

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE COMMISSION ON PEACE OFFICER
STANDARDS AND TRAINING**

<p><i>In Re The Appeal Of</i> INTERNATIONAL TRAINING RESOURCES,</p> <p><i>Appellant</i></p>	<p>DECISION OF THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING ON THE APPEAL OF INTERNATIONAL TRAINING RESOURCES</p> <p>Date: June 28, 2012 Time: 10:00 a.m.</p>
--	--

The appeal of International Training Resources (“ITR”) of the decertification of all previously POST-certified ITR courses came on for hearing at the regularly scheduled meeting of the Commission on Peace Officer Standards and Training (“POST”) held in Sacramento, California on June 28, 2012. Michael Rains argued for ITR. Alan Deal argued for POST staff.

After argument and submission of the matter for POST’s consideration, deliberations of the Commission were held in closed session, with Commissioners Allen, Bui, Cook, Kurylowicz, Lowenberg, Hayhurst, Hutchins, McGinnis, Parker and Wallace deliberating. Commissioner Sobek recused himself from deliberations. The written submissions of the parties were reviewed and considered.

1 Having considered the written submissions and arguments of the parties, the
2 Commission makes the following findings, conclusions, and determinations, and
3 accordingly, it affirms in part and reverses and modifies in part, with conditions, the
4 decision of POST staff to decertify, under POST Regulation 1057, all courses
5 taught by ITR.

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

14 In 2005, ITR was investigated by the Commission in connection with unsafe
15 live fire exercises conducted as part of an ITR-taught SWAT course which exposed
16 students and instructors to unnecessary hazards. In connection with that
17 investigation, it was determined that ITR did not ensure that proper safety
18 equipment was used by students and instructors and that ITR allowed instructors to
19 instruct SWAT curriculum that was not approved by POST. It also found that ITR
20 permitted live fire exercises to be presented as part of the course that were not
21 approved in the certified curriculum. ITR did not challenge those findings and they
22 became final.¹ POST's letter of October 6, 2005, containing the findings and
23 actions of the Commission as to that incident, is attached as Attachment B.

24 ¹ While ITR is precluded from re-litigating those final findings now, it in any
25 event made no meaningful effort at the hearing or in the appeal to deny those
26 findings, beyond asserting that the complaint in that case was made by an
27 individual that was not present at the exercise, and by asserting that it involved only
28 a 45 minute exercise occurring at the end of an 80 hour course. Those challenges
miss the point; the Commission does not tolerate unsafe practices that endanger
students, and the use of instructors and course instruction that deviates from POST-
approvals are impermissible and risk course decertification.

1 The Distraction Device Breaching - Instructor course was initially certified
2 and presented by ITR once during February 2011. It was recertified effective July
3 1, 2011. The course description provided by ITR was that it was "designed to
4 develop participants as law enforcement instructors in the use of distraction device
5 breaching."² The certification of the course took several months to complete.
6 Considerable effort was made during the review process to ensure that the safety
7 plan developed by ITR addressed the potential hazards students and instructors
8 could encounter. The course was approved on January 4, 2011 and was initially
9 taught without incident on February 23 and 24, 2011.

10 On July 21, 2011, during the second presentation of the Distraction Device
11 Breaching Instructor Course by ITR, Officer Michael Short (Short) of the Visalia
12 Police Department was injured. The July course was taught by ITR at the old Fort
13 Ord military base in Monterey County, California.

14 The instructors at the July course were Ben Tisa and David Bliss, the owners
15 of ITR. However, Tisa and Bliss also utilized the services of two individuals as
16 instructors that had not been approved by POST as part of the course certification –
17 Ronald McCarthy and Frank Harden, employees of Safariland, LLC, the vendor of
18 a device referred to as the “WallBanger.” Although POST regulations specifically
19 require all course instructors to be approved as a condition to certification, ITR did
20 not do so, and instead improperly entered the names of these individuals into
21 POST’s electronic data system only after the course had been presented and the
22 injury had occurred. Bliss and Tisa, without POST’s knowledge and approval,
23 taught the course as a course in the use of the “WallBanger” product. This did not
24 comport with POST’s certification of the course, and it deviated from the expanded
25 course outline approved by POST for the course.

26 ² A distraction device, commonly described as a "flash bang," is a grenade-
27 type device that produces bright light and loud noise upon detonation. It is
28 primarily used to disorient the occupants of a room to enable the entry of law
enforcement officers.

1 Students reported that the course was effectively taught as a sales course for
2 the WallBanger product. Also, another sales representative for a different company
3 was allowed to make a presentation concerning a TASER product that had
4 absolutely nothing to do with the course, but that was being “pitched” to the
5 audience of captive students. ITR admitted in their written materials that this
6 discussion of the TASER was improper and that they should have acted to have
7 stopped it, but did not. This presentation of the course did not follow the POST-
8 approved course curriculum.

9 The injury occurred when Officer Short used Safariland’s “WallBanger”
10 device to breach an outward opening wood/veneer covered door to a small room,
11 located in a narrow hallway consisting of concrete and cinderblock. The trainees
12 were allowed to experiment with the entry device and decided to attempt to defeat
13 the door by applying the WallBanger device to the center of the door, using two 15
14 gram distraction devices to breach the door. Video recordings of the injury
15 incident were taken from the hallway, one on each side of Officer Short, permitting
16 review of the actions of ITR and Officer Short, prior to the explosion. While ITR
17 attempted to classify Harden and McCarthy as “Guest Product/Technical
18 Specialists,” Harden is seen wearing a vest emblazoned with the word “Firearms
19 Instructor” in large letters on the back, and is clearly seen and heard giving
20 instruction in the video to Officer Short as to the proper placement of the device
21 just prior to the explosion. In fact, Tisa and Bliss, the only actually certified
22 instructors that *had* been approved by POST, were standing away from the area and
23 were uninvolved in the actual instruction being given to Officer Short.

24 The tape shows Harden instructing Officer Short as to how to place the
25 device against the door. Officer Short was instructed by Harden to place the device
26 flush against the door. Officer Short’s body and face were positioned in front of,
27
28

1 and within a few feet of, the impending explosion. Harden then left the area and
2 sought cover, leaving Officer Short directly exposed to the impending blast.³

3 The resulting explosion was substantial. The cameras filming the event
4 (handheld by two student observers) were bounced around from the pressure of the
5 blast, and the video showed a shower of debris and smoke thrown outwards from
6 the explosion towards Officer Short. The WallBanger pole was impaled by the
7 explosion into the wall behind Officer Short. The explosion even shattered an exit
8 sign that was 12 feet away from the breach point, and the hallway was littered with
9 debris. Officer Short staggered away from the explosion and it became almost
10 immediately apparent that he sustained a life-changing injury. The explosion
11 caused grievous injury to Officer Short's face, causing him to lose his right eye.

12 Officer Short's eyes were protected with only a pair of safety glasses issued
13 by his own department. He was not required by ITR to wear a face shield, nor was
14 there any requirement that the eye and ear protection used meet any specified
15 standards; rather, students were left to select their own safety equipment and some
16 students apparently wore only sunglasses. While ITR made much in their written
17 submissions of the fact that the shield was offered to Officer Short and Officer
18 Short apparently declined the use of the shield, their counsel conceded in argument
19 before the Commission that Officer Short should have been required by ITR to
20 wear the face shield and was not. At least one other student was also struck by
21 rebound fragmentation, causing minor injuries.

22 ³ During argument, ITR's counsel emphasized a witness statement to the effect
23 that Officer Short was told to divert his eyes from the blast and that Officer Short
24 only happened to look towards the impending explosion after being distracted by
25 something, which ITR claimed, was an unpredictable and unpreventable event for
26 which they should not be penalized. However, a review of the video tape does not
27 support this claim. Harden showed Officer Short how to place the device, told him
28 when the device was properly placed flush against the door, and then left the area,
leaving Officer Short looking at the device. When Officer Short nodded his head in
a "yes" gesture, still looking towards the device, the device was remotely detonated.

1 POST was unaware that ITR was effectively teaching the course as a course
2 in the use of Safariland’s “WallBanger” device. ITR had not been certified to
3 teach a “WallBanger” course. Had POST been made aware that the course would
4 focus on the use of the “WallBanger” device, POST would have needed to test the
5 device, and would have developed standards for its use in training. Among other
6 things, POST would have determined if the device was being used in the course in a
7 way that made it a destructive device that would have to be deployed only by
8 certain qualified users.

9 As presented, ITR did not provide a safe training environment for Officer
10 Short. ITR violated the *POST Guidelines for Student Safety in Certified Courses*
11 and other conditions for certification in a number of important respects. For
12 example, Harden should not have been permitted to instruct students during the
13 course, and ITR’s use of him as an instructor violated POST’s conditions of
14 certification, one of which is to use only approved instructors. The location of the
15 blast, in a narrow hallway, in the center of a door which should have been expected
16 to produce secondary projectiles upon being subjected to an explosive blast, the
17 placement of Officer Short in a location immediately in front of the blast, the failure
18 to require adequate protective gear for students during such blasts, the permitting of
19 students to experiment with charge size and placement, and the size of the
20 explosive charges used in that specific deployment, all violated POST’s safety and
21 other guidelines that are a condition of course certification.

22 ITR instructors admitted that prior controlled testing of the explosive
23 charges, and placements of those charges, as conducted by the students in the
24 training course, had not been previously performed by the instructors. As a result,
25 the instructors and students were unaware of the level of risk presented by the
26 particular explosions they permitted. No mathematical calculations of the pressure
27 or potential over-pressurization based upon the site of the blast were attempted.
28 While ITR may have been uncertain or unaware of the hazards presented by the

1 particular blast, such uncertainty means that the blasts should not have been
2 permitted by ITR. In this instance, instruction was clearly insufficient, and the risk
3 to students was clearly too great.

4 By its actions, ITR also violated Commission Regulations 1052(a)(2) and (4)
5 regarding course content and instruction. The course was effectively taught as a
6 “WallBanger” course, which does not comport with the course description and
7 expanded course outline. ITR permitted sales presentations on devices related to,
8 and other devices completely unrelated to, the course content. At least some
9 instruction – and certainly the instruction leading directly to the injury - was by
10 unapproved instructors. The instruction included insufficient target analysis,
11 extremely risky safety protocols and experimental explosions not preceded by
12 controlled testing. The explosive breach permitted by ITR instructors, resulting in
13 the injury to Officer Short, exceeded the competence of the instructors and POST
14 approvals for the permitted instruction of the course as certified. ITR also violated
15 Regulation 1053(d) by, *inter alia*, changing and modifying the course, without
16 POST approval, following certification.

17 Upon learning of the incident, POST immediately suspended presentation, as
18 a POST-certified course, of the Diversionary Devices and Distraction Device
19 Breaching course taught by ITR. POST then investigated the incident and made
20 the following six findings.

21 **Finding Number 1:** ITR failed to adhere to provisions of the safety policy
22 approved as a condition of certification of the course.

23 **Finding Number 2:** ITR used instructors who are not approved as a
24 condition of certification of the course.

25 **Finding Number 3:** ITR departed from the content of the course specified
26 in the approved expanded outline and hourly distribution for the course.
27
28

1 **Finding Number 4:** ITR improperly and incorrectly prepared distraction
2 device munitions.

3 **Finding Number 5:** ITR allowed experimental use of explosive materials
4 not approved within the certification of the course.

5 **Finding Number 6:** ITR engaged in experimental deployment of
6 equipment and munitions that exceeded the experience and competence of all
7 instructional personnel who were present at the scene.

8 As a result of those findings, by letter dated October 24, 2010, POST
9 decertified those ITR courses it had previously certified and prohibited Bliss and
10 Tisa from participating in POST certified courses as instructors or assistants.⁴ The
11 Commission finds that, although it will ultimately reverse and modify this decision
12 in part, with conditions, following this full hearing on the merits, POST staff acted
13 properly, in light of the grievousness of the injury and the evidence available to it,
14 to decertify all courses offered by ITR pending an appeal and a decision by the full
15 Commission as to whether or not ITR would be permitted certification of any
16 courses and if so, under what conditions.

17 As to the six factual findings made by POST staff, the Commission
18 specifically finds, after weighing the evidence presented by both parties, that the
19 evidence SUPPORTS those findings. ITR's attacks on POST's investigative
20 findings are largely in the form of *ad hominem* attacks on POST and its
21 investigator, and self-serving denials that are largely unpersuasive.⁵ To the extent

22 ⁴ The Commission notes that this action (decertification) did not, as their
23 counsel indicated at hearing, deprive these individuals of any license or right to
24 teach these courses as a profession; it only removed POST's certification of the
25 courses they taught, leaving them free to teach such courses, but only as courses of
instruction not certified by POST.

26 ⁵ ITR's counsel, at the hearing, stated that he believed that POST's hearing
27 procedure improperly placed the burden of proof on ITR, and that the burden of
28 proof should instead be on POST staff to demonstrate the correctness of their
actions. Even if the burden of proof was on POST staff to prove the correctness of

(continued...)

1 that those statements are inconsistent with these finding, the Commission finds
2 them to lack credibility.

3 Accordingly, the Commission finds that:

4 1. ITR failed to adhere to provisions of the safety policy approved as a
5 condition of certification of the course.

6 2. ITR used instructors who are not approved as a condition of
7 certification of the course.

8 3. ITR departed from the content of the course specified in the approved
9 expanded outline and hourly distribution for the course.

10 4. ITR improperly and incorrectly prepared distraction device munitions.

11 5. ITR allowed experimental use of explosive materials not approved
12 within the certification of the course.

13 6. ITR engaged in experimental deployment of equipment and munitions
14 that exceeded the experience and competence of all instructional personnel who
15 were present at the scene.

16 However, the Commission does recognize that the areas in which ITR
17 teaches are subject areas that do involve potential danger to instructors and students
18 and that ITR has taught such courses for many years with no reported injury to
19 students or instructors until the present injury. The Commission recognizes that the
20 first presentation of the course took place on February 23 and 24, 2011, with no
21 injury. The Commission also recognizes that instructors Bliss and Tisa are
22 recognized as having considerable expertise in the subject areas in which the
23 Commission has previously certified them to instruct.

24
25 _____
25 (...continued)

26 their actions, the Commission finds that staff met the burden of proving that
27 decertification of all courses pending an appeal was correct, and has further proved
28 that ITR's actions, as set forth herein, warrants the determinations of the
Commission as set forth herein.

1 While such courses are extraordinarily valuable for California law
2 enforcement, the Commission will not tolerate deviation from, among other things,
3 course safety requirements, approved course outlines, and approved instructors.
4 Strict compliance with all other conditions and prerequisites to the giving of POST
5 certification for law enforcement courses will be required. ITR should be aware
6 that any further violations will be subject to the close scrutiny of the Commission
7 and may result in complete decertification of ITR's entire course load, now and in
8 the future, and may result in permanent loss by Mr. Bliss and Mr. Tisa of their right
9 to give instruction or assistance in any POST-certified courses. Student safety in
10 POST certified courses is of paramount importance, and further violations will not
11 be tolerated.

12 In violating POST Regulations and Guidelines, as set forth above, ITR is
13 subject to discipline under POST Regulation 1057 (b) for its failure to comply with
14 the requirements set forth in Regulations 1052-1055. ITR is also subject to
15 discipline under POST Regulation 1057 (c) for other causes warranting
16 decertification, as determined by the Commission. Here, those causes include
17 several lapses in compliance by ITR with POST requirements for continued
18 certification that violate the trust placed by POST in those that conduct POST
19 certified training.

20 **DETERMINATIONS**

21 **I. DISTRACTION DEVICE BREACHING INSTRUCTOR COURSE**

22 Accordingly, the Commission determines that ITR's Distraction Device
23 Breaching Instructor Course (CCN 1025-33566) was properly decertified and the
24 Commission affirms the decision of staff insofar as that course was decertified.
25 The Commission notes that although ITR appealed this decision, its counsel took
26 the position in correspondence to the Commission and in oral argument that this
27 course was, in fact, *properly decertified* and *agreed* that the Commission *should*
28 continue to keep that course decertified. The Commission disagrees with ITR,

1 however, insofar as the rationale behind a decision to continue the decertification of
2 the course. The course is properly decertified not, as ITR asserts, because it was
3 improvidently certified in the first place, but instead, because ITR engaged in the
4 activities and actions set forth in this Decision.

5 **II. SEDENTARY CLASSROOM TRAINING COURSES**

6 While ITR has violated the Commission's trust in the conduct of its training
7 that involved live fire and explosive breaching, and where a risk of injury to
8 students exists in any such courses taught by ITR, the Commission finds that no
9 such risks exists in mere classroom training where only sedentary instruction
10 occurs. Therefore, ITR may resume teaching any course, if it has any, in which
11 students are required to do nothing more than passively receive, in a sedentary
12 manner, classroom information from POST-approved instructors - consistent, of
13 course, with the course outline and all POST certification requirements for that
14 course. The Executive Director shall takes steps to immediately determine which
15 course(s), if any, of those that have been decertified, so qualify as consisting of only
16 sedentary classroom presentations with no practical application or hands-on training
17 by the students, and shall notify ITR as soon as such determinations have been
18 made. Such courses, if any, shall be returned to active status and they shall no
19 longer be noted in the Commission's records as being decertified.

20 ITR is cautioned, however, that it must strictly comply with all of the
21 Commission's certification requirements in the teaching of all courses.

22 This ruling does not excuse ITR from adherence to and compliance with, nor
23 does it require POST staff to waive, any other requirement to which ITR would
24 normally have been subject to. Staff is authorized, of course, to ensure compliance
25 with all regulations in all courses taught by ITR.

1 **III. OTHER COURSES INVOLVING PRACTICAL APPLICATION BY**
2 **STUDENTS BEYOND SEDENTARY CLASSROOM**
3 **INSTRUCTION**

4 Safety of students undergoing POST-certified training is of paramount
5 importance. While decertification of any other course taught by ITR involving
6 non-sedentary, practical application by students, is supported by the facts proven by
7 staff, the Commission will nevertheless offer ITR an opportunity to demonstrate
8 that continued decertification of those courses is unwarranted, by a sufficient
9 demonstration by ITR, as set forth herein, that it understands and will comply with
10 all POST requirements of certification, sufficient to satisfy POST staff. The
11 Commission will allow the decertification of any such courses to be reversed, and
12 any course returned to active status, *only* upon the satisfactory completion of an
13 audit by POST staff, and *only* under the following conditions.

14 All courses other than the Distraction Device Breaching Instructor Course
15 identified in Section I and any purely sedentary classroom courses identified in
16 Section II, will remain suspended from presentation by order of the Commission
17 until and unless:

- 18 1. As set forth herein, for each course, the Commission, through a review
19 process, has first obtained and received sufficient assurances (the sufficiency of
20 which may be determined in POST's complete discretion) that ITR understands
21 and will strictly comply, in each such course, with all POST-mandated course
22 certification and presentation requirements, will comply with all POST
23 Regulations and Safety requirements, and that the failures, enumerated herein,
24 demonstrated by ITR in the Destructive Device Breaching Instructor Course
25 shall henceforth no longer occur in any course presentation, *and*
26 2. ITR's next presentation of the course successfully passes an audit and
27 review of its presentation of the course, conducted by POST staff attending the
28 presentation, and paid for by ITR at ITR's expense, as also set forth herein.

1 The Commission recognizes that POST staff has limited resources and that
2 the requirements imposed upon it by this Decision are resource intensive and are
3 imposed upon POST staff through no fault of their own, but through the failures of
4 ITR. Therefore, ITR must understand that this process will be one that will, and
5 must, take some period of time to complete. ITR is directed to identify to POST
6 staff which courses it wishes to seek to teach, in whatever priority order ITR
7 identifies. POST staff shall endeavor to use its limited resources to work with ITR,
8 auditing one course at a time. POST staff shall respect, to the extent practicable,
9 ITR's identification of which courses it wishes to have audited by order of priority.
10 The audit shall consist of the following two steps.

11 In the first step, ITR shall work with POST staff while staff conducts a
12 review of each course with ITR to ensure ITR's compliance with accepted
13 regulatory and safety standards in the presentation of the course. If ITR cannot
14 satisfy staff that it is in compliance with safety and other POST regulatory
15 standards, the course will remain decertified. Should ITR satisfy staff that its
16 presentation of any such course is in compliance with POST requirements, and will
17 be presented in a way that places paramount importance on student safety, the
18 course shall be provisionally removed from its suspended/decertified status and
19 shall be permitted to be presented on a one-time basis, with POST staff to
20 physically audit the course presentation *at ITR's expense*. Should this audit of the
21 actual course presentation result in a finding that the course is being instructed by
22 ITR in a manner that is consistent with POST requirements, the course shall be
23 removed from its suspended/decertified status, and, assuming all other requirements
24 for certification are and continue to be met, may then be re-certified. If not, then
25 the course shall remain decertified. The Executive Director shall periodically
26 report to the Commission the status of the audit process.

1 Again, as set forth above, nothing in this ruling is intended to excuse ITR
2 from adherence to and compliance with, nor requires POST staff to waive, any
3 other requirement to which ITR would normally be subject to. Staff is authorized
4 to ensure compliance with all regulations in all courses taught by ITR.

5 This decision is effective immediately.

6
7 **IT IS SO ORDERED.**

8
9 Dated: July 9, 2012.

10 _____
11 Lai Lai Bui
12 Chair of the *Commission*
13 *On Peace Officer Standards and*
14 *Training*