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1 [PROCEEDINGS ON 19 NOVEMBER 2012]  
 2 [10:16] CHAIRPERSON: The Commission resumes. We  
 3 were due to start at half past nine, but I am informed that  
 4 there was a misunderstanding and a number of those who are  
 5 appearing were under the impression we were going to start  
 6 at 10 o'clock. That explains why we didn't start before  
 7 10, and thereafter there've discussions with the evidence  
 8 leaders in relation to the programme for the week, which  
 9 has also taken up time. I am sorry if any members of the –  
 10 we apologise to any members of the public who were in the  
 11 auditorium waiting from half past nine. We don't intend to  
 12 be as unpunctual as we do this morning. Yes, Mr Madlanga?  
 13 We still have the Brigadier here. Yes, Brigadier, you are  
 14 still under the oath that you took last week. I must  
 15 remind you of that. Mr Tip, you were cross-examining as  
 16 far as I remember.  
 17 MR TIP SC: That is correct, Mr  
 18 Arbitrator.  
 19 CHAIRPERSON: Do you have any further  
 20 cross-examination?  
 21 MR TIP SC: I do have some further cross-  
 22 examination.  
 23 CHAIRPERSON: Please proceed.  
 24 MR TIP SC: Thank you. Brigadier, I have  
 25 some questions for you which are largely going to go around

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1 the topic of the training and the equipment that you deal  
 2 with in your training section, particularly in relation to  
 3 crowd management and the operation of the functions of the  
 4 public order policing unit. Before I do that, I just have  
 5 a few preliminary questions to clarify just what your  
 6 position is. I take it that you are in the national office  
 7 in respect of training of various units.  
 8 BRIG BREYTENBACH: That is correct, I am  
 9 co-ordinating courses for tactical units, so my function is  
 10 to arrange that the course that they place, that the  
 11 material is available, and the trainers are available, that  
 12 the facilities is available. I am not a subject expert on  
 13 all the courses that I presented, or that I alluded that  
 14 people are trained in.  
 15 MR TIP SC: Would I be correct to think  
 16 that there is an important interface between training and  
 17 the operations divisions of the police service?  
 18 BRIG BREYTENBACH: The process that is  
 19 followed when a need is identified for training is that  
 20 such a need by the operational units would be raised with  
 21 our curriculum development and research fraternity, and  
 22 they would do the research and compile the training modules  
 23 which is then presented to the forth and back process  
 24 between operational people and the curriculum developers.  
 25 MR TIP SC: Would it therefore be so that

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1 the overview that you presented to us in exhibit Q reflects  
 2 the current state of the approach to training, the use of  
 3 equipment in conjunction with operations?  
 4 BRIG BREYTENBACH: That is correct.  
 5 MR TIP SC: I want to touch very briefly  
 6 on an aspect of the basic training programme that you have  
 7 dealt with, and it might be useful for us to have reference  
 8 to slide number 18, of your presentation. Do you have it,  
 9 Brigadier?  
 10 BRIG BREYTENBACH: Yes, I do.  
 11 MR TIP SC: You will see there that you  
 12 deal with the basic training that is offered to all  
 13 candidate policemen, is that correct?  
 14 BRIG BREYTENBACH: That is correct, yes.  
 15 MR TIP SC: And there in slide 18, you  
 16 say you say that "crowd management is presented  
 17 theoretically in the programme, and that it is presented at  
 18 this level only in respect of first responders in crowd  
 19 management, before specialised trained members arrive."  
 20 BRIG BREYTENBACH: That is correct, yes.  
 21 MR TIP SC: I take it that that implies  
 22 that the basic training at this level is of a very  
 23 elementary sort.  
 24 BRIG BREYTENBACH: That is correct. This  
 25 is for the police officer on patrol that comes around a

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1 spontaneous crowd forming, how to report that, and know the  
 2 legislation, when it's transgressed or not.  
 3 MR TIP SC: The reference to specialised  
 4 trained members, would that be a reference to public order  
 5 policing? I am going to call them POP.  
 6 BRIG BREYTENBACH: Yes, that is a  
 7 reference to public order police members or other units  
 8 that can assist with the crowd situation.  
 9 MR TIP SC: Other units might assist but  
 10 the specialist training is given only to POP.  
 11 BRIG BREYTENBACH: That is correct, yes.  
 12 MR TIP SC: And just to be sure that we  
 13 are clear, a unit such as the STS, which you describe as an  
 14 elite technical assault unit, that would not be concerned  
 15 with crowd management training, is that right?  
 16 BRIG BREYTENBACH: Not on a day to – no,  
 17 they aren't concerned with crowd management training.  
 18 MR TIP SC: And broadly that will be true  
 19 also of the TST and the NIU?  
 20 BRIG BREYTENBACH: That is correct, yes.  
 21 MR TIP SC: Brigadier, it's clear from  
 22 your presentation that the police service is very concerned  
 23 to avoid loss of life and serious injury in crowd  
 24 management circumstances.  
 25 BRIG BREYTENBACH: That is correct, yes.

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1 MR TIP SC: And we have heard, presumably  
 2 in pursuance of that objective, that POP members carry only  
 3 non-lethal equipment.  
 4 BRIG BREYTENBACH: That is correct,  
 5 Public Order Policemen is issued with shotguns for crowd  
 6 management, but I believe that they would carry side arms  
 7 for personal protection in other cases.  
 8 MR TIP SC: You deal –  
 9 BRIG BREYTENBACH: I can just say, sorry,  
 10 I can just say we focus on the shotgun during the training,  
 11 not as such the pistols, so I cannot definitely say that  
 12 POP members would be carrying a pistol or not, but I assume  
 13 that they would because it's going to a scene not  
 14 necessarily encountering crowd management situation, they  
 15 need to be armed.  
 16 MR TIP SC: Well, I am sure, Brigadier,  
 17 that we will clarify the position with other witnesses in  
 18 respect of side arms, but a side arm would not be carried  
 19 by a POP member in order to be used for crowd management  
 20 purposes. Is that fair?  
 21 BRIG BREYTENBACH: If a crowd management  
 22 situation turns around into a violent situation, I don't  
 23 think that the shotgun with rubber, would be sufficient,  
 24 and I believe that is the reason why police officers are  
 25 issued with side arms to protect themselves. As I said

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1 again, the course focuses on non-lethal methods of dealing  
 2 with crowd management.  
 3 MR TIP SC: And the shotgun is issued  
 4 only for the discharge of rubber bullets, or as we now know  
 5 rubber balls.  
 6 BRIG BREYTENBACH: That is correct, yes.  
 7 MR TIP SC: Yes. I am going to return to  
 8 that shortly, but I wanted firstly just to take you to  
 9 slide 23, where you describe the mandate that is given to  
 10 public order policing.  
 11 BRIG BREYTENBACH: Yes.  
 12 MR TIP SC: And you describe in essence,  
 13 that it is there to do, to deal with crowd management and  
 14 crowd unrest situations, and then there's a phrase that  
 15 goes as follows, "where classic policing strategies are not  
 16 equipped to deal with a situation," I wonder if you could  
 17 just clarify for us what that phrase entails, "classic  
 18 policing strategies?"  
 19 BRIG BREYTENBACH: That would be the  
 20 people that we spoke about in the basic police training,  
 21 that they've only a basic understanding of crowd  
 22 management. They would get to a scene, maybe inform the  
 23 person on the scene that this is an illegal gathering, and  
 24 they could not deal with it, and that is classical policing  
 25 that we are referring to and that is when the specialists,

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1 which is POP, is called in to deal with the situation.  
 2 MR TIP SC: Crowd management and crowd  
 3 unrest situations permit of course of a wide variety of  
 4 circumstances that a POP unit might confront.  
 5 BRIG BREYTENBACH: That is correct, yes.  
 6 MR TIP SC: One of those might be where  
 7 there's a large crowd of angry people, perhaps some  
 8 carrying some form of weapons, but who are determined to  
 9 move towards an objective somewhere, that the police do not  
 10 wish them to reach.  
 11 BRIG BREYTENBACH: It can be –  
 12 MR TIP SC: Sorry, I was just waiting for  
 13 the interpreter. Now, I will add to that, it would then be  
 14 up to essentially the POP unit on the scene to stop them  
 15 from moving towards that place.  
 16 BRIG BREYTENBACH: Well, Sir, if I can  
 17 understand, you say the police do not want them to go to a  
 18 specific place because of a certain reason that they might  
 19 cause harm or damage or so forth. Yes, then it would be  
 20 public order police to channel them to a certain area, or  
 21 to avoid them from reaching that place or to disperse the  
 22 crowd and using other methods to protect that target, if I  
 23 can call it that.  
 24 MR TIP SC: It's in that context that I  
 25 want to turn to look with you at certain features of the

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1 equipment which POP members carry with them. And to assist  
 2 you, the purpose of those questions will really be to test  
 3 whether a POP unit would have the capacity it stop a crowd  
 4 of that description. Brigadier, you deal with equipment in  
 5 respect of – at slide 27, if I can ask you to turn to that.  
 6 BRIG BREYTENBACH: Yes.  
 7 MR TIP SC: You have it already?  
 8 BRIG BREYTENBACH: Yes.  
 9 MR TIP SC: I notice that in the schedule  
 10 of equipment that is set out there, there is no reference  
 11 to barbed wire.  
 12 BRIG BREYTENBACH: That is correct, yes.  
 13 The equipment referred to here is for the personal issue of  
 14 the members. It also doesn't refer to the water canon,  
 15 which is a separate course for training those operators.  
 16 MR TIP SC: Well, how integral to the  
 17 operations and functions of the POP is an item such as  
 18 barbed wire, the deployment of barbed wire?  
 19 BRIG BREYTENBACH: Well, Sir, as much as  
 20 I would like to help, at this stage, I think we are getting  
 21 into techniques, but I believe that the techniques were  
 22 asked to a specialist. My experience is that the barbed  
 23 wire is used by crowd management for channelising crowds  
 24 into certain areas, or cordoning off. But that's to the  
 25 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  
 2 mind.  
 3 MR TIP SC: I gather from that answer,  
 4 Brigadier, that you are not in a position to tell us about  
 5 the particulars of the training that is given to POP  
 6 members in respect of the use of barbed wire, where and  
 7 when it should be used, how far away it should be used,  
 8 questions of that sort.  
 9 BRIG BREYTENBACH: That is correct,  
 10 because it will coincide with certain tactics that is used.  
 11 MR TIP SC: Well, let us turn our  
 12 attention to the double bore rubber rounds. Now Brigadier,  
 13 you'll correct me if I've misunderstood the position, but  
 14 we have reference in this Commissioner to a circular from  
 15 the divisional commissioner operations in December last  
 16 year, 2011, declaring that with immediate effect rubber  
 17 bullets of the kind that have previously been used were no  
 18 longer to be used under any circumstances. Are you  
 19 familiar with that?  
 20 BRIG BREYTENBACH: I can recall there was  
 21 a circular in that regard, yes.  
 22 MR TIP SC: And was that given effect to,  
 23 within training?  
 24 BRIG BREYTENBACH: In training the  
 25 curriculum was not adjusted and we continued training them

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1 with that, when it comes to operationalising because that  
 2 circular came from operational division, where it was  
 3 halted but from a training perspective the curriculum was  
 4 not changed at that stage.  
 5 MR TIP SC: So POP trainees continue to  
 6 use rubber bullets of the kind I've described, we are  
 7 talking about the same thing, a fairly large, fairly heavy  
 8 cylindrical bullet, is that correct?  
 9 BRIG BREYTENBACH: No rubber ball is two  
 10 balls about the size -  
 11 MR TIP SC: Yes, no.  
 12 BRIG BREYTENBACH: But you talk about the  
 13 40 millimetre rubber.  
 14 MR TIP SC: I am talking about the rubber  
 15 bullet that was dealt with in that circular in December  
 16 2011, the fairly large cylindrical bullet.  
 17 BRIG BREYTENBACH: If you call it by name  
 18 -  
 19 CHAIRPERSON: Brigadier, is that correct,  
 20 as I understand it there are rubber bullets which are as Mr  
 21 Tip described, there are also rubber balls. Now the  
 22 question is, whether that circular in December last year  
 23 which forbade the future use of rubber bullets, applied also  
 24 to rubber balls or is only applicable to bullets as Mr Tip  
 25 described? I think that's the question that we must deal

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1 with first, before you carry on.  
 2 BRIG BREYTENBACH: Chairperson, we refer  
 3 to it as 40 millimetre, because that's the only non-lethal  
 4 rubber than you can get, and 12 gauge. 12 gauge has two  
 5 balls in it. 40 millimetre is a cylindrical type of  
 6 rubber, and if you can just clarify which one you are  
 7 referring to, and I cannot recall what stood in that  
 8 specific circular, but if you refer to rubber bullets, the  
 9 police talk about 12 gauge there, rubber balls in a bullet,  
 10 been shot from a shot gun. And if I can recall, they  
 11 referred to a 12-gauge 2-ball rubber.  
 12 [10:37] MR TIP SC: From a training perspective,  
 13 what is the view of your section and you personally on the  
 14 effectiveness of a rubber round of that kind in stopping an  
 15 angry advancing crowd of people?  
 16 BRIG BREYTENBACH: You ask me for my  
 17 opinion on the use of 12-gauge rubber ammunition and I  
 18 believe that these, it falls in the escalation of force  
 19 that you are using and that it's my opinion that it does  
 20 have a place in the armament of police officers when it  
 21 comes to dealing with crowds.  
 22 MR TIP SC: Brigadier, perhaps I can  
 23 shorten these questions, which I'd be glad to do if I can,  
 24 by just repeating to you a portion of an opening submission  
 25 made by my learned friend Mr Semanya on behalf of SAPS in

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1 these proceedings, and he said the following. This was as  
 2 part of a description of what happened at Marikana. I  
 3 haven't lost sight of the fact that you were not at  
 4 Marikana, but that's not really the thrust of why I'm going  
 5 to read this to you, and the following was said. "The  
 6 protesters defied this and attempted on three occasions to  
 7 breach the Police barbed wire. Teargas, stun grenades,  
 8 water canons and rubber bullets were used to try and stop  
 9 them from breaching the Police line. This did not deter  
 10 them. They had protected themselves from rubber bullets by  
 11 wearing numerous layers of clothing and covering themselves  
 12 with a blanket. Chair and members of the Commission, you  
 13 will hear evidence about the ineffectiveness of police  
 14 issue rubber bullets in such circumstances," and that is  
 15 the end of what learned counsel had to say on that topic at  
 16 that stage, and it's with regard to statements of that kind  
 17 and also perhaps what we have seen on video material here  
 18 that I'm raising this question for you again from the  
 19 perspective of what members are trained to do and what they  
 20 are equipped with in order to achieve their duties. I'm  
 21 going to ask you to comment on that, but again to assist  
 22 you, I'm going to add the following, that the real thrust  
 23 of these questions is the following. If there is a  
 24 situation where there is an angry advancing crowd and the  
 25 POP is not able to bring them to a stop, then what is the

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1 next step? And the concern there is of course the  
2 possibility that the next step is the use of live  
3 ammunition.

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

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

25 MR TIP SC: Brigadier, I don't propose to

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1 pursue this at any length, but I do want to repeat the  
2 question and to make clear precisely what the focus of it  
3 is. We're looking at a situation where there is a  
4 sensitive – let me be concrete about it. Suppose that  
5 there is a procession of dignitaries moving along a street  
6 a block away and that there is a crowd of protesters who  
7 are very opposed to those particular dignitaries and who  
8 would like to get close enough to at least interfere with  
9 the procession and to make their views known. The crowd is  
10 determined to get there and there is a unit of POP who are  
11 a block away and who are there to prevent them from getting  
12 there. As set out in the passage from our learned friend  
13 Mr Semenya, teargas, water canons, rubber bullets, stun  
14 grenades were used; it didn't deter that group, and let us  
15 say it doesn't deter the hypothetical group I'm putting to  
16 you. It is with respect not an answer to say well they  
17 will continue to use that equipment because they have tried  
18 it and it has failed and the crowd is about to overrun  
19 them. Does it mean that the POP unit in those  
20 circumstances couldn't contain the crowd, couldn't stop  
21 them?

22 BRIG BREYTENBACH: When you say overrun  
23 the police officers, I assume that that goes hand in hand  
24 with violent attack on those police officers that's  
25 standing on the line, because that's the only –

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1 MR TIP SC: Forgive me for interrupting  
2 you. That's not a premise. When I say overrun, it means  
3 that they pass them. They get through and they're on their  
4 way to the procession.

5 BRIG BREYTENBACH: Well Sir, I don't know  
6 how to answer you because that is tactics that police  
7 officers would be utilising, the POP. But I assume that  
8 they would use all efforts necessary to stop them from  
9 breaching the line that they are protecting, and further  
10 than that I cannot say exactly what the POP member would do  
11 in that situation.

12 MR TIP SC: Chair, that concludes our  
13 questions.

14 CHAIRPERSON: Thank you, Mr Tip. Mr  
15 Bruinders, do you have questions for the witness?

16 MR BRUINDERS SC: Thank you. Brigadier,  
17 you said that the POP is trained in aspects of the  
18 Regulation of Gatherings Act.

19 BRIG BREYTENBACH: That's correct.

20 MR BRUINDERS SC: Which aspects of that  
21 act are they trained in?

22 BRIG BREYTENBACH: Well Sir, I do not  
23 have the content with me. I do not have knowledge of the  
24 content itself. The content of the curriculum is not, I  
25 cannot comment on that because I do not have specific

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1 knowledge of it.

2 MR BRUINDERS SC: Then it's clear from  
3 the evidence that you've just given that you agree that the  
4 focus of the training of the POP is public order policing.

5 BRIG BREYTENBACH: It is public order  
6 policing and crowd management, yes, as per slide 24 where  
7 it says, "Responsibility of Public Order Police is to  
8 perform crowd management, combating public violence,  
9 stabilising of serious and violent crime incidents, and  
10 giving specialised operational support and giving  
11 specialised assistance."

12 MR BRUINDERS SC: What you've just read  
13 out is the focus of the training of POP members.

14 BRIG BREYTENBACH: That's correct, yes.

15 MR BRUINDERS SC: That's not the focus of  
16 the training of the NIU, STF and TRT?

17 BRIG BREYTENBACH: No, that is not the  
18 focus of the, of those units that you mentioned.

19 MR BRUINDERS SC: As I understand it, you  
20 yourself don't know what training the POP members underwent  
21 who were on duty on the 16th of August.

22 BRIG BREYTENBACH: That is correct, yes.

23 MR BRUINDERS SC: And you don't know  
24 whether these members had previously carried out public  
25 order policing, crowd management, the kind of things you

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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

4 those POP members had previously carried out a public order

5 policing exercise involving thousands of workers engaged in

6 an unlawful strike, many of them armed?

7 BRIG BREYTENBACH: No, I don't know.

8 MR BRUINDERS SC: What you can say is

9 that you'd expect because of the focus of their training,

10 Public Order Policing to be responsibility for and to carry

11 out the policing exercise in managing the situation I just

12 described?

13 BRIG BREYTENBACH: That is correct, yes.

14 MR BRUINDERS SC: And as I also

15 understand your evidence, you don't know what the plan was

16 for managing and policing the situation on the koppie at

17 Wonderkop.

18 BRIG BREYTENBACH: No, no, I was not

19 aware of that.

20 MR BRUINDERS SC: Are POP members trained

21 about how to respond when things don't go according to

22 plan?

23 BRIG BREYTENBACH: If I'm correct you're

24 asking, they've got a plan, they're executing it and it

25 doesn't go to, according to the plan, if they know what to

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1 do next, and I would say that is when they regroup and take

2 another decision, implement a new tactical plan.

3 MR BRUINDERS SC: And that's what they're

4 trained to do –

5 CHAIRPERSON: Sorry, Brigadier, that

6 wasn't an answer to the question. The question was, are

7 POP members trained how to respond when things don't go

8 according to plan?

9 BRIG BREYTENBACH: Chairperson, I cannot

10 comment on that. I cannot recall that I read it out here

11 from the presentation, and that, if I can say, that would

12 be a tactical decision, a command decision by the members

13 on the ground how to respond next.

14 MR BRUINDERS SC: When you said that if

15 things don't go according to plan you expect the POP to

16 regroup and formulate a new plan, did you mean to say that

17 that is what they are trained to do?

18 BRIG BREYTENBACH: Sir, I cannot comment

19 on that unfortunately because I do not see it in the

20 slides, and as I earlier said, this slides was prepared by

21 a team of members and I would prefer if that question can

22 be directed to a specialist in the POP environment. I do

23 not see it in the slides, which means there's no specific

24 subject to that.

25 CHAIRPERSON: To whom must Mr Bruinders

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1 then direct those questions? Who is the person who gave

2 you the information which you incorporated in your

3 presentation, who will be able to deal with the points that

4 Mr Bruinders is now raising with you?

5 MR SEMENYA SC: Chair, if I may be of

6 assistance. It is Colonel Scott who will deal with those

7 issues.

8 CHAIRPERSON: Thank you, Mr Semenya.

9 [10:57] MR BRUINDERS SC: Thank you, Chair.

10 Brigadier, when you said that when things don't go

11 according to plan you expect the POP to regroup and

12 reformulate their plan, do you mean to say that that would

13 be a commonsensical response of a unit in that situation?

14 BRIG BREYTENBACH: Yes, I agree with what

15 you are saying.

16 MR BRUINDERS SC: Would recruiting and

17 reformulating the plan, would that be, as far as you are

18 concerned as a trainer, would that be a standard way of

19 best dealing with a situation that doesn't go according to

20 plan?

21 BRIG BREYTENBACH: Well, Sir, not as a

22 trainer of public or the police, but as a coordinator of

23 it, those decisions get taken on the ground, it is not a

24 sit down and discuss it again, that's what I would expect,

25 but where the commanders would take lead and say, let's

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1 employ this tactic or do this or that, that's what I as a

2 police officer think that they should be doing.

3 MR BRUINDERS SC: Do you think that, - or

4 sorry, can I rephrase that, as a coordinator would you say

5 that that standard that you expect would be reasonable to

6 expect from the commanders in charge of a situation that

7 doesn't go according to plan?

8 BRIG BREYTENBACH: That is correct, yes.

9 MR BRUINDERS SC: Thank you, Chair, I

10 have no further questions.

11 CHAIRPERSON: Thank you, Mr Bruinders.

12 Mr Bizos?

13 CROSS-EXAMINATION BY MR BIZOS SC: Oh,

14 thank you, Mr Chair. You joined the police force in 85.

15 BRIG BREYTENBACH: That is correct, yes

16 Sir.

17 MR BIZOS SC: Who had nine years

18 experience as a police officer when fundamental

19 constitutional changes took place in South Africa?

20 BRIG BREYTENBACH: Yes, Sir.

21 MR BIZOS SC: What was your rank in 94?

22 BRIG BREYTENBACH: I think I was a

23 lieutenant, I am not sure.

24 MR BIZOS SC: But already an officer?

25 BRIG BREYTENBACH: I think so, yes, 94.

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1 MR BIZOS SC: Now it has been suggested  
 2 quite seriously that the police force was militarised  
 3 during your nine years of experience as a police officer,  
 4 would you agree with that assertion?  
 5 BRIG BREYTENBACH: So you're referring  
 6 between 85 and 94 then?  
 7 MR BIZOS SC: Well, let's confine it to  
 8 the period where you wore that kaki uniform, was it the  
 9 kaki uniform?  
 10 BRIG BREYTENBACH: Sir, I've only worn  
 11 blue in my whole life, I've never been part of units that  
 12 were kaki or the camouflage, but I believe that is the  
 13 period that you are referring to, yes.  
 14 MR BIZOS SC: Yes, was it or was it not a  
 15 militarised unit or force, a militarised force?  
 16 BRIG BREYTENBACH: Sir –  
 17 MR BIZOS SC: It was being accused of it,  
 18 it has been accepted but I want your view, did you consider  
 19 it a militarised force?  
 20 BRIG BREYTENBACH: No, I did not consider  
 21 it a militarised force –  
 22 MR BIZOS SC: So the people who say so  
 23 are wrong?  
 24 BRIG BREYTENBACH: Sir, you've asked for  
 25 my opinion and that's what my opinion is.

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1 MR BIZOS SC: Yes, if I were to put to  
 2 you that the reason why it was referred to as a militarised  
 3 force is because it believed in shooting first and asking  
 4 questions later. It may be a simplification but was that  
 5 the common man's vision?  
 6 BRIG BREYTENBACH: Sir again, in my  
 7 experience I did not experience that because I was not  
 8 involved with that and I cannot speak for the common man,  
 9 as you refer to.  
 10 MR BIZOS SC: Are you not a common man?  
 11 BRIG BREYTENBACH: I am on the side of  
 12 the police now, if you say, because you're referring to me  
 13 as a police officer.  
 14 MR BIZOS SC: Yes, police officers do not  
 15 shut their ears or distance their brains from the common  
 16 feeling of the people in the country or should they?  
 17 BRIG BREYTENBACH: I cannot speak for  
 18 other police officers, except myself.  
 19 MR BIZOS SC: Are you aware that before  
 20 94, during the apartheid regime there were numerous  
 21 massacres of people who gathered, being shot dead, are you  
 22 aware of that?  
 23 BRIG BREYTENBACH: Yes, I am aware of  
 24 that.  
 25 MR BIZOS SC: From the time of

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1 Sharpeville?  
 2 BRIG BREYTENBACH: I know about that, yes  
 3 Sir.  
 4 MR BIZOS SC: 76?  
 5 BRIG BREYTENBACH: Yes.  
 6 MR BIZOS SC: Eastern Province, the so  
 7 called Transkei independent state and in Mr Khotso's  
 8 republic, Ciskei?  
 9 BRIG BREYTENBACH: Yes, I know about  
 10 that.  
 11 MR BIZOS SC: Yes, and particularly even  
 12 in the 90s in Natal, in the Vaal Triangle, and it earned  
 13 the disrespect of the people of South Africa as a military  
 14 force who indiscriminately killed innocent people. Are you  
 15 aware of it?  
 16 BRIG BREYTENBACH: I was aware of those  
 17 notions, yes.  
 18 MR BIZOS SC: In 1994 and the fundamental  
 19 constitutional changes and the democratic elections, did  
 20 you become aware that there was a revulsion of this  
 21 reputation of the police forces, a militarised force, did  
 22 you become aware of it that there was this revulsion?  
 23 BRIG BREYTENBACH: Yes, I became aware of  
 24 it.  
 25 MR BIZOS SC: And are you aware that the

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1 then Commissioner of Police, General Fivaz, the Minister of  
 2 Police, Mr Mufamadi and the president himself, Mr Mandela,  
 3 called for fundamental change to the mindset of the police  
 4 force soon after the 1994 elections? Did you become aware  
 5 of it?  
 6 BRIG BREYTENBACH: Yes, I became aware of  
 7 it.  
 8 MR BIZOS SC: Are you aware that a  
 9 special committee of South Africa and UN and European Union  
 10 experts were called together in order to help in the  
 11 transformation of the South African Police?  
 12 BRIG BREYTENBACH: No, I was not aware of  
 13 that.  
 14 MR BIZOS SC: Would you dispute that  
 15 there was a very serious attempt to re-educate each and  
 16 every policeman and I would assume even you to change your  
 17 mind about the responsibility for the sanctity of the life  
 18 of all the citizens of the country –  
 19 BRIG BREYTENBACH: No, I don't –  
 20 MR BIZOS SC: It did not reach you?  
 21 BRIG BREYTENBACH: No, I am not disputing  
 22 it, I do not know that there was a special commission.  
 23 MR BIZOS SC: But did that sort of  
 24 training of the mind change come through to you as an  
 25 individual, as a young officer?

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1 BRIG BREYTENBACH: I cannot say I will  
 2 recall specific courses, but yes, there was a general  
 3 change in the approach of policing and I was also part of  
 4 that, yes.

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

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

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

19 BRIG BREYTENBACH: Yes, it definitely  
 20 did.

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

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

25 MR BIZOS SC: You accepted that and it is

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1 probably one of the reasons why you achieved the prominence  
 2 that you have in the police force.

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

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

9 BRIG BREYTENBACH: The period 94 to 98, -

10 MR BIZOS SC: Yes -

11 BRIG BREYTENBACH: - not that I can  
 12 recall, Sir.

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

16 BRIG BREYTENBACH: Yes, according to me,  
 17 yes.

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

21 BRIG BREYTENBACH: Not that I know of.

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

25 BRIG BREYTENBACH: Yes, I do.

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1 MR BIZOS SC: Did he in June 1999,  
 2 shortly after his appointment in the speech to the police  
 3 in Soweto say, "We are going to deal with criminals as a  
 4 bulldog deals with a bull," do you remember that?

5 BRIG BREYTENBACH: No, I have never heard  
 6 those words before, but if you read it I suppose that the  
 7 Minister -

8 MR BIZOS SC: I beg your pardon?

9 BRIG BREYTENBACH: I have not heard those  
 10 words before but if you read it I suppose -

11 MR BIZOS SC: You take them from me or  
 12 from good authority that -

13 BRIG BREYTENBACH: Yes -

14 MR BIZOS SC: - he said that?

15 BRIG BREYTENBACH: Yes.

16 MR BIZOS SC: Was that consistent with  
 17 the spirit of 1994 to 1998?

18 CHAIRPERSON: Can we cut this short, I am  
 19 not quite sure where you're going with this cross-  
 20 examination of this witness? Obviously the points you're  
 21 making may well have force as argument to advance later on,  
 22 but is it necessary to get the views of this brigadier who  
 23 wasn't even involved in the events of the 16th of August on  
 24 this topic? If you want to ask someone, perhaps you should  
 25 ask this to Ms Nkosi Thomas' client when he comes into the

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1 witness box.

2 MR BIZOS SC: No, no -

3 CHAIRPERSON: If he does.

4 MR BIZOS SC: Mr Chairman, it is not the  
 5 only quotation that I have, the purpose of the cross-  
 6 examination is that you can rise to the rank of a brigadier  
 7 without taking notice what is happening in the country and  
 8 what is being said by whom in relation to -

9 CHAIRPERSON: Very well, Mr Bizos,  
 10 proceed with the cross-examination. Mr Bizos, I see, I am  
 11 sorry to interrupt you, I see it is now quarter past  
 12 eleven, when it is appropriate for us to take the tea  
 13 adjournment will you let me know?

14 MR BIZOS SC: I can do it now, Mr  
 15 Chairman, I am going to the next quotation.

16 CHAIRPERSON: Well, make your quotation  
 17 then.

18 MR BIZOS SC: Yes.

19 CHAIRPERSON: Then we can take the tea  
 20 adjournment.

21 MR BIZOS SC: When Mr Charles Nqakula, N-  
 22 Q-A-K-U-L-A, took over in April 2002, did you hear that he  
 23 said anyone who points a firearm at police will be killed  
 24 by police officers?

25 BRIG BREYTENBACH: Yes, I can recall

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1 that.

2 MR BIZOS SC: Do you think that it is in  
3 accordance with the law that you have yourself told us  
4 about, proportionality, is that an appeal to the statement  
5 to police to use proportional force, the pointing of a  
6 firearm, the pointing of a firearm must lead to the death  
7 of the person that pointed it?

8 BRIG BREYTENBACH: I believe the time it  
9 was said was when there were huge police killings where  
10 police officers were killed and maybe that sparked the  
11 minister to say something like that.

12 MR BIZOS SC: Is that –

13 [11:17] BRIG BREYTENBACH: We teach, sorry, can I  
14 continue, sorry Sir. We teach the police officer the law,  
15 but the person eventually taking the decision to shoot or  
16 not is that individual, that police officer standing there,  
17 and if his life is threatened then he should take the  
18 necessary action to protect himself or the people that he  
19 is standing with.

20 MR BIZOS SC: He can seek to protect  
21 himself by possibly being quicker on the draw, wound the  
22 person in the leg but not kill him?

23 BRIG BREYTENBACH: You're asking whether,  
24 if he is faster and then wounding the person instead of  
25 killing him?

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1 MR BIZOS SC: Yes, isn't that an  
2 expectation of what the judges said in various cases?

3 BRIG BREYTENBACH: Well, I cannot comment  
4 on specific incidences, but if a person's life is  
5 threatened, that member have to take the decision, is his  
6 life threatened, must he use proportional force and not  
7 necessarily shooting somebody in the toe would stop him  
8 from shooting back at you, and I think that is, I cannot be  
9 able to comment on that unless I am in the situation  
10 myself.

11 MR BIZOS SC: Do you think that it is  
12 right –

13 CHAIRPERSON: May I please ask, what the  
14 witness thinks about what's right or wrong when a gun is  
15 pointed is a matter for him. I am not sure whether his  
16 views on the point will assist us to answer the questions  
17 we're called upon to answer?

18 MR BIZOS SC: Yes.

19 CHAIRPERSON: If you can show a  
20 connection between the questions you're asking and the  
21 questions we're asked to answer, please proceed, but  
22 speaking for myself, please prima facie to say I have  
23 difficulty.

24 MR BIZOS SC: Mr Chairman, we intend  
25 showing that alternative actions could have been taken at

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1 Marikana on the 16th on a proper understanding of what the  
2 courts have said, what the legislation says and what the  
3 constitution says –

4 CHAIRPERSON: Yes, I understand that –

5 MR BIZOS SC: - and I must put to this  
6 witness –

7 CHAIRPERSON: That's not, with respect,  
8 directly relevant to the question you've asked the witness.  
9 Now what I am putting to you, if the witness' opinion on  
10 the point you've asked doesn't really help us to answer the  
11 question as to whether the police acted correctly, whether  
12 they could have acted differently and prevented the  
13 massacre, these are matters we have to decide.

14 MR BIZOS SC: Yes.

15 CHAIRPERSON: And obviously you're going  
16 to deal with it and we will equally listen to everything  
17 that your witnesses have to say on the points.

18 MR BIZOS SC: Yes.

19 CHAIRPERSON: But my only question is  
20 whether it is necessary or helpful to ask these questions  
21 to this witness? Is that the only point in debate between  
22 us at the moment?

23 MR BIZOS SC: Well, it may be a  
24 convenient stage for an adjournment.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:42] MR BUDLENDER SC: The commission will  
2 resume.

3 CHAIRPERSON: You're still under oath,  
4 Brigadier.

5 MR BUDLENDER SC: Chair, and before we  
6 commence, may I ask that the dispensation with regard to  
7 jackets be continued, it is very, unpleasantly hot in here?

8 CHAIRPERSON: When you were absent, Mr  
9 Budlender, the point arose with Mr Mpofo and he made the  
10 point that until the dispensation is revoked it stands,  
11 this is why it was not necessary for me to expressly extend  
12 it earlier this morning.

13 MR BUDLENDER SC: I understand it was  
14 indefinite, thank you, Chair.

15 CHAIRPERSON: Brigadier, you're still  
16 under oath, you don't have to keep your jacket on if you  
17 don't want to, allow Mr Bizos has his jacket on, so perhaps  
18 you can continue your debate both appropriately clad.

19 MR BIZOS SC: Brigadier, there is an  
20 aspect of your evidence that I cannot understand or accept,  
21 the answer given to my learned friend on my left, Mr Tip,  
22 that you really don't know the content of the training of  
23 any particular branch. How do you coordinate them if you  
24 don't know what their training is, what their mindset is,  
25 what their capabilities are? Is your function as, how did



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1 you describe yourself?

2 BRIG BREYTENBACH: A training

3 coordinator.

4 MR BIZOS SC: A coordinator, how do you

5 coordinate something that you are so ignorant about?

6 BRIG BREYTENBACH: Sir, with all due

7 respect, there is hundreds of courses in the police of

8 which I cannot recall all the curriculums. My function is

9 to identify the need or the need is identified for a

10 specific training area, the need is then passed down to our

11 division, we draw up a yearly training programme in which

12 we then address that need. The courses that are utilised

13 to train the people is identified and then we make it

14 happen and we would put the facility, the members that are

15 nominated, the funding, coordinating the necessary trainers

16 to be present at the intervention so that they can present

17 that training. I am not ignorant to it, if a matter is

18 raised during a training intervention I would then

19 facilitate that the research department look into that

20 specific aspect if I can't address it myself, but as I from

21 the beginning said, I am not a trainer in all these

22 aspects. I am not the task force, a special task force

23 trainer, I am not the public or the police trainer, I

24 merely facilitate that those trainings take place and when

25 I was asked to come and give evidence it was to give a

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1 broad outline of the curriculums so that the committee can

2 understand the subjects that are taught to the trainees.

3 MR BIZOS SC: I can understand what you

4 say but the issue of when to shoot to kill must be and

5 ought to be a very important question in the minds of

6 everyone in the police force, would you agree with that?

7 BRIG BREYTENBACH: Yes, I do.

8 MR BIZOS SC: You as a rookie must have

9 asked yourself when am I entitled to kill a fellow human

10 whatever wrong he/she may have done, did you ask yourself

11 that question?

12 BRIG BREYTENBACH: Yes, Sir, I was taught

13 that in my basic police training.

14 MR BIZOS SC: Do you share the view of

15 General Cele, "who are they to call us brutal, those who

16 sit with their books in air conditioned offices," you see

17 Mr Chairman, I am very sensitive to this issue of air

18 conditioning, "while our officers have to go out there and

19 respond to violent activities such as heists, armed

20 robberies and hijackings?" Do you know that General Cele

21 said that?

22 BRIG BREYTENBACH: Yes, I am aware that

23 he said that.

24 MR BIZOS SC: And did you ask yourself or

25 did any of your subordinates ask you, Brigadier, what is

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1 this Mr Commissioner Cele saying, how can you compare

2 heists, armed robberies and hijackings? We in the popular

3 office, POPS, we want to know what do we do in a situation

4 in which there are 3 000 people, some of them as the

5 minority are armed, they are hungry, they are thirsty, they

6 are disappointed because they haven't got any wages for the

7 last six weeks or so and they misbehave, how do we deal

8 with it? Do we shoot indiscriminately and possibly kill

9 someone who hasn't committed any crime other than possibly

10 to attend an unlawful gathering? Aren't those questions

11 discussed with your fellow officers, the people under you,

12 were they not discussed, are they not discussed, what

13 answers do you give them?

14 CHAIRPERSON: Mr Bizos, I think the

15 interpreter who –

16 MR BIZOS SC: Sorry –

17 CHAIRPERSON: - is very good in

18 interpreting long questions, but I think you've gone rather

19 far down the line of long questions, I think you should

20 give him a chance to catch up.

21 MR BIZOS SC: I'll try.

22 BRIG BREYTENBACH: I can recall when

23 General Cele said that and I did not take it as shoot first

24 and ask questions later, because I have respect for life.

25 When I was asked this question by fellow police officers,

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1 can we just now shoot indiscriminately, I replied by saying

2 the law still stands, irrespective of what the General

3 said. The way I interpreted General Cele's statement was

4 to defend yourself, be vigilant, defend yourself and not

5 become statistics as part of the policemen that are killed

6 on a daily basis and that has been my standpoint from day

7 one that I joined the police service, they have to act

8 within the law.

9 MR BIZOS SC: Have you said this as part

10 of the training process that we have to make that

11 distinction?

12 BRIG BREYTENBACH: I am not a guest

13 speaker but whenever I have interactions with trainees,

14 whether I visit the course or whether it were functions

15 that I had closed off for them, that would be my point of

16 view if I was asked this and that is the point of view that

17 I always take with trainees. The curriculum wasn't changed

18 to take out the law after General Cele said that, the

19 curriculum remained the same with the Criminal Procedure

20 Act in place.

21 MR BIZOS SC: You decided to put Exhibit

22 Q together, did you?

23 BRIG BREYTENBACH: It was a group effort,

24 yes Sir.

25 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,

7 training and development, ETD, in support of creating a

8 safe and secure environment for all people in the Republic

9 of South Africa. You chose to put that in the forefront of

10 the document that you drew?

11 BRIG BREYTENBACH: Yes, I did, Sir.

12 MR BIZOS SC: Because you believe in it?

13 BRIG BREYTENBACH: Yes, I believe in

14 that.

15 MR BIZOS SC: Have you seen the plan of

16 Colonel Scott?

17 BRIG BREYTENBACH: No, I have not seen

18 his plan.

19 MR BIZOS SC: You were not asked which

20 units that you have trained or you are responsible for

21 training, ought to participate in what was happening on the

22 koppie?

23 BRIG BREYTENBACH: No, I was not asked

24 who participated there.

25 MR BIZOS SC: If you were asked whether

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1 people with experience in arresting or killing hijackers or

2 terrorists or bank robbers or ATM robbers, what would your

3 advice to him have been having regard to your knowledge of

4 the training of these people?

5 BRIG BREYTENBACH: Sorry, can you

6 rephrase the question, I missed the first part of it?

7 MR BIZOS SC: If he had asked you or if

8 he had told you, if he had asked you, I intend using people

9 who have special experience to put an end to heists, bank

10 robberies, committed by small groups with very

11 sophisticated weapons, that he intended to use persons of

12 that background with that education as to how to

13 distinguish between life and death and their reactions,

14 what would you have advised him?

15 BRIG BREYTENBACH: If anybody would have

16 asked me if I would use the special task force or NAU or

17 TRT for a crowd management situation I would ask, why is it

18 necessary to use them and if it is not a crowd management

19 situation and maybe a violent crime scene, then that can be

20 justifiable.

21 MR BIZOS SC: Justifiable, yes, and if he

22 were to give you the facts honestly, that there were 3 000

23 people mixed, some, very few are armed with firearms, a few

24 with sharp instruments, axes, pangas, spears, many of them

25 with sticks and a very substantial number of them not

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1 bearing any arms, but at worse they may be guilty of

2 attending an unlawful gathering, what role if any, did

3 these people, would those people, expert at killing others

4 have served, how could they distinguish between the

5 "innocent" striker and those who had deadly weapons?

6 BRIG BREYTENBACH: Those people that you

7 refer to as being trained to kill, I suppose you refer to

8 the task force and these highly other trained units. As I

9 indicated in the earlier slides, they all have the same

10 basic police training. I cannot comment on the way that

11 the operational commander thought that day, why he would

12 bring them in, I cannot comment on that. If I have all the

13 facts in front of me, stating that there are people that

14 are armed, remember we said earlier that the public or

15 police only have now rubber and pistols, going up against

16 armed police officers, if it was me I would also bring in

17 specialised people that can deal with such situations, but

18 again I can't answer on behalf of the operational

19 commander, what I can say is that the special task force

20 and the NIU and the TRT have a wide skill set that can be

21 applied in many circumstances, and I suppose it is better

22 to come prepared for any eventuality and that might be the

23 reason that they were deployed there.

24 MR BIZOS SC: Was the person who was

25 unarmed and there in order to try and get a better wage a

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1 criminal, he was entitled to live or die?

2 BRIG BREYTENBACH: I don't want to

3 comment on that –

4 MR BIZOS SC: Why –

5 BRIG BREYTENBACH: - because an unarmed

6 person is not necessarily not a dangerous person.

7 MR BIZOS SC: If he is unarmed what harm,

8 immediate harm does he, can he possibly cause on a police

9 officer armed with an R5?

10 BRIG BREYTENBACH: Sir, what I've seen

11 previously is policemen bleeding that were thrown with

12 stones, I've seen policemen that were hacked to death. I

13 cannot comment on that question. I believe the situation

14 is much more complicated than as you put it, an unarmed

15 person, referring to only one while you earlier said that

16 there were over the 3 000 people. I do not want to comment

17 on that, Sir.

18 [12:02] MR BIZOS SC: I want to put it straight

19 to you that we are going to argue that your attitude is

20 that of Pontius Pilate who washed his hands and was not

21 prepared to pass judgment on what you may have done or

22 advised.

23 CHAIRPERSON: I'm not going to allow him

24 to answer that question. Pontius Pilate was the governor

25 of Judea, responsible for what was happening. This witness

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1 was not in any position, in control of what's happening.  
 2 He wasn't even on the scene. So the analogy with Pontius  
 3 Pilate is irrelevant and inapplicable, and I'm not going to  
 4 allow him to answer the question.

5 MR BIZOS SC: Brigadier, the present  
 6 Minister produced a document on the 29th of August, 2011,  
 7 which is the Minister Nathi Mthethwa. Are you aware of it?

8 BRIG BREYTENBACH: Sir, you didn't give  
 9 the name of the document. I do not –

10 MR BIZOS SC: I'll read it out. "Policy  
 11 and guidelines – Policing of Public Protests, Gatherings  
 12 and Major Events." Are you aware of this document?

13 BRIG BREYTENBACH: I'm aware of it.

14 MR BIZOS SC: Did you study it?

15 BRIG BREYTENBACH: I can recall reading  
 16 the document. I cannot recall the exact content of it.

17 MR BIZOS SC: The purpose of doing  
 18 exhibit Q is to inform the Commissioner of the high  
 19 principles which the Police adhere to in the protection of  
 20 all the people of South Africa. Now did you deliberately  
 21 leave it out of consideration of the document that you  
 22 prepared, exhibit Q, or was unintentional?

23 BRIG BREYTENBACH: It was not left out  
 24 deliberately or intentionally. If it, the content of that  
 25 would have filtered through the curriculum development

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1 process and would have been in the, or is in the training  
 2 curriculum of POP. So it is not specifically referred to.

3 MR BIZOS SC: Mr Chairman, this is a  
 4 document which was in the documents disclosed.

5 CHAIRPERSON: I'm aware of that.

6 MR BIZOS SC: I don't know whether we  
 7 should put it in as an exhibit at this stage.

8 CHAIRPERSON: Well, if all the documents  
 9 disclosed aren't exhibits, then I hope they never will be  
 10 because there are thousands of them, but it sounds from  
 11 what you said and what I remember of the document, to be a  
 12 most material document and I suggest you should put it in.  
 13 I think R, Ms Pillay is the expert on this. R is the next  
 14 exhibit letter. Is that correct?

15 MS PILLAY: That's so, Chairperson, it's  
 16 R.

17 MR BIZOS SC: What was it? Exhibit?

18 MS PILLAY: R.

19 MR BIZOS SC: Exhibit R. The name is  
 20 Policy and Guidelines – Policing of Public Protests,  
 21 Gatherings and Major Events. Now –

22 CHAIRPERSON: You did mention a date –

23 MR BIZOS SC: The end of August – I'll  
 24 give you the precise date, Mr Chairman. It was the 29th of  
 25 August, 2011. 11 and a half months before the advent of

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1 the tragedy that we are – you will agree that I was not  
 2 alone in considering the relevance, the pre-apartheid  
 3 history, because the Minister appears to have taken it into  
 4 consideration what ought to be happening in the Police  
 5 Force. Would you agree with that?

6 BRIG BREYTENBACH: Yes, Sir.

7 MR BIZOS SC: Would you agree that there  
 8 are various recommendations –

9 CHAIRPERSON: Just to be fair, have you  
 10 got a spare copy to put before the witness, because he says  
 11 he read it but as I understood him to say, he can't  
 12 remember all the details.

13 MR BIZOS SC: Unhappily we actually only  
 14 came across it last night, Mr Chairman, and we only –

15 CHAIRPERSON: Ms Pillay is standing up,  
 16 advancing towards the witness. I suspect she's coming to  
 17 your aid.

18 MR BIZOS SC: We are fortunate in having  
 19 Ms Pillay in running the exhibits in particular.

20 CHAIRPERSON: - page you're on and where  
 21 he will find the passage you're going to put to him.

22 MR BIZOS SC: On page 7 where SAPS  
 23 Standing Order No. 262 on Crowd Management, and the  
 24 National Municipal Policing Standard for Crowd Management.  
 25 Standing Order No. 262 in a clear and coherent manner

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1 states that the use of force must be avoided at all costs  
 2 and members deployed for the operation must display the  
 3 highest degree of tolerance. The use of force and  
 4 dispersal of crowds must comply with the requirements of  
 5 9(1) and (2) of the SAPS Act. The Standing Order further  
 6 puts in place the procedures to be followed by the Police  
 7 if negotiations fail in a public gathering which exposes  
 8 the lives of people and property to danger. At the same  
 9 time the Standing Order also prescribes the requirements  
 10 which are to be followed by the Police if the use of force  
 11 becomes unavoidable, and then I want to turn to the last  
 12 paragraph on page 8. "During public protest marches, the  
 13 right to life of protesters, the Police, and the general  
 14 public, may be at stake. The right to life, sometimes  
 15 described as the supreme human right, constitutes an  
 16 international law that is central in the recognition of the  
 17 rights enshrined in international human rights treaties."  
 18 You're aware of that?

19 BRIG BREYTENBACH: Yes, I'm aware of  
 20 that.

21 MR BIZOS SC: Do you subscribe to that  
 22 principle?

23 BRIG BREYTENBACH: I do, yes.

24 MR BIZOS SC: What steps, if any, did you  
 25 take that every police officer you as the teacher, as the

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1 coordinator, as the brigadier, did you take that this is  
2 repeated over and over again to anyone that has anything to  
3 do with the use of force over a crowd?  
4 BRIG BREYTENBACH: These things what you  
5 just read is in, is part of the crowd management course.  
6 Standing Order 262 is there; all these acts that you are  
7 referring to, and that is what is taught during crowd  
8 management.  
9 MR BIZOS SC: I want to turn to page 9  
10 and read out the passage. "Therefore key questions raised  
11 in addressing the implications of the Police use of force  
12 in handling public protests are," mark the next  
13 subparagraph carefully, please. "Is the current training  
14 of SAPS still relevant and appropriate, theoretical and  
15 practical, and do they have proper equipped training  
16 centres?" That's a matter that should be of great concern  
17 to you, Brigadier.  
18 BRIG BREYTENBACH: Sorry, I didn't get  
19 the question. Are you asking whether it's a concern for  
20 me?  
21 MR BIZOS SC: I've read you the passage.  
22 BRIG BREYTENBACH: Yes.  
23 MR BIZOS SC: The question is still to  
24 come. What steps, if any, in the last 11 and a half months  
25 did you take to ensure that SAPS training is still

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1 relevant, and if you had taken any steps before the 16th of  
2 August, what were the steps, and if you didn't take any  
3 steps, why not? If you did take steps, what were they –  
4 CHAIRPERSON: Mr Bizos, I'm sorry to  
5 interrupt you. You're asking about five questions all in a  
6 row. It's all bundled up together. May I suggest you take  
7 them singly?  
8 MR BIZOS SC: I'll try my best, thank  
9 you. Did this particular paragraph come to your notice?  
10 BRIG BREYTENBACH: Sir, I can say yes. I  
11 know that the curriculum developers is, reviewed the  
12 process –  
13 MR BIZOS SC: No, you. Let's speak about  
14 you. What steps did you take –  
15 BRIG BREYTENBACH: I implement the  
16 training programme that is provided to me.  
17 MR BIZOS SC: Tell us what you did. If  
18 you went to the trainers, what did you tell them they must  
19 do in future, which the Minister was concerned about  
20 apparently, because he put it a memorandum that these are  
21 the things that have to be done. What did you do?  
22 BRIG BREYTENBACH: I did not drive to the  
23 trainers to speak to them directly. The training  
24 programmes that were implemented were intensified; more  
25 training programmes were presented and coordinated by my

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1 office.  
2 MR BIZOS SC: Next bullet point on page  
3 9, "Is training done within the context and understanding  
4 of the Gatherings Act?" Did you do that?  
5 BRIG BREYTENBACH: Yes, it is done in  
6 that regard.  
7 MR BIZOS SC: Please tell us what report  
8 you made to whom in answer to the Minister's query.  
9 BRIG BREYTENBACH: I did not make any  
10 report.  
11 MR BIZOS SC: If you didn't make a  
12 report, what steps did you take?  
13 BRIG BREYTENBACH: As I explained  
14 earlier, Sir, the curriculum was influenced by this  
15 document. The curriculum is handed to me and I ensure that  
16 it gets presented. Further to that I did not write a  
17 report to the Minister to answer the specific questions.  
18 MR BIZOS SC: The Minister of Police, to  
19 his credit – sorry, you have an objection?  
20 MR SEMENYA SC: It's not an objection,  
21 Chair, but to say for the record, there will be evidence  
22 coming, explaining why we have these things as drafts  
23 because they arise exactly as a response to the policy  
24 position taken in the document Mr Bizos is dealing with.  
25 MR BIZOS SC: We look forward to that

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1 evidence. Brigadier –  
2 MR TOKOTA SC: - if I may ask Mr Semanya,  
3 is this debate and details about that and all that with  
4 this witness taking us anywhere?  
5 MR SEMENYA SC: I was trying to say to  
6 truncate that line, it may very well be that when General  
7 Annandale comes, speaking on the consequences of this  
8 ministerial policy, my learned colleague may very well find  
9 that a useful witness to test that aspect.  
10 MR BIZOS SC: I will, thank you for that.  
11 Who is the head of training in the Police?  
12 BRIG BREYTENBACH: The divisional  
13 commissioner for training is Lieutenant-General Mbekela.  
14 MR BIZOS SC: Did he ask you to report  
15 what you had to say in answer to the Minister's query?  
16 BRIG BREYTENBACH: No, she did not ask  
17 me, that I can recall.  
18 MR BIZOS SC: If you are the coordinator  
19 of training, would you have expected your superior to ask  
20 you what your view was in answer to the Minister's query?  
21 BRIG BREYTENBACH: I could have made a  
22 contribution, but I believe there's other specialists in  
23 that operational environment that maybe can give a better  
24 input, and maybe they –  
25 MR BIZOS SC: Who is that?

<p style="text-align: right;">Page 1666</p> <p>1 BRIG BREYTENBACH: The other specialists?</p> <p>2 MR BIZOS SC: Yes.</p> <p>3 BRIG BREYTENBACH: We can start with the</p> <p>4 Operational Response Services' Head.</p> <p>5 MR BIZOS SC: Who is it?</p> <p>6 BRIG BREYTENBACH: Lieutenant-General</p> <p>7 Mawela is the Head of Operational Response Services.</p> <p>8 MR BIZOS SC: And the final query by the</p> <p>9 Minister is, "Does the SAPS training manuals support,"</p> <p>10 leave aside the grammar, "the SAPS training manual support,</p> <p>11 the background of the public or the policing, were you</p> <p>12 asked about, to put it in relation to that?</p> <p>13 [12:22] BRIG BREYTENBACH: Not that I can recall.</p> <p>14 MR BIZOS SC: Can you think of any</p> <p>15 possible reason why the coordinator of training wouldn't be</p> <p>16 asked what his view was to these important questions posed</p> <p>17 by the minister?</p> <p>18 BRIG BREYTENBACH: No, I cannot.</p> <p>19 MR BIZOS SC: The minister says in the</p> <p>20 middle of page 10, "The international perspective on the</p> <p>21 broader aspects of police training in crowd control and</p> <p>22 management for all police personnel at all levels highlight</p> <p>23 that the training should include a review and reinforcement</p> <p>24 of applicable laws, state statutes and departmental</p> <p>25 policies, a review of civil rights, issues inherent in mass</p>	<p style="text-align: right;">Page 1668</p> <p>1 Operational Responses, General Mawela's management might.</p> <p>2 MR BIZOS SC: Did either of them ask you</p> <p>3 for your view on the query or the requirement of the</p> <p>4 minister?</p> <p>5 BRIG BREYTENBACH: No, they did not.</p> <p>6 MR BIZOS SC: Any reason for them to</p> <p>7 avoid the coordinator of training?</p> <p>8 BRIG BREYTENBACH: I cannot say why they</p> <p>9 did not do that, Sir.</p> <p>10 MR BIZOS SC: On page 13, paragraph 9,</p> <p>11 "In order to give impetus and ensure compliance with the</p> <p>12 bill of rights the constitution, national legislation and</p> <p>13 international standards, the SAPS, must," underline, not by</p> <p>14 me, by the person who drew this, "must urgently review its</p> <p>15 current dispensation and operational approach to the</p> <p>16 policing of public protests and riots." Did you read that?</p> <p>17 BRIG BREYTENBACH: I read it now, yes.</p> <p>18 MR BIZOS SC: Then, 11 and a half months</p> <p>19 ago, did you read it?</p> <p>20 BRIG BREYTENBACH: I suppose if it was in</p> <p>21 this document I did read it, but again as I said earlier, I</p> <p>22 was not consulted on this document to give input into any</p> <p>23 further curriculum development or the operationalisation of</p> <p>24 the public order police.</p> <p>25 MR BIZOS SC: This is an urgent call by</p>
<p style="text-align: right;">Page 1667</p> <p>1 demonstration events, a uniform understanding of the rules</p> <p>2 of engagement, the use of force policies and mass arrest</p> <p>3 procedures, a clear instruction on the lead of self</p> <p>4 control, team work and adherence to command," underline</p> <p>5 that, "adherence to command, stated expectations for highly</p> <p>6 disciplined behaviour, self control and restrain and a</p> <p>7 strong statement that any officer's failure to comply could</p> <p>8 result not only in failed police statistics but also in</p> <p>9 employee discipline." Did you take any steps to review any</p> <p>10 of the matters referred to by the minister?</p> <p>11 BRIG BREYTENBACH: No, I did not.</p> <p>12 MR BIZOS SC: Would you know of anyone of</p> <p>13 similar or higher or lower rank to you who may have done</p> <p>14 so?</p> <p>15 BRIG BREYTENBACH: Curriculum</p> <p>16 Development, division HRD might and also –</p> <p>17 MR BIZOS SC: Who is that?</p> <p>18 BRIG BREYTENBACH: Curriculum</p> <p>19 Development, the section Curriculum Development.</p> <p>20 MR BIZOS SC: Who is in charge of that?</p> <p>21 BRIG BREYTENBACH: General Van Eyk.</p> <p>22 MR BIZOS SC: Did he approach you –</p> <p>23 BRIG BREYTENBACH: And also –</p> <p>24 MR BIZOS SC: Sorry, sorry.</p> <p>25 BRIG BREYTENBACH: Sorry, Sir, also</p>	<p style="text-align: right;">Page 1669</p> <p>1 the minister about a serious problem that we've had in the</p> <p>2 last 12 months in our country, Brigadier. He considered it</p> <p>3 sufficiently important to underline the word "must", the</p> <p>4 head of the teaching department, so to speak or the</p> <p>5 coordinator ignores it, why?</p> <p>6 BRIG BREYTENBACH: I was not tasked with</p> <p>7 these inputs directly, the task team would have come, it</p> <p>8 would have been from the national commissioner down the</p> <p>9 channels, via the divisional commissioners.</p> <p>10 MR BIZOS SC: In paragraph 14 are other</p> <p>11 matters, what happens elsewhere, the subheading, "It is</p> <p>12 thus imperative that the SAPS must," again underlined,</p> <p>13 "urgently align itself with the following issues as crucial</p> <p>14 areas for intervention and redress." Sorry, page 14 and</p> <p>15 not paragraph 14, I am sorry, and then he gives some</p> <p>16 history which we are familiar with. "In terms of SAPS act</p> <p>17 the national commissioner is obliged to establish a</p> <p>18 national public or a policing unit and maintain the same,"</p> <p>19 and he quotes Section 17 in brackets. "Such unit was</p> <p>20 indeed established during 1996. During 2002 the POPS unit</p> <p>21 was subject to the SAPS restructuring and aligned to</p> <p>22 function the policing area levels as the area crime</p> <p>23 combating units. As the latter name suggest the functions</p> <p>24 also change to include crime combating. Unfortunately this</p> <p>25 relegated the crowd management function into a secondary</p>

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1 function. During the subsequent restructuring process in  
 2 2006 the policing areas were disestablished and policing  
 3 resources released to supplement much needed capacity at  
 4 station level. Again the ACCUS was affected and the name  
 5 was changed to Crime Combating Units," CCU.

6 Then on page 15, the second paragraph, "It is  
 7 indeed the 2006 restructuring of the ACCU the area crime  
 8 commanding unit provoked serious criticism since it was  
 9 indicative that specifically from this period a remarkable  
 10 increase incurred in the number of service delivery  
 11 protests. However the reasons advanced for the  
 12 transformation of the initial POP unit and the subsequent  
 13 rationalisation of the ACCU was firstly, that the functions  
 14 of the unit could not be justified since they did not have  
 15 much duties to perform and thus not value for money. In  
 16 line with the PFMA," what does that stand for, I don't  
 17 know, perhaps you can tell us?

18 BRIG BREYTENBACH: It stands for Public  
 19 Financial Management Act.

20 MR BIZOS SC: Oh. "Secondly, that the  
 21 skills and experience of members of the POP unit were  
 22 deemed necessary in creating capacity to boost police  
 23 station crimes, combating initiatives." Is that a correct  
 24 statement?

25 BRIG BREYTENBACH: I believe that the

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1 operational response service would be better to answer this  
 2 question, because they are the ones dealing with this  
 3 operationalising on a daily basis.

4 MR BIZOS SC: The second last –

5 CHAIRPERSON: Mr Bizos, the interpreter  
 6 is still busy –

7 MR BIZOS SC: Sorry –

8 CHAIRPERSON: - and then I want to put  
 9 something to you when he is finished.

10 MR BIZOS SC: Sorry.

11 MR MAHLANGU: I am, thank you, Sir.

12 MR BIZOS SC: Are you finished, thank  
 13 you.

14 CHAIRPERSON: Mr Bizos, if a point made  
 15 by the witness is not correct, I have difficulty in  
 16 understanding how he can help us –

17 MR BIZOS SC: Yes –

18 CHAIRPERSON: - in relation to the points  
 19 you're putting –

20 MR BIZOS SC: Sorry –

21 CHAIRPERSON: - and I am not sure whether  
 22 you're attacking the policy adopted by the police. Ms  
 23 Nkosi Thomas said it wasn't clear whether that would be the  
 24 line taken, but she said if there were challenges to the  
 25 policy then her clients would, (a), be preparing a

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1 statement which we would be getting, and (b), would be  
 2 giving evidence. Now I wonder whether, I hesitate to say  
 3 this because it may sound as I am criticising you, but I  
 4 wonder whether the time of the commission couldn't be  
 5 better used asking this witness questions of another kind.  
 6 I am not suggesting the questions you're asking are  
 7 irrelevant, but I suggest they may be better asked to  
 8 people better able to answer them.

9 MR BIZOS SC: It is important as the next  
 10 paragraph will show, that I read out the second last  
 11 paragraph 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  
 17 must be re-established, maintained and capacitated to  
 18 execute those functions, the Act confers upon it, due to  
 19 changes, demands and an increase in public protests and  
 20 demonstrations, especially incidents with a violent nature  
 21 since 2006, the need for a specialised public order  
 22 policing unit becomes more and more justified. This notion  
 23 is strengthened by the constant negative public scrutiny of  
 24 current policing methods and approached applied during such  
 25 protests and gatherings, which in some incidents had

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1 already resulted in unnecessary casualties and fatalities."

2 CHAIRPERSON: I assume that this witness  
 3 can answer in relation to that long quotation.

4 MR BIZOS SC: Did you personally take any  
 5 steps to restore the authority and experience of the public  
 6 policing?

7 BRIG BREYTENBACH: No, because it is not  
 8 my responsibility.

9 MR BIZOS SC: Whose responsibility -

10 BRIG BREYTENBACH: And I cannot answer on  
 11 behalf of General Mawela.

12 MR BIZOS SC: General?

13 BRIG BREYTENBACH: I cannot answer on  
 14 behalf of General Mawela who is responsible for the  
 15 establishment of this.

16 MR BIZOS SC: As a coordinator of  
 17 training didn't you think that you should draw to their  
 18 attention that if nothing has been done in 11 and a half  
 19 months, something ought to have been done sometime along  
 20 the way?

21 CHAIRPERSON: Yes, I am sorry, I don't  
 22 understand the question, I understood the evidence to be or  
 23 rather the presentation that we heard to be, that this  
 24 particular unit was there on the 16th of August. If that's  
 25 correct, it was re-established in which case, I don't

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1 understand the relevance of the question. The person, Mr  
2 Semenya can tell us whether the assumption I put to you is  
3 correct, because if it is wrong then obviously you can  
4 carry on.

5 MR SEMENYA SC: The unit is in place,  
6 Chair.

7 MR BIZOS SC: I am sorry, I didn't hear  
8 my learned friend?

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

13 [12:42] MR BIZOS SC: May I just bury the  
14 question, your Lordship is right, yes. Do you know when  
15 steps were taken to re-establish the unit and by whom?

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

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

24 MR SEMENYA SC: No, Chair, what the  
25 document says is that there was a point at which a

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

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

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

10 MR BIZOS SC: Yes, I am coming to another  
11 heading about –

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

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

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

20 MR BIZOS SC: There is a heading on page  
21 16 of the minister's document, training of members attached  
22 to public order policing unit. "Comparative research," and  
23 then a reference is given, "has shown that the current  
24 level of training to SAPS members in crowd management and  
25 control public order policing lacks content." Was that the

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1 position 11 months ago?

2 CHAIRPERSON: I think you meant 14 and a  
3 half months, Mr Bizos.

4 MR BIZOS SC: I beg your pardon?

5 CHAIRPERSON: Do you mean 14 and a half  
6 months ago? This document was produced in late August of  
7 last year, so isn't that 14 and a half months –

8 MR BIZOS SC: Oh yes, before, - sorry, 11  
9 and a half months before the events that we are discussing,  
10 thank you, Mr Chairman. Did it lack content on the 16th of  
11 –

12 BRIG BREYTENBACH: Well, according to the  
13 minister it did lack content.

14 MR BIZOS SC: Do you know if any steps  
15 were taken to put it right?

16 BRIG BREYTENBACH: Yes, there is a  
17 project on revising the training and introducing refresher  
18 training or refresher training has already been presented.

19 MR BIZOS SC: When did that happen?

20 BRIG BREYTENBACH: It is in this  
21 financial year, I cannot give the exact date from the top  
22 of my head.

23 MR BIZOS SC: Before or after the 16th of  
24 August?

25 BRIG BREYTENBACH: I do not want to lie

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1 but I am sure that it was, if I can recall correctly,  
2 before the 16th.

3 MR BIZOS SC: So listen to the next  
4 sentence on page 16, "Basic and refresher training for  
5 police and others involved in law enforcement should  
6 include courses not only on human and constitutional  
7 rights, but also scientific techniques and other best  
8 practices for the professional discharge of their functions  
9 within the public protest environment." Did that happen as  
10 far as you know?

11 BRIG BREYTENBACH: As far as I know, yes.

12 MR BIZOS SC: Before the 16th of August or  
13 after?

14 BRIG BREYTENBACH: If I can recall before  
15 the 16th of August.

16 MR BIZOS SC: Because if I suggest to you  
17 that it does not appear to have helped anywhere, in any  
18 way, what would your answer be?

19 BRIG BREYTENBACH: I would say that is a  
20 matter of opinion, Sir, with due respect.

21 MR BIZOS SC: Well, we know the facts,  
22 over 45 people were killed or 45 thereabout, and about 90  
23 were seriously injured and the country has been thrown into  
24 turmoil as a result of the police actions. What is your  
25 opinion?

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1 MR SEMENYA SC: I haven't been in that  
 2 world of turmoil, Chair speaking for myself.  
 3 CHAIRPERSON: It sounds like a debating  
 4 point, Mr Bizos, frankly which you can deal with argument  
 5 obviously.  
 6 MR BIZOS SC: Yes.  
 7 CHAIRPERSON: I am not sure whether  
 8 anything the witness may have to say and I intend no  
 9 disrespect to him but I am not sure that anything he can  
 10 say to us on the point will actually help us significantly  
 11 one way or the other.  
 12 MR BIZOS SC: Well, if we record that it  
 13 did not affect him in any way, did it affect your life in  
 14 any way as a brigadier in the police force, of what  
 15 happened?  
 16 BRIG BREYTENBACH: You're asking if the  
 17 events of the 16th of August affected my life?  
 18 MR BIZOS SC: Yes.  
 19 BRIG BREYTENBACH: I think it affected  
 20 those that saw it, I saw it on television and it impacts on  
 21 my work. I was not attacked or experienced any protest  
 22 personally.  
 23 MR BIZOS SC: "Policing is often regarded  
 24 as a function required in highly discretionary activity  
 25 since there is no single standard prescription in doing

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1 policing during a public protest. Thus the police officer,  
 2 especially unsupervised would be perpetually called upon to  
 3 make decisions and take appropriate action."  
 4 BRIG BREYTENBACH: Sorry, I didn't get  
 5 the question?  
 6 MR BIZOS SC: Yes, do you read that  
 7 another way of saying that individual policeman must not  
 8 shoot to kill unless they are ordered by a commander? Do  
 9 you know the word, there must be a command and not an  
 10 individual discretion to kill –  
 11 MR SEMENYA SC: Objection, Chair, there  
 12 is nothing in the police service that says people must  
 13 shoot and kill on command, not even in law.  
 14 MR BIZOS SC: - prove that to be wrong.  
 15 CHAIRPERSON: I am not sure, with respect  
 16 to you, the time of the commission is being as gainfully  
 17 employed now as it might be if another line would have been  
 18 followed, but in any event whatever the document says,  
 19 presumably a policeman is still, even if there isn't a  
 20 commander to do so, would be entitled to protect himself,  
 21 to defend his own life and I take it defend the lives of  
 22 this colleagues in terms of the common law rules applicable  
 23 to private defence. One of the question is of course  
 24 whether the requisites for the successful invocation of the  
 25 justification of private defence exists in this case, but I

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1 am not sure if this witness is able to help us to answer  
 2 that question which we will have to answer, and we will  
 3 obviously be helped by your submissions and those of your  
 4 colleagues based on the evidence we're going to hear.  
 5 MR BIZOS SC: I think the wording of the  
 6 question which I think that is based on authority, Mr  
 7 Chairman, a policeman on his own or in a small group may  
 8 exercise his discretion as to when to shoot to kill. In  
 9 large gatherings in which criminal activity may be indulged  
 10 in by one or two persons does not entitle the policemen to  
 11 shoot at random other people who have done nothing  
 12 substantially wrong. Please accept that as a proposition  
 13 of law.  
 14 CHAIRPERSON: What's the question you're  
 15 asking the witness, if the proposition of the law is  
 16 correct then you don't expect the witness to say whether he  
 17 agrees or disagrees, so what do you ask him based upon that  
 18 proposition that you've stated to him? There must be  
 19 question mark at the end of your question.  
 20 MR BIZOS SC: There must be a question  
 21 mark. Have the police being told that if you are faced  
 22 with a crowd you are not to indiscriminately shoot into the  
 23 crowd without an order from a superior officer?  
 24 BRIG BREYTENBACH: With or without  
 25 command every member –

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1 MR BIZOS SC: With or without, - no, no,  
 2 no, -  
 3 BRIG BREYTENBACH: No, no –  
 4 MR BIZOS SC: - individually you don't  
 5 expect a person to give you a command and that's why it is  
 6 called private defence. The question that I am putting to  
 7 you, that in our law a police officer is not entitled to  
 8 shoot into a crowd indiscriminately just because he  
 9 believes that there may be somebody there that has got a  
 10 firearm and may discharge it against the policeman, himself  
 11 or his fellow policemen next to him. There has to be a  
 12 command in a situation where innocent people may be mingled  
 13 up by those people that may be misbehaving.  
 14 BRIG BREYTENBACH: As I was saying, with  
 15 or without a command a member pulling the trigger is the  
 16 one responsible for the shot. There is something like an  
 17 illegal command and I agree with the statement that one  
 18 should not fire into a crowd indiscriminately with or  
 19 without a command.  
 20 MR BIZOS SC: Oh, I see. Yes, yes, is  
 21 what you've said, that nobody has the right to  
 22 indiscriminately shoot into a crowd taught to policemen or  
 23 whatever group there may be in?  
 24 BRIG BREYTENBACH: Yes, and that applies  
 25 from basic training onwards.



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1 MR BIZOS SC: Let me, with regard to page  
 2 18 –  
 3 CHAIRPERSON: Mr Bizos, is this perhaps  
 4 an appropriate stage for us to take the adjournment?  
 5 MR BIZOS SC: Thank you, Mr Chairman.  
 6 CHAIRPERSON: And can we look at page 18  
 7 after we've taken the adjournment?  
 8 MR BIZOS SC: Yes, thank you, Mr  
 9 Chairman.  
 10 CHAIRPERSON: Very well, the commission  
 11 will adjourn for lunch.  
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 13 [14:04] CHAIRPERSON: The Commission resumes. Mr  
 14 Bizos, you were busy cross-examining. Brigadier, I must  
 15 remind you you're still under oath.  
 16 BRIG BREYTENBACH: Yes, Sir.  
 17 CHAIRPERSON: Mr Bizos turn your machine  
 18 on, nobody can hear you.  
 19 MR BIZOS SC: Yes, please turn to page 18  
 20 of Exhibit R, Command and Control. "The success of  
 21 effective response by the SAPS to any public protest  
 22 situation is dependant on a strong line of command and  
 23 control. It has been proved that command and control has  
 24 different meanings to different people. Within the context  
 25 of policing of public protests, command and control simply

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1 means that certain people must know that they have  
 2 different roles to play. Ordinary members in the platoon  
 3 are to execute, getting instructions from the platoon  
 4 leader. The platoon leader is guided by the operational  
 5 commander, who is normally situated some blocks away in a  
 6 mobile or permanent command centre. This can create  
 7 serious repercussions in cases where communication is lost  
 8 and the platoon is left on its own." Do you agree with  
 9 that statement?  
 10 BRIG BREYTENBACH: I believe that it  
 11 would be for operational people to make a determination.  
 12 Effective control can be on scene, or it can be removed.  
 13 The distance, also, is relevant. I think that if it is a  
 14 kilometre away and there's good radio communication, yes.  
 15 If there's not, then that makes a difference, but there  
 16 should be good communication between whichever, close or  
 17 far they are.  
 18 MR BIZOS SC: Lower ranks must be able to  
 19 communicate with higher ranks and vice versa?  
 20 BRIG BREYTENBACH: That's correct, yes.  
 21 MR BIZOS SC: In any situation such as  
 22 that which we are investigating as having happened on the  
 23 16th of August, it appears to be common cause that the radio  
 24 communication was not working properly. I want you to  
 25 assume that, you may not know. What effect would it have

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1 on the command and control situation if that was the case?  
 2 BRIG BREYTENBACH: Commands could not be  
 3 relayed to people.  
 4 MR BIZOS SC: Would that have disastrous  
 5 consequences of certain people taking it upon themselves  
 6 when to shoot to kill?  
 7 BRIG BREYTENBACH: I think that's only  
 8 applicable if a command was given to shoot to kill, which,  
 9 as I clearly explained earlier, that whenever such a  
 10 command was given, or supposed to be given, the member –  
 11 the individual at the end of the day takes their own, the  
 12 final decision on that. So it would be speculative to say  
 13 it would have catastrophic impact.  
 14 MR BIZOS SC: If it was known that the  
 15 command system was not operating properly, might  
 16 individuals who would not ordinarily have the right to  
 17 decide whether to use lethal force or not, might have taken  
 18 a decision when they shouldn't?  
 19 BRIG BREYTENBACH: It's a possibility,  
 20 yes.  
 21 CHAIRPERSON: It's not simply that, is  
 22 it, Brigadier? Because it's not only the decision to fire,  
 23 but also if you have a – using a rifle which you can fire a  
 24 large number of bullets automatically, one after the other  
 25 in very short period of time, the decision as to when to

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1 desist is also important and an officer might be in a  
 2 better position than the individual marksman to tell him to  
 3 cease fire. Now if the radios weren't working properly and  
 4 the decision to cease fire was not properly conveyed,  
 5 couldn't that have serious consequences?  
 6 BRIG BREYTENBACH: Yes, it would,  
 7 Chairperson.  
 8 MR BIZOS SC: On page 22 of the Exhibit  
 9 R, the last paragraph, "On the other hand coercive and  
 10 deadly force involves force which a law enforcement officer  
 11 uses for the purpose of causing, or which the officer knows  
 12 to create a substantial risk of causing death or serious  
 13 bodily harm. Examples include purposely firing a firearm  
 14 in the direction of another person or a vehicle, building  
 15 or structure in which there are people. This kind of force  
 16 normally occurs as a measure of last resort, which the –  
 17 sorry, and is very, and in very few cases. Very often the  
 18 indiscriminate application of deadly force by police in  
 19 many developed countries such as the US and Canada evoke  
 20 public protests on the police's use of force, which return  
 21 results in public discourse on police policy reviews,  
 22 however it cannot be argued with certainty that the  
 23 frequency of this indiscriminate use of deadly force seem  
 24 to be more in one country compared with the other  
 25 countries. It is largely a rare phenomenon and should be

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1 understood within the broader context of violence in  
2 particular locality and country.”

3 And it goes on, on page 23, “In order to ensure  
4 compliance with the Constitution and organisations under  
5 the international instruments, the current operational  
6 strategies and/or policies guiding the use of force by the  
7 SAPS during public protest must be subject to urgent review  
8 to reduce the use of force to a minimum. This view must  
9 ensure strict measures and guidelines are adopted and  
10 implemented to reduce the risk of casualties and fatalities  
11 associated with the use of firearms during public  
12 protests.” You read that?

13 BRIG BREYTENBACH: I read it, yes.

14 MR BIZOS SC: Do you agree that – well,  
15 can you tell us whether any urgent notice was taken on this  
16 aspect of the matter, and was a decision to discharge a  
17 firearm, should it be on orders of the commanders? “Any  
18 decision or instruction to discharge firearm must be  
19 subject to review and investigation, which does not  
20 preclude disciplinary and criminal sanctions in cases  
21 resulting in casualties or fatalities caused by the use of  
22 such firearms.” Would you regard this as a stern warning  
23 by the Minister?

24 BRIG BREYTENBACH: Yes, I would, Sir.

25 MR BIZOS SC: Did you attend any meeting

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1 of the senior police officers at head office or elsewhere  
2 in order to put into effect, as a matter of urgency, what  
3 the minister was suggested.

4 BRIG BREYTENBACH: No, I did not attend  
5 any such –

6 MR BIZOS SC: Did you think that it did  
7 not apply to you to take initiative in order to perform the  
8 minister’s will?

9 BRIG BREYTENBACH: As I earlier said,  
10 such instruction would have through the command structures  
11 to me, if I was to engage and head such a process. I know  
12 that the individual ORS under General Mawela, there is a  
13 process of working on a continuum of force.

14 MR BIZOS SC: You were in an important  
15 position directing or coordinating the training. Was this  
16 not a matter for urgent attention of officers of your rank  
17 – all of you?

18 BRIG BREYTENBACH: It was, but it was not  
19 directed to me.

20 MR BIZOS SC: You were not part of the  
21 whole?

22 BRIG BREYTENBACH: I don’t understand the  
23 whole.

24 MR BIZOS SC: As an individual didn’t you  
25 feel that here is a call on senior police officers to put

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1 what is wrong right? Why didn’t you take any initiative?  
2 BRIG BREYTENBACH: I did not take  
3 initiative, because I was not instructed to attend or draft  
4 such a report.

5 MR BIZOS SC: I don’t want to have a  
6 semantic argument with you, but taken initiative means that  
7 you don’t expect to be commanded to do something which is  
8 obviously part of your duty to better the situation in  
9 relation to loss of life at the hands of the police.

10 MR SEMENYA SC: Chair, we have registered  
11 the objection to say it is it is incorrect to proceed on  
12 proposition that there was no action taken on this policy.  
13 There was, and in fact POP got established and drafts that  
14 we have been using are a response and a direct response to  
15 the policy position that the minister has formulated.

16 MR BIZOS SC: Did you think that you’re  
17 required to be asked, and you did not think that you should  
18 take any initiative?

19 BRIG BREYTENBACH: That is correct, yes.

20 MR BIZOS SC: Why, why did you want to  
21 distance yourself –

22 CHAIRPERSON: Mr Bizos, I don’t think  
23 it’s appropriate to use the language – to use that he  
24 wanted to distance himself. I understand the substance of  
25 your questioning, but I don’t think that expression is

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1 appropriate in the circumstances. Maybe you must  
2 reformulate the question.

3 MR BIZOS SC: Ja.

4 CHAIRPERSON: But while you’re thinking  
5 about how to reformulate the question, let me ask him a  
6 question. It was suggested to you, you should have taken  
7 the initiative in respect of something which was, you say  
8 was really directed to other people in other sections of  
9 police. How does the police force work as far people  
10 taking the initiative about matters that relate to other  
11 divisions apart from that in which they, themselves, are  
12 placed?

13 BRIG BREYTENBACH: Chairperson, normally  
14 instructions come to say head this task team for us or do  
15 this or that, from a higher authority – from the National  
16 Commissioner’s office, who at the end of the day is  
17 ultimately responsible for all of this. I was not aware of  
18 such instruction. There was a process at General Mawela’s  
19 office dealing with a continuum of force. For me to impose  
20 myself in certain areas is inappropriate and it’s not the  
21 way that we function in the police service. If I received  
22 such an instruction from whoever, it would have been done.

23 Chairperson, this is not necessarily a training  
24 matter, but it can also be dealt with as an operational  
25 matter. There’s operational and the standard operational

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1 procedures for public order can deal with that matter.  
2 MR BIZOS SC: How other than that the  
3 leader of the training programme, could this urgent matter  
4 be taken forward?

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

9 MR BIZOS SC: The sentence adds, "Each  
10 member has certain responsibilities and should be held  
11 responsible for decisions taken by them." Your decision  
12 not to become involved, are you happy with it that you did  
13 not become involved?

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

16 MR MAHLANGU: I'm sorry.

17 MR BIZOS SC: I read this, "It therefore  
18 stands to deduct from the command and control of this  
19 hierarchy that each member has certain responsibilities and  
20 should be held responsible for decisions taken by them."  
21 You took a decision to ignore the concerns of the minister.

22 BRIG BREYTENBACH: It's not a matter that  
23 I ignored it, there was already something done, as I said,  
24 by ORS.

25 MR BIZOS SC: I want, finally, to ask you

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1 that they are convenient euphemisms which to avoid you and  
2 your colleagues communicating with each other and avoiding  
3 the use of the word kill deliberately.

4 CHAIRPERSON: Mr Bizos, is this witness  
5 able to give us an answers that will help us to resolve the  
6 questions that we have to decide. Whether it's euphemism  
7 is a matter we as competent to decide – we hope as  
8 commissioners is competent to decide as anybody else.  
9 Isn't it a matter for argument more properly to be  
10 addressed to us at the end of the evidence rather than to  
11 ask this witness his opinion. And he says it isn't a  
12 euphemism, we may disagree. So does it really help?

13 MR BIZOS SC: I will accept your ruling.  
14 I thought that it would be – if there is an explanation for  
15 the use of those three words over a 100 times in all the  
16 documents that they have used, avoiding to use the word  
17 kill –

18 CHAIRPERSON: The brigadier didn't draft  
19 the documents. Maybe if the some senior official – senior  
20 officer general somebody gives evidence and we've been told  
21 by Mr Nkosi Thomas it's possible that the Minister himself  
22 may come give evidence if matters of policy are an issue  
23 and I'm not clear from you yet as to whether you've raised  
24 questions of policy will necessitate it for the minister to  
25 come, but isn't the minister or some or other senior

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1 this -

2 BRIG BREYTENBACH: What finally was the  
3 decision?

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

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

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

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

25 MR BIZOS SC: I'm going to put to you

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1 general, who was responsible for drafting these documents,  
2 a better person to ask the question of, rather than the  
3 Brigadier who saw it for the first time after it was  
4 produced?

5 MR BIZOS SC: The Brigadier has avoided  
6 the use of the word in his report, but I will take it no  
7 further, Mr Chairman. I think that I've made the point  
8 that I wanted to make. Thank you.

9 CHAIRPERSON: Yes, Mr Ntsebeza.

10 MR NTSEBEZA SC: Thank you, Mr Chairman.  
11 With your leave, Mr Chairman, if Mr Mpofo could go ahead  
12 and ask before I do.

13 CHAIRPERSON: Are you surrendering your  
14 right to cross-examine to him?

15 MR NTSEBEZA SC: No –

16 CHAIRPERSON: Or you wish him merely to  
17 defer your cross-examination –

18 MR NTSEBEZA SC: I'm just deferring my  
19 cross-examination to when he has done so.

20 CHAIRPERSON: Mr Mpofo, are you happy to  
21 take up the cross-examination at this stage? Take over the  
22 baton at this point?

23 CROSS-EXAMINATION BY MR MPOFU: I'm  
24 happy, Chairperson. Brigadier, did you attend the 9 day  
25 conference in preparation for the commission in

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1 Potchefstroom?

2 BRIG BREYTENBACH: No, I did not.

3 MR MPOFU: Were you aware of the 9 day  
4 conference?

5 BRIG BREYTENBACH: As I earlier said, no  
6 I was not aware of that?

7 MR MPOFU: I'm sorry. Okay. Let me  
8 start with the level of the risk. You do agree that one of  
9 the things that needs to be done in an operation of the  
10 kind in question here is the assessment of the level of the  
11 risk. Agreed?

12 CHAIRPERSON: Mr Mpofo, this witness is  
13 not called as an expert on public order policing policy.

14 MR MPOFU: But at the time –

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

20 MR MPOFU: Okay. Thank you, Chair. You  
21 testified that the POP is the primary unit to be used in  
22 crowd management, correct?

23 BRIG BREYTENBACH: That is correct, yes.

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

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1 charge?

2 BRIG BREYTENBACH: I do not – I cannot  
3 recall the standing order or the national instruction per  
4 se. I would prefer if that can be directed to operational  
5 specialist.

6 MR MPOFU: And do you know – are you  
7 aware of the policy that only non-lethal force should be  
8 used in crowd management?

9 BRIG BREYTENBACH: In the crowd  
10 management curriculum, as it is outlined in this document,  
11 Exhibit Q, it gives all the non-lethal options and also the  
12 use of force. Deadly force I believe is one of the topics  
13 that is covered in the training manual.

14 MR MPOFU: And in fact POP being the  
15 primary unit for crowd management, according to your  
16 evidence, apart from the side pistols that they might use  
17 for self protection, they're not issued with lethal weapons  
18 such as R5s, correct?

19 BRIG BREYTENBACH: That is my  
20 understanding, yes.

21 MR MPOFU: And the side pistols that you  
22 referred to, that is just standard issue to any policeman  
23 for self protection, correct?

24 BRIG BREYTENBACH: That's correct. The  
25 side arm is a standard issue. I cannot say whether members

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1 were issued with it or not, or whether they issued – I  
2 suppose they are issued with it.

3 MR MPOFU: Ja. Yes, no, what I'm getting  
4 at is that even if they were, let's assume that they were  
5 issued with side pistols, that would be for the purposes of  
6 standard issue and not for crowd management.

7 BRIG BREYTENBACH: That is correct, yes.

8 MR MPOFU: Ja. And in fact, if I  
9 understood your evidence correctly, you distinguish between  
10 the situations that we read about, for example of policemen  
11 being robbed and having their firearms confiscated and all  
12 that, the individual attacks on policeman. Those are  
13 different matters to this issue of crowd control, correct?

14 BRIG BREYTENBACH: I'm not sure I  
15 understand the question, but maybe – what I said was that  
16 policeman have side arms to protect themselves.

17 MR MPOFU: Ja. No, sorry –

18 BRIG BREYTENBACH: Even an office worker  
19 for that matter can have a firearm.

20 MR MPOFU: Sure. Now correct me if I'm  
21 wrong, I understood you to be saying the instructions such  
22 as shoot to kill and all those things, they relate to the  
23 individual attacks on police rather than crowd management.

24 BRIG BREYTENBACH: I believe General Cele  
25 said that in that period where there was a huge number of

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1 police killings, I don't know his motivation, but that's  
2 what I gather from –

3 MR MPOFU: Yes.

4 BRIG BREYTENBACH: - from that.

5 MR MPOFU: Yes and you understood it to  
6 be dealing with those situations rather than crowd  
7 management?

8 BRIG BREYTENBACH: That is correct.

9 MR MPOFU: And but what we are dealing  
10 with here is the issue of crowd management, do you  
11 understand that?

12 BRIG BREYTENBACH: Yes, Sir.

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

19 BRIG BREYTENBACH: I saw on the  
20 television, they acted in a group –

21 MR MPOFU: Ja.

22 BRIG BREYTENBACH: - but as I earlier  
23 also said, it's the individual that is discharging the  
24 firearm –

25 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 read it to you so long, you can just believe what I'm going  
 2 to say. Standing order 262, "force may only be used on the  
 3 command or instruction of the CJOC or operational commander  
 4 if appointed." Sorry. Are we together?  
 5 BRIG BREYTENBACH: My pages - but I'm  
 6 trying to get there.  
 7 MR MPOFU: Okay, sorry. I've just read  
 8 the first sentence of 5.  
 9 BRIG BREYTENBACH: Okay, yes.  
 10 MR MPOFU: Okay. "Force may only be used  
 11 on the command or instruction of the CJOC, and that's the  
 12 Chief of the Joint Operations Centre, or operational  
 13 commander if appointed." And then the next question – the  
 14 next sentence, sorry. "Members may never act individually  
 15 without receiving a command from their commander." Are you  
 16 familiar with that standing order?  
 17 BRIG BREYTENBACH: Yes, it's as it is in  
 18 the standing order, yes.  
 19 MR MPOFU: Yes. And if we are told  
 20 together that we are dealing here with a group action, more  
 21 likely, then the person who would give such an order would  
 22 be the operational commander, correct?  
 23 BRIG BREYTENBACH: If you read it in  
 24 context of this, I think that would be a fair assumption.  
 25 MR MPOFU: Thanks. In – if we accept

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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  
 3 1994.  
 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  
 11 called the Instability Unit which units does it correspond  
 12 to in this new terminology, TRT, POP and so on.  
 13 [14:44] BRIG BREYTENBACH: It is internal  
 14 stability what –  
 15 MR MPOFU: Ja, internal stability unit,  
 16 it is correct, ja.  
 17 BRIG BREYTENBACH: Yes, and I don't know,  
 18 I don't think there is a direct mirror image of that unit.  
 19 MR MPOFU: Ja.  
 20 BRIG BREYTENBACH: Many changes took  
 21 place in the police and functions were purified, I think a  
 22 combination of TRT, POP, maybe NIU, certain of those  
 23 functions can definitely be drawn back in a certain sense,  
 24 but I think in the new age that we are operating in now, it  
 25 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 Mpofo 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: Ja –

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?

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1 MR MPOFU: Well, that's a different  
2 question, Chair, all I was –  
3 CHAIRPERSON: I know it is a different  
4 question, I am asking you the question.  
5 MR MPOFU: Ja.  
6 CHAIRPERSON: And what's your answer to  
7 the question?  
8 MR MPOFU: Yes, the answer is, yes, but  
9 that's not –  
10 CHAIRPERSON: Sorry, you say –  
11 MR MPOFU: That's a matter for argument –  
12 CHAIRPERSON: What happened on the 16th of  
13 August was a day to day crowd management operation?  
14 MR MPOFU: Well, it even less than that,  
15 according to Thamae it was simply just a –  
16 CHAIRPERSON: Well, according to Thamae  
17 that is what it was going to be early in the morning, but  
18 the question is, has it ultimately turned out –  
19 MR MPOFU: Thamae –  
20 CHAIRPERSON: - of a day to day crowd  
21 management operation.  
22 MR MPOFU: Yes, that is the part that is  
23 for argument, all I was saying, all I am asking the witness  
24 is that there is a prohibition which to me at least is  
25 indicated by the word "not." Whether that prohibition then

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1 applied to this situation or that situation, that's not for  
2 the witness, that's a matter for argument and whether one,  
3 whatever Thamae said or whatever actually happened amounts  
4 to day to day crowd management operation, that is a matter  
5 for argument. I can't canvas that with the witness.  
6 CHAIRPERSON: Brigadier, are you aware of  
7 any prohibition such as this put to you by Mr Mpofo?  
8 BRIG BREYTENBACH: I read it only as it  
9 stands here, Chairperson, where it says, "They are deployed  
10 through intelligence driven and targeted deployment to  
11 address specific incidents of crime and public violence and  
12 not day to day crowd management operations."  
13 CHAIRPERSON: Thank you, Brigadier.  
14 MR MPOFU: Anyway while we're now on this  
15 point, do you accept that crowd management includes  
16 situations of unrest and violence?  
17 BRIG BREYTENBACH: It is difficult for me  
18 to answer, because I am not familiar with the definitions  
19 per se.  
20 MR MPOFU: Okay.  
21 BRIG BREYTENBACH: Yes.  
22 MR MPOFU: Yes, I'll take you to the  
23 definitions, can you go to page 436 of that same document  
24 that Ms [inaudible] gave you, or did she take it back?  
25 CHAIRPERSON: Would you be kind enough to

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1 find page 436 on the hard drive and then it give back to  
2 the brigadier when you found it, if you don't mind?  
3 SPEAKER: Chair, I am just having one  
4 small problem –  
5 MR MPOFU: We do have the hard copy which  
6 could be used.  
7 CHAIRPERSON: It is a small problem, but  
8 if you address the small problem then you can find it.  
9 BRIG BREYTENBACH: Thank you very much,  
10 I've got it, thank you.  
11 MR MPOFU: Have you got it, okay. Can  
12 you look at paragraph 2(E) and can you read that out?  
13 BRIG BREYTENBACH: "Crowd management  
14 means the policing of assemblies, demonstrations and all  
15 gatherings as defined in the act whether recreational,  
16 peaceful or of an unrest nature."  
17 MR MPOFU: Do you now accept that the  
18 notion of crowd management is not confined to peaceful  
19 demonstrations, but also those that involve unrest?  
20 BRIG BREYTENBACH: Yes.  
21 MR MPOFU: Thank you. Are you aware that  
22 there was some concern about use of force in the upper  
23 body?  
24 BRIG BREYTENBACH: I only know of that  
25 because of news reports on television.

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1 MR MPOFU: Are you aware that the police  
2 themselves, the senior police made this distinction between  
3 injuring people in the upper body or not?  
4 BRIG BREYTENBACH: No, I was not aware of  
5 such a statement.  
6 MR MPOFU: Can you go to page 397, 397 of  
7 that document?  
8 BRIG BREYTENBACH: Yes.  
9 MR MPOFU: That is a letter by Lieutenant  
10 General Mawela, the senior person you referred to who is  
11 one of your superiors, correct?  
12 BRIG BREYTENBACH: That's correct, yes.  
13 MR MPOFU: Can you read paragraph 3 of  
14 that circular?  
15 BRIG BREYTENBACH: "In a few of these  
16 incidents negative publicity resulting in both the print  
17 and visual media raising questions regarding the use of  
18 rubber rounds in crowd management situations, especially  
19 where participants are injured in the upper body."  
20 MR MPOFU: Would you now then accept that  
21 the issue of, which part of the body the force was applied  
22 on was an issue as far as your superiors are concerned?  
23 BRIG BREYTENBACH: Sorry, when you asked  
24 the question I thought you referred to specifically the 16th  
25 of August here.

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1 MR MPOFU: Okay.

2 BRIG BREYTENBACH: That's why I said,

3 only what I saw on television.

4 MR MPOFU: Yes.

5 BRIG BREYTENBACH: And I know of this

6 letter.

7 MR MPOFU: You were aware of this?

8 BRIG BREYTENBACH: Yes.

9 MR MPOFU: Okay, no sorry, maybe the

10 question was not clear. Now that you've been reminded

11 would you agree that the implication of this is that the

12 shooting of people in the upper body should be a last

13 resort?

14 BRIG BREYTENBACH: The way I understood

15 this letter and I cannot recall exactly what the stand was

16 because of the use of rubber or a two ball rubber where

17 people were shot in the upper body and then direct shot to

18 upper body. The instruction and training is to shoot and

19 bounce the rounds off the ground and I think this is what

20 the author intended to say, that there should not be

21 shooting directly to through the upper body.

22 MR MPOFU: Okay, thanks, well Brigadier,

23 to me the opposite of upper body is the lower body, not the

24 ground.

25 BRIG BREYTENBACH: Yes.

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1 MR MPOFU: Would you agree?

2 BRIG BREYTENBACH: It is the opposite,

3 yes.

4 MR MPOFU: Just to go back to the issue

5 of the order as in the command, do you understand what I am

6 saying?

7 BRIG BREYTENBACH: Yes.

8 MR MPOFU: Ja, just help me with this, I

9 asked you questions about the possible giving of an order

10 at the beginning of the shooting, do you remember we dealt

11 with that?

12 BRIG BREYTENBACH: That's correct, yes.

13 MR MPOFU: Ja, now let's go to the end of

14 the shooting, if somebody says, cease fire, that could be

15 construed as an order to stop, correct?

16 BRIG BREYTENBACH: That is correct, yes.

17 MR MPOFU: And in fact one of the

18 standing orders, I don't know which one now, I'll find it I

19 have to, says that the use of force even if it happens,

20 must be stopped as soon as the danger is no longer there,

21 words to that effect.

22 BRIG BREYTENBACH: You are correct.

23 MR MPOFU: Am I correct?

24 BRIG BREYTENBACH: Yes.

25 MR MPOFU: Yes, in fact as it happened it

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1 is in the same letter of Lieutenant General Mawela on the

2 following page, 398, page 398. "The use of force must

3 always be reasonable in the circumstances and force must be

4 discontinued once the objective has been achieved." There

5 is another reference, but that would capture what we are

6 discussing now, correct?

7 BRIG BREYTENBACH: Correct, correct.

8 MR MPOFU: And it can also be assumed

9 that if somebody says, cease fire, it means that they

10 perceive that the danger is no longer there, correct?

11 BRIG BREYTENBACH: I would make that,

12 yes, one can say that.

13 MR MPOFU: Yes, thank you.

14 BRIG BREYTENBACH: I think that is a fair

15 assumption.

16 MR MPOFU: And any shooting that happens

17 after that would not be in line with this directive,

18 correct?

19 [15:04] BRIG BREYTENBACH: At that specific point

20 where there is imminent danger –

21 MR MPOFU: Yes.

22 BRIG BREYTENBACH: It would be also a

23 fair assumption, yes.

24 MR MPOFU: Thank you. And if it can be

25 shown, and once again I'm not asking you to accept that

Page 1713

1 what I'm saying is correct, but if it can be shown that

2 there was further shooting after order of ceasefire, then

3 it's at least possible that that further shooting was

4 unwarranted?

5 BRIG BREYTENBACH: As you say, we have to

6 accept what you are saying there -

7 CHAIRPERSON: I think there on the video

8 there were a couple of cases where you could hear someone

9 saying cease fire and you can hear a shot thereafter.

10 Whether of course that shot any target is something which

11 we don't know the answer, but certainly there do appear to

12 be shots fired after ceasefire was said, whether the person

13 who fired the shot heard what was said, of course is

14 another matter also, but I think we can accept it as a

15 fact, based on the video, that there were shots fired after

16 the order to cease fire was given.

17 BRIG BREYTENBACH: That is correct,

18 Chairperson. What I saw on the television and rightfully,

19 as you said, it can be, whether did those people that were

20 still shooting hear the ceasefire command or not.

21 MR MPOFU: Well, are the police trained

22 to listen to the orders of their commanders, and are those

23 orders given in a particular way, in a loud way so that

24 most people should be able to hear them?

25 BRIG BREYTENBACH: That is correct, it



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1 should be given in a loud way so that most people should  
2 hear it.

3 MR MPOFU: Thank you very much. Sorry,  
4 Chair, finally – sorry, Chairperson, if I can just have one  
5 second? If you go to page 426 – 426, Chairperson, this is  
6 what is called the Use of Force Directive, Public Order  
7 Police. That's the name of the document, just to give you  
8 the context, Brigadier. And I just want your comment on  
9 2.3, which says, "To accomplish the following ideals for  
10 crowd management situations," and we've already defined  
11 what crowd management situations mean. 2.3.1, "No loss of  
12 life." Are you aware of that?

13 BRIG BREYTENBACH: Yes.

14 MR MPOFU: 2.3.3, "No injuries." Are you  
15 aware of that?

16 BRIG BREYTENBACH: Yes, as it says, to  
17 the following ideals no loss of life and damage to  
18 property.

19 MR MPOFU: Ja, that's what I - and  
20 2.3.4, "All citizens must be satisfied with the conduct of  
21 the SAPS." Are you aware of that?

22 BRIG BREYTENBACH: Sorry, 2.2.?

23 MR KUPER SC: 2.3.4, sorry.

24 BRIG BREYTENBACH: 2.3.4. Yes, I see it  
25 here.

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1 MR MPOFU: And the last one, 2.3.5, "All  
2 citizens present at the gathering to feel safe and secure,"  
3 are you also aware of that?

4 BRIG BREYTENBACH: Yes.

5 MR MPOFU: And you're also aware that the  
6 TRT is meant to play, what is called a holding role until  
7 the NIU or FTF/STF arrive?

8 BRIG BREYTENBACH: They would stabilise  
9 the situation unless an immediate tactical solution present  
10 itself, and basically stabilise and wait for specialists to  
11 arrive, if they cannot deal with the situation.

12 MR MPOFU: Yes.

13 MR KUPER SC: And that they also required  
14 to react only – or rather let's, sorry, let me not add  
15 words to it, - react if necessary if a tactical solution  
16 cannot be delayed, and we now know what a tactical solution  
17 means, it means killing people.

18 MR NTSEBEZA SC SC: Objection, Chair.

19 MR MPOFU: Okay, I –

20 CHAIRPERSON: I didn't know we knew that.  
21 I didn't know that, Mr Mpofo, I didn't know –

22 MR MPOFU: Well, it was the, this was –  
23 okay, Mr Bizos, at least used what you call euphemisms,  
24 the, okay –

25 CHAIRPERSON: I think reformulate the

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1 question in a way that it does away the objection and then  
2 we can carry on.

3 MR MPOFU: Yes, in fairness, okay.  
4 Whatever a tactical solutions means, but these people are  
5 only to react if necessary and if a tactical solution  
6 cannot be delayed, is that correct?

7 BRIG BREYTENBACH: That is correct, yes.

8 MR MPOFU: Thank you, Chairperson, I have  
9 nothing further, and I would like to thank my learned  
10 friend, Mr Ntsebeza. Mr Chairperson, the reason why there  
11 was this swop was because I need to be excused, with your  
12 permission, Chairperson.

13 CHAIRPERSON: You are excused, Mr Mpofo.

14 MR MPOFU: Thank you, Chairperson.

15 CHAIRPERSON: Mr Ntsebeza, having waived  
16 or deferred your right, are you now in a position to  
17 exercise it.

18 MR NTSEBEZA SC SC: Yes, Mr Chairman. We  
19 adhere – I have the disadvantage of having had to follow  
20 evidence from transcripts.

21 CHAIRPERSON: Oh.

22 CROSS-EXAMINATION BY MR NTSEBEZA SC SC:  
23 And, Mr Chairman, please you will forgive me if I stray,  
24 but I know you will make sure that I keep within the range.  
25 I just want to find exactly where your place is in the

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1 training environment in the SAPS?

2 BRIG BREYTENBACH: Where I, myself, is  
3 based, the station?

4 MR NTSEBEZA SC SC: Yes.

5 BRIG BREYTENBACH: I'm situated in  
6 Pretoria under the head office of training, Division HRD,  
7 Human Resource Development, under the component In-service  
8 Police Development.

9 MR NTSEBEZA SC SC: Now I've heard you  
10 being referred to variously as a trainer or a training  
11 coordinator. Are you a training coordinator?

12 BRIG BREYTENBACH: That is correct, yes.

13 MR NTSEBEZA SC SC: What does that entail  
14 actually?

15 BRIG BREYTENBACH: What it entails is  
16 that the needs of the South African Police Service is  
17 extracted. Then a need assessment is done and it  
18 determined that the certain training intervention needs to  
19 take place. Then that training interventions is placed on  
20 a national training provision plan for the next financial  
21 year. We plan yearly for that. Then all the courses that  
22 falls – which is assigned to me to coordinate, for that  
23 purpose I need to ensure that nominations are done  
24 properly, that facilities is available, that trainers is  
25 available, and that the program is presented and that it

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1 afterwards be captured and financial responsibilities  
 2 related to that.  
 3 MR NTSEBEZA SC SC: I understand from  
 4 that answer that you are not necessarily doing the training  
 5 yourself?  
 6 BRIG BREYTENBACH: That is correct, yes.  
 7 MR NTSEBEZA SC SC: And you will correct  
 8 me if I'm wrong, you are also not responsible for drawing  
 9 the curriculum, or the curriculums of the various training  
 10 – of the various units which should be trained,  
 11 particularly for whatever?  
 12 BRIG BREYTENBACH: That is correct. The  
 13 component Research and Development in the same division as  
 14 I'm working, they're responsible for drawing that  
 15 curriculum.  
 16 MR NTSEBEZA SC SC: So where, for  
 17 instance, you have the NIU, the National Intervention Unit,  
 18 which I see you start to deal with from slide 70, you  
 19 wouldn't be the person who is in charge of training that  
 20 unit?  
 21 BRIG BREYTENBACH: Physically, on the  
 22 range, physically, on the centre?  
 23 MR NTSEBEZA SC SC: Yes.  
 24 BRIG BREYTENBACH: No, I would not be the  
 25 one physically presenting it.

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1 MR NTSEBEZA SC SC: There would be  
 2 somebody who is the head of training National Intervention  
 3 Unit personnel?  
 4 BRIG BREYTENBACH: Their training is  
 5 conducted currently under division ORS. They coordinate,  
 6 or they see to it that it get implemented, that the  
 7 coordination is done. They are the ones presenting the  
 8 training itself.  
 9 MR NTSEBEZA SC SC: Yes, you must please  
 10 appreciate that I'm trying to find which questions I can  
 11 ask from you usefully –  
 12 BRIG BREYTENBACH: Sure.  
 13 MR NTSEBEZA SC SC: - fruitfully, so that  
 14 I should know that I shouldn't put questions to you when  
 15 they are actually appropriately put to somebody else.  
 16 BRIG BREYTENBACH: I understand.  
 17 MR NTSEBEZA SC SC: I understand that  
 18 all, you were part of a team that put together Exhibit 2?  
 19 BRIG BREYTENBACH: That's correct.  
 20 MR NTSEBEZA SC SC: There were others who  
 21 were involved in putting together exhibit?  
 22 BRIG BREYTENBACH: That's correct, yes.  
 23 MR NTSEBEZA SC SC: So if the Commission  
 24 wanted to know the person who is in charge of training the  
 25 people who are in the National Intervention Unit, it would

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1 look to somebody else?  
 2 BRIG BREYTENBACH: That is correct, yes.  
 3 MR NTSEBEZA SC SC: And the Special  
 4 Taskforce?  
 5 BRIG BREYTENBACH: [Inaudible].  
 6 MR NTSEBEZA SC SC: And the TRT, Tactical  
 7 Response Teams, Units?  
 8 BRIG BREYTENBACH: The same applies to  
 9 them.  
 10 MR NTSEBEZA SC SC: And the Dog Unit?  
 11 BRIG BREYTENBACH: The Dog Unit falls  
 12 within our responsibility, not mine, specifically, but one  
 13 of my fellow colleagues.  
 14 MR NTSEBEZA SC SC: Now when you say our,  
 15 who is us?  
 16 BRIG BREYTENBACH: Apology, Division  
 17 Training, Division Human Resource Development.  
 18 MR NTSEBEZA SC SC: The division, Human  
 19 Resources Training. And is there somebody who is in charge  
 20 of training the POP, the Public Order Police?  
 21 BRIG BREYTENBACH: Yes, there is somebody  
 22 in charge of that also.  
 23 MR NTSEBEZA SC SC: Now, I think that's  
 24 helpful, because it gives me a sense of what is involved.  
 25 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  
 4 you have also Exhibit L?  
 5 BRIG BREYTENBACH: No.  
 6 MR NTSEBEZA SC SC: You don't have  
 7 Exhibit L, okay. Exhibit L, I believe was the police  
 8 presentation.  
 9 BRIG BREYTENBACH: Is it this one?  
 10 MR NTSEBEZA SC SC: It's, on the outside  
 11 it says Mine Unrest at Lonmin Marikana history and build  
 12 up.  
 13 BRIG BREYTENBACH: The interpreter got  
 14 one here.  
 15 MR NTSEBEZA SC SC: Oh yes, a very useful  
 16 man, the interpreter. Now from what I've seen in 211, or  
 17 slide 211, which speaks munitions expended at scene 1. Now  
 18 I now you, from what I've read from your transcript, the  
 19 transcript of your testimony, you were not present on the  
 20 16th of August, did I get that right?  
 21 BRIG BREYTENBACH: That's correct, yes.  
 22 MR NTSEBEZA SC SC: Yes. If it is only  
 23 on the basis of ammunitions that were expended at scene 1,  
 24 would it be correct that two units, the POP and TRT,  
 25 appeared to have been involved in discharging ammunition in

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1 scene 1, from what is represented there?

2 BRIG BREYTENBACH: Yes.

3 MR NTSEBEZA SC SC: And if we go to slide

4 257 of that document, on the evidence thereof it does

5 appear that virtually – that the NIU was involved, the

6 Canine was involved - the Dog Unit, the TRT was involved

7 and POP were involved?

8 BRIG BREYTENBACH: That's correct.

9 MR NTSEBEZA SC SC: And since you were

10 not involved on the day, you wouldn't know what the

11 rationale would have been for an involvement of all those

12 units? It wouldn't be a question to put to you?

13 BRIG BREYTENBACH: That would be correct.

14 The best person to answer would be the operational

15 commander.

16 MR NTSEBEZA SC SC: Now, in the training

17 of all these units, and since you are the coordinator, I

18 want to proceed on the basis that you are keen to know

19 whether what is in the curricula, is in fact implemented.

20 It would be – I wouldn't put it higher than saying you

21 would have a keen interest to see that it is implemented.

22 BRIG BREYTENBACH: That's correct, yes.

23 MR NTSEBEZA SC SC: Are there ever any

24 sessions at which you become involved, for instance, where

25 evaluation of scenes that have been involved in public

Page 1723

1 violence are assessed?

2 [15:24] BRIG BREYTENBACH: No, I have not been

3 involved in any such assessment.

4 MR NTSEBEZA SC SC: I know you have

5 indicated that you were not involved in the 9 day gathering

6 at Potchefstroom, I'm not referring to that specific

7 incident.

8 BRIG BREYTENBACH: Ja, no others also, I

9 was not –

10 MR NTSEBEZA SC SC: Other than the theory

11 that we all have been able to see that comes out of these

12 documents, it's public standing order so and so, you should

13 not do this, you should do this – you have never been in a

14 situation where you have yourself been involved, even in a

15 post-mortem assessment of the efficacy of this training

16 matters.

17 BRIG BREYTENBACH: No, I have not, but my

18 colleagues at Research and Development in our division,

19 whose function it is, they performed that function.

20 MR NTSEBEZA SC SC: For instance, I would've

21 wanted to ask you what is involved in the practical

22 training of those who would be involved in crowd control.

23 Now would you be useful in giving us an answer with regard

24 to that?

25 BRIG BREYTENBACH: As much as I want to

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1 assist, I would be basically touching on topics and I think

2 best would be to ask the trainer specialist that can be

3 called for that purposes –

4 MR NTSEBEZA SC: Yes.

5 BRIG BREYTENBACH: - because they know

6 the tactics, the terminology, everything by heart.

7 MR NTSEBEZA SC: I ask because I don't

8 want you to leave that witness stand and then realise after

9 we've left that I should've put certain questions to you.

10 Do you understand that, Brigadier?

11 BRIG BREYTENBACH: I understand, Sir.

12 MR NTSEBEZA SC: For instance, I – a

13 figure has been bandied about which represents the number

14 of people who were on that koppie in the 16th, it's been 3

15 000 people. Now I would want to know what those who get

16 trained in crowd control, what are they actually taught to

17 do when they deal with 3 000 people? Let's say for

18 instance people who are unarmed, do you have any sense

19 about what it is practically that they are supposed to do

20 when – and the operation for instance, as is the operation

21 in this case, disperse and – let's say it was just

22 dispersed. Now what practically are the people trained?

23 How do they handle that situation?

24 BRIG BREYTENBACH: If I can refer to the

25 slides, it is somewhere here where the tactical options is

Page 1725

1 presented – I'm not sure, I can just find it here quickly.

2 Slide 29 –

3 MR NTSEBEZA SC: Yes.

4 BRIG BREYTENBACH: - where it says the

5 defensive options and the offensive options, other than

6 what it stands there, I would believe it would be injustice

7 for me to try and explain to you the details of each of

8 these techniques.

9 MR NTSEBEZA SC: Yes.

10 BRIG BREYTENBACH: And those are the

11 techniques that is used in crowd management.

12 MR NTSEBEZA SC: And you wouldn't know

13 what kind of risk analysis those who would go into that

14 kind of crowd control situation, what they do?

15 BRIG BREYTENBACH: No, I don't want to

16 comment on that.

17 CHAIRPERSON: Mr Ntsebeza, I'm proposing

18 to sit to half past four because we lost time this morning.

19 So therefore, in fairness to everybody, I'm prepared to

20 take a tea adjournment. When it's convenient for you,

21 please tell me and we can adjourn for tea.

22 MR NTSEBEZA SC: No, Chairman, when once

23 you say that you either say the tea adjournment is now or

24 we'll come after tea. There are just a couple of questions

25 that I would've liked to have explore. Maybe let's take

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1 the tea adjournment now, Chairman.  
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 3 [15:48] CHAIRPERSON: The commission resumes.  
 4 You are still under oath, Brigadier.  
 5 BRIG BREYTENBACH: Yes, Chairperson.  
 6 MR NTSEBEZA SC: Thank you, Mr Chairman,  
 7 just a couple of question, Brigadier. I've looked at  
 8 Exhibit Q. There doesn't seem to be any reference to the  
 9 existence of risk assessment manual. In other words  
 10 something that as part of training people who are going to  
 11 do crowd control, they will be told these are the ABCs when  
 12 – you know that kind of – do you have a risk assessment  
 13 manual?  
 14 BRIG BREYTENBACH: No, not that I can  
 15 recall, no.  
 16 MR NTSEBEZA SC: Now you have been asked  
 17 a number of questions on what appears in the SAPS Bundle 1,  
 18 on pages 397 to 401 and beyond. The first one is the  
 19 letter that seems to have gone to all provincial  
 20 commissioners, all provincial heads, operational response  
 21 MECs on the 20th of December 2012.  
 22 BRIG BREYTENBACH: 2011 or 2012?  
 23 MR NTSEBEZA SC: 2011, well I mean we  
 24 arrived at it – thank you, Brigadier. You recall this  
 25 letter?

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1 BRIG BREYTENBACH: I do, yes.  
 2 MR NTSEBEZA SC: Now, in your capacity as  
 3 a training coordinator, does this kind of letter come to  
 4 you and if it does, for what purpose it would come to you?  
 5 In other words, I am just trying to see where in the scheme  
 6 of things, you would fit with what that letter seems to  
 7 convey.  
 8 BRIG BREYTENBACH: If I think a better  
 9 way to explain is, it mentions specifically the stopping,  
 10 to use the rubber rounds, for instance. Our curriculum  
 11 personnel would then amend the curriculum. But that very  
 12 same letter was recalled in 2012, early this year.  
 13 MR NTSEBEZA SC: Yes.  
 14 BRIG BREYTENBACH: So, yes, if a letter  
 15 like that come, it will influence the curriculum because  
 16 the operational side said that they experienced a problem,  
 17 the curriculum would changed and then it would be passed  
 18 down to us for implementation.  
 19 MR NTSEBEZA SC: So you get to know about  
 20 it in your capacity as a coordinator of training because  
 21 the curriculum developers would have to take the contents  
 22 of that letter into account, is that right?  
 23 BRIG BREYTENBACH: That is correct, yes.  
 24 MR NTSEBEZA SC: And then an inquiry as  
 25 to whether that was put into operation would have to be

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1 more to the people who are the divisional heads of the  
 2 units that get trained by you. Would you agree with that?  
 3 BRIG BREYTENBACH: Whether they implement  
 4 this instruction specifically –  
 5 MR NTSEBEZA SC: Yes.  
 6 BRIG BREYTENBACH: - yes.  
 7 MR NTSEBEZA SC: That will be also the  
 8 case with respect to the letter also attaining a form of a  
 9 circular on that same document which purports to be a  
 10 letter from the National Commissioner, re public order  
 11 police, use of force during crowd management, 20th July  
 12 2012. You are familiar with that letter?  
 13 BRIG BREYTENBACH: I don't have it in  
 14 front of me, but I think it's the one that we talk about  
 15 the drawing, the previous one.  
 16 MR NTSEBEZA SC: I would think so. I  
 17 don't know whether your copy is legible but most of the  
 18 copies were –  
 19 BRIG BREYTENBACH: No, I know about this  
 20 letter, yes.  
 21 MR NTSEBEZA SC: Yes. In other words, as  
 22 late as the 20th of July 2012, this letter was circulated to  
 23 all provincial commissioners, all divisional commissioners,  
 24 all provincial heads, all deputy national commissioners,  
 25 chief of staff, ministry of police, secretary of police,

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1 secretariat police. You can confirm that?  
 2 BRIG BREYTENBACH: Yes.  
 3 MR NTSEBEZA SC: And you can see in fact  
 4 it agrees with what you have just testified. It says it is  
 5 this evenly numbered letter, I mean the evenly numbered  
 6 letter dated 20th December 2012 which is the one that I  
 7 talked to, has reference and is hereby withdrawn and is  
 8 replaced by this instruction.  
 9 CHAIRPERSON: Mr Ntsebeza, I take this  
 10 has got to be an exhibit. So seeing you're referring to  
 11 it, is it Exhibit S? Thank you.  
 12 MR NTSEBEZA SC: Yes. In the police  
 13 bundle it is referred to as item 37, what is it –  
 14 CHAIRPERSON: No, but the whole police  
 15 bundle isn't going to be handed in as an exhibit before the  
 16 commission, because otherwise you can image how many  
 17 exhibits we would have. Only those will be referred to in  
 18 evidence will get exhibit numbers. And so this is a letter  
 19 from the National Commissioner to provincial commissioners  
 20 and others dated 20 July 2012. So it is – it was in  
 21 operation for something like 25, 26, 27 days – or had been  
 22 in operation in 26 days when the events which form subject  
 23 of this –  
 24 MR NTSEBEZA SC: Yes.  
 25 CHAIRPERSON: - commission took place.

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1 Well the culminating events which formed the subject of  
2 this commission took place.  
3 MR NTSEBEZA SC: Thank you, Chairman.  
4 Now what exhibit number are we giving it? S?  
5 CHAIRPERSON: S.  
6 MR NTSEBEZA SC: Exhibit S, alright.  
7 Now, Brigadier, you indicate that you are aware of this  
8 letter.  
9 BRIG BREYTENBACH: That's correct, yes.  
10 MR NTSEBEZA SC: And as the Chair has  
11 indicated, it seems to have been circulated a few weeks  
12 before the events that form now the subject matter of this  
13 commission because it was sent in July – towards the end of  
14 July of 2012. Do you agree.  
15 BRIG BREYTENBACH: I agree.  
16 MR NTSEBEZA SC: Now when did you  
17 personally become aware of this letter?  
18 BRIG BREYTENBACH: It must've been around  
19 the time of the circulation. It do take a few days to go  
20 through circulation. I cannot recall specific dates, but  
21 obviously after – between 20 July and August.  
22 MR NTSEBEZA SC: Now when a letter of  
23 this nature crosses your table in your capacity, do you do  
24 anything about it or what do you do? Because it seems to  
25 be giving some indications as to what must be done.

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1 BRIG BREYTENBACH: If a letter of this  
2 nature come across my table, influencing directly the  
3 training, I would interact with the curriculum developers  
4 and ask them whether they are aware of this because they  
5 need to adjust the curriculum accordingly.  
6 MR NTSEBEZA SC: Yes. Would you also  
7 interact with the trainers in the divisions – in the  
8 various divisions?  
9 BRIG BREYTENBACH: Not necessarily  
10 because this letter is distributed and the training people  
11 that's presenting it would also get a copy of this. So one  
12 would expect them to take it down to the trainers. But  
13 this also speaks directly to the – Sorry, Chair.  
14 CHAIRPERSON: I'm sorry to intervene, but  
15 I want to ask you a question. In view the fact that this  
16 letter was only issued just over two weeks prior to the  
17 events of the 16th of August, had any training, any relevant  
18 training taken place between the issuing of this letter and  
19 the events on the 16th of August?  
20 BRIG BREYTENBACH: Chairperson, that was  
21 what I was about to say. The curriculum has not been  
22 changed. So if there was a course ongoing at that stage, I  
23 cannot recall dates and so on, they would continue with the  
24 curriculum but this is then operationalised to say that you  
25 cannot utilise this or the different levels of force

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1 operationally. So the curriculum would have, if there was  
2 a course at that stage, continue the way they had it but  
3 members would've been made aware that there's going to be  
4 operationally something else than what they are currently  
5 busy with. Circulars of this nature is also circulated  
6 around the whole police service. So operational units, POP  
7 units would've received this through normal correspondence  
8 to take notice of it.  
9 CHAIRPERSON: Do we have the evenly  
10 numbered letter of the 20th of December 2011? I take it, it  
11 hasn't been handed in as an exhibit yet, has it?  
12 MS PILLAY: It doesn't have an exhibit  
13 number, but it's part of the police bundle.  
14 CHAIRPERSON: It's part of the police  
15 bundle – the relevant point that may have to be considered  
16 is what changes were introduced by this letter of the 20th  
17 of July 2012. I don't know whether the witness can help us  
18 and if he can't then obviously we'll raise it with a later  
19 witness. But I notice that this letter refers, for  
20 example, to the minimum force and it refers to the need for  
21 review every time a minimal force is used. Now does that  
22 mean that the letter of the 20th of December 2011 didn't  
23 require minimum force should be used, or is this something  
24 that we can only clear up when we have a witness who has  
25 direct knowledge of the earlier letter? I'm afraid I

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1 wasn't clear to whom I was addressing. Addressed to the  
2 witness primarily, but possibly the evidence leaders could  
3 help us and that or possibly even Mr Ntsebeza. I don't  
4 know. Anyway I've asked the question. It's directed –  
5 it's aimed at three particular people. If any of you can  
6 answer, I'll be grateful.  
7 BRIG BREYTENBACH: Mr Chair, from our  
8 side, as I said earlier, it was passed on to the curriculum  
9 developers and they were working on the process in amending  
10 the curriculum and also operational units would have  
11 received both letters via the correspondence channels to  
12 use as operational guidelines immediately.  
13 CHAIRPERSON: It seems to me I should  
14 actually have directed the question to Mr Semenya because  
15 if he knows the answer immediately it will save a lot of  
16 time. The question is, are the differences between the  
17 letter of 20 December 2011, which has not yet been handed  
18 as an exhibit and this Exhibit S, which was dated the 20th  
19 of July 2012, are there any significant differences. Was  
20 it necessary to issue this new letter and to withdraw and  
21 replace the earlier instruction? I know it's not directly  
22 relevant to what the witness says but it may actually save  
23 a lot of time if we know the answer to that, either now or  
24 first thing tomorrow morning.  
25 MR SEMENYA: May I give an answer first

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1 thing or may I have an answer given first thing tomorrow  
 2 morning?  
 3 CHAIRPERSON: Certainly, Mr Semenya. Mr  
 4 Ntsebeza, I'm sorry I interrupted you, but please proceed.  
 5 MR NTSEBEZA SC: No, not at all, Mr  
 6 Chairman. Just as a follow-up on what the chairman has  
 7 put, it appears to me that one of the issues that are  
 8 addresses – that is addressed in both letters is the use of  
 9 rubber rounds and shotguns. In paragraph 5 of the letter  
 10 of the 20th of December 2011, which is on page 297 of SAPS  
 11 Bundle 1, the letter, the circular – 20th December circular  
 12 says the use of rubber rounds and shotguns must be stopped  
 13 with immediate effect and then it goes on – do you have it  
 14 in front of you, Brigadier? [Inaudible] matters to manage  
 15 crowds must be implemented, negotiations is still the first  
 16 resort. A gradual response such as the use of  
 17 pyrotechnics, water cannon and limited launcher must then  
 18 be used. The purpose of offensive actions must be to de-  
 19 escalate conflict with a minimum level of force to  
 20 accomplish the goal. The degree of force must be  
 21 proportional to the seriousness of the situation and the  
 22 threat posed in terms of situational appropriateness. The  
 23 use of force must always be reasonable in the circumstances  
 24 and force must be discontinued once the objective has been  
 25 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  
 3 then, please make a comment as to whether Exhibit F, the  
 4 August letter, addresses differently the question of  
 5 shotgun and the rubber rounds in paragraph 3? Do you have  
 6 paragraph 3?  
 7 BRIG BREYTENBACH: Yes, I do – paragraph  
 8 3?  
 9 MR NTSEBEZA SC: Paragraph 3, it will be  
 10 3.1, 3.2, 3.3 –  
 11 BRIG BREYTENBACH: Yes, Sir.  
 12 MR NTSEBEZA SC: Ja, if you could read  
 13 that into the record just so that we are all following and  
 14 then make a comment whether it alters in any significant  
 15 way what the circular of the 20th of December 2011 says with  
 16 regard to shotguns and with regards to rubber rounds.  
 17 BRIG BREYTENBACH: Paragraph 3 – only the  
 18 Beretta or Mustard 12 bore shotgun and shotgun 12 bore  
 19 double ball rounds, M9A1 must be used by trained POP  
 20 members and dedicated in the use thereof, rubber rounds  
 21 should be used from a distance of 20 meters and more from  
 22 the crowd. POP members issued with the shotgun, may never  
 23 act individually but only on the command of the section  
 24 leader, platoon commander or operational commander.  
 25 [16:08] The rubber rounds must be skip fired on targets

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1 to target at the legs of the crowds. POP operational  
 2 commanders must ensure as video footage is taken to the  
 3 crowd – taken of the crowd throughout the phases of  
 4 including during the use of minimum force. A record keeper  
 5 must also record everything on operational diary. The  
 6 member who gives the command for action must not take part  
 7 in the action. Disciplinary or criminal and or criminal  
 8 steps will be taken against members who act beyond the  
 9 command or use force that was necessary as per command.  
 10 Every time minimum force is used, a review of the action  
 11 taken must always be done by an officer holding the rank of  
 12 captain and above who was not part of the action and was  
 13 also not on the scene. As mentioned in paragraph 11.4(c)  
 14 of Standing Order General 262, rubber rounds may only be  
 15 used to discharge a crowd in extreme circumstances should  
 16 other less forceful methods prove ineffective. This means  
 17 that the use of rubber rounds is only as a last resort. A  
 18 national instructional policy will be distributed as soon  
 19 as it is finalised.  
 20 MR NTSEBEZA SC: Now I don't know whether  
 21 it would be a fair conclusion to make that it seems in  
 22 terms of this circular of August 2012, emphasis seems to be  
 23 placed –  
 24 CHAIRPERSON: No, Mr Ntsebeza, it's July.  
 25 You said August, it's July.

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1 MR NTSEBEZA SC: July, thank you,  
 2 Chairman. Now how do you interpret now and how did you  
 3 interpret then when you first became aware of this letter?  
 4 3.6 of Exhibit S.  
 5 BRIG BREYTENBACH: The first letter of  
 6 December said no rubber rounds should be used during crowd  
 7 management and then that was basically revoked by the  
 8 letter of July where it said then when it can be used and  
 9 under which conditions it can be used. That is the main  
 10 difference that I see between the two letters and the  
 11 purpose of the second letter.  
 12 MR NTSEBEZA SC: Yes. But whether it not  
 13 in the training units, this was something that was taken  
 14 into account, you wouldn't know because you are not in the  
 15 units –  
 16 BRIG BREYTENBACH: No, I would not be  
 17 able to say with accuracy.  
 18 MR NTSEBEZA SC: Yes. By the way, who is  
 19 in charge of curriculum development in the NIU? Do you  
 20 know?  
 21 BRIG BREYTENBACH: No, the curriculum  
 22 development under Division HRD would be General van Eck.  
 23 MR NTSEBEZA SC: General?  
 24 BRIG BREYTENBACH: Van Eyk.  
 25 MR NTSEBEZA SC: Is van Eyk, E-C-K or A-

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1 U-I-J-E-K?

2 BRIG BREYTENBACH: J-K.

3 MR NTSEBEZA SC: U-I-J-K?

4 BRIG BREYTENBACH: Van Eck, ja.

5 MR NTSEBEZA SC: Eck. U-I-J-K? General

6 van Yk. And who – do you know who –

7 BRIG BREYTENBACH: Sorry, it's Y-K.

8 MR NTSEBEZA SC: Okay. Van Yk. Y-K.

9 Now how do you spell van Yk?

10 MR MPOFU: Van Yk is spelt, V-A-N Y-K.

11 MR NTSEBEZA SC: V-A-N Y-K.

12 MR MPOFU: V-A-N alone and then –

13 BRIG BREYTENBACH: E-Y-K.

14 MR NTSEBEZA SC: Y-K?

15 BRIG BREYTENBACH: E-Y-K. But I know

16 him, I can pass a message on to the general.

17 MR NTSEBEZA SC: Is it E-Y-K or E-Y-C-K?

18 E-Y-K?

19 BRIG BREYTENBACH: E-Y-K.

20 MR NTSEBEZA SC: Alright. Now he's in

21 charge of curriculum development.

22 BRIG BREYTENBACH: That is correct, yes.

23 MR NTSEBEZA SC: And who would be in

24 charge of the practical training of people trained in the

25 NIU that would be there in the field to say this is what

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1 you do?

2 BRIG BREYTENBACH: I cannot give you a

3 specific name because the recent reshuffling in that

4 division. I do not know exact name or the person that's in

5 charge of that. It was recently, but it can be – it falls

6 under General Mawela, under his component.

7 MR NTSEBEZA SC: Would you know who would

8 have been in charge of the practical training of the NIU at

9 the time of the events that we are talking about?

10 BRIG BREYTENBACH: I think it would be

11 best if we can refer to Brigadier Silwane at National

12 Intervention Unit.

13 MR NTSEBEZA SC: Thank you and the

14 special task force, who would be in charge of curriculum

15 development there?

16 BRIG BREYTENBACH: Again, it's General

17 Eyk.

18 MR NTSEBEZA SC: General Van Eyk. And

19 training?

20 BRIG BREYTENBACH: That would be

21 Brigadier Fritz, whoever is responsible for the different

22 phases would report under his command.

23 MR NTSEBEZA SC: Curriculum development

24 for TRT units?

25 BRIG BREYTENBACH: General van Eyk.

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1 MR NTSEBEZA SC: Curriculum development?

2 BRIG BREYTENBACH: That is correct.

3 MR NTSEBEZA SC: And then the training of

4 those units?

5 BRIG BREYTENBACH: The training would be

6 – I think they have a colonel at this stage otherwise it

7 falls directly under the command of General Annandale. I

8 just want to reiterate that the changes in their division,

9 in Division ROS, I'm not certain of certain of these posts

10 so if there's a wrong a person at the wrong position -

11 MR NTSEBEZA SC: No, you won't be

12 crucified.

13 BRIG BREYTENBACH: Thank you very much,

14 Sir.

15 MR NTSEBEZA SC: In the dog unit, the K9

16 unit, who would be – that would be under you, would it be?

17 BRIG BREYTENBACH: No, not under myself,

18 Sir. Under curriculum development is General van Eyk once

19 again and the training itself presented at the K9 Academy

20 under Brigadier Vuma.

21 MR NTSEBEZA SC: Brigadier Vuma, okay.

22 MR MAHLANGU: Colonel Vuma?

23 BRIG BREYTENBACH: Brigadier.

24 MR MAHLANGU: Brigadier.

25 MR NTSEBEZA SC: Thank you, Mr Chairman,

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1 no further questions.

2 BRIG BREYTENBACH: Thank you.

3 MR NTSEBEZA SC: Brigadier.

4 CHAIRPERSON: Thank you. Mr Ramapela do

5 you wish to ask any questions?

6 CROSS-EXAMINATION BY MR RAMAPELA:

7 Chairperson, I'm sure I'll ask just one or two. Brigadier

8 you are one of the leaders in this human resource

9 development division and I see that in slide number 2, you

10 say that your mission is to ensure quality education,

11 training and development in support of creating a safe and

12 secure environment for all people of South Africa. Is this

13 correct?

14 BRIG BREYTENBACH: That is correct.

15 MR RAMAPELA: And will I also be correct

16 if I say that taking instructions runs through all forms of

17 training?

18 BRIG BREYTENBACH: Yes, where's the

19 speaker? I can't see the speaker.

20 MR RAMAPELA: You must just listen.

21 Taking instructions runs through all forms of training?

22 BRIG BREYTENBACH: That is correct, yes.

23 MR RAMAPELA: And it is for this reason

24 that it was not even necessary for you to put it as one of

25 the outcomes in your outcomes under, I think it's slide 9

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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?

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1 Do you want to give it to the Brigadier? You're promoting

2 him for the afternoon.

3 BRIG BREYTENBACH: Thank you.

4 CHAIRPERSON: Thank you. Have you given

5 one to the witness? When you talked about giving one to

6 the General, did you mean the witness? Brigadier, have you

7 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

14 given one.

15 MR RAMAPELA: I am at the back and I

16 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 –

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1 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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1 Rustenburg POP will be deployed. Now the question that I

2 ask you is –

3 MR MAHLANGU: Mr Chairman, a long

4 statement has been made here and I do not have any document

5 which to refer to. It's very difficult for me to unless Mr

6 Ramapela can repeat what he's been saying please.

7 MR RAMAPELA: Okay. I say one of the

8 missions of the contingency plan of the 10th of August 2012

9 was the following and I will read - The Deputy Provincial

10 Commissioner of the North West province has instructed that

11 public order and crime prevention be maintained in the area

12 of Marikana along the route to Eastern Platinum Mine and

13 Western Platinum Mine before, during and after the strike.

14 Marikana crime prevention and Rustenburg POP will be

15 deployed. Now if the officers did not carry out this

16 instruction it would mean that we can assume that there

17 would be a weakness in the training.

18 BRIG BREYTENBACH: It's not necessarily

19 that there's a weakness in the training of the people who

20 do not follow instructions. It can be of members own will.

21 Instructions – members are taught from entry into the

22 police service to follow instructions. But we are training

23 robots to follow instructions blindly. Members have a

24 certainly level of discretion when it comes to following

25 instructions especially when it comes to the following of



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1 illegal instructions or when operating unsupervised.  
 2 [16:28] MR RAMAPELA: Okay. Let us go to number  
 3 3 of this concept plan which then gives the concept in  
 4 focus. Under 3.2 it says operation orders. POP will  
 5 parade at the base and Marikana –  
 6 CHAIRPERSON: Mr Gumbi, I'm sorry to  
 7 interrupt you. Are you going to go through the whole of  
 8 this? So sorry, Mr Ramapele, forgive me. You're Mr  
 9 Ramapele. Are you going to go through the whole of this  
 10 document?  
 11 MR RAMAPELA: No.  
 12 CHAIRPERSON: The whole of the portion  
 13 that you're now reading, para 3?  
 14 MR RAMAPELA: No, Chairperson, I'm going  
 15 to highlight some of the issues that –  
 16 CHAIRPERSON: The only reason I ask you  
 17 it's now half past 4, I said I would carry on until half  
 18 past 4. It sounds to me if you're only going to take 5  
 19 minutes, then we carry on, but if you're going to take a  
 20 bit longer, I suggest you resume this cross-examination  
 21 tomorrow morning.  
 22 MR RAMAPELA: Chair, let me try 5  
 23 minutes. If I go beyond 5 minutes –  
 24 CHAIRPERSON: Alright. That's fair  
 25 enough.

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1 MR RAMAPELA: - then it could be tomorrow  
 2 morning. Now let me go specifically to 3.2.3. It says all  
 3 incidents must be reported to JOC. Hourly reports on the  
 4 situation must be reported at JOC as from deployment  
 5 thereafter hourly until duties are concluded. If these  
 6 reports were not – this order was not executed, can we say  
 7 that there is something fundamentally weak with the  
 8 training?  
 9 BRIG BREYTENBACH: No, I would not say  
 10 that. This is operational document and operational  
 11 environment is fluent and the situation can change on an  
 12 hourly or minute base. This is – my experience from the  
 13 operational environment is this is the ideal that members  
 14 should strive towards. There might be reasons that they  
 15 have to deviate from this and those instructions would be  
 16 then given to deviate from it. You cannot blame all  
 17 disregard for instructions on training. There's numerous  
 18 factors to take into consideration. The member itself, the  
 19 circumstances he find himself in and whatever transpires  
 20 from that circumstances that he finds himself in.  
 21 MR RAMAPELA: Thank you, Brigadier. I go  
 22 to 3.2.4 in deviations. It says all personnel will fall  
 23 under the command of the overall commander. No deviation  
 24 from duty will be allowed without authority from JOC. If  
 25 the police – sorry. So if the police officer trained

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1 deviates without following this order, there will be  
 2 something fundamentally wrong with their concept of what  
 3 their duties should be to ensure safety of persons. Would  
 4 you agree with me?  
 5 BRIG BREYTENBACH: I would rather say  
 6 there'd be something wrong with their conduct.  
 7 MR RAMAPELA: The last question. If and  
 8 this is now the force levels we're talking about. We're  
 9 talking about 7 crime prevention officers, 3 crime  
 10 intelligence officers and 14 public order policing. If all  
 11 of these people did not follow the instructions or the  
 12 orders, then there's something fundamentally wrong with  
 13 execution of orders of the police. Do you agree with me?  
 14 BRIG BREYTENBACH: In a sense I would say  
 15 yes because it can be that the members were ill disciplined  
 16 and did not follow orders or that the situation did not  
 17 allow them to follow that specific order and that they had  
 18 to take their own decision or initiative. But your general  
 19 statement that orders should be followed is something that  
 20 we -  
 21 MR GUMBI: Chair, the difficulty with  
 22 this hypothetical questions, I don't know whether it is  
 23 alleged some instructions are not followed and by who or  
 24 it's just a matter of what?  
 25 CHAIRPERSON: He's the putting the

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1 question on the basis that if what he says is right, how  
 2 does the brigadier comment. The Brigadier's busy  
 3 commenting. He is nearly finished with his comment.  
 4 Obviously we'll get more detail at a later stage as to  
 5 whether all the instructions were disobeyed or only some of  
 6 them were, but it would probably much quicker for the  
 7 purposes of finishing this part of the cross-examination  
 8 this afternoon, is to let him finish his answer when we're  
 9 told it's the last question.  
 10 BRIG BREYTENBACH: I hope I've answered  
 11 you sufficiently, Sir.  
 12 MR RAMAPELA: Yes. You answered  
 13 sufficiently and then the last question. If we don't have  
 14 hourly reports on this concept plan that can be brought  
 15 before this commission, then you'd agree with me that there  
 16 was a problem with the implementation of this plan and it  
 17 is as good as the paper it's written on?  
 18 BRIG BREYTENBACH: That would be  
 19 operational matters and not as much a training matter if  
 20 the hourly reports were not done as they were planned to be  
 21 done.  
 22 MR RAMAPELA: Thank you, Chairperson.  
 23 CHAIRPERSON: Thank you, Mr Ramapele.  
 24 I'm sorry that I confused you with your colleague, Mr  
 25 Gumbi, a few moments ago, but –

1 MR RAMAPELA: Okay.  
2 CHAIRPERSON: - thank you very much for  
3 your questions. Mr Gumbi, I take it, if you have any  
4 questions you'll be happy to ask them tomorrow?  
5 MR GUMBI: Yes, Chairperson. I'm going  
6 to take instruction to that effect.  
7 CHAIRPERSON: The commission will adjourn  
8 and resume tomorrow at 09:30.  
9 [COMMISSION ADJOURNED]  
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