable ballistic profile of potential debris/fragmentation.
5. One or all of course instructors could have been standing right next to Officer Short on either side of him at the time of the accident, and in no way would these instructor positions in any manner, have been a preventive factor as to the eye injury based upon:
 - a. The type/location of injury as to direct and proximate cause.
 - b. The unpredictable pattern as to the type of potential debris/fragmentation.
 - c. The unpredictable ballistic profile of potential debris/fragmentation.
6. The proximity as to distance/positioning of an ITR or Guest instructor in relation to a course participant is influenced by a number of interrelated factors which the qualified instructor evaluates and makes an informed judgment based upon the totality of these factors.

7. Ben Tisa, as one of the named and approved instructors in the course certification, was in close proximity to Officer Mike Short during the deployment and detonation of the munitions, and chose the position based upon an informed evaluation of the following interrelated factors:
- a. The training and experience of the instructor
 - b. Training event procedures as to skills being employed
 - c. Ability to provide final instructions
 - d. Ability to provide corrective actions
 - e. Ability to provide equipment support
 - f. Ability to control supporting events
 - g. Ability to observe other participants
 - h. Ability to control access to the immediate training site
 - i. Sequence of the training event in relation to sequence of course material
 - j. Target configuration – door/window/wall/etc.
 - k. Target location
 - l. Approach route
 - m. Tools/equipment being employed
 - n. Tactical positioning of cover officers
 - o. Tactical positioning of entry officers
 - p. Positioning and distances of other course participants as to observing and recording of the specific training event from safe location.
 - q. Instructor Development course verses Core Skills Development course.
 - r. Other circumstances specific to each training event.
8. Dave Bliss, as one of the named and approved instructors in the course certification, also chose the position taken at the time of the accident, based upon an informed evaluation of the following interrelated factors as to being within close proximity to Officer Mike Short during the deployment and detonation of the munitions.
- a. The training and experience of the instructor
 - b. Training event procedures as to skills being employed
 - c. Ability to provide final instructions
 - d. Ability to provide corrective actions
 - e. Ability to provide equipment support
 - f. Ability to control supporting events
 - g. Ability to observe other participants
 - h. Ability to control access to training site
 - i. Sequence of the training event in relation to sequence of course material
 - j. Target configuration – door/window/wall/etc.
 - k. Target location
 - l. Approach route
 - m. Tools/equipment being employed
 - n. Tactical positioning of cover officers
 - o. Tactical positioning of entry officers

- p. Positioning and distances of other course participants as to observing and recording of the specific training event from safe location.
- q. Instructor Development course versus Core Skills Development course.
- r. Other circumstances specific to each training event.

11. The positions of instructors Ben Tisa and Dave Bliss are documented by videos, photographs and other information available to POST investigator Don Lane.

Section 15

LOCATION OF BREACHING TOOL OPERATOR DURING DEPLOYMENT OF MUNITIONS

1. Specific position selected by the Breaching Tool operator will depend on the operators assessment of operational/training conditions, including but not limited to the following:
 - a. Target configuration – door/window/wall/fence/etc.
 - b. Target location on exterior or interior of incident/training site.
 - c. Approach route to selected breach point.
 - d. Tool/equipment being employed.
 - e. Position which will allow the most positive chamber seal to the surface of the breach point.
 - f. Tactical positioning of cover officers.
 - g. Tactical positioning of entry officers.
 - h. Operational functioning of tools as to safe positioning of cover and entry officers.
 - i. Environmental effects resulting from detonation of the breaching tool munitions
 - j. Movement and repositioning of the breaching officer upon execution of the breach.
 - k. Review of the Breachers Log information as to prior operational and/or training breaches.
 - l. SWAT Team Leader mission planning requirements.
 - O. Other operational/training circumstances.
2. Specific positions used by Breaching tool operator are consistent with procedures as taught and recommended by Mr. Sandy Wall, inventor of the Distraction Device Breaching Tool System and as set forth in digital videos of practical application training events.
3. Mr. Sandy Wall is the National Training Manager of Safariland Training Group and the Master Instructor for certification of participants in Distraction Device Breaching Instructor courses presented by the Safariland Training Group and in conjunction with the California POST Distraction Device Breaching courses presented by International Training Resources.

Section 16

BREACH TOOL POSTIONING

1. 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, 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. | |
2. This course is an advanced officer course attended by experience SWAT officers who have both basic SWAT training and operational experience in the scouting of incident sites, breach points and breaching tactics/procedures.
3. Incident Location

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

 - a. Distance from door to opposite wall 55 ½ inches
 - b. Wall is cinder block construction
5. 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
6. 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
7. Outward opening-simulated exterior door to incident site
- a. Door knob/locking mechanism on right side
 - b. Door hinges/three on left side
 - c. Door opening from right side to left
8. Specific Training Event during which injury to Officer Short was sustained:
- a. Mission was to defeat/removal of door knob/locking mechanism to allow positive entry through door.
 - b. Team to develop tool set-up/tool positioning/firing system and munition gram weight amount
9. As opposed to placing tool on door knob to defeat the locking mechanism, Team One decided to place tool in center of door to test forcing the center of the door to release the locking mechanism and/or create port opening for interior access.
10. Tool placement was positioned midpoint of door with door knob and centered in middle of long axis as opposed to being placed over door knob.
11. Tool rigging was a straight on placement of chamber on door center with Officer Short positioned alongside the left side of pole handle and behind the chamber with his head above the chamber placement point.
12. The straight on placement of the chamber was chosen by Team One as the best position to establish a positive seal of the chamber and minimize the risk of pressure leakage and potential debris/fragment from being projected to the immediate left and right sides of the tool placement position.
13. The tool placement was consistent with the operational deployment design of the tool and consistent with procedures presented in the program of instruction including curriculum content for defeating the target door to ensure positive entry into the incident site.