

# Section 17

## MUNITIONS CHARGE ASSESSMENT BASED UPON TARGET CONFIGURATION ANALYSIS

1. All Team 1 members participated in the scouting assessment of the target door and came to an agreement as to the tool rigging configuration and munitions gram weight which was to be two 15 gram command initiated devices.
2. The gram weight was valid and reasonable based upon the 100 lb gross weight with 1 ¾ door thickness and locking mechanism configuration of the target door.
3. The two 15 gram distraction device reloads placed into the carbon steel chamber represent .576 ounce of TNT equivalent explosive content.
4. This simulated exterior breach point door is unusually heavy, thick and dense as to composition and presented an excellent training target for course participants to enhance their collective experience, knowledge and data book information for responding to other operational breaching assignments.
5. The results of the denotation were with-in predicable parameters based upon the accumulated data for the distraction device tool deployment as to the door porting being successful and the disruption/defeating of the locking mechanism to allow positive entry.
6. Photographic evidence of the successful breaching procedures as designed, to include the porting point and defeat/disruption of the locking mechanism are available for review

# Section 18

## **FRAGMENTATION AS OPPOSED TO DENOTATION PRESSURES AS THE CAUSE OF INJURY**

1. The SME's from OCSO were of the opinion that the eye injury to Officer Mike Short was caused by the exterior pressure wave based upon the following comments in the statement recorded by Don Lane on October 5, 2011.

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 of Officer Short. The equivalent of Approximately .36 pounds of TNT exploded in his face.

2. The SME's from ATF were of the opinion that the eye injury to Officer Mike Short was caused by a fragment from the door based upon the following comments in the statement recorded by Don Lane on August 15, 2011.

Their observation included 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 that had overpressure alone been the cause, the injury would have been more evenly spread over a greater area of the officer's face.

3. SME R.K. Miller was of the opinion that the eye injury was caused by fragmentation based upon the following comments in the statement recorded by Don Lane on October 6-7, 2011.

In his opinion the charge was too large for the target room and he said that fragmentation should have been anticipated.

4. None of the POST SME's make reference to any forensic testing, technical analysis, reconstruction process, measurements, record examination or other investigative procedures which document, with any degree of medical certainty, the direct and proximate cause of the eye injury, other than the unsubstantiated opinions expressed in their statements.
5. 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 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
6. 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

# Section 19

## **POST EDI SYSTEM FOR PRESENTATION INSTRUCTORS AND GUEST INSTRUCTORS**

- 1. Instructors approved as a condition for POST certification of course**
  - a. Ben Tisa**
  - b. Dave Bliss**
  - c. Russ Barcelona**
  
- 2. Guest Product/Technical Specialist listed in POST course online Data Entry Input system (EDI) for 7/20-21/11 course**
  - a. Ron McCarthy**
  - b. Frank Harden**
  
- 3. Because Distraction Device Breaching is such a unique, specialized and equipment specific course as to curriculum content and operational application, ITR by design, reaches out to the very limited number of Product/Technical Specialist who are qualified to enhance the course presentation for the following reasons:**
  - a. Provide information as to current design changes and accessories.**
  - b. Provide information as to other agencies that have similar breaching capabilities for regional SWAT team mission support and co-training.**
  - c. Provide equipment ordering and pricing information**
  - d. Provide additional technical presence as to assisting students regarding equipment set-up/munitions design/rigging questions**
  - e. Provide additional technical support and safety oversight as to classroom and practical phases of the training sequence.**
  - f. Increases the Instructor to student ratio with qualified individuals who have the equipment and practical application experience with the specialized procedures involved in Distraction Device Breaching.**
  - g. The ITR policy for allowing the presence of qualified individuals during specific courses, represents a due diligence responsibility for excellence in training and to disregard these specially qualified individuals would be detrimental to the overall safety and quality of education provided the participants.**
  
- 4. POST EDI System for Presentation Instructor and other Instructor Listing.**
  - a. In 2010, the POST EDI system began capturing instructor participation in In the presentation of certified courses.**
  - b. In the "Presentation Instructors" section of the EDI, preapproved and vetted Instructors were listed and could be simply checked if they participated in the presentation of a particular course.**
  - c. Also in this section of EDI, is a section to include "Other Instructor" and a place to document the reason for the instructor being at the course.**
  - d. ITR has used this section of EDI to inform POST of other instructors beginning In April 2010 when it was first available, and has done so a minimum of 11 different times for no less than 8 different courses.**

# Section 20

### **ATF DISTRACTION DEVICE USER LICENSE REQUIREMENTS**

- 1. Because of the significant number of ATF Requirements/Regulations regarding transporting, shipping, receiving or possessing Distraction Devices, ITR is supported by Mr. Ron McCarthy who is a vendor and Product/Technical Specialist for Defense Technology/Safariland Equipment Company.**
- 2. Mr. McCarthy possesses the following U.S. Department of Justice-ATF licenses/permits:**
  - 1. Federal Firearms License # 9-33-059-09-2M-01419**
  - 2. License/Permit – Dealer of Special Munitions # 9-CA-059-26-3B-01482**
  - 3. License/Permit – User of Special Munitions # 9-CA-059-33-3B-01481**
  - 4. Notice of Clearance for Individuals transporting, shipping, receiving or possessing Special Munitions/material.**
- 3. Mr. McCarthy possesses the following California Department of Justice license/permits:**
  - 1. Distraction Device Permit # 07916**
  - 2. Centralized List of Exempt Federal Firearms Licensees**
  - 3. Certificate of Eligibility as to acquiring or possessing firearms.**
- 4. All munitions/distraction devices are shipped from the vendor via UPS directly to the certified facilities of Mr. McCarthy.**
- 5. All of the munitions ordered for each course are transported to the training site by Mr. McCarthy and are handled/used/consumed by the participants during the 16 hour course.**

# Section 21

**DON LANE FAILURE TO RESEARCH AND CONFIRM REQUIREMENT FOR BLASTER LICENSE  
AS PART OF THE DISTRACTION DEVICE BREACHING COURSE CERTIFICATION PROCESS**

1. In email dated 9/8/11 sent by Don Lane to Ben Tisa, which in part, contained the following statements:
  - a. You are a private presenter not a commissioned police agency.
  - b. The rules differ between the two.
  - c. There are two primary items in question here, per federal law
  - d. In order to possess the explosive blend (magnesium, aluminum and perchlorate) you must be licensed for explosives, commonly referred to as a "Blaster License". It most certainly is not black powder. It's classified as an explosive.
  - e. To possess the device itself, each reload is, by law a destructive device, and you must have a permit for that as well.
2. At no time has consultant Don Lane, POST Training, Delivery and Compliance staff or the Commission ever notified ITR verbally or in writing during the certification process, of the necessity for alleged compliance with Cal/OSHA guidelines relating to "blasting operations" for presentation of the Distraction Device Breaching Instructor Course.
3. The Distraction Device Breaching Instructor course was certified by the Commission based upon the alleged review process conducted by Don Lane with all modification required by the POST reviewers, being resubmitted by ITR for final approval.
4. The Distraction Device Breaching Instructor course was POST certified January 14, 2011 without any requirements by the Commission for compliance to Cal/OSHA "blasting operations" guidelines until the 12/19/11 meeting at POST headquarters where it was determined, almost one year after it was certified and 5 months after the injury accident on 7/21/11, that the "distraction device tool was a blasting operation as used"
5. POST has not, in any of the following three administrative decertification letters produced in response to the reports submitted by ITR, presented any statements containing justification for decertification of the Distraction Device Breaching course because of non-compliance to POST or Cal/OSHA guidelines for "blasting operations".
  - a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
  - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
  - c. Letter dated 1/24/12 to ITR from Assistant Executive Director Alan Deal
6. Per Cal/OSHA Report # 315364695 dated 1/18/12 prepared by inspector Robert Smith, a meeting was held at POST headquarters regarding the injury accident involving Officer Mike Short which occurred on 7/21/11 while participating in the POST certified Distraction Device Breaching Instructor course.

7. The date of this meeting was on 12/19/11 and present were the following individuals:
  - a. Robert Smith – Cal/OSHA inspector/Fremont District Office
  - b. Steve Hart – Principle Engineer/Cal/OSHA Mining and Tunneling Unit
  - c. Don Lane – POST consultant/Training and Delivery Bureau
  - d. John Dineen – POST Bureau Chief/Training, Delivery and Compliance
8. Per Inspector Robert Smith's report, the following applicable statements were extracted from a hand written document, which ITR believes to address issues discussed prior to and during the POST headquarter meeting on 12/19/11:
  - a. The injury as described exceeded the severity expected from the use of a Distraction device.
  - b. Contact with POST indicated that they were investigating the accident.
  - c. I discussed the accident with Steve Hart (issuer of blaster's licenses).
  - d. We agreed that POST would complete their investigation and share their finding with us.
  - e. If indicated we would move forward with our investigation.
  - f. On 12/19/11 @ 10:00 am we meet w/POST, at their Sacramento office, to review their incomplete report.
  - g. All parties agreed that the distraction device breaching tool was a blasting operation as used.
9. As POST consultant Don Lane and Bureau Chief John Dineen were in agreement regarding their assessment that the distraction device tool as used was a "blasting operation", Don Lane was negligent in his due diligent responsibility to conduct a prudent and appropriate curriculum assessment during the initial processing of the certification documents as submitted by ITR.
10. This requirement has been retroactive applied subsequent to the certification and presentation of these courses.
11. Don Lane as the POST consultant who originally processed the courses for certification by the Commission, negligently failed to conduct due diligence research as to the appropriateness of making these requirements part of the certification approval.
12. Don Lane as the POST consultant who originally processed the course for certification by the commission, negligently failed to comply with PAM section B-1053 as to Subparagraph 2 - Course Instructor Resume regarding verification of "professional license certifications relevant to the course".

**13. To define the use of distraction devices and/or distraction device breaching as “blasting operations” requiring the presence of a qualified Licensed Blaster, would mean that every law enforcement agency in the state of California would have to cease enforcement operations and/or training that involved the use of these munitions.**

- a. This critical law enforcement operational capability would have to be curtailed until every agency using distraction devices/distraction device breaching procedures came into compliance with this interpretation of CCR Title 8 Section 5238(a)**
- b. Additionally, this interpretation of CCR Title 8 Section 5238(a) could possible require every instructor/trainer/vendor involved in the presentation of distraction breaching courses and/or distraction device courses to obtain a Blasters License**

# Section 22

## Section B – Regulations

### 1053. Course Certification Request and Review Process.

**Course Certification Request.** Any person or organization desiring to have a course certified shall first telephonically contact a POST regional consultant for an evaluation of the factors described in Regulation 1052(a) or (b). If the evaluation is favorable, a complete course certification request shall be submitted to POST via the Electronic Data Interchange (EDI) System.

- (a) The following information, provided to POST via the EDI, shall constitute a complete course certification request for instructor-led training and for the instructor-led portion of a blended learning course:

- (1) **Course Administration Information** collected via EDI shall consist of the following:

- (A) Agency submitting request
- (B) Course title
- (C) College affiliation
- (D) Plan requested
- (E) Course length – hours
- (F) Format: Hours per day, days per week, weeks
- (G) Presentations per year
- (H) Units granted: semester or quarter
- (I) Participating law enforcement agencies and estimated number of yearly trainees from each agency
- (J) Enrollment restrictions
- (K) Maximum number of students
- (L) Address of course site
- (M) Facilities - number and size of classrooms
- (N) Course objectives and narrative description of course
- (O) Method of presentation - all techniques used: lecture, demonstration, simulation, role playing, conference, other
- (P) Number of instructors
- (Q) Training aids used
- (R) Required project
- (S) Method of evaluating stated objectives
- (T) Name and title of person requesting course certification
- (U) Contact number
- (V) Date of request
- (W) Secondary course title
- (X) Fiscal year
- (Y) Variable/fixed format
- (Z) Course is specific to dispatchers: yes or no
- (AA) Publish in POST course catalog: yes or no
- (BB) Categories
- (CC) Course is a legislative mandate: yes or no
- (DD) Course is in response to POST regulatory training requirements: yes or no
- (EE) Course requires standardized curriculum: yes or no
- (FF) Revisit content prior to course
- (GG) Course is highly dynamic: yes or no
- (HH) Course requires a safety guideline: yes or no
- (II) Subventions

## Section B – Regulations

- (JJ) Pre-requisites required: yes or no
- (KK) Proposed presentation dates
- (LL) On-site/Off-site presentations
- (MM) Material agency fees
- (NN) E-mail address

- (2) **Course Instructor Resume**, completed by the course presenter for each instructor assigned to instruct in any POST certified/approved course. The presenter Attestation/Evaluation section of the resume form shall be completed for each instructor of a “Specialized Training Subject” listed in Regulation 1070 and has been evaluated and found to meet the instructor training requirements of 1070 and Regulation 1082. The Course Instructor Resume information collected via EDI shall consist of the following:

- (A) Instructor’s name (first, middle, last)
- (B) Current occupation
- (C) Current employer (primary)
- (D) Business address: street city state zip
- (E) Business phone number
- (F) Business email
- (G) Course assigned to instruct
- (H) Training presenter
- (I) POST presenter number
- (J) Course number if known
- (K) Subject(s) assigned to instruct (e.g., firearms, legal update)
- (L) Highest degree
- (M) Year obtained
- (N) Major
- (O) Education/teaching credential
- (P) College/university (include city and state)
- (Q) Types of general law enforcement experience relative to this instructional assignment (e.g., patrol, swat, traffic), number of years
- (R) Other law enforcement-related experience relative to this instructional assignment (e.g., college instructor, attorney), number of years
- (S) Instructor development training (general instructor skills: adult learning, assessment, presentation skills, testing): Course titles – POST-certified, course control number, total hours, completion date
- (T) Instructor development training (general instructor skills: adult learning, assessment, presentation skills, testing): Course titles – non POST-certified, presenter, total hours, completion date
- (U) Instructor training specific to this course – initial training and any update training (e.g., driver instructor course, driver instructor update course): course titles – POST-certified, course control number, total hours, completion date
- (V) 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
- (W) Professional license certificates relevant to this course (e.g., EMT, NAUI, R.N.)
- (X) The name of the specialized subject the instructor is assigned to teach and the required instructor training course title as listed in Regulation 1082 (e.g., firearms instructor)
- (Y) Completion of POST-certified instructor course –Regulation 1070(b): course titles – post-certified, course control number, hours

## Section B – Regulations

- (Z) Equivalency evaluation for instructor course – regulation 1070(c): course titles/subject areas, course control number if known, hours, date, presenter
  - (AA) Attestation for (Y) or (Z) above: presenter/designee, position title, date
  - (BB) Titles of directly related courses/subjects taught
  - (CC) Other teaching experience (course titles/subjects)
  - (DD) Presenter/designee authorized to approve instructor
  - (EE) Presenter's contact information: office number, cell number, fax number, email address
- (3) **Course Budget** if the proposed course will require a tuition. (Reference Regulation 1054, Requirements for Course Budget.) Course Budget information collected via EDI shall consist of the following:
- (A) Agency presenting the course
  - (B) Course category
  - (C) Course title
  - (D) Direct costs - services: instruction, coordination, clerical, printing/reproduction
  - (E) Direct costs - supplies: books/pamphlets/handouts, certificates, notebooks, paper/office supplies
  - (F) Direct costs – equipment
  - (G) Direct costs - travel: coordinator, instructors
  - (H) Direct costs – miscellaneous
  - (I) Indirect costs
  - (J) Subventions
  - (K) Name of person submitting budget and date
  - (L) Services – instruction: name, number of instructor hours, hourly rate
  - (M) Services – coordination: name, number of coordinator hours, hourly rate
  - (N) Services – clerical: name, number of hours, hourly rate
  - (O) Services – printing/reproduction: item, cost
  - (P) Supplies - books/pamphlets/handouts: item, quantity, cost
  - (Q) Supplies - certificates: item, quantity, cost
  - (R) Supplies - notebooks: item, quantity, cost
  - (S) Supplies - office supplies: item, quantity, cost
  - (T) Equipment: item, specific cost
  - (U) Travel: coordinator's name, origin and destination, mode of transportation, specific costs (e.g., transportation, per diem, etc.)
  - (V) Miscellaneous: item, cost
  - (W) Subventions: source of subventions, type of subventions (cash, equipment, services, etc.), cash value of subvention
  - (X) General coordination
  - (Y) Presentation coordination
  - (Z) Site indicator
  - (AA) Course facilities cost
- (4) **Expanded course outline** that minimally includes subject topics to the third level of detail to sufficiently indicate the technical information in the subject areas. A generic outline example is as follows:

## Section B – Regulations

Course Name or Title

- I. Introduction
  - A. Instructors
  - B. Course description
  - C. Administration
- II. Topic 1 or Section I
  - A. First subtopic/section content
    - 1. Content breakdown goes here
  - B. Second subtopic/section content
    - 1. Content breakdown goes here

- (5) **Hourly distribution schedule** indicating, by day of the week, the instructors and topics scheduled during each course hour. (Example formats are available from POST.)
- (6) **Course safety policies and procedures** for courses that include manipulative skills training. (Reference *POST Guidelines for Safety in Certified Courses for clarification and sample policies*.) The policies and procedures must minimally address:
  - (A) Rules of Safety and Conduct,
  - (B) Reporting and Handling Injuries,
  - (C) Ratios of Instructional Staff to Students.
- (b) **Self-paced training** (e.g., CD-ROM or Web-based training.) The following forms and related materials shall constitute a complete package for self-paced training, including the self-paced portion of a blended learning course:

- (1) **Self-Paced Training Course Certification Request** (*POST Form 2-124, 8/06*)
- (2) **Course Developer Résumé** (*POST 2-125, 8/06*). The course presenter shall complete a résumé for each course developer assigned to create any POST certified/approved self-paced course. The presenter Attestation/Evaluation section of the résumé form shall be completed for at least one developer of a “Specialized Training Subject” listed in Regulation 1070 who has been evaluated and found to meet the instructor training requirements of Regulation 1070 and Regulation 1082.
- (3) **Access to the WBT**. For review purposes, the presenter shall provide POST with the Uniform Resource Locator (URL) or other access resource (e.g., CD-ROM or DVD disc), log-on requirements, and any other information or media that would be supplied to a student taking the WBT.
- (4) **An expanded course outline** which minimally includes subject topics to the fourth level of detail to sufficiently indicate the technical information in the subject areas. The outline shall also show the connection between course content and objectives, learning activities, and evaluations. A generic outline example is as follows:

## Section B – Regulations

### Course Name or Title

#### I. Introduction

- A. Course description
- B. How to access and complete the on-line training
  - 1. Uniform Resource Locator (URL) and log-on requirements
  - 2. Completion requirements

#### II. Topic 1 or Section 1

##### A. First subtopic/section content

- 1. Content breakdown goes here
  - (a) Learning activities, related objectives, and estimated times of completion go here
- 2. Student evaluations, related objectives, and estimated times of completion go here if done at the topic/section level. A typical evaluation might include written, audio, and/or video scenarios depicting a situation the student must successfully identify or analyze by answering multiple-choice, true/false, or matching questions.

##### B. Second subtopic/section content

- 1. Content breakdown goes here
  - (a) Learning activities, related objectives, and estimated times of completion go here
- 2. Student evaluations, related objectives, and estimated times of completion go here if done at the topic/section level. A typical evaluation might include written, audio, and/or video scenarios depicting a situation the student must successfully identify or analyze by answering multiple choice, true/false, or matching questions.

#### III. Course Evaluation

- A. Student evaluations, related objectives, and estimated times of completion go here if done at the course level.

#### (5) **Proposed Continuing Professional Training (CPT) hours**

#### (6) **An estimation of the total time required to complete the course**

- (7) **The presenter's attestation** of course developer approval and commitment to adhere to the POST-Approved Expanded Course Outline, and Conditions of Certification presentation  
Any modifications to objectives, content, evaluations, total hours, etc., in a POST-certified course must be submitted to POST for approval before presentation.

#### (c) **Course Certification Review.**

- (1) Within 14 calendar days of receiving a course certification request, POST shall review the request and notify the requestor, via the Electronic Data Interchange (EDI) System, of the status of the request. If the request is incomplete, POST will identify the areas needing completion and shall return the request via the EDI System before further action will be taken to consider certification of the course.

## Section B – Regulations

- (2) The Commission shall review each complete request for course certification and base its decision on evaluation of those factors enumerated in Regulation 1052. Within 60 calendar days of receiving the course certification request, POST will notify the requestor of the Commission's decision to approve or disapprove certification of the course.
- (3) Any requestor not satisfied with a certification action may submit an appeal to the Commission in accordance with Regulation 1058.
- (d) **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.
  - (2) Corrections are changes to a Course Presentation Request submitted to POST and approved by POST after the course presentation.

(Revised: 01-01-11)

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# Section 23

**CAL/OSHA EXPLOSIVE ORDERS**  
**BLASTING OPERATIONS AND LICENSED BLASTERS REQUIREMENTS**

1. Per the current Cal/OSHA Explosive Orders, a blasting operation is defined as follows:

Blasting Operations Includes but is not limited to use, on-site transportation, and storage of commercial explosives, blasting agents and other materials used in blasting.

2. Per the current Cal/OSHA Explosive Order, explosives are defined as follows:

Any chemical compound, mixture, or device, the primary or common purpose is to function by explosion. The term includes, but is not limited to Dynamite and other high explosives, black powder, pellet powder, Initiating explosives, detonators, safety fuses, detonating cord, igniter cord and igniters.

3. Per the current Cal/OSHA Explosive Order, blasting agents are defined as follows:

Any material or mixture consisting of a fuel and oxidizer, intended For blasting and not otherwise classified as an explosive, provided the finished product, as mixed and packaged for shipment cannot be detonated by a No. 8 test blasting cap when unconfined.

4. Per the current Cal/OSHA Explosive Order, a blasting Supervisor must be designated to direct and supervise all blasting operations:

Blasters must be qualified through training, knowledge and experience in transporting, storing, handling and using explosives to include having a working Knowledge of state and local laws and regulations, which pertain to explosives. Blastors must hold a Federal, State or local license or certificate, have proof of formal training attended within the last 5 years or three to the blaster's knowledge and ability to perform in a safe manner the type of blasting that will be required.

5. Per Cal/OSHA Report # 315364695 dated 1/18/12 prepared by inspector Robert Smith, a meeting was held at POST headquarters regarding the injury accident involving Officer Mike Short which occurred on 7/21/11 while participating in the POST certified Distraction Device Breaching Instructor course.

6. The date of this meeting was on 12/19/11 and the following individuals were present:
  - a. Robert Smith – Cal/OSHA inspector/Fremont District Office
  - b. Steve Hart – Principle Engineer/Cal/OSHA Mining and Tunneling Unit
  - c. Don Lane – POST consultant/Training and Delivery Bureau
  - d. John Dineen – POST Bureau Chief/Training, Delivery and Compliance
7. Per Inspector Robert Smith's report, the following applicable statements were extracted from a hand written document, which ITR believes to address issues discussed prior to and during the POST headquarter meeting on 12/19/11:
  - a. The injury as described exceeded the severity expected from the use of a Distraction Device.
  - b. Contact with POST indicated that they were investigating the accident.
  - c. I discussed the accident with Steve Hart (issuer of blaster's licenses).
  - d. We agreed that POST would complete their investigation and share their finding with us.
  - e. If indicated we would move forward with our investigation.
  - f. On 12/19/11 @ 10:00 am we meet w/POST, at their Sacramento office, to review their incomplete report.
  - g. All parties agreed that the distraction device breaching tool was a blasting operation as used.
8. Inspector Smith stated that this agreement was based upon the following information provided by Don Lane as to determining that this incident was a blasting operation:
  - a. Don Lane showed two videos, one of the incident injury and one of Dave Bliss using the Distraction Device Tool at another course
  - b. No other videos showing the distraction device tool being used were presented by Don Lane.
  - c. Don Lane advised of a NET explosive weight calculation done by a POST Subject Matter Expert, based upon the flash powder gram weight.
  - d. The SME advised that the amount was calculated at .36 pounds of TNT equivalent based upon two 15 gram flash powder devices
  - e. Neither inspector Smith nor Steve Hart reviewed the calculations as to content, accuracy or veracity as to the incident circumstance.
9. The agreement as to the distraction device breaching tool being a blasting operation was based solely on two issues which were the two videos and the explosive weight of .36 lbs of TNT equivalent for flash powder.

10. Neither Inspector Smith nor Steve Hart were allowed to view the extensive inventor of other training videos involving the distraction device tool being deployed.
11. Additionally, because they did not confirm the accuracy of the POST SME TNT explosive weight at .36 pound, they were not aware of the total inaccuracy of the calculations and thus, were significantly mislead as to veracity of these critical issues.

# Section 24

## **DISTRACTION DEVICES BREACHING VERSES EXPLOSIVE BREACHING PROCEDURES**

1. Some of the more important advantages of the Distraction Device Breaching Tool System over standard explosive breaching procedures are as follows:

- a. No use, on-site transportation and storage of commercial explosives, blasting agents and other materials used in explosive breaching/blasting operations.
- b. No exposed surface attachment of high explosive charges to target.
- c. No high explosive blasting caps and firing systems required.
- d. Procedures for "Failures to Detonate" are significantly safer with command initiated munitions as they only require simply removal procedures and soaking in water.
- e. Blast pressure conditions from exposed high explosive charges, including secondary pressure effects of reflection, focusing and shielding are significantly less because the munitions are all contained inside the carbon steel chamber.

2. Distraction Device Breaching System Munitions:

- a. The tool assemblies and attachments uses commercially available distraction device munitions which contain flash powder combined with a command initiated firing system.
- b. The commercially available command initiated munitions come in 15, 8 and 4 gram flash powder loads for various target applications.
- c. The commercially available command initiated munitions are sold "over the counter" to qualified law enforcement agencies by police product vendors.
- d. The distraction device munitions do not require a Blaster License for purchase from police product vendors as they are not classified as explosive materials requiring a special purchase permit.

3. The munitions are manufactured, shipped and handled as a 1.4 Division Explosive Classification which is defined as follows:

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

4. The tool system provides the capability to use denotation energy of distraction devices for forced breaching applications without having to resort to very specialized and extensive explosive breaching training, equipment, storage requirements and special certification process for the Cal/OSHA Blaster License.

- a. To define the use of distraction devices and/or distraction device breaching as “blasting operations” requiring the presence of a qualified Licensed Blaster would mean that every law enforcement agency in the state of California would have to cease enforcement operations and/or training that involved the use of these munitions.
  - b. This critical law enforcement operational capability would have to be curtailed until every agency using distraction devices/distraction device breaching procedures came into compliance with this interpretation of CCR Title 8 Section 5238(a)
  - c. Additionally, this interpretation of CCR Title 8 Section 5238(a) could possible require every instructor/trainer/vendor involved in the presentation of distraction device/distraction device breaching courses to obtain a Blasters License.
5. The munitions are shipped by the manufacturer to the vendors to the end user law enforcement agencies via common carriers such as UPS or FedEx.
6. The munitions are loaded, unloaded and delivered to the various law enforcement agencies by UPS or FedEx vehicle drivers for use by designated officers who received training in proper deployment.
7. The special tools used in this system are designed to use the denotation pressure from the munition charge to shape and form this force to defeat locking mechanisms and create ports in doors, windows and walls.
8. The detonation pressure from the munition charges are contained in a carbon steel chamber designed and engineered to direct and focus the force at the target point.

# Section 25

## **BLASTER LICENSE CERTIFICATION AND EXPLOSIVE BREACHING COURSE DEVELOPMENT**

1. 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.
2. This initial course was originally certified through the ACSO base upon documentation, lesson plans, student manual, training protocols, training aids and safety procedures developed and prepared by Ben Tisa.
3. Additionally, through extensive coordination with CAL-OSHA's Mining and Tunneling Division, Ben Tisa obtained the first ever Law Enforcement Blaster License category for Explosive Breaching by law enforcement officers.
4. This Blaster License is classified as Cal/OSHA Blaster License Classification(E) Limited – Law enforcement
5. In-conjunction with Cal-OSHA staff, Ben Tisa developed approximately 75% of the test questions and testing procedures used for course participants to obtain their special category Blaster License.
6. There is no block of instruction in the California POST certified Explosive Breaching Course curriculum which specifically address the use of command initiated distraction devices and the distraction device tool system as part of the explosive breaching training requirements for obtaining a special category Blaster License.
7. Additionally, there are no test questions or special knowledge demonstration required by Cal/OSHA regarding distraction device breaching munitions and tool deployment for obtaining the special category Blaster License certification.
8. The totality of the information contained in the documents and material provided in this report, substantiates the factual conclusion that no objectively reasonable examination of the 16 hour course curriculum and tools system involved in Distraction Devices Breaching would require the attending of a 80 hour Explosive Breaching course and a Cal/OSHA Blaster License for all instructors.

# Section 26

**Ben Tisa, International Training Resources (ITR)**

On September 6, 2011, Senior Consultant Don Lane interviewed the presenter and owner of ITR, Ben Tisa. The interview took place in Stockton at the Police Training Facility and Range. Dave Bliss, his partner in ITR, was unavailable.

Tisa was advised that the interview was related to a fact-finding inquiry for POST to address the following:

1. Why the incident happened?
2. Was it preventable?
3. What could be done to insure that a similar incident didn't recur?
4. Review ITR's Safety Policy and Practice.
5. Assess instructor certifications and qualifications.
6. Determine the authority of ITR to possess and use explosives and destructive devices.
7. Review any supplemental class materials not previously submitted to POST that were used in support of the EDI certification documents (Wallbanger Instructor manual, other documents, Powerpoint presentations, etc.).

Tisa was asked for his opinion as to why this incident happened. What environmental or tactical factors, circumstances, actions, or mindset resulted in the injury to Officer Michael Short.

Tisa said that he thought a piece of veneer from the wooden door hit Officer Short in the eye. He emphasized that if he (Tisa) or any of his staff could have known this was going to happen, he would have done anything in his power to prevent it. He said it was impossible to anticipate that something like this could occur, and was very sorry that Short was injured.

He was asked whether too much explosive was used for a center-shot application on an outward opening wood particle board door to a small room. He was asked whether that combination of factors could have resulted in sufficient overpressure or reflective pressure to cause rebound fragmentation or a blowback of explosive energy.

Tisa didn't think that overpressure to the door was the cause. He said he looked in the room after the incident and observed an overhead light bulb still intact. In the case of excess overpressure the bulb would have shattered, he said.

He said the overpressure generated by the amount (gram weight) of the "black powder" reload could not generate enough overpressure to harm anyone. He said he thought it was the fragment, not the overpressure that caused the injury.

Tisa was asked how much overpressure can cause harm. He said five PSI increase in pressure can cause hearing injury. The damage would come from decibel levels, not overpressure. He said the black powder charge was very safe, slow-burning, and not a high explosive.

He was asked if he witnessed the actual explosion. He said yes he was in a clear position to observe a few feet down the hallway.

He was asked if he saw Michael Short place the WallBanger device on the center of the door. He said yes he saw it and knew it wasn't supposed to be placed on the center; it was supposed to be placed on the doorknob.

Tisa was 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 team (of students) decided to do a center shot. They were conducting a series of experimental breaches and recording the results from different types of door locks and mechanisms to judge the results of the different loads.

He was asked if that was the best method to employ as a teaching technique; conducting trial and error experiments with explosives? He said yes. He said the students had to learn what different gram weight combinations would work on different kinds of doors and build a shot log to document the results. That way they could go back to their agencies and know how to deploy the device.

He said this class 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.

Tisa was asked if he had conducted prior controlled testing of the explosives and placements so that at least he, as instructor, knew the capabilities. He said no. He didn't know what would happen either.

He said if he would have known he would have done anything to stop the injury from happening.

He was asked if there were other causative factors contributing to the injury. He said he didn't know what kind of safety glasses Short was using, but that they perhaps might have been of inferior quality. He didn't have any way to tell that for sure, however.

Tisa was asked that as the presenter did he specify any particular rating or ballistic resistance level for the safety glasses. He said no just that they had to have eye protection. It was up to the students to bring them.

He was asked if he was knowledgeable about overpressure considerations. He said yes, and explained that one must calculate the Net Explosive Weight of each charge to get an idea of the pressure generated by a particular charge, which was determined by starting with the industry standard of a Baseline Explosive Rating.

He was asked to explain as an instructor how he would calculate such a number incorporating a 30 gram charge on the small room in question with no windows or other

venting pathways. He said he couldn't do it without a conversion table, which he didn't have with him. Further, he couldn't provide an informal estimate without the table. Tisa further said that overpressure is calculated using charges initiated outside in open areas. It wasn't done relative to interior rooms.

He was asked about the instructor certification. Tisa was told that neither McCarthy nor Harden was authorized by POST to teach in the class. He was asked whether they were otherwise qualified to teach in some equivalent capacity.

He said they were Safariland trained instructors on the Wallbanger. They were cleared by Safariland, and were working with the device as technicians.

He was asked whether they were otherwise qualified to teach breaching in any other capacity. He said he didn't know.

Tisa was asked whether they were bomb technicians. He said no not to his knowledge.

Note: Ron McCarthy is listed via his signature as an Account Representative, not an instructor nor otherwise qualified to teach explosive breaching. His POST training record reflects no certified training in this specialty.

Note: In the video Harden is clearly providing instruction and not just performing as an equipment technician. Harden's POST training record reflects no certified training in this specialty.

Tisa was asked about Instructor to student ratios and if he maintained the 1:1 ratio required in the POST Certification documents. He said that Harden was right there, and that he and Dave Bliss were both close by and observing. It was pointed out to Tisa that Harden left the room, was out of sight of the student, and calling out "fire in the hole" prior to detonation. It was pointed out to Tisa that a 1:1 ratio requires the instructor to be within arms length, or close enough to immediately stop action.

He was asked why Harden left the student alone. Tisa said he didn't know, but he was glad that Harden wasn't standing next to Short or he would have been injured too.

He was asked if he or anybody associated with ITR or Safariland was licensed or permitted to possess, transport, and use explosive substances and destructive devices.

He said he didn't know, and couldn't produce a copy of his license or any authority to possess explosive substances or destructive devices. He said he would be sure to ask Safariland for information about that.

He admitted that he was the presenter of the explosive breaching class and didn't know if anyone in the present instructor cadre had authority to possess explosive or destructive devices. He said he would find out that information. He said that UPS (United Parcel Service) delivered the reloads, so he didn't think it was a very serious explosive licensing requirement.

Tisa said he had been to about ten explosive breaching and/or distraction device instructor courses and was otherwise highly qualified to teach.

Tisa was asked about fragmentation as a safety issue during the training. He was told that students said they had been struck by fragmentation from every shot. He said that fragmentation never affected him. It was just minor debris and dust. He said fragmentation was not a problem. He was asked if he thought Officer Short would agree. Tisa said he probably would not.

He was told that review of the videos and witness statements reflected that fragmentation was an obvious and consistent hazard with each application of the device.

He was asked why the students were allowed to be in the hallway observing the shots in close proximity when fragmentation occurred with each shot. He said it's important for the "conditioning of the officers" to get used to the blasts and know that it wasn't going to hurt them. Asked if the students were now confident that the blasts wouldn't hurt them, he said he didn't think so.

He was asked if he could rewind the timeline, and was again present in the same circumstance with Officer Short, would he let that shot take place. He said no.

Tisa was told that advisors said the charge was too large for the small room and that type of door, and that an explosive rebound fragment struck Officer Short. It was pointed out that the device arm ejected backward from the breach point and stuck in the concrete cinderblock wall behind the officer. Tisa said it didn't stick in the wall but was just leaning against the wall.

Note: Subsequent review of the video shows the device arm stuck horizontally into the wall. This point shows the measure of force released in the deflagration sufficient to drive a steel bar into a concrete cinder block wall.

Tisa was asked if he recalled showing a video during the class of Bliss applying the WallBanger on the center of a sheetrock wall; that a piece of sheetrock nearly hit Bliss in the head; and that smaller fragments bloodied and bruised his face. Tisa said yes, that he "tightened up" safety after that and made sure everyone had helmets, eye protection, and vests.

Note: In the video of the training injury involving Officer Short, Tisa, Bliss, and Harden were not wearing helmets.

Tisa presented a copy of Safariland's "The Wallbanger Instructor Course" manual. He said it is the only manual for the course.

Note: The manual is divided into three sections, of which only the last section (three) has 16 pages of PowerPoint slides depicting the doorkey (breaching device) in use. The information is limited, and briefly addresses safety. There are no calculations of explosive weight charges, or sufficient warnings about

## *International Training Resources (ITR)*

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overpressure, occupant hazards, or risk of injury from fragmentation. There is brief mention (page 38) of safety concerns to "children and elderly," and "...fragmentation...into the objective." There is no mention of fragmentation hazards to officers while deploying the device.

Multiple graphics showing the device being detonated are included in the instructor's manual, and virtually all of them show fragmentation ejecting outward from the breach point.

Note: During the course of the investigation, Cal-OHSA Supervising Investigator Mike Fry and Investigator Robert Smith were contacted by Lane. They initiated a query of the California Department of Mining and Tunneling and learned that Benedict Tisa had a Blasters License that expired April 19, 2004. He is not currently licensed.

# Section 27

### ITR RESPONSE TO INTERVIEW STATEMENT OF BEN TISA BY DON LANE

1. The entire content of the interview statements and responses which were attributed to Ben Tisa by Don Lane consist of self serving misstatements, erroneous quotes, outright fictitious and deceitful comments which are categorically denied Ben Tisa.
2. The interview statement of Ben Tisa by Don Lane is a false and complete fabrication on his part which is consistent with other investigative misconduct as evidenced by his negligent ability to factually document and validate the six "original finding" and the new six "new findings" of fault.
3. Based upon inquiry of Ben Tisa transmitted via email 9/1/11 to consultant Don Lane, ITR requested an update as to the status of the investigation regarding the injury accident which occurred on 7/21/11.
  - a. ITR also requested advice as to any additional information and document requirements that ITR can provide to assist in the investigation.
  - b. Don Lane responded via email Thursday 9/1/20011 with the following information requests/questions regarding the following issues:
    - (1) Class safety policy and procedures
    - (2) Instructor certification documents and information
    - (3) Licensing documents/authority for possession of destructive devices
    - (4) Copies of all class instructional material
    - (5) Any additional video of the course and/or injury incident
4. Ben Tisa with permission of the Stockton Police Department, made arrangements to meet with Don Lane at the Stockton Police Department range on Tuesday 9/6/11
5. At the onset of the Tuesday 9/6/11 meeting, consultant Don Lane made the following comments:
  - a. Advised that he had little knowledge regarding actual Distraction Device Breaching procedures or the use of special munitions/explosives.
  - b. Confirmed he was the POST consultant who processed the certification request as to meeting all the criteria for approval by the POST Commission.

- c. Had already received and reviewed the Preliminary ITR Incident Report DVD disk and other supplemental information provided POST by direct submission via U.S. Mail.
  - d. Confirmed receipt of all class instructional material, class safety policy and procedures, instructor certification information, Safariland Training Group manuals and other training aids not already provided POST by direct submission.
  - e. Saw video of Mr. Sandy Wall (master instructor and inventor of the Distraction Device Breaching System) and Dave Bliss using the distraction Device Breaching during an unspecified training course.
6. During the course of the meeting, Don Lane indicated that the investigation was still in progress and his report was nearing completion, but wanted to discuss the following matters as to finalizing the "findings of cause" regarding the accident.
- a. Needed more detailed information as to instructor certifications involving special munitions/distraction device products.
  - b. ITR awareness of requirement for possession of Blaster Licenses and permits to use explosives
  - c. Engineering studies and propriety information regarding the distraction tool design and manufacturing procedures.
  - d. Why the vendor representative Mike Bullion was allowed to address the participants for approximately 45 minutes
  - e. Awareness of any specific ATF and Cal/OSHA regulations regarding distraction device breaching procedures and munitions
  - f. What Instructor to student ratio of one on one was applied during the course.
  - g. Proximity of the instructors to participants as to distance during course of deploying the distraction device breaching tool
  - h. Gram weight of munitions used as to total amount based upon analysis of outward opening door target
  - i. Testing procedures verses known results of munition deployment
  - j. No record or documentation of Safariland Training Group instructor listed as guest instructors/product specialist
  - k. Authorization procedures for Safariland Training Group and Defense Technology to ship, transport and provide product to end users/class participants.
  - l. Difference between private presenter and a commissioned police agency as to certain regulations involving distraction devices.

7. All of the above matters, which subsequently formed the basis of the alleged six "Original Findings" and the six "New Findings" are documented in the following three letters which constitutes the total substantive production of factual documentation for the POST decertification of all ITR courses and Instructors:
  - a. Letter dated 10/24/11 to ITR from Assistant Executive Director Michael DiMicieli
  - b. Letter dated 1/23/12 to ITR from Executive Director Paul Cappitelli
  - c. Letter dated 2/3/12 to ITR from Assistant Executive Director Alan Deal
8. Any document information that was provided at the meeting by Ben Tisa, which did not fully address the issues raised by Don Lane, were to be the subject of further research and submission.
9. All of the issues that Don Lane requested additional information, clarification or explanation were produced in exhaustive detail as part of the ITR Appeal Report provided to POST staff and to all Commission Members as follows:
  - a. Course Safety Equipment Requirements Listed in Course Announcement
  - b. Safety Equipment/Uniform worn by Officer Short
  - c. ITR Practical Application Safety Procedures
  - d. Instructor to Student Ratio Guidelines
  - e. Instructor Positioning/Distance to Student Guidelines
  - f. Participant use of Face Shield during Training
  - g. Course Certification Safety Procedures and Equipment
  - h. Course Certification Diversionary Device Safety Brief
  - i. Course Certification Diversionary Device Safety Protocol
  - j. Blasting Operations and Licensed Blaster Requirement
  - k. Participant use of Eye Protection Equipment during Training events
  - l. Use and Operational Deployment of the Distraction Device Breaching Tool
  - m. Preparation of Command Initiated Distraction Device Munitions
  - n. Course Specific Training Procedures/Practical Application Phase
  - o. Location of Breaching Tool Operator during Deployment of Munitions
  - p. Instructor Training, Experience and Competence
  - q. Ben Tisa Resume/Special Munitions and Products
  - r. Dave Bliss Resume/Special Munitions and Products
  - s. Ben Tisa Resume/POST Courses
  - t. Dave Bliss Resume/POST Course
10. Any matters not addressed was because they were asserted by Don Lane In the POST Investigated Report dated 10/17/11 which ITR DID NOT RECEIVE UNTIL MAY 29, 2012 and is now responding to as part of this supplemental Commission Report.

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

# Section 28

### DON LANE INTERVIEW STATEMENTS OF COURSE PARTICIPANT WITNESSES

1. The following individuals were interviewed by Don Lane as part of his investigation regarding the injury accident to Officer Mike Short on 7/21/11.
  - a. Officer Paul Vandiver – Concord Police Department
  - b. Officer Mark Souza – Concord Police Department
  - c. Officer Chris Jacoby – Redding Police Department
  - d. Officer Michael Short – Visalia Police Department
2. ITR was not aware of the course participant interviews that were conducted by consultant Don Lane as part of his investigative efforts, because ITR did not receive the POST Investigative Report dated 10/17/11 until June 1, 2012
3. What is of critical importance regarding the veracity of the investigation done by Don Lane, is the individuals that were PURPOSELY NOT interviewed as part of the alleged detailed investigation conducted by POST in support of the decertification "findings".
4. Any competent investigator involved in such a important matter such as this incident, would make every effort to conduct a due diligence effort to seek out and contact all individuals who, because of their on-scene knowledge can collectively establish the events and circumstances as they actually occurred.
5. Critical individual of significant importance who consultant Don Lane apparently felt were not of investigative importance as to their on-scene knowledge and/or subject matter expertise include the following individuals:
  - a. POST course instructor Dave Bliss – International Training Resources.
  - b. Guest instructor Product/Technical Specialist Ron McCarthy – Safariland Training Group
  - c. Guest instructor Product/Technical Specialist Frank Harden – Safariland Training Group
  - d. Sandy Wall, Training Manager of the Safariland Training Group who is the individual who created and designed the distraction devise breaching tool system to include developing all of the operational procedures, user manuals, training aids and instructor certification process.
6. Other critical individual of signifiation importance who consultant Don Lane apparently felt were not of investigative importance as to their on-scene knowledge, were the members of Training Team 1.

7. Training Team 1 members, who with Officer Mike Short participated in all of the sequential training events to include the target analysis, breach point planning, munition selection, tool rigging, placement and positioning for the event during which Officer Short was injured. These individuals are identified 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. |                                  |

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

# Section 29

### ITR RESPONSE TO INTERVIEWS OF COURSE PARTICIPANTS BY DON LANE

1. ITR was not aware of the course participant interviews that were conducted by consultant Don Lane as part of his investigative efforts regarding the injury accident of Officer Mike Short on 7/21/11, in as much as ITR did not received the investigative report until June 1,2012.
2. ITR has chosen not to respond to the comments, criticisms and opinions attributed by Don Lane to the four course participants interviewed for his investigation, as it is the individual officers right to do so as to manner, terminology and content.
3. Because none of witness statements as recorded by Don Lane were available to ITR until June 1, 2012, ITR did not have the capably to have a neutral party confirm the veracity of the statements as interpreted by Don Lane.
4. ITR instructors as a matter of policy, do not express negative comments, disrespectful opinions and unsubstantiated criticism of course participant and other law enforcement officers unless the evaluation is documented and in compliance with the guidelines of state and federal expert witness testimony.
5. Opinions/statement of participants regarding the operational deployment of the Distraction Device Distraction Device tool system are not those of a qualified subject matter expert, but those of STUDENTS who are still undergoing training and experience development as to technical knowledge.
6. Opinions/statement of participants regarding the techniques of instruction for presentation of Distraction Device Distraction Device course are not those of a qualified subject matter expert, but those of STUDENTS who are still undergoing training and experience development as to instructional capabilities.

# Section 30

**STATEMENTS OF COURSE PARTICIPANT INTERVIEWED BY DON LANE**

1. The interview statements of course participant are contained in the POST Investigative dated 10/17/11.
2. As such, they are not being reproduced for this report.