the overview that you presented to us in exhibit Q reflects
the current state of the approach to training, the use of
equipment in conjunction with operations?
BRIG BREYTENBACH: That is correct.
MR TIP SC: I want to touch very briefly
on an aspect of the basic training programme that you have
dealt with, and it might be useful for us to have reference
to slide number 18, of your presentation. Do you have it,
Brigadier?
BRIG BREYTENBACH: Yes, I do.
MR TIP SC: You will see there that you
deal with the basic training that is offered to all
candidate policemen, is that correct?
BRIG BREYTENBACH: That is correct, yes.
MR TIP SC: And there in slide 18, you
say you say that "crowd management is presented
theoretically in the programme, and that it is presented at
this level only in respect of first responders in crowd
management, before specialised trained members arrive."
BRIG BREYTENBACH: That is correct, yes.
MR TIP SC: I take it that that implies
that the basic training at this level is of a very
elementary sort.
BRIG BREYTENBACH: That is correct. This
is for the police officer on patrol that comes around a
spontaneous crowd forming, how to report that, and know the
legislation, when it's transgressed or not.
MR TIP SC: The reference to specialised
trained members, would that be a reference to public order
policing? I am going to call them POP.
BRIG BREYTENBACH: Yes, that is a
reference to public order police members or other units
that can assist with the crowd situation.
MR TIP SC: Other units might assist but
the specialist training is given only to POP.
BRIG BREYTENBACH: That is correct, yes.
MR TIP SC: And just to be sure that we
are clear, a unit such as the STS, which you describe as an
elite technical assault unit, that would not be concerned
with crowd management training, is that right?
BRIG BREYTENBACH: Not on a day to – no,
they aren't concerned with crowd management training.
MR TIP SC: And broadly that will be true
also of the TST and the NIU?
BRIG BREYTENBACH: That is correct, yes.
MR TIP SC: Brigadier, it's clear from
your presentation that the police service is very concerned
to avoid loss of life and serious injury in crowd
management circumstances.
BRIG BREYTENBACH: That is correct, yes.
24 and I believe that is the reason why police officers are
23 think that the shotgun with rubber, would be sufficient,
22 situation turns around into a violent situation, I don't
21           BRIG BREYTENBACH:          If a crowd management
20 purposes.  Is that fair?
19 by a POP member in order to be used for crowd management
18 respect of side arms, but a side arm would not be carried
17 that we will clarify the position with other witnesses in
16           MR TIP SC:          Well, I am sure, Brigadier,
15 need to be armed.
14 necessarily encountering crowd management situation, they
13 that they would because it's going to a scene not
12 POP members would be carrying a pistol or not, but I assume
11 not as such the pistols, so I cannot definitely say that
10 I can just say we focus on the shotgun during the training,
9           BRIG BREYTENBACH:          I can just say, sorry, I
8 can call it that.
7 for personal protection in other cases.
6           BRIG BREYTENBACH:          That is correct, yes.
5 Public Order Policemen is issued with shotguns for crowd
4           BRIG BREYTENBACH:          That is correct, yes.
3 non-lethal equipment.
2 in pursuance of that objective, that POP members carry only
1           MR TIP SC:          And we have heard, presumably

again, the course focuses on non-lethal methods of dealing
with crowd management.
MR TIP SC:          And the shotgun is issued
only for the discharge of rubber bullets, or as we now know
rubber balls.
BRIG BREYTENBACH:          That is correct, yes.
MR TIP SC:          Yes. I am going to return to
that shortly, but I wanted firstly just to take you to
slide 23, where you describe the mandate that is given to
public order policing.
BRIG BREYTENBACH:          Yes.
MR TIP SC:          And you describe in essence,
that it is there to do, to deal with crowd management and
crowd unrest situations, and then there's a phrase that
goes as follows, “where classic policing strategies are not
equipped to deal with a situation,” I wonder if you could
just clarify for us what that phrase entails, “classic
policing strategies?”
BRIG BREYTENBACH:          That would be the
people that we spoke about in the basic police training,
that they've only a basic understanding of crowd
management. They would get to a scene, maybe inform the
person on the scene that this is an illegal gathering, and
they could not deal with it, and that is classical policing
that we are referring to and that is when the specialists,
which is POP, is called in to deal with the situation.
MR TIP SC:          Crowd management and crowd
unrest situations permit of course of a wide variety of
circumstances that a POP unit might confront.
BRIG BREYTENBACH:          That is correct, yes.
MR TIP SC:          One of those might be where
there's a large crowd of angry people, perhaps some
way of weapons, but who are determined to
move towards an objective somewhere, that the police do not
wish them to reach.
BRIG BREYTENBACH:          It can be –
MR TIP SC:          Sorry, I was just waiting for
the interpreter. Now, I will add to that, it would then be
up to essentially the POP unit on the scene to stop them
from moving towards that place.
BRIG BREYTENBACH:          Well, Sir, if I can
understand, you say the police do not want them to go to a
specific place because of a certain reason that they might
cause harm or damage or so forth. Yes, then it would be
public order police to channel them to a certain area, or
to avoid them from reaching that place or to disperse the
crowd and using other methods to protect that target, if I
can call it that.
MR TIP SC:          It's in that context that I
want to turn to look with you at certain features of the
equipment which POP members carry with them. And to assist
you, the purpose of those questions will really be to test
whether a POP unit would have the capacity it stop a crowd
of that description. Brigadier, you deal with equipment in
respect of – at slide 27, if I can ask you to turn to that.
BRIG BREYTENBACH:          Yes.
MR TIP SC:          You have it already?
BRIG BREYTENBACH:          Yes.
MR TIP SC:          I notice that in the schedule
of equipment that is set out there, there is no reference
to barbed wire.
BRIG BREYTENBACH:          That is correct, yes.
The equipment referred to here is for the personal issue of
the members. It also doesn't refer to the water canon,
which is a separate course for training those operators.
MR TIP SC:          Well, how integral to the
operations and functions of the POP is an item such as
barbed wire, the deployment of barbed wire?
BRIG BREYTENBACH:          Well, Sir, as much as
I would like to help, at this stage, I think we are getting
into techniques, but I believe that the techniques were
asked to a specialist. My experience is that the barbed
wire is used by crowd management for channelising crowds
into certain areas, or cordoning off. But that's to the
extent that I can comment on the actual use of it, and I
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1 think we should refer that to the specialist, if you don’t mind.
2 MR TIP SC: I gather from that answer,
3 Brigadier, that you are not in a position to tell us about
4 the particulars of the training that is given to POP
5 members in respect of the use of barbed wire, where and
6 when it should be used, how far away it should be used,
7 questions of that sort.
8 BRIG BREYTENBACH: That is correct,
9 because it will coincide with certain tactics that is used.
10 MR TIP SC: Well, let us turn our
11 attention to the double bore rubber rounds. Now Brigadier,
12 you’ll correct me if I’ve misunderstood the position, but
13 we have reference in this Commissioner to a circular from
14 the divisional commissioner operations in December last
15 year, 2011, declaring that with immediate effect rubber
16 bullets of the kind that have previously been used were no
17 longer to be used under any circumstances. Are you
18 familiar with that?
19 BRIG BREYTENBACH: I can recall there was
20 a circular in that regard, yes.
21 MR TIP SC: And was that given effect to,
22 within training?
23 BRIG BREYTENBACH: In training the
24 curriculum was not adjusted and we continued training them
25 with first, before you carry on.
1 with it as 40 millimetre, because that’s the only non-lethal
2 rubber than you can get, and 12 gauge. 12 gauge has two
3 balls in it. 40 millimetre is a cylindrical type of
4 rubber, and if you can just clarify which one you are
5 referring to, and I cannot recall what stood in that
6 specific circular, but if you refer to rubber bullets, the
7 police talk about 12 gauge there, rubber balls in a bullet,
8 been shot from a shot gun. And if I can recall, they
9 referred to a 12-guage 2-ball rubber.
10 [10:37] MR TIP SC: From a training perspective,
11 what is the view of your section and you personally on the
12 effectiveness of a rubber round of that kind in stopping an
13 angry advancing crowd of people?
14 BRIG BREYTENBACH: You ask me for my
15 opinion on the use of 12-gauge rubber ammunition and I
16 believe that these, it falls in the escalation of force
17 that you are using and that it’s my opinion that it does
18 have a place in the armament of police officers when it
19 comes to dealing with crowds.
20 MR TIP SC: Brigadier, perhaps I can
21 shorten these questions, which I’d be glad to do if I can,
22 by just repeating to you a portion of an opening submission
23 made by my learned friend Mr Semenya on behalf of SAPS in
24 these proceedings, and he said the following. This was as
25 part of a description of what happened at Marikana. I
26 haven’t lost sight of the fact that you were not at
27 Marikana, but that’s not really the thrust of why I’m going
28 to read this to you, and the following was said. “The
29 protesters defied this and attempted on three occasions to
30 breach the Police barbed wire. Teargas, stun grenades,
31 water canons and rubber bullets were used to try and stop
32 them from breaching the Police line. This did not deter
33 them. They had protected themselves from rubber bullets by
34 wearing numerous layers of clothing and covering themselves
35 with a blanket. Chair and members of the Commission, you
36 will hear evidence about the ineffectiveness of police
37 issue rubber bullets in such circumstances,” and that is
38 the end of what learned counsel had to say on that topic at
39 that stage, and it’s with regard to statements of that kind
40 and also perhaps what we have seen on video material here
41 that I’m raising this question for you again from the
42 perspective of what members are trained to do and what they
43 are equipped with in order to achieve their duties. I’m
44 going to ask you to comment on that, but again to assist
45 you, I’m going to add the following, that the real thrust
46 of these questions is the following. If there is a
47 situation where there is an angry advancing crowd and the
48 POP is not able to bring them to a stop, then what is the
next step? And the concern there is of course the possibility that the next step is the use of live ammunition.

BRIG BREYTENBACH: Firstly I have to say, the use of sharp ammunition would be a last resort in any case for any police officer to defend himself or the life of others. The next level would be to continue with those non-lethal methods that Police are issued with because as I said earlier, in basic training already we start with the right of life and where people are taught according to article 49 of the Criminal Procedure Act and the use of force, and if a police officer would use sharp ammunition, that would be the last resort.

In peaceful demonstrations that turn violent, in numerous cases it is found that these tactics of using non-lethal is very effective; using rubber bullets, water canons and teargas to disperse crowds, that I’ve seen. If a protest turns so violent that those things become obsolete, that they do not work anymore, then one has to ask the question what is the next level, and that’s your question, and I doubt whether a police officer will shoot to disperse a crowd with live ammunition, and I would think that is his decision to defend his life when he uses sharp ammunition.

MR TIP SC: Brigadier, I don’t propose to pursue this at any length, but I do want to repeat the question and to make clear precisely what the focus of it is. We’re looking at a situation where there is a sensitive - let me be concrete about it. Suppose that there is a procession of dignitaries moving along a street a block away and that there is a crowd of protesters who are very opposed to those particular dignitaries and who would like to get close enough to at least interfere with the procession and to make their views known. The crowd is determined to get there and there is a unit of POP who are a block away and who are there to prevent them from getting there. As set out in the passage from our learned friend Mr Semenya, teargas, water canons, rubber bullets, stun grenades were used; it didn’t deter that group, and let us say it doesn’t deter the hypothetical group I’m putting to you. It is with respect not an answer to say well they say it doesn’t deter the hypothetical group I’m putting to you. That’s not a premise. When I say overrun, it means it and it has failed and the crowd is about to overrun them. Does it mean that the POP unit in those circumstances couldn’t contain the crowd, couldn’t stop it and it has failed and the crowd is about to overrun them? BRIG BREYTENBACH: When you say overrun the police officers, I assume that that goes hand in hand with violent attack on those police officers that’s standing on the line, because that’s the only -
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1. describe in slide 24?
   2. BRIG BREYTENBACH: That is correct, yes.
   3. MR BRUINDERS SC: You don’t know whether those POP members had previously carried out a public order policing exercise involving thousands of workers engaged in an unlawful strike, many of them armed?
   4. BRIG BREYTENBACH: No, I don’t know.
   5. MR BRUINDERS SC: What you can say is that you’d expect because of the focus of their training, Public Order Policing to be responsible for and to carry out the policing exercise in managing the situation I just described?
   6. BRIG BREYTENBACH: That is correct, yes.
   7. MR BRUINDERS SC: And as I also understand your evidence, you don’t know what the plan was for managing and policing the situation on the koppie at Wonderkop.
   8. BRIG BREYTENBACH: No, no, I was not aware of that.
   9. MR BRUINDERS SC: Are POP members trained about how to respond when things don’t go according to plan?
   10. BRIG BREYTENBACH: If I’m correct you’re asking, they’ve got a plan, they’re executing it and it doesn’t go to, according to the plan, if they know what to do next, and I would say that is when they regroup and take another decision, implement a new tactical plan.
   11. MR BRUINDERS SC: And that’s what they’re trained to do –
   12. CHAIRPERSON: Sorry, Brigadier, that wasn’t an answer to the question. The question was, are POP members trained how to respond when things don’t go according to plan?
   13. BRIG BREYTENBACH: Chairperson, I cannot comment on that. I cannot recall that I read it out here from the presentation, and that, if I can say, that would be a tactical decision, a command decision by the members on the ground how to respond next.
   14. MR BRUINDERS SC: When you said that if things don’t go according to plan you expect the POP to regroup and formulate a new plan, did you mean to say that is what they are trained to do?
   15. BRIG BREYTENBACH: Sir, I cannot comment on that unfortunately because I do not see it in the slides, and as I earlier said, this slides was prepared by a team of members and I would prefer if that question can be directed to a specialist in the POP environment. I do not see it in the slides, which means there’s no specific subject to that.
   16. CHAIRPERSON: To whom must Mr Bruinders then direct those questions? Who is the person who gave you the information which you incorporated in your presentation, who will be able to deal with the points that Mr Bruinders is now raising with you?
   17. MR SEMENYA SC: Chair, if I may be of assistance. It is Colonel Scott who will deal with those issues.
   19. BRIG BREYTENBACH: Yes, I agree with what you are saying.
   20. MR BRUINDERS SC: Would recruiting and reformulating the plan, would that be, as far as you are concerned as a trainer, would that be a standard way of best dealing with a situation that doesn’t go according to plan?
   21. BRIG BREYTENBACH: Well, Sir, not as a trainer of public or the police, but as a coordinator of it, those decisions get taken on the ground, it is not a sit down and discuss it again, that’s what I would expect, but where the commanders would take lead and say, let’s employ this tactic or do this or that, that’s what I as a police officer think that they should be doing.
   22. MR BRUINDERS SC: Do you think that, - or sorry, can I rephrase that, as a coordinator would you say that that standard that you expect would be reasonable to expect from the commanders in charge of a situation that doesn’t go according to plan?
   23. BRIG BREYTENBACH: That is correct, yes.
   24. MR BRUINDERS SC: Thank you, Chair, I have no further questions.
   25. CHAIRPERSON: Thank you, Mr Bruinders. Mr Bizos?
   26. MR BIZOS SC: Who had nine years experience as a police officer when fundamental constitutional changes took place in South Africa?
   27. BRIG BREYTENBACH: Yes, Sir.
   28. MR BIZOS SC: What was your rank in 94?
   29. BRIG BREYTENBACH: I think I was a lieutenant, I am not sure.
   30. MR BIZOS SC: But already an officer?
   31. BRIG BREYTENBACH: I think so, yes, 94.
MR BIZOS SC: Now it has been suggested quite seriously that the police force was militarised during your nine years of experience as a police officer, would you agree with that assertion?

BRIG BREYTENBACH: So you’re referring between 85 and 94 then?

MR BIZOS SC: Well, let’s confine it to the period where you wore that kaki uniform, was it the kaki uniform?

BRIG BREYTENBACH: Sir, I’ve only worn blue in my whole life, I’ve never been part of units that were kaki or the camouflage, but I believe that is the period that you are referring to, yes.

MR BIZOS SC: Yes, was it or was it not a militarised unit or force, a militarised force?

BRIG BREYTENBACH: Sir –

MR BIZOS SC: It was being accused of it, it has been accepted but I want your view, did you consider it a militarised force?

BRIG BREYTENBACH: No, I did not consider it a militarised force -

MR BIZOS SC: So the people who say so are wrong?

BRIG BREYTENBACH: Sir, you’ve asked for my opinion and that’s what my opinion is.

MR BIZOS SC: Yes, if I were to put to you that the reason why it was referred to as a militarised force is because it believed in shooting first and asking questions later. It may be a simplification but was that the common man’s vision?

BRIG BREYTENBACH: Sir again, in my experience I did not experience that because I was not involved with that and I cannot speak for the common man, as you refer to.

MR BIZOS SC: Are you not a common man?

BRIG BREYTENBACH: I am on the side of the police now, if you say, because you’re referring to me as a police officer.

MR BIZOS SC: Yes, police officers do not shut their ears or distance their brains from the common feeling of the people in the country or should they?

BRIG BREYTENBACH: I cannot speak for other police officers, except myself.

MR BIZOS SC: Are you aware that before 94, during the apartheid regime there were numerous massacres of people who gathered, being shot dead, are you aware of that?

BRIG BREYTENBACH: Yes, I am aware of that.

MR BIZOS SC: From the time of 19th November 2012 Marikana Commission of Inquiry Arbitration
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1. BRIG BREYTENBACH: I cannot say I will recall specific courses, but yes, there was a general change in the approach of policing and I was also part of that, yes.

2. MR BIZOS SC: What was the attempt to achieve what, that all this trouble was taken for the period of four years, from 1994 until the end of that decade to transform the police force, what did you learn, what were you told, how should you behave vis-a-vis the ordinary people of South Africa?

3. BRIG BREYTENBACH: I cannot recall specific training interventions that I attended but I know about the Human Rights courses, the Batho Pele principles, so there was, yes, there was an approach change in the police.

4. MR BIZOS SC: Did it affect your mindset in relation to the safety of all the people in South Africa?

5. BRIG BREYTENBACH: Yes, it definitely did.

6. MR BIZOS SC: Do you - had you received promotion to almost the highest rank in the police force?

7. BRIG BREYTENBACH: Sorry, can you just repeat the question, I didn't get that?

8. MR BIZOS SC: You accepted that and it is probably one of the reasons why you achieved the prominence that you have in the police force.

9. BRIG BREYTENBACH: That's correct and that's why I am a proud police officer today.

10. MR BIZOS SC: During that period you name one similar event of what happened in the past or what happened in Marikana on the 16th of August this year, were there any massacres during that period?

11. BRIG BREYTENBACH: The period 94 to 98, -

12. MR BIZOS SC: - not that I can recall, Sir.

13. MR BIZOS SC: Not that you can recall. Does the spirit of 1994 to 1998 still prevail in the police force that you are now serving?

14. BRIG BREYTENBACH: Yes, according to me, yes.

15. MR BIZOS SC: Yes? Sir, has anyone in the police force or in any political, high political office questioned the wisdom of the attitude of that period?

16. BRIG BREYTENBACH: Not that I know of.

17. MR BIZOS SC: Not that you know of, let me remind you. Do you remember the name Steve Tshwete, the Minister of Safety and Security?

18. BRIG BREYTENBACH: Yes, I do.
24 showing that alternative actions could have been taken at
23 difficulty.
22 speaking for myself, please prima facie to say I have
21 questions we're asked to answer, please proceed, but
20 connection between the questions you're asking and the
19 minister to say something like that.
18 MR BIZOS SC:          Yes.
17 CHAIRPERSON:          May I please ask, what the
16 views on the point will assist us to answer the questions
15 pointed is a matter for him. I am not sure whether his
14 witness thinks about what's right or wrong when a gun is
13 MR BIZOS SC:          Do you think that it is in
12 that.
11 to police to use proportional force, the pointing of a
10 police officers were killed and maybe that sparked the
9 was said was when there were huge police killings where
8 of the person that pointed it?
7 BRIG BREYTENBACH:          I believe the time it
6 saying that it is necessary to protect himself or the people that he
5 I am not sure whether his life is threatened then he should take the
4 on specific incidences, but if a person's life is
3 threatened, that member have to take the decision to shoot or
2 must he use proportional force and not
1 CHAIRPERSON:          That's not, with respect,
0 10 to police to use proportional force, the pointing of a
9 firearm, the pointing of a firearm must lead to the death
8 of the person that pointed it?
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3 threatened, that member have to take the decision to shoot or
2 must he use proportional force and not
1 CHAIRPERSON:          That's not, with respect,
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1 you describe yourself?
2 BRIG BREYTENBACH: A training coordinator.
3 MR BIZOS SC: A coordinator, how do you coordinate something that you are so ignorant about?
4 BRIG BREYTENBACH: Sir, with all due respect, there is hundreds of courses in the police of which I cannot recall all the curriculums. My function is to identify the need or the need is identified for a specific training area, the need is then passed down to our division, we draw up a yearly training programme in which we then address that need. The courses that are utilised to train the people is identified and then we make it happen and we would put the facility, the members that are nominated, the funding, coordinating the necessary trainers to be present at the intervention so that they can present that training. I am not ignorant to it, if a matter is raised during a training intervention I would then facilitate that the research department look into that specific aspect if I can't address it myself, but as I from the beginning said, I am not a trainer in all these aspects. I am not the task force, a special task force to train the people is identified and then we make it happen as I was asked to come and give evidence it was to give a broad outline of the curriculums so that the committee can understand the subjects that are taught to the trainees.
5 MR BIZOS SC: I can understand what you say but the issue of when to shoot to kill must be and ought to be a very important question in the minds of everyone in the police force, would you agree with that?
6 BRIG BREYTENBACH: Yes, I do.
7 MR BIZOS SC: You as a rookie must have asked yourself when am I entitled to kill a fellow human whatever wrong he/she may have done, did you ask yourself that question?
8 BRIG BREYTENBACH: Yes, Sir, I was taught that in my basic police training.
9 MR BIZOS SC: Do you share the view of General Cele, "who are they to call us brutal, those who sit with their books in air conditioned offices," you see Mr Chairman, I am very sensitive to this issue of air conditioning, "while our officers have to go out there and respond to violent activities such as heists, armed robberies and hijackings?" Do you know that General Cele said that?
10 BRIG BREYTENBACH: Yes, I am aware that he said that.
11 MR BIZOS SC: And did you ask yourself or did any of your subordinates ask you, Brigadier, what is this Mr Commissioner Cele saying, how can you compare heists, armed robberies and hijackings? We in the popular office, POPS, we want to know what do we do in a situation in which there are 3 000 people, some of them as the minority are armed, they are hungry, they are thirsty, they are disappointed because they haven't got any wages for the last six weeks or so and they misbehave, how do we deal with it? Do we shoot indiscriminately and possibly kill someone who hasn't committed any crime other than possibly to attend an unlawful gathering? Aren't those questions discussed with your fellow officers, the people under you, were they not discussed, are they not discussed, what answers do you give them?
12 CHAIRPERSON: Mr Bizos, I think the interpreter who –
13 MR BIZOS SC: Sorry -
14 CHAIRPERSON: - is very good in interpreting long questions, but I think you've gone rather far down the line of long questions, I think you should give him a chance to catch up.
15 MR BIZOS SC: I'll try.
16 BRIG BREYTENBACH: I can recall when General Cele said that and I did not take it as shoot first and ask questions later, because I have respect for life. When I was asked this question by fellow police officers, can we just now shoot indiscriminately, I replied by saying the law still stands, irrespective of what the General said. The way I interpreted General Cele's statement was to defend yourself, be vigilant, defend yourself and not become statistics as part of the policemen that are killed on a daily basis and that has been my standpoint from day one that I joined the police service, they have to act within the law.
17 MR BIZOS SC: Have you said this as part of the training process that we have to make that distinction?
18 BRIG BREYTENBACH: I am not a guest speaker but whenever I have interactions with trainees, whether I visit the course or whether it were functions that I had closed off for them, that would be my point of view if I was asked this and that is the point of view that I always take with trainees. The curriculum wasn't changed to take out the law after General Cele said that, the curriculum remained the same with the Criminal Procedure Act in place.
19 MR BIZOS SC: You decided to put Exhibit Q together, did you?
20 BRIG BREYTENBACH: It was a group effort, yes Sir.
21 MR BIZOS SC: But you headed it. I would
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1. like to draw -

2. CHAIRPERSON: You nodded your head, but

3. he didn’t say yes, so -

4. BRIG BREYTENBACH: Yes, sorry.

5. MR BIZOS SC: For the purposes of the

6. record, the vision of SAPS is to ensure quality, education, training and development, ETD, in support of creating a safe and secure environment for all people in the Republic of South Africa. You chose to put that in the forefront of the document that you drew?

7. BRIG BREYTENBACH: Yes, I did, Sir.

8. MR BIZOS SC: Because you believe in it?

9. BRIG BREYTENBACH: Yes, I believe in that.

10. MR BIZOS SC: Have you seen the plan of Colonel Scott?

11. BRIG BREYTENBACH: No, I have not seen his plan.

12. MR BIZOS SC: You were not asked which units that you have trained or you are responsible for training, ought to participate in what was happening on the koppie?

13. BRIG BREYTENBACH: No, I was not asked who participated there.

14. MR BIZOS SC: If you were asked whether people with experience in arresting or killing hijackers or terrorists or bank robbers or ATM robbers, what would your advice to him have been regarding to your knowledge of the training of these people?

15. BRIG BREYTENBACH: Sorry, can you rephrase the question, I missed the first part of it?

16. MR BIZOS SC: If he had asked you or if he had told you, if he had asked you, I intend using people who have special experience to put an end to heists, bank robberies, committed by small groups with very sophisticated weapons, that he intended to use persons of that background with that education as to how to distinguish between life and death and their reactions, what would you have advised him?

17. BRIG BREYTENBACH: If anybody would have asked me if I would use the special task force or NAU or TRT for a crowd management situation I would ask, why is it necessary to use them and if it is not a crowd management situation and maybe a violent crime scene, then that can be justifiable.

18. MR BIZOS SC: Justifiable, yes, and if he were to give you the facts honestly, that there were 3 000 people mixed, some, very few are armed with firearms, a few with sharp instruments, axes, pangas, spears, many of them with sticks and a very substantial number of them not bearing any arms, but at worse they may be guilty of attending or unlawful gathering, what role if any, did these people, would those people, expert at killing others have served, how could they distinguish between the “innocent” striker and those who had deadly weapons?

19. BRIG BREYTENBACH: Those people that you refer to as being trained to kill, I suppose you refer to the task force and these highly other trained units. As I indicated in the earlier slides, they all have the same basic police training. I cannot comment on the way that the operational commander thought that day, why he would bring them in, I cannot comment on that. If I have all the facts in front of me, stating that there are people that are armed, remember we said earlier that the public or police only have now rubber and pistols, going up against armed police officers, if it was me I would also bring in specialised people that can deal with such situations, but again I can't answer on behalf of the operational commander, what I can say is that the special task force and the NIU and the TRT have a wide skill set that can be applied in many circumstances, and I suppose it is better to come prepared for any eventuality and that might be the reason that they were deployed there.

20. MR BIZOS SC: Was the person who was unarmed and there in order to try and get a better wage a criminal, he was entitled to live or die?

21. BRIG BREYTENBACH: I don’t want to comment on that -

22. MR BIZOS SC: Why -

23. BRIG BREYTENBACH: - because an unarmed person is not necessarily not a dangerous person.

24. MR BIZOS SC: If he is unarmed what harm, immediate harm does he, can he possibly cause on a police officer armed with an R5?

25. BRIG BREYTENBACH: Sir, what I’ve seen previously is policemen bleeding that were thrown with stones, I’ve seen policemen that were hacked to death. I cannot comment on that question. I believe the situation is much more complicated than as you put it, an unarmed person, referring to only one while you earlier said that there were over the 3 000 people. I do not want to comment on that, Sir.

26. [12:02] MR BIZOS SC: I want to put it straight to you that we are going to argue that your attitude is that of Pontius Pilate who washed his hands and was not prepared to pass judgment on what you may have done or advised.

27. CHAIRPERSON: I'm not going to allow him to answer that question. Pontius Pilate was the governor of Judea, responsible for what was happening. This witness
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>the tragedy that we are – you will agree that I was not</td>
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<td>2</td>
<td>alone in considering the relevance, the pre-apartheid</td>
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<td>3</td>
<td>history, because the Minister appears to have taken it into</td>
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<td>4</td>
<td>consideration what ought to be happening in the Police</td>
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<td>5</td>
<td>Force. Would you agree with that?</td>
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<td>6</td>
<td>BRIG BREYTENBACH: Yes, Sir.</td>
</tr>
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<td>7</td>
<td>MR BIZOS SC: Would you agree that there</td>
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<td>8</td>
<td>are various recommendations -</td>
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<td>9</td>
<td>CHAIRPERSON: Just to be fair, have you</td>
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<td>10</td>
<td>got a spare copy to put before the witness, because he says</td>
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<td>11</td>
<td>he read it but as I understood him to say, he can't</td>
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<td>12</td>
<td>remember all the details.</td>
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<td>13</td>
<td>MR BIZOS SC: Unhappily we actually only</td>
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<td>14</td>
<td>came across it last night, Mr Chairman, and we only -</td>
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<td>15</td>
<td>CHAIRPERSON: Ms Pillay is standing up,</td>
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<td>16</td>
<td>advancing towards the witness. I suspect she's coming to</td>
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<td>17</td>
<td>your aid.</td>
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<td>18</td>
<td>MR BIZOS SC: We are fortunate in having</td>
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<td>19</td>
<td>Ms Pillay in running the exhibits in particular.</td>
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<td>20</td>
<td>CHAIRPERSON: - page you're on and where</td>
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<tr>
<td>21</td>
<td>he will find the passage you're going to put to him.</td>
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<td>22</td>
<td>MR BIZOS SC: On page 7 where SAPS</td>
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<tr>
<td>23</td>
<td>Standing Order No. 262 on Crowd Management, and the</td>
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<td>25</td>
<td>Standing Order No. 262 in a clear and coherent manner</td>
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>states that the use of force must be avoided at all costs</td>
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<td>2</td>
<td>and members deployed for the operation must display the</td>
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<td>3</td>
<td>highest degree of tolerance. The use of force and</td>
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<td>4</td>
<td>dispersal of crowds must comply with the requirements of</td>
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<td>5</td>
<td>9(1) and (2) of the SAPS Act. The Standing Order further</td>
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<td>6</td>
<td>puts in place the procedures to be followed by the Police</td>
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<td>7</td>
<td>if negotiations fail in a public gathering which exposes</td>
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<td>8</td>
<td>the lives of people and property to danger. At the same</td>
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<td>9</td>
<td>time the Standing Order also prescribes the requirements</td>
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<td>10</td>
<td>which are to be followed by the Police if the use of force</td>
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<td>11</td>
<td>becomes unavoidable, and then I want to turn to the last</td>
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<td>12</td>
<td>paragraph on page 8. “During public protest marches, the</td>
</tr>
<tr>
<td>13</td>
<td>right to life of protesters, the Police, and the general</td>
</tr>
<tr>
<td>14</td>
<td>public, may be at stake. The right to life, sometimes</td>
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<td>15</td>
<td>described as the supreme human right, constitutes an</td>
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<td>16</td>
<td>international law that is central in the recognition of the</td>
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<td>17</td>
<td>rights enshrined in international human rights treaties.”</td>
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<td>18</td>
<td>You're aware of that?</td>
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<td>19</td>
<td>BRIG BREYTENBACH: Yes, I'm aware of</td>
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<td>20</td>
<td>that.</td>
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<td>21</td>
<td>MR BIZOS SC: Do you subscribe to that</td>
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<td>22</td>
<td>principle?</td>
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<td>23</td>
<td>BRIG BREYTENBACH: I do, yes.</td>
</tr>
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<td>24</td>
<td>MR BIZOS SC: What steps, if any, did you</td>
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<td>25</td>
<td>take that every police officer you as the teacher, as the</td>
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<p>| Process and would have been in the, or is in the training |
| curriculum of POP. So it is not specifically referred to. |
| MR BIZOS SC: Mr Chairman, this is a |
| document which was in the documents disclosed. |
| CHAIRPERSON: I'm aware of that. |
| MR BIZOS SC: I don't know whether we |
| should put it in as an exhibit at this stage. |
| CHAIRPERSON: Well, if all the documents |
| disclosed aren't exhibits, then I hope they never will be |
| because there are thousands of them, but it sounds from |
| what you said and what I remember of the document, to be a |
| most material document and I suggest you should put it in. |
| I think R, Ms Pillay is the expert on this. R is the next |
| exhibit letter. Is that correct? |
| MS PILLAY: That's so, Chairperson, it's |
| R. |
| MR BIZOS SC: What was it? Exhibit? |
| MS PILLAY: R. |
| MR BIZOS SC: Exhibit R. The name is |
| Policy and Guidelines – Policing of Public Protests, |
| Gatherings and Major Events. Now - |
| CHAIRPERSON: You did mention a date - |
| MR BIZOS SC: The end of August - I'll |
| give you the precise date, Mr Chairman. It was the 29th of |
| August, 2011. 11 and a half months before the advent of |</p>
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<tr>
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<th>Page 1663</th>
<th>Page 1664</th>
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<tbody>
<tr>
<td>1 coordinator, as the brigadier, did you take that this is</td>
<td>1 office.</td>
<td>1 MR BIZOS SC:</td>
</tr>
<tr>
<td>2 repeated over and over again to anyone that has anything to</td>
<td>2 MR BIZOS SC:</td>
<td>2 “Is training done within the context and understanding</td>
</tr>
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<td>3 do with the use of force over a crowd?</td>
<td>3 of the Gatherings Act?” Did you do that?</td>
<td>4 of that regard.</td>
</tr>
<tr>
<td>4 BRIG BREYTENBACH: These things what you</td>
<td>5 BRIG BREYTENBACH:</td>
<td>5 BRIG BREYTENBACH:</td>
</tr>
<tr>
<td>5 just read is in, is part of the crowd management course.</td>
<td>6 that regard.</td>
<td>6 that regard.</td>
</tr>
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<td>6 Standing Order 262 is there; all these acts that you are</td>
<td>7 MR BIZOS SC:</td>
<td>7 MR BIZOS SC:</td>
</tr>
<tr>
<td>7 referring to, and that is what is taught during crowd</td>
<td>8 you made to whom in answer to the Minister’s query.</td>
<td>8 you made to whom in answer to the Minister’s query.</td>
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<td>8 management.</td>
<td>9 BRIG BREYTENBACH:</td>
<td>9 BRIG BREYTENBACH:</td>
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<td>9 MR BIZOS SC:</td>
<td>I want to turn to page 9</td>
<td>10 report.</td>
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<td>10 and read out the passage. “Therefore key questions raised</td>
<td>11 MR BIZOS SC:</td>
<td>11 MR BIZOS SC:</td>
</tr>
<tr>
<td>11 in addressing the implications of the Police use of force</td>
<td>12 report, what steps did you take?</td>
<td>12 report, what steps did you take?</td>
</tr>
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<td>12 in handling public protests are,” mark the next</td>
<td>13 BRIG BREYTENBACH:</td>
<td>13 BRIG BREYTENBACH:</td>
</tr>
<tr>
<td>13 subparagraph carefully, please. “Is the current training</td>
<td>14 earlier, Sir, the curriculum was influenced by this</td>
<td>14 earlier, Sir, the curriculum was influenced by this</td>
</tr>
<tr>
<td>14 of SAPS still relevant and appropriate, theoretical and</td>
<td>document. The curriculum is handed to me and I ensure that</td>
<td>document. The curriculum is handed to me and I ensure that</td>
</tr>
<tr>
<td>15 practical, and do they have proper equipped training</td>
<td>15 it gets presented. Further to that I did not write a</td>
<td>15 it gets presented. Further to that I did not write a</td>
</tr>
<tr>
<td>15 centres?” That’s a matter that should be of great concern</td>
<td>16 report to the Minister to answer the specific questions.</td>
<td>16 report to the Minister to answer the specific questions.</td>
</tr>
<tr>
<td>16 to you, Brigadier.</td>
<td>17 MR BIZOS SC:</td>
<td>17 MR BIZOS SC:</td>
</tr>
<tr>
<td>17 BRIG BREYTENBACH: Sorry, I didn’t get</td>
<td>18 his credit – sorry, you have an objection?</td>
<td>18 his credit – sorry, you have an objection?</td>
</tr>
<tr>
<td>18 the question. Are you asking whether it’s a concern for</td>
<td>19 MR SEMENYA SC:</td>
<td>19 MR SEMENYA SC:</td>
</tr>
<tr>
<td>19 me?</td>
<td>20 It’s not an objection,</td>
<td>20 It’s not an objection,</td>
</tr>
<tr>
<td>20 MR BIZOS SC:</td>
<td>21 Chair, but to say for the record, there will be evidence</td>
<td>21 Chair, but to say for the record, there will be evidence</td>
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<tr>
<td>21 I’ve read you the passage.</td>
<td>22 coming, explaining why we have these things as drafts</td>
<td>22 coming, explaining why we have these things as drafts</td>
</tr>
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<td>22 BRIG BREYTENBACH: Yes.</td>
<td>23 because they arise exactly as a response to the policy</td>
<td>23 because they arise exactly as a response to the policy</td>
</tr>
<tr>
<td>23 MR BIZOS SC:</td>
<td>The question is still to come. What steps, if any, in the last 11 and a half months</td>
<td>24 position taken in the document Mr Bizos is dealing with.</td>
</tr>
<tr>
<td>24 come. What steps, if any, in the last 11 and a half months</td>
<td>25 did you take to ensure that SAPS training is still</td>
<td>25 MR BIZOS SC:</td>
</tr>
<tr>
<td>25 did you take to ensure that SAPS training is still relevant, and if you had taken any steps before the 16th of</td>
<td>26 page 9</td>
<td>26 relevant, and if you had taken any steps before the 16th of</td>
</tr>
<tr>
<td>26 August, what were the steps, and if you didn’t take any</td>
<td>27 evidence. Brigadier –</td>
<td>27 evidence. Brigadier –</td>
</tr>
<tr>
<td>27 steps, why not? If you did take steps, what were they -</td>
<td>28 - if I may ask Mr Semenya,</td>
<td>28 - if I may ask Mr Semenya,</td>
</tr>
<tr>
<td>28 CHAIRPERSON: Mr Bizos, I’m sorry to</td>
<td>29 is this debate and details about that and all that with</td>
<td>29 is this debate and details about that and all that with</td>
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<tr>
<td>29 interrupt you. You’re asking about five questions all in a</td>
<td>30 this witness taking us anywhere?</td>
<td>30 this witness taking us anywhere?</td>
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<td>30 row. It’s all bundled up together. May I suggest you take</td>
<td>31 MR SEMENYA SC:</td>
<td>31 MR SEMENYA SC:</td>
</tr>
<tr>
<td>31 them singly?</td>
<td>32 I was trying to say to truncate that line, it may very well be that when General</td>
<td>32 I was trying to say to truncate that line, it may very well be that when General</td>
</tr>
<tr>
<td>31 MR BIZOS SC: I’ll try my best, thank</td>
<td>33 Annandale comes, speaking on the consequences of this ministerial policy, my learned colleague may very well find</td>
<td>33 Annandale comes, speaking on the consequences of this ministerial policy, my learned colleague may very well find</td>
</tr>
<tr>
<td>32 you. Did this particular paragraph come to your notice?</td>
<td>34 that a useful witness to test that aspect.</td>
<td>34 that a useful witness to test that aspect.</td>
</tr>
<tr>
<td>32 BRIG BREYTENBACH: Sir, I can say yes. I know that the curriculum developers is, reviewed the</td>
<td>35 MR BIZOS SC:</td>
<td>35 MR BIZOS SC:</td>
</tr>
<tr>
<td>35 process –</td>
<td>36 I will, thank you for that.</td>
<td>36 I will, thank you for that.</td>
</tr>
<tr>
<td>35 MR BIZOS SC: No, you. Let’s speak about</td>
<td>37 Who is the head of training in the Police?</td>
<td>37 Who is the head of training in the Police?</td>
</tr>
<tr>
<td>36 you. What steps did you take –</td>
<td>38 BRIG BREYTENBACH: The divisional</td>
<td>38 BRIG BREYTENBACH: The divisional</td>
</tr>
<tr>
<td>36 BRIG BREYTENBACH: I implement the</td>
<td>commissioner for training is Lieutenant-General Mbekela.</td>
<td>commissioner for training is Lieutenant-General Mbekela.</td>
</tr>
<tr>
<td>37 training programme that is provided to me.</td>
<td>39 MR BIZOS SC: Did he ask you to report</td>
<td>39 MR BIZOS SC: Did he ask you to report</td>
</tr>
<tr>
<td>37 MR BIZOS SC: Tell us what you did. If</td>
<td>40 what you had to say in answer to the Minister’s query.</td>
<td>40 what you had to say in answer to the Minister’s query.</td>
</tr>
<tr>
<td>38 you went to the trainers, what did you tell them they must</td>
<td>41 BRIG BREYTENBACH: No, she did not ask</td>
<td>41 BRIG BREYTENBACH: No, she did not ask</td>
</tr>
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<td>39 do in future, which the Minister was concerned about</td>
<td>42 me, that I can recall.</td>
<td>42 me, that I can recall.</td>
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<td>40 apparently, because he put it a memorandum that these are</td>
<td>43 MR BIZOS SC: If you are the coordinator</td>
<td>43 MR BIZOS SC: If you are the coordinator</td>
</tr>
<tr>
<td>40 the things that have to be done. What did you do?</td>
<td>44 of training, would you have expected your superior to ask</td>
<td>44 of training, would you have expected your superior to ask</td>
</tr>
<tr>
<td>41 BRIG BREYTENBACH:</td>
<td>45 you what your view was in answer to the Minister’s query?</td>
<td>45 you what your view was in answer to the Minister’s query?</td>
</tr>
<tr>
<td>42 I did not drive to the trainers to speak to them directly. The training</td>
<td>46 BRIG BREYTENBACH: I could have made a</td>
<td>46 BRIG BREYTENBACH: I could have made a</td>
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<td>43 programmes that were implemented were intensified; more</td>
<td>47 contribution, but I believe there’s other specialists in</td>
<td>47 contribution, but I believe there’s other specialists in</td>
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<td>44 training programmes were presented and coordinated by my</td>
<td>48 that operational environment that maybe can give a better</td>
<td>48 that operational environment that maybe can give a better</td>
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<td>45 MR BIZOS SC:</td>
<td>input, and maybe they -</td>
<td>49 input, and maybe they -</td>
</tr>
<tr>
<td>46 MR BIZOS SC:</td>
<td>Who is that?</td>
<td>49 MR BIZOS SC:</td>
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<td>Operational Responses, General Mawela’s management might.</td>
<td>1</td>
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<td>2</td>
<td>MR BIZOS SC: Did either of them ask you</td>
<td>2</td>
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<td>3</td>
<td>for your view on the query or the requirement of the</td>
<td>3</td>
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<td>4</td>
<td>minister?</td>
<td>4</td>
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<td>5</td>
<td>BRIG BREYTENBACH: No, they did not.</td>
<td>5</td>
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<td>6</td>
<td>MR BIZOS SC: Any reason for them to</td>
<td>6</td>
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<td>7</td>
<td>avoid the coordinator of training?</td>
<td>7</td>
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<td>8</td>
<td>BRIG BREYTENBACH: I cannot say why they</td>
<td>8</td>
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<td>9</td>
<td>did not do that, Sir.</td>
<td>9</td>
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<td>10</td>
<td>MR BIZOS SC: On page 13, paragraph 9,</td>
<td>10</td>
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<td>11</td>
<td>“In order to give impetus and ensure compliance with the</td>
<td>11</td>
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<td>12</td>
<td>bill of rights the constitution, national legislation and</td>
<td>12</td>
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<tr>
<td>13</td>
<td>international standards, the SAPS, must,” underline, not by</td>
<td>13</td>
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<td>14</td>
<td>me, by the person who drew this, “must urgently review its</td>
<td>14</td>
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<td>15</td>
<td>current dispensation and operational approach to the</td>
<td>15</td>
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<td>16</td>
<td>policing of public protests and riots.” Did you read that?</td>
<td>16</td>
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<td>17</td>
<td>BRIG BREYTENBACH: I read it now, yes.</td>
<td>17</td>
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<td>18</td>
<td>MR BIZOS SC: Then, 11 and a half months ago, did you read it?</td>
<td>18</td>
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<td>19</td>
<td>BRIG BREYTENBACH: I suppose if it was in</td>
<td>19</td>
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<td>20</td>
<td>this document I did read it, but again as I said earlier, I</td>
<td>20</td>
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<tr>
<td>21</td>
<td>was not consulted on this document to give input into any</td>
<td>21</td>
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<td>22</td>
<td>further curriculum development or the operationalisation of</td>
<td>22</td>
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<td>23</td>
<td>the public order police.</td>
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<td>24</td>
<td>MR BIZOS SC: This is an urgent call by</td>
<td>24</td>
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</tbody>
</table>

| 1 | The other specialists? | 1 |
| 2 | MR BIZOS SC: Yes. | 2 |
| 3 | BRIG BREYTENBACH: We can start with the | 3 |
| 4 | Operational Response Services’ Head. | 4 |
| 5 | MR BIZOS SC: Who is it? | 5 |
| 6 | BRIG BREYTENBACH: Lieutenant-General | 6 |
| 7 | Mawela is the Head of Operational Response Services. | 7 |
| 8 | MR BIZOS SC: And the final query by the | 8 |
| 9 | Minister is, “Does the SAPS training manuals support,” | 9 |
| 10 | leave aside the grammar, “the SAPS training manual support, | 10 |
| 11 | the background of the public or the policing, were you | 11 |
| 12 | asked about, to put it in relation to that? | 12 |
| 13 | [12:22] BRIG BREYTENBACH: Not that I can recall. | 13 |
| 14 | MR BIZOS SC: Can you think of any | 14 |
| 15 | possible reason why the coordinator of training wouldn’t be | 15 |
| 16 | asked what his view was to these important questions posed | 16 |
| 17 | by the minister? | 17 |
| 18 | BRIG BREYTENBACH: No, I cannot. | 18 |
| 19 | MR BIZOS SC: The minister says in the | 19 |
| 20 | middle of page 10, “The international perspective on the | 20 |
| 21 | broader aspects of police training in crowd control and | 21 |
| 22 | management for all police personnel at all levels highlight | 22 |
| 23 | that the training should include a review and reinforcement | 23 |
| 24 | of applicable laws, state statutes and departmental | 24 |
| 25 | policies, a review of civil rights, issues inherent in mass | 25 |

| 1 | demonstration events, a uniform understanding of the rules | 1 |
| 2 | of engagement, the use of force policies and mass arrest | 2 |
| 3 | procedures, a clear instruction on the lead of self | 3 |
| 4 | control, team work and adherence to command,” underline | 4 |
| 5 | that, “adherence to command, stated expectations for highly | 5 |
| 6 | disciplined behaviour, self control and restrain and a | 6 |
| 7 | strong statement that any officer’s failure to comply could | 7 |
| 8 | result not only in failed police statistics but also in | 8 |
| 9 | employee discipline.” Did you take any steps to review any | 9 |
| 10 | of the matters referred to by the minister? | 10 |
| 11 | BRIG BREYTENBACH: No, I did not. | 11 |
| 12 | MR BIZOS SC: Would you know of anyone of | 12 |
| 13 | similar or higher or lower rank to you who may have done | 13 |
| 14 | so? | 14 |
| 15 | BRIG BREYTENBACH: Curriculum | 15 |
| 16 | Development, division HRD might and also – | 16 |
| 17 | MR BIZOS SC: Who is that? | 17 |
| 18 | BRIG BREYTENBACH: Curriculum | 18 |
| 19 | Development, the section Curriculum Development. | 19 |
| 20 | MR BIZOS SC: Who is in charge of that? | 20 |
| 21 | BRIG BREYTENBACH: General Van Eyk. | 21 |
| 22 | MR BIZOS SC: Did he approach you – | 22 |
| 23 | BRIG BREYTENBACH: And also – | 23 |
| 24 | MR BIZOS SC: Sorry, sorry. | 24 |
| 25 | BRIG BREYTENBACH: Sorry, Sir, also | 25 |

| 1 | the minister about a serious problem that we’ve had in the | 1 |
| 2 | last 12 months in our country, Brigadier. He considered it | 2 |
| 3 | sufficiently important to underline the word “must”, the | 3 |
| 4 | head of the teaching department, so to speak or the | 4 |
| 5 | coordinator ignores it, why? | 5 |
| 6 | BRIG BREYTENBACH: I was not tasked with | 6 |
| 7 | these inputs directly, the task team would have come, it | 7 |
| 8 | would have been from the national commissioner down the | 8 |
| 9 | channels, via the divisional commissioners. | 9 |
| 10 | MR BIZOS SC: In paragraph 14 are other | 10 |
| 11 | matters, what happens elsewhere, the subheading, “It is | 11 |
| 12 | thus imperative that the SAPS must,” again underlined, | 12 |
| 13 | “urgently align itself with the following issues as crucial | 13 |
| 14 | areas for intervention and redress.” Sorry, page 14 and | 14 |
| 15 | not paragraph 14, I am sorry, and then he gives some | 15 |
| 16 | history which we are familiar with. “In terms of SAPS act | 16 |
| 17 | the national commissioner is obliged to establish a | 17 |
| 18 | national public or a policing unit and maintain the same,” | 18 |
| 19 | and he quotes Section 17 in brackets. “Such unit was | 19 |
| 20 | indeed established during 1996. During 2002 the POPS unit | 20 |
| 21 | was subject to the SAPS restructuring and aligned to | 21 |
| 22 | function the policing area levels as the area crime | 22 |
| 23 | combating units. As the latter name suggest the functions | 23 |
| 24 | also change to include crime combating. Unfortunately this | 24 |
| 25 | relegated the crowd management function into a secondary | 25 |
25           BRIG BREYTENBACH:          I believe that the
24 statement?
23 station crimes, combating initiatives.”  Is that a correct
22 deemed necessary in creating capacity to boost police
21 skills and experience of members of the POP unit were
20           MR BIZOS SC:          Oh.  “Secondly, that the
19 Financial Management Act.
18           BRIG BREYTENBACH:          It stands for Public
17 line with the PFMA,” what does that stand for, I don't
16 much duties to perform and thus not value for money.  In
15 rationalisation of the ACCU was firstly, that the functions
13 of the unit could not be justified since they did not have
12 transformation of the initial POP unit and the subsequent
11 protests.  However the reasons advanced for the
10 paragraph will show, that I read out the second last
paraphrase on page 15, I may just read it because the
12 relevance of what I am asking I think may become clearer.
13 “Technically it is thus argued that the POPS unit does not
14 exist anymore as “specialised [dedicated] public order
15 policing function as envisaged in the SAPS Act unit Section
16 17 of the SAPS Act, is amended accordingly.  The POP unit
15 must be re-established, maintained and capacitated to
14 execute those functions, the Act confers upon it, due to
12 changes, demands and an increase in public protests and
demonstrations, especially incidents with a violent nature
11 since 2006, the need for a specialised public order
10 policing unit becomes more and more justified.  This notion
is strengthened by the constant negative public scrutiny of
12 current policing methods and approached applied during such
11 protests and gatherings, which in some incidents had
10 indicative that specifically from this period a remarkable
9 example of this was when a Unit was confront with
8 commanding unit provoked serious criticism since it was
7 indeed the 2006 restructuring of the ACCU the area crime
6 was changed to Crime Combating Units,” CCU.
5 BRIG BREYTENBACH:          It stands for Public
4 Financial Management Act.
3 MR BIZOS SC:          Oh.  “Secondly, that the
2 skills and experience of members of the POP unit were
1 deemed necessary in creating capacity to boost police
station crimes, combating initiatives.”  Is that a correct
statement?
25 BRIG BREYTENBACH:          I believe that the
24 operational response service would be better to answer this
23 question, because they are the ones dealing with this
22 operationalising on a daily basis.
21 MR BIZOS SC:          The second last –
20 CHAIRPERSON:          Mr Bizos, the interpreter
19 is still busy -
18 MR BIZOS SC:          Sorry -
17 CHAIRPERSON:          - and then I want to put
16 something to you when he is finished.
15 MR BIZOS SC:          Sorry.
14 MR MAHLANGU:          I am, thank you, Sir.
13 MR BIZOS SC:          Are you finished, thank
12 you.
11 CHAIRPERSON:          Mr Bizos, if a point made
10 by the witness is not correct, I have difficulty in
9 understanding how he can help us -
8 MR BIZOS SC:          Yes -
7 CHAIRPERSON:          - in relation to the points
6 you’re putting -
5 MR BIZOS SC:          Sorry -
4 CHAIRPERSON:          - and I am not sure whether
3 you’re attacking the policy adopted by the police.  Ms
2 Nkosi Thomas said it wasn’t clear whether that would be the
1 line taken, but she said if there were challenges to the
25 policy then her clients would, (a), be preparing a
24 statement which we would be getting, and (b), would be
23 giving evidence.  Now I wonder whether, I hesitate to say
22 this because it may sound as I am criticising you, but I
21 wonder whether the time of the commission couldn’t be
20 better used asking this witness questions of another kind.
19 I am not suggesting the questions you’re asking are
18 irrelevant, but I suggest they may be better asked to
17 people better able to answer them.
16 MR BIZOS SC:          It is important as the next
15 paragraph will show, that I read out the second last
14 paragraph on page 15, I may just read it because the
13 relevance of what I am asking I think may become clearer.
12 “Technically it is thus argued that the POPS unit does not
11 exist anymore as “specialised [dedicated] public order
10 policing function as envisaged in the SAPS Act unit Section
9 17 of the SAPS Act, is amended accordingly.  The POP unit
8 must be re-established, maintained and capacitated to
7 execute those functions, the Act confers upon it, due to
6 changes, demands and an increase in public protests and
demonstrations, especially incidents with a violent nature
5 since 2006, the need for a specialised public order
4 policing unit becomes more and more justified.  This notion
3 is strengthened by the constant negative public scrutiny of
2 current policing methods and approached applied during such
1 protests and gatherings, which in some incidents had

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A particular unit got conflated rendering public order policing secondary and the minister's policy says, no, it has to be brought back as a specialised unit and we know it was, because it was on the scene at Marikana.

MR BIZOS SC: I will leave it at that, Mr Chairman.

CHAIRPERSON: It is a sensible decision, would you like to move on to another aspect before, we'll take the adjournment at one o'clock?

MR BIZOS SC: Yes, I am coming to another heading about -

CHAIRPERSON: You've got a quarter of an hour to deal with other matters, until we take the lunch adjournment.

MR BIZOS SC: I don't think I can finish in a quarter of an hour if we intend taking -

CHAIRPERSON: Use the quarter of an hour that we have and then if you haven't finished by then you can resume after the lunch adjournment.

MR BIZOS SC: There is a heading on page 16 of the minister's document, training of members attached to public order policing unit. "Comparative research," and then a reference is given, “has shown that the current level of training to SAPS members in crowd management and control public order policing lacks content.” Was that the opinion?

MR BIZOS SC: No, Chair, what the document says is that there was a point at which a fact, the way I understand the passage is that it was argued that it does not exist anymore, it is not stated as a fact, the way I understand the passage is that it was ineffective and it is still ineffective, am I wrong in that?

MR SEMENYA SC: The unit is in place, I am sorry, I didn't hear my learned friend?

CHAIRPERSON: He says the unit is in place. You asked him, was it important to re-establish the unit and the answer is, it was re-established, that's why it was in place on the 16th of August at Wonderkop.

[12:42] MR BIZOS SC: May I just bury the question, your Lordship is right, yes. Do you know when steps were taken to re-establish the unit and by whom?

BRIG BREYTENBACH: No, I do not have the date for that, but they are established -

MR BIZOS SC: Did it happen at all? If I understand the passage correctly, technically it is thus argued that it does not exist anymore, it is not stated as a fact, the way I understand the passage is that it was ineffective and it is still ineffective, am I wrong in that?

MR SEMENYA SC: No, Chair, what the document says is that there was a point at which a
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1 MR SEMENYA SC: I haven't been in that world of turmoil, Chair speaking for myself.
2 CHAIRPERSON: It sounds like a debating point, Mr Bizos, frankly which you can deal with argument obviously.
3 MR BIZOS SC: Yes.
4 CHAIRPERSON: I am not sure whether anything the witness may have to say and I intend no disrespect to him but I am not sure that anything he can say to us on the point will actually help us significantly one way or the other.
5 MR BIZOS SC: Well, if we record that it did not affect him in any way, did it affect your life in any way as a brigadier in the police force, of what happened?
6 BRIG BREYTENBACH: You're asking if the events of the 16th of August affected my life?
7 MR BIZOS SC: Yes.
8 BRIG BREYTENBACH: I think it affected those that saw it, I saw it on television and it impacts on my work. I was not attacked or experienced any protest personally.
9 MR BIZOS SC: "Policing is often regarded as a function required in highly discretionary activity since there is no single standard prescription in doing policing during a public protest. Thus the police officer, especially unsupervised would be perpetually called upon to make decisions and take appropriate action."
10 BRIG BREYTENBACH: Sorry, I didn't get the question?
11 MR BIZOS SC: Yes, do you read that another way of saying that individual policeman must not shoot to kill unless they are ordered by a commander? Do you know the word, there must be a command and not an individual discretion to kill?
12 MR SEMENYA SC: Objection, Chair, there is nothing in the police service that says people must shoot and kill on command, not even in law.
13 MR BIZOS SC: - prove that to be wrong.
14 CHAIRPERSON: I am not sure, with respect to you, the time of the commission is being as gainfully employed now as it might be if another line would have been followed, but in any event whatever the document says, presumably a policeman is still, even if there isn't a commander to do so, would be entitled to protect himself, to defend his own life and I take it defend the lives of this colleagues in terms of the common law rules applicable to private defence. One of the question is of course whether the requisites for the successful invocation of the justification of private defence exists in this case, but I am not sure if this witness is able to help us to answer that question which we will have to answer, and we will obviously be helped by your submissions and those of your colleagues based on the evidence we're going to hear.
15 MR BIZOS SC: I think the wording of the question which I think that is based on authority, Mr Chairman, a policeman on his own or in a small group may exercise his discretion as to when to shoot to kill. In large gatherings in which criminal activity may be indulged in by one or two persons does not entitle the policemen to shoot at random other people who have done nothing substantially wrong. Please accept that as a proposition of law.
16 CHAIRPERSON: What's the question you're asking the witness, if the proposition of the law is correct then you don't expect the witness to say whether he agrees or disagrees, so what do you ask him based upon that proposition that you've stated to him? There must be question mark at the end of your question.
17 MR BIZOS SC: There must be a question mark. Have the police being told that if you are faced with a crowd you are not to indiscriminately shoot into the crowd without an order from a superior officer?
18 BRIG BREYTENBACH: With or without command every member -
19 MR BIZOS SC: With or without, - no, no,
20 no, -
21 BRIG BREYTENBACH: No, no -
22 MR BIZOS SC: - individually you don't expect a person to give you a command and that's why it is called private defence. The question that I am putting to you, that in our law a police officer is not entitled to shoot into a crowd indiscriminately just because he believes that there may be somebody there that has got a firearm and may discharge it against the policeman, himself or his fellow policemen next to him. There has to be a command in a situation where innocent people may be mingled up by those people that may be misbehaving.
23 BRIG BREYTENBACH: As I was saying, with or without a command a member pulling the trigger is the one responsible for the shot. There is something like an illegal command and I agree with the statement that one should not fire into a crowd indiscriminately with or without a command.
24 MR BIZOS SC: Oh, I see. Yes, yes, is what you've said, that nobody has the right to indiscriminately shoot into a crowd taught to policemen or whatever group there may be in?
25 BRIG BREYTENBACH: Yes, and that applies from basic training onwards.
1. MR BIZOS SC: Let me, with regard to page 18 –

2. CHAIRPERSON: Mr Bizos, is this perhaps an appropriate stage for us to take the adjournment?

3. MR BIZOS SC: Thank you, Mr Chairman.

4. CHAIRPERSON: And can we look at page 18 after we’ve taken the adjournment?

5. MR BIZOS SC: Yes, thank you, Mr Chairman.

6. CHAIRPERSON: Very well, the commission will adjourn for lunch.

7. [COMMISSION ADJOURNS]

8. [COMMISSION RESUMES]

9. [14:04] CHAIRPERSON: The Commission resumes. Mr Bizos, you were busy cross-examining. Brigadier, I must remind you you’re still under oath.

10. BRIG BREYTENBACH: Yes, Sir.

11. CHAIRPERSON: Mr Bizos turn your machine on, nobody can hear you.

12. MR BIZOS SC: Yes, please turn to page 18 of Exhibit R, Command and Control. “The success of effective response by the SAPS to any public protest situation is dependant on a strong line of command and control. It has been proved that command and control has different meanings to different people. Within the context of policing of public protests, command and control simply means that certain people must know that they have different roles to play. Ordinary members in the platoon are to execute, getting instructions from the platoon leader. The platoon leader is guided by the operational commander, who is normally situated some blocks away in a mobile or permanent command centre. This can create serious repercussions in cases where communication is lost and the platoon is left on its own.” Do you agree with that statement?

13. BRIG BREYTENBACH: I believe that it would be for operational people to make a determination. Effective control can be on scene, or it can be removed. The distance, also, is relevant. I think that if it is a kilometre away and there’s good radio communication, yes. If there’s not, then that makes a difference, but there should be good communication between whichever, close or far they are.

14. MR BIZOS SC: Lower ranks must be able to communicate with higher ranks and vice versa?

15. BRIG BREYTENBACH: That’s correct, yes.

16. MR BIZOS SC: In any situation such as that which we are investigating as having happened on the 16th of August, it appears to be common cause that the radio communication was not working properly. I want you to assume that, you may not know. What effect would it have on the command and control situation if that was the case?

17. BRIG BREYTENBACH: Commands could not be relayed to people.

18. MR BIZOS SC: Would that have disastrous consequences of certain people taking it upon themselves when to shoot to kill?

19. BRIG BREYTENBACH: I think that’s only applicable if a command was given to shoot to kill, which, as I clearly explained earlier, that whenever such a command was given, or supposed to be given, the member – the individual at the end of the day takes their own, the final decision on that. So it would be speculative to say it would have catastrophic impact.

20. MR BIZOS SC: If it was known that the command system was not operating properly, might individuals who would not ordinarily have the right to decide whether to use lethal force or not, might have taken a decision when they shouldn’t?

21. BRIG BREYTENBACH: It’s a possibility, yes.

22. CHAIRPERSON: It’s not simply that, is it, Brigadier? Because it’s not only the decision to fire, but also if you have a – using a rifle which you can fire a large number of bullets automatically, one after the other in very short period of time, the decision as to when to desist is also important and an officer might be in a better position than the individual marksman to tell him to cease fire. Now if the radios weren’t working properly and the decision to cease fire was not properly conveyed, couldn’t that have serious consequences?

23. BRIG BREYTENBACH: Yes, it would.

24. Chairperson.

25. MR BIZOS SC: On page 22 of the Exhibit R, the last paragraph, “On the other hand coercive and deadly force involves force which a law enforcement officer uses for the purpose of causing, or which the officer knows to create a substantial risk of causing death or serious bodily harm. Examples include purposely firing a firearm in the direction of another person or a vehicle, building or structure in which there are people. This kind of force normally occurs as a measure of last resort, which the – sorry, and is very, and in very few cases. Very often the indiscriminate application of deadly force by police in many developed countries such as the US and Canada evoke public protests on the police’s use of force, which return results in public discourse on police policy reviews, however it cannot be argued with certainty that the frequency of this indiscriminate use of deadly force seems to be more in one country compared with the other countries. It is largely a rare phenomenon and should be
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1 understood within the broader context of violence in a particular locality and country."
2 And it goes on, on page 23, "In order to ensure compliance with the Constitution and organisations under the international instruments, the current operational strategies and/or policies guiding the use of force by the SAPS during public protest must be subject to urgent review to reduce the use of force to a minimum. This view must ensure strict measures and guidelines are adopted and implemented to reduce the risk of casualties and fatalities associated with the use of firearms during public protests." You read that?
3 MR BREYTENBACH: I read it, yes.
4 MR BIZOS SC: Do you agree that – well, can you tell us whether any urgent notice was taken on this aspect of the matter, and was a decision to discharge a firearm, should it be on orders of the commanders? "Any decision or instruction to discharge firearm must be subject to review and investigation, which does not preclude disciplinary and criminal sanctions in cases resulting in casualties or fatalities caused by the use of such firearms." Would you regard this as a stern warning by the Minister?
5 BRIG BREYTENBACH: I don't understand the whole.
6 MR BIZOS SC: Did you attend any meeting of the senior police officers at head office or elsewhere in order to put into effect, as a matter of urgency, what the minister was suggested.
7 BRIG BREYTENBACH: No, I did not attend any such –
8 MR BIZOS SC: Did you think that it did not apply to you to take initiative in order to perform the minister's will?
9 BRIG BREYTENBACH: As I earlier said, such instruction would have through the command structures to me, if I was to engage and head such a process. I know that the individual ORS under General Mawela, there is a process of working on a continuum of force.
10 MR BIZOS SC: You were in an important position directing or coordinating the training. Was this not a matter for urgent attention of officers of your rank – all of you?
11 BRIG BREYTENBACH: It was, but it was not directed to me.
12 MR BIZOS SC: You were not part of the whole?
13 BRIG BREYTENBACH: I don't understand the whole.
14 MR BIZOS SC: As an individual didn’t you feel that here is a call on senior police officers to put what is wrong right? Why didn’t you take any initiative?
15 BRIG BREYTENBACH: I did not take initiative, because I was not instructed to attend or draft such a report.
16 MR BIZOS SC: I don't want to have a semantic argument with you, but taken initiative means that you don't expect to be commanded to do something which is obviously part of your duty to better the situation in relation to loss of life at the hands of the police.
17 MR SEMENYA SC: Chair, we have registered the objection to say it is it is incorrect to proceed on proposition that there was no action taken on this policy. There was, and in fact POP got established and drafts that we have been using are a response and a direct response to the policy position that the minister has formulated.
18 BRIG BREYTENBACH: That is correct, yes.
19 MR BIZOS SC: Why, why did you want to distance yourself –
20 CHAIRPERSON: Mr Bizos, I don’t think it’s appropriate to use the language – to use that he wanted to distance himself. I understand the substance of your questioning, but I don’t think that expression is appropriate in the circumstances. Maybe you must reformulate the question.
21 MR BIZOS SC: Ja.
22 CHAIRPERSON: But while you’re thinking about how to reformulate the question, let me ask him a question. It was suggested to you, you should have taken the initiative in respect of something which was, you say was really directed to other people in other sections of police. How does the police force work as far people taking the initiative about matters that relate to other divisions apart from that in which they, themselves, are placed?
23 BRIG BREYTENBACH: Chairperson, normally instructions come to say head this task team for us or do this or that, from a higher authority – from the National Commissioner's office, who at the end of the day is ultimately responsible for all of this. I was not aware of such instruction. There was a process at General Mawela's office dealing with a continuum of force. For me to impose myself in certain areas is inappropriate and it's not the way that we function in the police service. If I received such an instruction from whoever, it would have been done. Chairperson, this is not necessarily a training matter, but it can also be dealt with as an operational matter. There's operational and the standard operational
MR BIZOS SC: How other than that the leader of the training programme, could this urgent matter be taken forward?

BRIG BREYTENBACH: The operational units and the division responsible for that, together with curriculum development would have attended to that, if the operational responder did not a SOP in that regard.

MR BIZOS SC: The operational units have certain responsibilities and should be held responsible for decisions taken by them. Your decision not to become involved, are you happy with it that you did not become involved?

BRIG BREYTENBACH: Sorry, I couldn't hear both sides.

MR MAHLANGU: I'm sorry.

MR BIZOS SC: I read this, “It therefore stands to deduct from the command and control of this hierarchy that each member has certain responsibilities and should be held responsible for decisions taken by them.” Your decision not to become involved, there was already something done, as I said, by ORS.

MR BIZOS SC: I want, finally, to ask you whether ORS.

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BRIG BREYTENBACH: What finally was the decision?

MR BIZOS SC: No, no, I'm going to the last topic. We have read your documents. The ones drawn by you, the ones drawn by Lieutenant-Colonel Scott and other reports, on the question of whether human life can be taken away from people in situations in which the police are involved, we can hardly ever find the word “kill” used, instead what is said will go to the phase of tactical force or strategic option. What's the other one? Or a different strategy. Are those all euphemisms used by the police to mean to kill?

[14:24] BRIG BREYTENBACH: No it is not.

MR BIZOS SC: Well we've looked up in the dictionaries, the common thing is that they are military solutions or military terms. Do you agree with the dictionaries or you disagree?

BRIG BREYTENBACH: I'm not - I'm not familiar with the languages. I mean or I'm familiar with the language but I'm not specialist in that. It's terminology used by the police to indicate that something else need to be done, it is not referring to killing per se.

MR BIZOS SC: I'm going to put to you that they are convenient euphemisms which to avoid you and your colleagues communicating with each other and avoiding the use of the word kill deliberately.

CHAIRPERSON: Mr Bizos, is this witness able to give us an answers that will help us to resolve the questions that we have to decide. Whether it's euphemism is a matter we as competent to decide - we hope as commissioners is competent to decide as anybody else.

Isn't it a matter for argument more properly to be addressed to us at the end of the evidence rather than to ask this witness his opinion. And he says it isn't a euphemism, we may disagree. So does it really help?

MR BIZOS SC: I will accept your ruling.

I thought that it would be - if there is an explanation for the use of those three words over a 100 times in all the documents that they have used, avoiding to use the word kill -

CHAIRPERSON: The brigadier didn't draft the documents. Maybe if the some senior official - senior officer general somebody gives evidence and we've been told by Mr Nkosi Thomas it's possible that the Minister himself may come give evidence if matters of policy are an issue and I'm not clear from you yet as to whether you've raised questions of policy will necessitate it for the minister to come, but isn't the minister or some other senior
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BRIG BREYTENBACH: No, I did not.
MR MPOFU: Were you aware of the 9 day conference?
BRIG BREYTENBACH: As I earlier said, no.

MR MPOFU: I'm sorry. Okay. Let me start with the level of the risk. You do agree that one of the things that needs to be done in an operation of the kind in question here is the assessment of the level of the risk. Agreed?
CHAIRPERSON: Mr Mpofu, this witness is not called as an expert on public order policing policy.
MR MPOFU: Okay. Thank you, Chair. You testified that the POP is the primary unit to be used in crowd management, correct?
BRIG BREYTENBACH: That is correct, yes.

MR MPOFU: And is it correct that in all levels of crowd management, POP should be operationally involved?

BRIG BREYTENBACH: That is correct. I have been at the conference.
MR MPOFU: Yes, I agree with it.

CHAIRPERSON: He's here just to explain what the training was. I have no doubt you will get ample opportunity to ask questions of that kind of witnesses such as Colonel Scott. So I don't propose to allow you to follow this line of cross-examination with this witness.

MR MPOFU: Okay. Now correct me if I'm wrong, I understood you to be saying the instructions such as you have seen on television, they acted in a group –

BRIG BREYTENBACH: I saw on the television, or your understanding of this situation that on the 16th the situation that we are dealing with there was a group decision.
MR MPOFU: Ja. No, sorry –

BRIG BREYTENBACH: Even an office worker for that matter can have a firearm.
MR MPOFU: Sure. Now correct me if I'm wrong, I understood you to be saying the instructions such as shoot to kill and all those things, they relate to the individual attacks on police rather than crowd management.

BRIG BREYTENBACH: I believe General Cele said that in that period where there was a huge number of police killings, I don't know his motivation, but that's what I gather from –
MR MPOFU: Yes.
BRIG BREYTENBACH: - from that.
MR MPOFU: Yes and you understood it to be dealing with those situations rather than crowd management?

BRIG BREYTENBACH: That is correct.
MR MPOFU: And but what we are dealing with here is the issue of crowd management, do you understand that?

BRIG BREYTENBACH: Yes, Sir.
MR MPOFU: And would you agree with me, these are from your own assessment or from what you saw on television or your understanding of this situation that on the 16th the situation that we are dealing with there was not a matter of individual policemen decisions but it was a group decision.

BRIG BREYTENBACH: I saw on the television, they acted in a group –
MR MPOFU: Ja.
BRIG BREYTENBACH: - but as I earlier also said, it's the individual that is discharging the firearm –

MR MPOFU: No, of course.
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1. BRIG BREYTENBACH: - it's his finger
2. pulling the trigger.
3. MR MPOFU: Ja, no, I understand,
4. Brigadier. I mean obviously each individual pulled a
5. trigger, but what you and I seem to be agreeing upon is
6. that there was a group action.
7. BRIG BREYTENBACH: That is correct, yes.
8. MR MPOFU: And you'll also agree that if
9. we are dealing with a group action, normally that would
10. mean responding to an order.
11. BRIG BREYTENBACH: Yes and a group can
12. act on it's own also if they don't have a command and they
13. find in situation, individuals in the group can take
14. decisions.
15. MR MPOFU: No, of course. I mean
16. theoretically that's also possible but I'm saying that -
17. and you can correct me if I'm wrong again - it would be
18. highly unlikely that 20 or 30 people all of - suddenly take
19. the same individual decision. It's more consistent with a
20. group decision.
21. BRIG BREYTENBACH: What I can recall from
22. the training manuals, I cannot recall that there's
23. something specifically to that.
24. MR MPOFU: Well there is and I don't know
25. if you have the sub-documents, on page 409 - anyway I'll

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1. that – and you have to accept this for now, you did say
2. earlier you were not familiar with that part of the
3. standing orders, but I can assure you that it is there. If
4. we accept that POP should be in overall command, whether we
5. are talking about level 1, level 2, level 3 risk, would it
6. be then fair to say that the - whatever the level of this
7. particular instance would be, that the TRT had not role to
8. play or were not needed?
9. BRIG BREYTENBACH: In Exhibit Q, on slide
10. number 5, I explained the overlapping responsibilities
11. where TRT can assist POP and vice versa and NIU can assist
12. POP. That slide, that's where I tried to explain how the
13. overlapping responsibilities is there. So if the POP or
14. whoever was in control found it necessary for them to
15. assist on that level then I think we have to take that
16. also. Did I answer your questions?
17. MR MPOFU: Ja, slightly. Okay, even if I
18. were to accept that answer, the POP would still be in
19. overall operational command, correct?
20. BRIG BREYTENBACH: I take it as you
21. quoted it from the standing order because I don't see it,
22. then that assumption can be made.
23. MR MPOFU: Thank you. Okay, I'll leave
24. that for now. You were a policeman for about 10 years in
25. the apartheid era, correct? In other words before 1994.
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1. Sorry, I don't mean it negatively.
2. BRIG BREYTENBACH: Yes, I was before
4. MR MPOFU: Yes.
5. BRIG BREYTENBACH: 9 years.
6. MR MPOFU: And this was – you became a
7. policeman in 1985, at the height of the violence that was
8. engulfing the country, correct?
9. BRIG BREYTENBACH: That's correct, yes.
10. MR MPOFU: There was a notorious unit
to which the instability unit which units does it correspond
to in this new terminology, TRT, POP and so on.
11. [14:44] BRIG BREYTENBACH: It is internal
12. stability what –
13. MR MPOFU: Ja, internal stability unit,
14. it is correct, ja.
15. BRIG BREYTENBACH: Yes, and I don't know,
16. I don't think there is a direct mirror image of that unit.
17. MR MPOFU: Ja.
18. BRIG BREYTENBACH: Many changes took
19. place in the police and functions were purified, I think a
20. combination of TRT, POP, maybe NIU, certain of those
21. functions can definitely be drawn back in a certain sense,
22. but I think in the new age that we are operating in now, it
23. was more purified, so there are specific units doing
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1 specific events.
2 MR MPOFU: Yes, okay, but the cluster of
3 units that you mentioned will be the closest to those
4 functions of the IFU, correct?
5 BRIG BREYTENBACH: That's correct, yes.
6 MR MPOFU: Are you aware that there is,
7 if I am not putting it too strongly, a prohibition of the
8 use of the NIU in crowd management situations?
9 BRIG BREYTENBACH: I am not aware of
10 that.
11 MR SEMENYA SC: And, Chair, neither are
12 we aware, if Mr Mpofu can point us to any stated
13 prohibition in law?
14 CHAIRPERSON: - to confine yourself to
15 law there may be some internal instructions or standing
16 orders or something.
17 MR MPOFU: Yes -
18 CHAIRPERSON: - but what you're saying
19 is, you expect something which forms the basis of what was
20 put, that seems an appropriate point to raise.
21 MR MPOFU: Well, -
22 CHAIRPERSON: What's your response to it?
23 MR MPOFU: My response is to what I am
24 just about to do, which is to do exactly that, Mr Chairman,
25 but you would agree before we do that, that -

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1 CHAIRPERSON: No, no, I think it is
2 appropriate for you to respond first and then put the
3 question because the -
4 MR MPOFU: Well, I -
5 CHAIRPERSON: The crux of the objection
6 is, it is not a fair question unless you can back up the
7 assertion you make.
8 MR MPOFU: J a -
9 CHAIRPERSON: So back up your assertion
10 and then proceed with the question.
11 MR MPOFU: Chair, I can give you a 1 000%
12 guarantee that I will do that, but can I just put one more
13 question before? There was, if I can rephrase it like
14 this, there was evidence by Warrant Officer Thamae that
15 what they were told in the morning was that this operation
16 really would come to this, the people would surrender their
17 arms, they would disburse and the Warrant Officer Thamae's
18 of this world would record the scene. You can just take it
19 from me, I know you were not here, but that was the
20 evidence, if it wasn't there would have been an objection
21 by now. Are we together, Brigadier?
22 BRIG BREYTENBACH: Yes.
23 MR MPOFU: Yes, and between that and
24 whatever else happened the assessment that this was a, what
25 one would call a day to day crowd management situation or

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1 operation, it will be correct, wouldn't it?
2 BRIG BREYTENBACH: I can draw only
3 conclusions to what I saw on television and that is that it
4 started out as a demonstration and ended on something else.
5 MR MPOFU: Yes.
6 BRIG BREYTENBACH: So please, I do not, I
7 cannot comment on that.
8 MR MPOFU: You can't categorise it?
9 BRIG BREYTENBACH: No.
10 MR MPOFU: Okay, can we now go to, it
11 looks like it is important that we go to slide 71.
12 CHAIRPERSON: Before slide 71, what about
13 your 1 000% guarantee, don't you think time has come for
14 you to comply with that?
15 MR MPOFU: Mr Chairperson, it is now 2
16 000%, because I am actually taking him to slide 71 just
17 before you ask me. Can we go to slide 71, Exhibit 2,
18 sorry. Are you there?
19 BRIG BREYTENBACH: Yes, I am.
20 MR MPOFU: Okay, can you read out the
21 last part, the purpose?
22 BRIG BREYTENBACH: "The purpose of the
23 NIU is to render a specialised operational support function
24 focussed on plans, intelligence driven and targeted
25 deployments to address specific incidents of crime and

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1 public violence and not day to day crowd management
2 operations."
3 MR MPOFU: Thank you, Brigadier.
4 MR SEMENYA SC: Then, Chair, the
5 proposition should have been to the witness that they also
6 offer operational support function.
7 MR MPOFU: No, Chair, I am sorry, the
8 proposition was very simple that they are not to be used in
9 crowd management operations, in day to day crowd management
10 operations. I don't think -
11 CHAIRPERSON: - guarantee -
12 MR MPOFU: Oh, thank you -
13 CHAIRPERSON: - comprise to the assertion
14 that there was a prohibition of some kind relating to the
15 involvement of the NIU and I don't exactly see that inside
16 71. As far as I can see there is, so far there is no
17 percentage at all of the implementation of a guarantee and
18 you may have something else, but I don't see it in 71.
19 MR MPOFU: Chair, I'll leave it for
20 argument, for me the word “not” cannot be anything but a
21 prohibition, but we will leave that for argument. If you
22 say -
23 CHAIRPERSON: No, sorry, are you
24 asserting that what happened on the 16th of August was a day
25 to day crowd management operation?
MR MPOFU: Well, that's a different question, Chair, all I was saying.

CHAIRPERSON: I know it is a different question, I am asking you the question.

MR MPOFU: Yes, the answer is, yes, but that's not –

CHAIRPERSON: Sorry, you say –

MR MPOFU: That's a matter for argument –

CHAIRPERSON: What happened on the 16th of August was a day to day crowd management operation?

MR MPOFU: Well, it even less than that, according to Thamae it was simply just a –

CHAIRPERSON: Well, according to Thamae that is what it was going to be early in the morning, but the question is, has it ultimately turned out –

MR MPOFU: Thamae –

CHAIRPERSON: - of a day to day crowd management operation.

MR MPOFU: Yes, that is the part that is for argument, all I was saying, all I am asking the witness is that there is a prohibition which to me at least is indicated by the word “not.” Whether that prohibition then applied to this situation or that situation, that's not for the witness, that's a matter for argument and whether one, whatever Thamae said or whatever actually happened amounts to day to day crowd management operation, that is a matter for argument. I can't canvas that with the witness.

CHAIRPERSON: Brigadier, are you aware of any prohibition such as this put to you by Mr Mpofu?

BRIG BREYTENBACH: I read it only as it stands here, Chairperson, where it says, “They are deployed through intelligence driven and targeted deployment to address specific incidents of crime and public violence and not day to day crowd management operations.”

CHAIRPERSON: Thank you, Brigadier.

MR MPOFU: Any way while we're now on this point, do you accept that crowd management includes situations of unrest and violence?

BRIG BREYTENBACH: It is difficult for me to answer, because I am not familiar with the definitions per se.

MR MPOFU: Okay.

BRIG BREYTENBACH: Yes.

MR MPOFU: Yes, I’ll take you to the definitions, can you go to page 436 of that same document that Ms [inaudible] gave you, or did she take it back?

CHAIRPERSON: Would you be kind enough to find page 436 on the hard drive and then it give back to the brigadier when you found it, if you don’t mind?

SPEAKER: Chair, I am just having one small problem –

MR MPOFU: We do have the hard copy which could be used.

CHAIRPERSON: It is a small problem, but if you address the small problem then you can find it.

BRIG BREYTENBACH: Thank you very much, I’ve got it, thank you.

MR MPOFU: Have you got it, okay. Can you look at paragraph 2(E) and can you read that out?

BRIG BREYTENBACH: “Crowd management means the policing of assemblies, demonstrations and all gatherings as defined in the act whether recreational, peaceful or of an unrest nature.”

MR MPOFU: Do you now accept that the notion of crowd management is not confined to peaceful demonstrations, but also those that involve unrest?

BRIG BREYTENBACH: Yes.

MR MPOFU: Thank you. Are you aware that there was some concern about use of force in the upper body?

BRIG BREYTENBACH: I only know of that because of news reports on television.
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1. MR MPOFU: Okay.
2. BRIG BREYTENBACH: That's why I said, only what I saw on television.
3. MR MPOFU: Yes.
4. BRIG BREYTENBACH: And I know of this letter.
5. MR MPOFU: You were aware of this?
6. BRIG BREYTENBACH: Yes.
7. MR MPOFU: Okay, no sorry, maybe the question was not clear.  Now that you've been reminded would you agree that the implication of this is that the shooting of people in the upper body should be a last resort?
8. BRIG BREYTENBACH: The way I understood this letter and I cannot recall exactly what the stand was because of the use of rubber or a two ball rubber where people were shot in the upper body and then direct shot to upper body.  The instruction and training is to shoot and bounce the rounds off the ground and I think this is what the author intended to say, that there should not be shooting directly to through the upper body.
9. MR MPOFU: Okay, thanks, well Brigadier, to me the opposite of upper body is the lower body, not the ground.
10. BRIG BREYTENBACH: Yes.

MR MPOFU: Would you agree?

BRIG BREYTENBACH: It is the opposite, yes.

MR MPOFU: Just to go back to the issue of the order as in the command, do you understand what I am saying?

BRIG BREYTENBACH: Yes.

MR MPOFU: Ja, just help me with this, I asked you questions about the possible giving of an order at the beginning of the shooting, do you remember we dealt with that?

BRIG BREYTENBACH: That's correct, yes.

MR MPOFU: Ja, now let's go to the end of the shooting, if somebody says, cease fire, that could be construed as an order to stop, correct?

BRIG BREYTENBACH: That is correct, yes.

MR MPOFU: And in fact one of the standing orders, I don't know which one now, I'll find it I have to, says that the use of force even if it happens, must be stopped as soon as the danger is no longer there, words to that effect.

BRIG BREYTENBACH: You are correct.

MR MPOFU: Am I correct?

BRIG BREYTENBACH: Yes.

MR MPOFU: Yes, in fact as it happened it is in the same letter of Lieutenant General Mawela on the following page, 398, page 398.  “The use of force must always be reasonable in the circumstances and force must be discontinued once the objective has been achieved.”  There is another reference, but that would capture what we are discussing now, correct?

BRIG BREYTENBACH: Correct, correct.

MR MPOFU: And it can also be assumed that if somebody says, cease fire, it means that they perceive that the danger is no longer there, correct?

BRIG BREYTENBACH: I would make that, yes, one can say that.

MR MPOFU: Yes, thank you.

BRIG BREYTENBACH: I think that is a fair assumption.

MR MPOFU: And any shooting that happens after that would not be in line with this directive, correct?

[15:04] BRIG BREYTENBACH: At that specific point where there is imminent danger -

MR MPOFU: Yes.

BRIG BREYTENBACH: It would be also a fair assumption, yes.

MR MPOFU: Thank you.  And if it can be shown, and once again I'm not asking you to accept that what I'm saying is correct, but if it can be shown that there was further shooting after order of ceasefire, then it's at least possible that that further shooting was unwarranted?

BRIG BREYTENBACH: As you say, we have to accept what you are saying there -

CHAIRPERSON: I think there on the video there were a couple of cases where you could here someone saying cease fire and you can hear a shot thereafter.  Whether of course that shot any target is something which we don't know the answer, but certainly there do appear to be shots fired after ceasefire was said, whether the person who fired the shot heard what was said, of course is another matter also, but I think we can accept it as a fact, based on the video, that there were shots fired after the order to cease fire was given.

BRIG BREYTENBACH: That is correct, Chairperson.  What I saw on the television and rightfully, as you said, it can be, whether did those people that were still shooting hear the ceasefire command or not.

MR MPOFU: Well, are the police trained to listen to the orders of their commanders, and are those orders given in a particular way, in a loud way so that most people should be able to hear them?

BRIG BREYTENBACH: That is correct, it
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1. should be given in a loud way so that most people should hear it.
2. MR MPOFU: Thank you very much. Sorry.
3. Chair, finally - sorry, Chairperson, if I can just have one second? If you go to page 426 – 426, Chairperson, this is what is called the Use of Force Directive, Public Order Police. That's the name of the document, just to give you the context, Brigadier. And I just want your comment on 2.3, which says, "To accomplish the following ideals for crowd management situations," and we've already defined what crowd management situations mean. 2.3.1, "No loss of life." Are you aware of that?
4. BRIG BREYTENBACH: Yes.
5. MR MPOFU: 2.3.3, "No injuries." Are you aware of that?
6. BRIG BREYTENBACH: Yes, as it says, to the following ideals no loss of life and damage to property.
7. MR MPOFU: Ja, that's what I - and 2.3.4, "All citizens must be satisfied with the conduct of the SAPS." Are you aware of that?
8. BRIG BREYTENBACH: Sorry, 2.2.?
9. MR KUPER SC: 2.3.4, sorry.
10. BRIG BREYTENBACH: 2.3.4. Yes, I see it here.

Chair, finally - sorry, Chairperson, if I can just have one second? If you go to page 426 – 426, Chairperson, this is what is called the Use of Force Directive, Public Order Police. That's the name of the document, just to give you the context, Brigadier. And I just want your comment on 2.3, which says, "To accomplish the following ideals for crowd management situations," and we've already defined what crowd management situations mean. 2.3.1, "No loss of life." Are you aware of that?

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1 look to somebody else?

2 BRIG BREYTENBACH: That is correct, yes.

3 MR NTSEBEZA SC SC: And the Special Taskforce?

4 BRIG BREYTENBACH: [Inaudible].

5 MR NTSEBEZA SC SC: And the TRT, Tactical Response Teams, Units?

6 BRIG BREYTENBACH: The same applies to them.

7 MR NTSEBEZA SC SC: And the Dog Unit?

8 BRIG BREYTENBACH: Yes, there is somebody in charge of that also.

9 MR NTSEBEZA SC SC: Now, I think that's helpful, because it gives me a sense of what is involved.

10 BRIG BREYTENBACH: Now, I have seen – I don't know if you have Exhibit 2. Do

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1 you have Exhibit 2?

2 BRIG BREYTENBACH: Yes, I do.

3 MR NTSEBEZA SC SC: Yes. Exhibit L, do you have also Exhibit L?

4 BRIG BREYTENBACH: No.

5 MR NTSEBEZA SC SC: You don't have Exhibit L, okay. Exhibit L, I believe was the police presentation.

6 BRIG BREYTENBACH: Is it this one?

7 MR NTSEBEZA SC SC: It's, on the outside it says Mine Unrest at Lonmin Marikana history and build up.

8 BRIG BREYTENBACH: The interpreter got one here.

9 MR NTSEBEZA SC SC: Oh yes, a very useful man, the interpreter. Now from what I've seen in 211, or slide 211, which speaks munitions expended at scene 1. Now I now you, from what I've read from your transcript, the transcript of your testimony, you were not present on the 16th of August, did I get that right?

10 BRIG BREYTENBACH: That's correct, yes.

11 MR NTSEBEZA SC SC: Yes. If it is only on the basis of ammunition that were expended at scene 1, would it be correct that two units, the POP and TRT, appeared to have been involved in discharging ammunition in
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scene 1, from what is represented there?

BRIG BREYTENBACH: Yes.

MR NTSEBEZA SC SC: And if we go to slide

tables, it is somewhere here where the tactical options is

257 of that document, on the evidence thereof it does
appear that virtually - that the NIU was involved, the
Canine was involved - the Dog Unit, the TRT was involved
and POP were involved?

BRIG BREYTENBACH: That's correct.

MR NTSEBEZA SC SC: And since you were
not involved on the day, you wouldn't know what the
rationale would have been for an involvement of all those
units? It wouldn't be a question to put to you?

BRIG BREYTENBACH: That would be correct.

The best person to answer would be the operational
commander.

MR NTSEBEZA SC SC: Now, in the training
of all these units, and since you are the coordinator, I
want to proceed on the basis that you are keen to know
whether what is in the curricula, is in fact implemented.
It would be - I wouldn't put it higher than saying you
would have a keen interest to see that it is implemented.
BRIG BREYTENBACH: That's correct, yes.

MR NTSEBEZA SC SC: Are there ever any
sessions at which you become involved, for instance, where
evaluation of scenes that have been involved in public
violence are assessed?

BRIG BREYTENBACH: No, I have not been
involved in any such assessment.

MR NTSEBEZA SC SC: I know you have
indicated that you were not involved in the 9 day gathering
at Potchefstroom, I'm not referring to that specific
incident.

BRIG BREYTENBACH: Ja, no others also, I
was not -

MR NTSEBEZA SC SC: Other than the theory
that we all have been able to see that comes out of these
documents, it's public standing order so and so, you should
not do this, you should do this - you have never been in a
situation where you have yourself been involved, even in a
post-mortem assessment of the efficacy of this training
matters.

BRIG BREYTENBACH: No, I have not, but my
colleagues at Research and Development in our division,
whose function it is, they performed that function.

MR NTSEBEZA SC SC: For instance, I would've
wanted to ask you what is involved in the practical
training of those who would be involved in crowd control.

BRIG BREYTENBACH: As much as I want to
assist, I would be basically touching on topics and I think
best would be to ask the trainer specialist that can be
called for that purposes -

MR NTSEBEZA SC SC: Yes.

BRIG BREYTENBACH: - because they know
the tactics, the terminology, everything by heart.

MR NTSEBEZA SC SC: I ask because I don't
want you to leave that witness stand and then realise after
we've left that I should've put certain questions to you.

Do you understand that, Brigadier?

BRIG BREYTENBACH: I understand, Sir.

MR NTSEBEZA SC SC: For instance, I - a
figure has been bandied about which represents the number
of people who were on that koppie in the 16th, it's been 3
000 people. Now I would want to know what those who get
trained in crowd control, what are they actually taught to
do when they deal with 3 000 people? Let's say for
instance people who are unarmed, do you have any sense
about what it is practically that they are supposed to do
when - and the operation for instance, as is the operation
in this case, disperse and - let's say it was just
dispersed. Now what practically are the people trained?

How do they handle that situation?

BRIG BREYTENBACH: If I can refer to the
slides, it is somewhere here where the tactical options is
[COMMISSION ADJOURNS  COMMISSION RESUMES]

You are still under oath, Brigadier.

BRIG BREYTENBACH: Yes, Chairperson.

MR NTSEBEZA SC: Thank you, Mr Chairman, just a couple of question, Brigadier. I've looked at Exhibit Q. There doesn't seem to be any reference to the existence of risk assessment manual. In other words something that as part of training people who are going to do crowd control, they will be told these are the ABCs when you get to know that kind of - do you have a risk assessment manual?

BRIG BREYTENBACH: No, not that I can recall, no.

MR NTSEBEZA SC: Now you have been asked a number of questions on what appears in the SAPS Bundle 1, on pages 397 to 401 and beyond. The first one is the letter that seems to have gone to all provincial commissioners, all provincial heads, operational response and MECs on the 20th of December 2012.

BRIG BREYTENBACH: 2011 or 2012?

MR NTSEBEZA SC: 2011, well I mean we arrived at it - thank you, Brigadier. You recall this letter?

BRIG BREYTENBACH: I do, yes.

MR NTSEBEZA SC: Now, in your capacity as a training coordinator, does this kind of letter come to you and if it does, for what purpose it would come to you? In other words, I am just trying to see where in the scheme of things, you would fit with what that letter seems to convey.

BRIG BREYTENBACH: If I think a better way to explain is, it mentions specifically the stopping, to use the rubber rounds, for instance. Our curriculum personnel would then amend the curriculum. But that very same letter was recalled in 2012, early this year.

MR NTSEBEZA SC: Yes.

BRIG BREYTENBACH: So, yes, if a letter like that come, it will influence the curriculum because the operational side said that they experienced a problem, the curriculum would changed and then it would be passed down to us for implementation.

MR NTSEBEZA SC: So you get to know about it in your capacity as a coordinator of training because the curriculum developers would have to take the contents of that letter into account, is that right?

BRIG BREYTENBACH: That is correct, yes.

MR NTSEBEZA SC: And then an inquiry as to whether that was put into operation would have to be more to the people who are the divisional heads of the units that get trained by you. Would you agree with that?

BRIG BREYTENBACH: Whether they implement this instruction specifically -

MR NTSEBEZA SC: Yes.

BRIG BREYTENBACH: - yes.

MR NTSEBEZA SC: That will be also the case with respect to the letter also attaining a form of a circular on that same document which purports to be a letter from the National Commissioner, re public order police, use of force during crowd management, 20th July 2012. You are familiar with that letter?

BRIG BREYTENBACH: I don't have it in front of me, but I think it's the one that we talk about the drawing, the previous one.

MR NTSEBEZA SC: I would think so. I don't know whether your copy is legible but most of the copies were -

BRIG BREYTENBACH: No, I know about this letter, yes.

MR NTSEBEZA SC: Yes. In other words, as late as the 20th of July 2012, this letter was circulated to all provincial commissioners, all divisional commissioners, all provincial heads, all deputy national commissioners, chief of staff, ministry of police, secretary of police, secretariat police. You can confirm that?

BRIG BREYTENBACH: Yes.

MR NTSEBEZA SC: And you can see in fact this letter dated 20th December 2012 which is the one that I talked to, has reference and is hereby withdrawn and is replaced by this instruction.

CHAIRPERSON: Mr Ntsebeza, I take this has got to be an exhibit. So seeing you're referring to it, is it Exhibit S? Thank you.

MR NTSEBEZA SC: Yes. In the police bundle it is referred to as item 37, what is it -

CHAIRPERSON: No, but the whole police bundle isn't going to be handed in as an exhibit before the commission, because otherwise you can image how many exhibits we would have. Only those will be referred to in evidence will get exhibit numbers. And so this is a letter from the National Commissioner to provincial commissioners and others dated 20 / July 2012. So it is - it was in operation for something like 25, 26, 27 days - or had been in operation in 26 days when the events which form subject of this -

MR NTSEBEZA SC: Yes.

CHAIRPERSON: - commission took place.
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1. Well the culminating events which formed the subject of this commission took place.
2. MR NTSEBEZA SC: Thank you, Chairman.
3. Now what exhibit number are we giving it? S?
4. CHAIRPERSON: S.
5. MR NTSEBEZA SC: Exhibit S, alright.
6. Now, Brigadier, you indicate that you are aware of this letter.
7. BRIG BREYTENBACH: That's correct, yes.
8. MR NTSEBEZA SC: And as the Chair has indicated, it seems to have been circulated a few weeks before the events that form now the subject matter of this commission because it was sent in July – towards the end of July of 2012. Do you agree.
9. BRIG BREYTENBACH: I agree.
10. MR NTSEBEZA SC: Now when did you personally become aware of this letter?
11. BRIG BREYTENBACH: It must've been around the time of the circulation. It do take a few days to go through circulation. I cannot recall specific dates, but obviously after – between 20 July and August.
12. MR NTSEBEZA SC: Now when a letter of this nature crosses your table in your capacity, do you do anything about it or what do you do? Because it seems to be giving some indications as to what must be done.
13. BRIG BREYTENBACH: I'm sorry to intervene, but this letter is distributed and the training people receive both letters via the correspondence channels to the curriculum and also operational units would have received both letters via the correspondence channels to the operational units. POP members would've been made aware that there's going to be operationally something else than what they are currently busy with. Circulars of this nature is also circulated around the whole police service. So operational units, POP units would've received this through normal correspondence to take notice of it.
14. CHAIRPERSON: Do we have the evenly numbered letter of the 20th of December 2011? I take it, it hasn't been handed in as an exhibit yet, has it?
15. MS PILLAY: It doesn't have an exhibit number, but it's part of the police bundle.
16. CHAIRPERSON: It's part of the police bundle – the relevant point that may have to be considered is what changes were introduced by this letter of the 20th of July 2012. I don't know whether the witness can help us and if he can't then obviously we'll raise it with a later witness. But I notice that this letter refers, for example, to the minimum force and it refers to the need for review every time a minimal force is used. Now does that mean that the letter of the 20th of December 2011 didn't require minimum force should be used, or is this something that we can only clear up when we have a witness who has direct knowledge of the earlier letter? I'm afraid I wasn't clear to whom I was addressing. Addressed to the witness primarily, but possibly the evidence leaders could help us and that or possibly even Mr Ntsebeza. I don't know. Anyway I've asked the question. It's directed – it's aimed at three particular people. If any of you can answer, I'll be grateful.
17. BRIG BREYTENBACH: Mr Chair, from our side, as I said earlier, it was passed on to the curriculum developers and they were working on the process in amending the curriculum and also operational units would have received both letters via the correspondence channels to use as operational guidelines immediately.
18. CHAIRPERSON: It seems to me I should actually have directed the question to Mr Semenya because if he knows the answer immediately it will save a lot of time. The question is, are the differences between the letter of 20 December 2011, which has not yet been handed as an exhibit and this Exhibit S, which was dated the 20th of July 2012, are there any significant differences. Was it necessary to issue this new letter and to withdraw and replace the earlier instruction? I know it's not directly relevant to what the witness says but it may actually save a lot of time if we know the answer to that, either now or first thing tomorrow morning.
19. MR SEMENYA: May I give an answer first
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1. thing or may I have an answer given first thing tomorrow morning?
2. CHAIRPERSON: Certainly, Mr Semenya. Mr Ntsebeza, I'm sorry I interrupted you, but please proceed.
3. MR NTSEBEZA SC: No, not at all, Mr Chairman. Just as a follow-up on what the chairman has put, it appears to me that one of the issues that are addresses – that is addressed in both letters is the use of rubber rounds and shotguns. In paragraph 5 of the letter of the 20th of December 2011, which is on page 297 of SAPS Bundle 1, the letter, the circular – 20th December circular says the use of rubber rounds and shotguns must be stopped with immediate effect and then it goes on - do you have it in front of you, Brigadier? [Inaudible] matters to manage crowds must be implemented, negotiations is still the first resort. A gradual response such as the use of pyrotechnics, water cannon and limited launcher must then be used. The purpose of offensive actions must be to de-escalate conflict with a minimum level of force to accomplish the goal. The degree of force must be proportional to the seriousness of the situation and the threat posed in terms of situational appropriateness. The use of force must always be reasonable in the circumstances and force must be discontinued once the objective has been achieved. Do you see that?

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1. BRIG BREYTENBACH: I see that, yes.
2. MR NTSEBEZA SC: Now I would like you to then, please make a comment as to whether Exhibit F, the August letter, addresses differently the question of shotgun and the rubber rounds in paragraph 3? Do you have paragraph 3?
3. BRIG BREYTENBACH: Yes, I do – paragraph 3?
4. MR NTSEBEZA SC: Paragraph 3, it will be 3.1, 3.2, 3.3 –
5. BRIG BREYTENBACH: Yes, Sir.
6. MR NTSEBEZA SC: Paragraph 3, it will be 3.1, 3.2, 3.3 –
7. BRIG BREYTENBACH: I see that, yes.
8. MR NTSEBEZA SC: No, I would not be able to say with accuracy.
9. BRIG BREYTENBACH: No, the curriculum development under Division HRD would be General van Eck.
10. MR NTSEBEZA SC: Yes. By the way, who is in charge of curriculum development in the NIU? Do you know?
11. BRIG BREYTENBACH: Yes.
12. MR NTSEBEZA SC: Yes.
13. BRIG BREYTENBACH: Yes. By the way, who is in charge of curriculum development in the NIU? Do you know?
14. MR NTSEBEZA SC: No, the curriculum development under Division HRD would be General van Eck.
15. BRIG BREYTENBACH: General?
16. MR NTSEBEZA SC: General?
17. BRIG BREYTENBACH: Van Eyk.
19. BRIG BREYTENBACH: Van Eyk.
20. MR NTSEBEZA SC: Is van Eyk, E-C-K or A-
21 Brigadier Fritz, whoever is responsible for the different phasestwo - do you know who -
22 Brigadier Breitzenbach: Sorry, it's Y-K.
23 Mr. NTsebeza SC: Curriculum development would report under his command.
24 Brigadier Breitzenbach: That would be General Van Eyk. And
25 Mr. NTsebeza SC: Okay. Van Yk. Y-K.
26 Mr. NTsebeza SC: Thank you and the Intervention Unit.
27 Brigadier Breitzenbach: I think it would be best if we can refer to Brigadier Silwane at National
28 best if we can refer to Brigadier Silwane at National
29 charge of curriculum development.
30 Brigadier Breitzenbach: That is correct, yes.
31 Mr. NTsebeza SC: And who would be in charge of the practical training of people trained in the
32 charge of the practical training of people trained in the
33 NIU that would be in the field to say this is what
34 you do?
35 Brigadier Breitzenbach: I cannot give you a specific name because the recent reshuffling in that
36 division. I do not know exact name or the person that's in charge of that. It was recently, but it can be - it falls
37 under General Mawela, under his component.
38 Mr. NTsebeza SC: Would you know who would have been in charge of the practical training of the NIU at
39 the time of the events that we are talking about?
40 Brigadier Breitzenbach: I think it would be best if we can refer to Brigadier Silwane at National
41 Intervention Unit.
42 Mr. NTsebeza SC: Thank you and the special task force, who would be in charge of curriculum
43 development there?
44 Brigadier Breitzenbach: Again, it's General Van Eyk.
45 Mr. NTsebeza SC: General Van Eyk. And training?
46 Brigadier Breitzenbach: That would be Brigadier Fritz, whoever is responsible for the different
47 phases would report under his command.
48 Mr. NTsebeza SC: Curriculum development for TRT units?
49 Brigadier Breitzenbach: General van Eyk.
50 Mr. NTsebeza SC: That is correct.
51 Mr. NTsebeza SC: And then the training of those units?
52 Brigadier Breitzenbach: The training would be falls directly under the command of General Annandale. I just want to reiterate that the changes in their division, in Division ROS, I'm not certain of certain of these posts so if there's a wrong a person at the wrong position -
53 Mr. NTsebeza SC: No, you won't be crucified.
54 Brigadier Breitzenbach: Thank you very much, Sir.
55 Mr. NTsebeza SC: In the dog unit, the K9 unit, who would be - that would be under you, would it be?
56 Brigadier Breitzenbach: No, not under myself, Sir. Under curriculum development is General van Eyk once
57 again and the training itself presented at the K9 Academy under Brigadier Vuma.
58 Mr. NTsebeza SC: Brigadier Vuma, okay.
59 Mr. Mahlangu: Colonel Vuma?
60 Brigadier Breitzenbach: Brigadier.
61 Mr. Mahlangu: Brigadier.
62 Mr. NTsebeza SC: Thank you, Mr Chairman.
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1 and 10?
2 BRIG BREYTENBACH: Can you just indicate
3 which bullet at or which point at slide 9 or 10 please.
4 MR RAMAPELA: No, I say that it is so
5 obvious that is one of the things that have to be trained -
6 BRIG BREYTENBACH: That's correct.
7 MR RAMAPELA: - to the extent that it was
8 not necessary for you to put it in that slide?
9 BRIG BREYTENBACH: Absolutely. Sorry, I
10 misunderstood. Yes.
11 MR RAMAPELA: And that if the people that
12 you have trained failed to take simple instruction, then it
13 means that there's a serious weakness. There would be a
14 serious weakness in the training.
15 BRIG BREYTENBACH: There would be a
16 serious weakness in the operations and that not following
17 instructions amount to misconduct, yes.
18 MR RAMAPELA: Now, Brigadier, there is a
19 contingency plan that was sort of drafted on the 10th of
20 August of 2012 and I have actually requested that the
21 contingency plan, Chairperson, if – Chairperson, I have
22 requested that the contingency plan be copied. I have
23 copies of the contingency plan and I would like the General
24 to have one of the copies and the chairperson as well.
25 CHAIRPERSON: Sorry, have we got copies?

Do you want to give it to the Brigadier? You're promoting
him for the afternoon.
2 BRIG BREYTENBACH: Thank you.
4 CHAIRPERSON: Thank you. Have you given
one to the witness? When you talked about giving one to
the General, did you mean the witness? Brigadier, have you
got one?
8 BRIG BREYTENBACH: No, I don't.
9 Chairperson.
10 CHAIRPERSON: The most important person -
11 MR RAMAPELA: I thought there will be
12 someone who assist me with -
13 CHAIRPERSON: It sounds like you've been
given one.
15 MR RAMAPELA: I am at the back and I
don't even have anyone assisting me with documents,
17 Chairperson.
18 CHAIRPERSON: We have great sympathy for
19 you in your plight, but carry on with your cross-
20 examination. Ms Pillay, we have to give this a number too.
21 T?
22 MS PILLAY: I think it's U. T is the
23 letter dated - well it's the letter dated the 20th of
24 December. You said that we may have to give it an exhibit
25 number -

CHAIRPERSON: I see, we haven't got it
2 yet, but in anticipation you're reserving the letter T for
3 it. That's fair enough.
4 MS PILLAY: That's because it follows S.
5 CHAIRPERSON: And we'll get that first
6 thing in the morning, I take it.
7 MS PILLAY: Alright, so should we –
8 CHAIRPERSON: And this one then will be
9 U?
10 MS PILLAY: This will be U then.
11 CHAIRPERSON: Okay, thank you.
12 MR RAMAPELA: Thank you, Chairperson.
13 General – Brigadier, sorry. Brigadier this document that I
14 have given you relates to a contingency plan on what was
15 supposed to happen from the 10th of August. Now let me give
16 you an indication of one of the reasons for the contingency
17 plan. It was because on Friday 2012-08-10 plus minus 7 000
18 employees of the affiliated unions had embarked on an
19 unprotected strike. And then one of the instructions that
20 was given is on page 2 of this under Mission. The Deputy
21 Provincial Commissioner of the North West province has
22 instructed that public order and crime prevention be
23 maintained in the area of Marikana along the route to
24 Eastern Platinum Mine and Western Platinum Mine before,
25 during and after the strike. Marikana crime prevention and
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[16:28] MR RAMAPELA: Okay. Let us go to number 3 of this concept plan which then gives the concept in focus. Under 3.2 it says operation orders. POP will parade at the base and Marikana -

CHAIRPERSON: Mr Gumbi, I’m sorry to interrupt you. Are you going to go through the whole of this? So sorry, Mr Ramapele, forgive me. You’re Mr Ramapele. Are you going to go through the whole of this document?

MR RAMAPELA: No.

CHAIRPERSON: The whole of the portion that you’re now reading, para 3?

MR RAMAPELA: No, Chairperson, I’m going to highlight some of the issues that -

CHAIRPERSON: The only reason I ask you to interrupt you. Are you going to go through the whole of this? So sorry, Mr Ramapele, forgive me. You’re Mr Ramapele. Are you going to go through the whole of this document?

MR RAMAPELA: - then it could be tomorrow morning. Now let me go specifically to 3.2.3. It says all incidents must be reported to JOC. Hourly reports on the situation must be reported at JOC as from deployment thereafter hourly until duties are concluded. If these reports were not - this order was not executed, can we say that there is something fundamentally weak with the training?

BRIG BREYTENBACH: No, I would not say that. This is operational document and operational environment is fluent and the situation can change on an hourly or minute base. This is - my experience from the operational environment is this is the ideal that members should strive towards. There might be reasons that they have to deviate from this and those instructions would be given to deviate from it. You cannot blame all disregard for instructions on training. There’s numerous factors to take into consideration. The member itself, the circumstances he find himself in and whatever transpires from that circumstances that he finds himself in.

MR RAMAPELA: Thank you, Brigadier. I go to 3.2.4 in deviations. It says all personnel will fall to 3.2.4 in deviations. It says all personnel will fall under the command of the overall commander. No deviation from duty will be allowed without authority from JOC. If the police - sorry. So if the police officer trained illegal instructions or when operating unsupervised.

CHAIRPERSON: He’s the putting the question on the basis that if what he says is right, how does the brigadier comment. The Brigadier’s busy commenting. He is nearly finished with his comment. Obviously we’ll get more detail at a later stage as to whether all the instructions were disobeyed or only some of them were, but it would probably much quicker for the purposes of finishing this part of the cross-examination this afternoon, is to let him finish his answer when we’re told it’s the last question.

BRIG BREYTENBACH: I hope I’ve answered you sufficiently, Sir.

MR RAMAPELA: Yes. You answered sufficiently and then the last question. If we don’t have hourly reports on this concept plan that can be brought before this commission, then you’d agree with me that there was a problem with the implementation of this plan and it is as good as the paper it’s written on?

BRIG BREYTENBACH: That would be operational matters and not as much a training matter if the hourly reports were not done as they were planned to be done.

MR RAMAPELA: Thank you, Chairperson. Thank you, Mr Ramapela.

CHAIRPERSON: Thank you, Mr Ramapela.

I’m sorry that I confused you with your colleague, Mr Gumbi, a few moments ago, but -
MR RAMAPELA: Okay.

CHAIRPERSON: thank you very much for your questions. Mr Gumbi, I take it, if you have any questions you'll be happy to ask them tomorrow?

MR GUMBI: Yes, Chairperson. I'm going to take instruction to that effect.

CHAIRPERSON: The commission will adjourn and resume tomorrow at 09:30.

[COMMISSION ADJOURNED]