

3 (11.30 am)

4 (In the presence of the jury)

5 SUMMING-UP

6 SIR MICHAEL WRIGHT: Good morning, ladies and gentlemen.

7 It's nice to see you back. Well, now, we meet again.

8 It's just over ten weeks since we started here on  
9 22 September, and we now embark on the closing stages of  
10 this inquest into the tragic, tragic death of  
11 Jean Charles de Menezes.

12 It's now for me to sum up the whole matter to you  
13 before I invite you, later this week, to retire and to  
14 consider the verdicts that you will return.

15 Let me first of all tell you how I propose to  
16 proceed from now on. First of all, it's very tiring for  
17 you to listen to a single voice non-stop. It's pretty  
18 hard on the owner of the voice as well, as a matter of  
19 fact, so I will have a number of breaks as we go on to  
20 give you a chance to stretch your legs and for me as  
21 well. Also for the same reason, I don't intend to sit  
22 as late as we have been sitting while you were hearing  
23 the inquest, when there were a lot of people to get  
24 through, so it will be slightly more relaxed as far as  
25 timing is concerned.

1           Again, please, if you, any of you, need a break, you  
2           don't need to send me a note. Just put your hand up and  
3           say, "Can I have a break?", and you shall have it.  
4           There is no problem. All you have to do is ask. Okay?  
5           Thank you very much.

6           Well, now, in summing this whole inquest up to you,  
7           I have two tasks. I have to direct you on the law. The  
8           law is my responsibility. You must take the law from  
9           me.

10          My second task is to summarise the evidence to you,  
11          to remind you of its salient features and to draw your  
12          attention to what appear to me to be the more important  
13          issues in the case. In the course of our investigation,  
14          we have of course covered a large amount of ground, and  
15          that is as it should be, but inevitably some parts of  
16          the material that we have covered will turn out, after  
17          examination, to have been more pertinent than others.

18          But just as the law is for me, so the facts are for  
19          you. It is for you to decide what evidence is relevant  
20          and significant, what evidence you accept, and what you  
21          reject, which witnesses you think are honest, accurate  
22          and reliable. It's your view that counts. It's not any  
23          view that you may think that I have. My views don't  
24          matter. If you think I have a view about a particular  
25          aspect of the evidence, and it doesn't accord with

1           yours, then you should reject it.

2           Equally, if I don't refer in the course of this  
3           summing-up to evidence which you consider important, you  
4           should not be deflected from taking that evidence into  
5           account because I haven't referred to it. You are the  
6           judges of the facts. It's for you to decide what  
7           evidence is important, and what is not, and you must  
8           consider all the evidence that's been put before you  
9           over the course of the 36 days that we actually heard  
10          evidence in this inquest.

11          In summing up the facts to you, I don't intend to  
12          repeat all that you have heard, it was seven weeks in  
13          fact, over the seven weeks of evidence that you have sat  
14          through. I am reasonably sure that you would not  
15          welcome the suggestion that we should all sit here for  
16          another seven weeks while I simply read through all the  
17          evidence that you have heard. This is a summing-up. It  
18          is, and is intended to be, a summary.

19          On the other hand, you did ask me, before we parted  
20          last time, whether you could see the statements.

21          I think I may have misunderstood what you said, because  
22          I rather thought that you meant the statements that the  
23          witnesses had made, the basis on which they gave  
24          evidence to you, and I told you, as indeed is the case,  
25          that you could not see those documents.

1           However, there will be in your room a complete  
2 transcript of the 36 days of evidence that you have  
3 heard, and it's there for you to refer to during your  
4 deliberations if you need it.

5           Each day's hearings are tagged, they are in folders,  
6 each day is indexed, so that you can conveniently find  
7 the evidence of any individual witness who gave evidence  
8 during that day, whom you may wish to refer to.

9           Can I say, however, as strongly as I possibly can:  
10 I do advise you against trying to read through it from  
11 beginning to end. That's not really the purpose of the  
12 transcript. It's there for your reference, as  
13 a reference volume -- reference four volumes actually --  
14 if you need it. Your assessments and impressions of the  
15 evidence and of the witnesses who gave that evidence  
16 will have been accumulating over the period of time that  
17 you were hearing the evidence, and those impressions and  
18 assessments are every bit as important as the cold print  
19 of the transcripts, any of the transcripts, that you may  
20 refer to.

21           Bear in mind the importance of considering all the  
22 evidence on a particular point. Don't be unfairly  
23 selective. If you are looking at the transcripts, bear  
24 this point in mind, it's a further point which I shall  
25 elaborate to you later: evidence comes from the

1 witnesses, not from counsel, however much they might  
2 like to think it did; the evidence comes from the  
3 witnesses.

4 You have, I know, because I was watching, making  
5 your own notes as you have gone along and you have  
6 asked, as I said you could, a significant number of  
7 questions of your own. I have no doubt, as I say, that  
8 you have clear impressions. I may revive them for you  
9 as I summarise the evidence, but your impressions and  
10 assessments of the witnesses are of paramount  
11 importance.

12 As I said many times already, and I do not hesitate  
13 to repeat it again, you decide the case on the evidence  
14 that you have heard in this court, and not on anything  
15 else that you may have seen, read or heard elsewhere.

16 Again, therefore, as I told you at the outset of  
17 this inquest, please continue to ignore -- as I am sure  
18 you have done -- media reports on the proceedings.  
19 Again, as I have said before, don't conduct your own  
20 investigations on the internet or elsewhere. Your duty  
21 is to find the facts and reach a conclusion on the  
22 evidence which is before you, which is the evidence that  
23 was laid before you in this court.

24 Don't ask for any further evidence. There will be  
25 none. The time for evidence is over. Over the past six

1 months, in fact, my team, assisted by the Independent  
2 Police Complaints Commission, have trawled exhaustively  
3 through the vast volume of documentation that has been  
4 created in relation to this tragic death. We are as  
5 sure as we can be that there is nothing more of any  
6 materiality or relevance that could be put before you.  
7 So that's it.

8 In the course of this inquest, you have heard  
9 evidence from one member of Mr de Menezes' family, and  
10 you heard statements from others of his family read.  
11 During the hearing, I don't doubt you all saw his  
12 mother, sitting at the side of the court, listening  
13 intently, through the earphones that she had, with the  
14 benefit of the translation facilities that were  
15 available, to the evidence as it developed. I know that  
16 your hearts will have gone out to her. By the same  
17 token, before you heard a word of evidence in this case,  
18 you must all have felt disquiet at the fact that  
19 an innocent member of the public could be shot and  
20 killed by trained firearms officers of the  
21 Metropolitan Police.

22 Equally, when you consider the problems that were  
23 facing the police on this particular occasion, you may  
24 feel a tendency to sympathise with their position,  
25 facing as they were a terrorist situation of this kind.

1           But these are emotional reactions, ladies and  
2 gentlemen, and you are charged with the duty of  
3 returning a verdict on the evidence. You must decide  
4 and assess what you make of the evidence  
5 dispassionately. Put aside any emotions, whatever they  
6 may be, your own emotions, put them on one side.

7           I come back to what I mentioned a moment ago.  
8 I stress also that the evidence that you have to  
9 consider in this case is the evidence that comes from  
10 the witnesses, whether they gave live evidence before  
11 you or through the statements that have been read to  
12 you.

13           Counsel, who act in accordance with their  
14 professional duty to the various interested persons by  
15 whom they are instructed, put to many witnesses in the  
16 form of lengthy and sometimes very seductive and  
17 argumentative questions, their proposals or suggestions  
18 as to the appropriate way in which police investigations  
19 of the kind that we are considering should be conducted.  
20 But I stress, as I have said already, counsel's  
21 questions are not evidence. They will only become  
22 evidence if, and insofar as, the witnesses to whom the  
23 question is directed agrees with and accepts the  
24 proposition or suggestion that's being put. I say to  
25 you again: the evidence comes from the witnesses, not

1 from the barristers. Bear that in mind again when you  
2 are referring to the transcripts.

3 You have had some statements read to you by counsel  
4 to the inquest. Some of those, such as the statements  
5 of the members of the de Menezes family, were read  
6 because nobody regarded them as controversial, and you  
7 were told that at the time. Those statements you may  
8 effectively regard as agreed evidence and give them full  
9 effect as you think they should be.

10 Other statements, such as those of some of the  
11 bystander witnesses in the railway carriage, were read  
12 to you as hearsay evidence, although they were not  
13 necessarily agreed to by all the interested parties.  
14 But there was simply a consensus that it was not  
15 necessary, it wasn't justifiable on grounds of upheaval  
16 and disturbance and expense to call the witnesses and  
17 have his or her evidence tested under examination by the  
18 advocates.

19 Bear that in mind, therefore, when you are  
20 considering some of the evidence that you heard,  
21 particularly those of the bystander witnesses which were  
22 not effectively entirely uncontroversial. They weren't  
23 necessarily entirely agreed to.

24 Having mentioned the advocates, can I say a little  
25 bit more about them. As I told you when I opened this



1           inquest, counsel for the inquest, that's Mr Hilliard  
2           Queen's Counsel and Mr Hough, are here to act entirely  
3           impartially, and as such, it was their task to examine  
4           the witnesses first on the facts relevant to the  
5           inquiry. They have also, of course, as part of that  
6           task, to assist you, tested the evidence of the  
7           witnesses generally.

8           Interested persons, in the form of the de Menezes  
9           family, and altogether I think six organisations or  
10          groups of persons that have been featured in this  
11          inquest, are entitled to be represented and they all  
12          have been. Counsel for interested persons are here to  
13          represent their clients, to bring out any additional  
14          facts that may be perceived to be relevant to their  
15          clients' interests, and to challenge any evidence with  
16          which their clients disagree.

17          There is always a tendency to become adversarial  
18          when challenging what a witness may have said, and  
19          I have already told you, and I repeat, that an inquest  
20          is a fact-finding exercise and not a trial, not to  
21          establish either criminal or civil liability. The  
22          Coroners' Rules prohibit any verdict that appears to  
23          determine civil liability generally or criminal  
24          liability of any named person. The underlying basic  
25          purpose of an inquiry of this kind is to establish the

1 true facts, to resolve the central issues of fact, and  
2 to ensure that unsubstantiated speculation and rumours  
3 are dispelled.

4 You will appreciate that Mr Mansfield acts for the  
5 family of Mr de Menezes, and so he's in rather  
6 a different position from that of the other interested  
7 persons. He doesn't have a client who can give him  
8 instructions about what did or did not happen at any  
9 particular time on 21 or 22 July 2005, and it's only  
10 fair that I should remind you of that fact.

11 This inquest is an unusual one, in a number of  
12 respects, not least its length, and its complexity.  
13 It's also unusual in so far that there has already been  
14 a trial by jury to determine the statutory criminal  
15 liability of the Office of the Commissioner of  
16 Metropolitan Police in relation to the Health and Safety  
17 at Work Act 1974.

18 The particulars of the offence in that trial were,  
19 so far as is relevant, that the Office of the  
20 Commissioner, and I'll quote now from the indictment:

21 "The Office of the Commissioner, between  
22 20 July 2005 and 23 July 2005, being an employer within  
23 the meaning of the Health and Safety at Work Act 1974,  
24 failed to conduct its undertaking, namely the  
25 investigation and surveillance of a location believed to

1 be connected with a suspected suicide bomber, and the  
2 planning and implementation of the surveillance,  
3 pursuit, arrest and detention of a suspected suicide  
4 bomber, and the prevention of a suicide bombing in such  
5 a way as to ensure that ..."

6 Then some irrelevant words are omitted:

7 "... members of the public, including Jean Charles  
8 de Menezes, were not exposed to risks to their health  
9 and safety in contravention of the duty imposed by  
10 Section 3, subsection 1 of the Health and Safety at Work  
11 Act 1974."

12 The result of that trial, as you heard, was that the  
13 Office of the Commissioner was convicted, and made the  
14 subject of a substantial financial penalty. The jury  
15 also returned a rider to its verdict, in the following  
16 terms. I quote:

17 "In reaching this verdict, the jury attach no  
18 personal culpability to Commander Dick."

19 The law is that your finding as to the cause of  
20 death should not be inconsistent with the outcome of  
21 that trial. There is in fact very little risk of this  
22 happening. The simple verdict of guilty returned by  
23 that jury does not enable us to identify which of the  
24 several complaints levelled against the Office of the  
25 Commissioner by the prosecution in that case the jury

1 found proved. There was just a simple guilty verdict,  
2 that's all.

3 So far as the jury's rider is concerned, it's by no  
4 means clear whether this is any part of the outcome of  
5 that trial. But in any event, it's not your role to  
6 attach criminal or civil fault to any named person, and  
7 you are not permitted to return any verdict which might  
8 have that effect.

9 What, then, is to be your approach to the witnesses  
10 whose evidence you have heard in this case? First of  
11 all, as I have already indicated, you will consider the  
12 evidence of those witnesses who deal directly with the  
13 events of 21 and 22 July, in order to decide whether the  
14 witnesses themselves are honest, accurate and reliable  
15 in their recollection, assisted as they have been by the  
16 statements which in almost all cases they made shortly  
17 after the happening of the relevant events.

18 In addition, you are also permitted as a matter of  
19 common sense to draw conclusions or inferences from the  
20 facts as you find them to be. You should bear in mind,  
21 however, that much of the evidence you have heard  
22 relating to the events from about 9.30 on the morning of  
23 22 July onwards relates to a dynamic series of events,  
24 moving at an ever accelerating speed towards  
25 an unexpected, shocking and frightening crisis of events

1 which culminated in the shooting of Mr de Menezes.

2         Against that background, you will have to consider  
3 very carefully the possibility that individual witnesses  
4 may be mistaken, may be confused, may simply have failed  
5 to recollect events in the correct sequence, in the heat  
6 of the moment, including quite significant events. You  
7 may remember that many witnesses, particularly the  
8 bystander witnesses, many witnesses spoke of their  
9 recollection being of the snapshot variety, with gaps,  
10 and the evidence of the bystander witnesses, whether  
11 they were given orally from the witness box or in the  
12 statements that were read to you, you may think were  
13 eloquent testimony as to the extent to which individual  
14 recollections can vary when they are describing events  
15 of that kind.

16         You also have to guard against being wise with  
17 hindsight. Everybody's agreed about that. Indeed, on  
18 occasions Mr Mansfield expressly said, when he was  
19 advancing particular criticisms, that it should have  
20 been obvious at the time that a particular approach or  
21 tactic was flawed; and you have to look, obviously, at  
22 what would be apparent from the circumstances existing  
23 at the time.

24         Hindsight, they always say, is 20/20 vision in  
25 spades and you should be careful not to, as it were,

1 apply it unfairly.

2 You may also want to bear in mind that in human  
3 affairs, perfection is not really very often achievable,  
4 and frequently in these proceedings, we have been  
5 concerned with matters of judgment to which there may  
6 not have been any one right answer. Perfection is one  
7 thing; competence is another. Everyone, of course, is  
8 entitled to expect competence where a police firearms  
9 operation is concerned.

10 Lies. More than one witness in the course of this  
11 inquest has been accused of lying. How should you  
12 approach this topic? First of all, of course, you must  
13 decide whether the person whose evidence you are  
14 considering has lied, rather than having simply made  
15 an honest mistake. If you think it is possible that it  
16 is the latter, honest mistake, rather than the former,  
17 a deliberate lie, you need consider it no further, and  
18 you can consider the evidence given in the light of the  
19 mistake as you think it to be.

20 If you conclude that the witness has lied, then you  
21 should go on to bear this in mind: people tell lies for  
22 a variety of reasons, not necessarily to hide their own  
23 guilt. In the context of this case, it may be to  
24 mitigate the impact of what has become apparent was  
25 a tragic mistake; to support others in the explanations

1           that they have -- they may have put forward. I will  
2           give you an example. Suppose you concluded, to take  
3           an issue which is at the forefront of your  
4           considerations, that Charlie 12 had not shouted "armed  
5           police" or that Mr de Menezes had not moved towards him;  
6           you would have to ask yourselves whether he was mistaken  
7           or whether he was telling a lie. Even if he was telling  
8           a lie, it would not automatically follow that Charlie 12  
9           could not still have been acting in lawful defence of  
10          himself and of others. That's merely an example. I am  
11          not expressing any view whatever about Charlie 12's  
12          evidence. That's for you to decide, not me.

13                 In addition, it doesn't follow that because you  
14          conclude that a witness has lied in one or some matters  
15          that nothing that he or she has told you can be relied  
16          upon. It doesn't necessarily follow that because you  
17          conclude that a witness has lied on one specific point  
18          that the whole of a witness's evidence can be regarded  
19          as demonstrably unreliable. It's for you to decide what  
20          you can accept and what you feel constrained to reject.

21                 Experts. The bulk of the evidence that you have  
22          heard in this inquest has focused entirely on the  
23          factual events leading up to and surrounding the death  
24          of Mr de Menezes. You have also heard the evidence of  
25          various senior serving and former police officers who

1 have been invited to give you the benefit of their  
2 opinions on the appropriateness or otherwise of police  
3 policies, strategies, and tactics when seeking to  
4 grapple with so problematic a subject as the best way to  
5 deal with the threat presented by suicide terrorist  
6 bombers.

7           It's by no means unusual for evidence of this nature  
8 to be permitted at an inquest, as it is indeed in many  
9 criminal trials. Its purpose is to provide you with  
10 information and the benefit of expert opinion which is  
11 within the witness's expertise and experience but which  
12 is likely to be outside your experience and knowledge,  
13 or mine for that matter, as ordinary members of the  
14 public.

15           Take an obvious example: you heard from the witness  
16 who went under the name of Neil to assist you with the  
17 characteristics, composition, and the explosive power of  
18 the materials and the devices that were used in the 7/7  
19 and the 21/7 attacks. You wouldn't have known anything  
20 about that without the benefit of that assistance.

21           You also heard from Dr Shorrocks, the consultant  
22 pathologist, and Mr Tomei, the forensic scientist, as to  
23 the nature of the injuries suffered by Mr de Menezes,  
24 the range at which the shots appeared to have been fired  
25 and the position of the body at the material time.



1           This evidence, together with that of Dr Mould, the  
2           pharmacologist who told you about the effect of cocaine,  
3           which was read to you, was evidence which was  
4           effectively uncontroversial. You may take it on its  
5           face value. Where there was a degree of controversy was  
6           over the evidence given to you by former  
7           Chief Superintendent Swain who you will remember was  
8           a leading member of the working party who was tasked  
9           with the development of policies and strategies and  
10          tactics for dealing with suicide bombers in the  
11          aftermath of the 9/11 attacks in New York.

12          He told you about the extensive research that he and  
13          his working party had carried out around the world,  
14          particularly in connection, his particular, what he  
15          calls strand of the working party, particularly in  
16          connection with tactics, training and equipment. You  
17          heard about the conclusions that they came to, and about  
18          the strategies that they introduced.

19          You also heard from the former Deputy Assistant  
20          Commissioner Mr Paddick, who is critical of the strategy  
21          that was developed by Commander McDowall for the  
22          operation on 22 July, particularly in relation to the  
23          designation and use of a designated senior officer,  
24          a DSO, and the absence of any appropriate code words.  
25          You will remember that there is some conflict between

1 the evidence of Mr Swain and Mr Paddick.

2 A witness who is called as an expert is entitled to  
3 express an opinion in respect of the matters that he  
4 deals with and on which he has expertise. These  
5 officers were called as senior officers who have  
6 experience and expertise on such matters. You are  
7 entitled and would no doubt wish to have regard to this  
8 evidence, and to the opinions that are expressed by the  
9 experts, when you come to your conclusion on various  
10 aspects of the case.

11 As I have said already, where there is no opposition  
12 being voiced to the opinions of any of the experts, like  
13 Neil or the pathologist, that sort of thing, then you  
14 may have little difficulty in feeling able to rely upon  
15 those opinions, where they are relevant or you find them  
16 to be relevant, in your deliberations.

17 But where there is controversy, then you approach  
18 such witnesses in exactly the same way as you would  
19 approach any other witness in the case. You weigh up  
20 the impression that each witness makes upon you, and you  
21 assess what weight you feel that you can give to that  
22 witness's opinions. And in particular in this case, you  
23 may wish to consider the level and extent of the  
24 expertise and experience that you think that each such  
25 witness is able to bear on the topics in respect of

1           which he is giving you his opinion.

2           The evidence that you have heard in this inquest has  
3           presented a graphic illustration of the topic that's  
4           already been referred to by counsel from time to time;  
5           that is the difficulty of achieving a reliable, positive  
6           identification of any person whose identity is in  
7           question.

8           Juries in our criminal courts always have to be  
9           reminded about how careful one must be in approaching  
10          what may appear to be confident identification evidence,  
11          but one which is given under difficult circumstances,  
12          for instance in a poor light, at a distance, for a brief  
13          instant only, and so on. They are told always of the  
14          need for special caution in such cases because  
15          experience has shown that ghastly mistakes can be made.

16          It's because of this well recognised difficulty that  
17          it may be unreasonable to expect officers, surveillance  
18          officers or any other police officers in the context of  
19          this case, to be able to establish with confidence the  
20          identity of a person who is under surveillance until  
21          observation has been able to be maintained over  
22          a significant period of time.

23          As I told you at the start of the case, the law  
24          states that the function of a Coroner's jury is to  
25          answer four important but limited questions: who the

1           deceased was; when he came by his death; where he came  
2           by his death; and how he came by his death. That last  
3           phrase means by what means and in what circumstances he  
4           came by his death. You are not limited to looking at  
5           the immediate physical cause of death.

6           In addition, you are required to confirm various  
7           formal matters which are required for the registration  
8           of death. Beyond those matters that I have told you  
9           about, you are not entitled to express an opinion on any  
10          other matter. I repeat yet again, you have heard it  
11          many times, that the law prevents you from making any  
12          findings which appear to determine any question of the  
13          criminal liability of a named individual or any question  
14          of civil liability whatever.

15          However, you are entitled to express judgmental  
16          conclusions of a factual nature. The law requires me to  
17          consider, after I have received your verdict, whether  
18          I should make any recommendations to the relevant public  
19          bodies for any changes in their future procedures and  
20          practices. But that's my responsibility.

21          So, legal directions. I now turn to direct you as  
22          to the verdicts that I am going to invite you to  
23          consider. Conventionally and traditionally the verdicts  
24          of a Coroner's jury are expressed in brief and in some  
25          cases uninformative terms. These are what are known as

1 short form verdicts. They include those that are  
2 familiar to you, and to the press, and to the public  
3 alike, such verdicts as suicide or accidental death.

4 Of course, suicide and accidental death obviously  
5 could in no way be appropriate in the circumstances of  
6 this case. Of the other short form verdicts that are  
7 available, it is my responsibility to determine whether  
8 any and, if so, which the law allows to be left to you  
9 to consider, and this is my duty. I am only permitted  
10 to leave a verdict to you if there is sufficient  
11 evidence, taken at its highest, to permit a jury,  
12 properly directed, properly to return such a verdict.

13 On Thursday and Friday of the week before last,  
14 having considered extensive written submissions from all  
15 the interested persons, I heard oral submissions again  
16 from all persons including counsel to the inquest.  
17 I have considered all those submissions, and the  
18 conclusion that I have come to, and I so direct you, is  
19 that the evidence in this case taken at its highest  
20 would not justify my leaving verdicts of unlawful  
21 killing to you. This is so in respect of Charlie 12 and  
22 Charlie 2, concerning their direct involvement in the  
23 shooting of Mr de Menezes, and also in respect of any of  
24 the particular senior officers in relation to their  
25 management and conduct of the operation which was

1           designed to find, follow and detain a suicide bomber.

2           I so conclude, bearing in mind, as I must, the  
3           extremely high standard of proof on the criminal basis  
4           which is required before you could properly come to such  
5           a verdict. In other words, a verdict of that kind could  
6           only be returned if a jury were sure beyond reasonable  
7           doubt that Mr de Menezes had been unlawfully killed.

8           Now, in directing you that you cannot return  
9           a verdict of unlawful killing, I am not saying that  
10          nothing went wrong in a police operation which resulted  
11          in the killing of an innocent man. All interested  
12          persons agree that a verdict of unlawful killing could  
13          only be left to you if you could be sure that a specific  
14          officer, a specific officer, had committed a very  
15          serious crime, murder or manslaughter.

16          In these circumstances, the law does not allow for  
17          an unlawful verdict(sic) to be left or returned on the  
18          basis that a number of people made different mistakes,  
19          the cumulative effect of which was to result in the  
20          death of Mr de Menezes; and in any event, as I shall  
21          tell you, I shall be leaving to you verdicts and  
22          conclusions which will allow you to determine whether  
23          the use of force by the officers Charlie 2 and  
24          Charlie 12 was legally justified and which allow you to  
25          determine what factors led to the death.

1           I will leave for your consideration the option to  
2           return either a verdict of lawful killing or an open  
3           verdict. That choice will allow you to determine  
4           a central issue in the case; that is whether the use of  
5           force by Charlie 2 and Charlie 12 was justified. All  
6           interested persons are agreed that you could properly  
7           return either of those verdicts, and they are obviously  
8           alternatives, either of those verdicts depending on your  
9           assessment of the evidence. I shall shortly be telling  
10          you how to approach those verdicts.

11          In order to understand the law that you must apply  
12          in relation to these verdicts, you must first understand  
13          that although the verdicts that are in use in this  
14          context in a Coroner's court use the slightly bland  
15          expressions of "lawful" or "unlawful killing", the  
16          accusation that is in fact being made against Charlie 2  
17          and Charlie 12 on behalf of the family is an allegation  
18          of murder; that is to say the deliberate killing of  
19          another human being without any lawful excuse. That is  
20          an allegation of murder.

21          The response of the two officers to that accusation  
22          is that they were acting in the lawful defence of  
23          themselves and of many other people in that they fired  
24          their weapons in order to prevent the detonation of  
25          a body-borne improvised explosive device, an IED, or

1 a bomb, which they honestly, albeit mistakenly, believed  
2 that Mr de Menezes was carrying and which he intended to  
3 detonate.

4 I am now going to ask my usher to hand out a set of  
5 written directions on the law. (Handed). If we may, we  
6 will go through them together.

7 Just take a moment, please, to glance through the  
8 first section, the general directions. I am not going  
9 to read them again because it repeats in effect what  
10 I have just told you. (Pause). With me so far? Thank  
11 you.

12 The next section begins "Short Form Verdicts", and  
13 as you will see, it gives you the choice between lawful  
14 killing and an open verdict, and you should consider  
15 lawful killing first.

16 Then I hope you will find the next section useful  
17 because it sets out in print what I have just told you.  
18 A lawful killing verdict should be returned where the  
19 evidence shows that it is probable, that is to say more  
20 likely than not, that the deceased died by the  
21 deliberate application of force against him, and that  
22 the person causing the injuries used reasonable force in  
23 self-defence or defence of another person, or to prevent  
24 a crime, or to assist in a lawful arrest, even if that  
25 force was, by its very nature or the manner of its



1 application, likely to be fatal.

2 I'll leave you just to read that through again for  
3 yourselves. (Pause). One aspect of that definition you  
4 will notice immediately is that the basis upon which you  
5 approach that verdict is that it is probable, more  
6 likely than not, which is the civil burden of proof and  
7 not the much higher criminal burden of proof which  
8 I told you a moment ago was to be sure beyond reasonable  
9 doubt. It is sufficient for you to find a lawful  
10 killing if you conclude that the criteria set out in  
11 that section is established on the balance of  
12 probabilities: more likely than not.

13 You will see that the direction provides that you  
14 should return a verdict of lawful killing if you find  
15 that the two officers, Charlie 2 and Charlie 12, when  
16 they shot Mr de Menezes, were acting in lawful defence  
17 of themselves or others. As you will see, in order to  
18 return that verdict, you will have to be satisfied of  
19 two matters on the balance of probabilities, and I now  
20 focus on the facts of this case.

21 You must be satisfied that it's more likely than not  
22 (a) that at the time they fired their weapons, they  
23 honestly although mistakenly believed that Mr de Menezes  
24 represented an imminent mortal danger to them and to the  
25 other people around them; and (b) -- two things -- that

1           they used no more force than was reasonably necessary in  
2           the circumstances as they honestly believed them to be.

3           When you consider question (a), you need to remember  
4           that the question is whether the officers honestly  
5           believed that Mr de Menezes represented an imminent and  
6           mortal danger. If the answer to that question is yes,  
7           then you would be saying that the officers made  
8           an honest but tragic mistake. The question is not  
9           whether that belief which we now know was mistaken was  
10          a reasonable one for them to hold. You can only  
11          consider whether it was reasonable if that helps you --  
12          if and insofar as that helps you to determine the real  
13          question: did they actually believe this?

14          In other words, the crucial question is: did they  
15          honestly and genuinely hold that belief, even though it  
16          may be mistaken and even though you may think that the  
17          mistake was unreasonable? The only relevance of the  
18          unreasonableness is if that assists you to conclude, to  
19          decide, whether they actually did hold that belief.

20          If you consider that the answer to question (a) is  
21          yes, you should then consider question (b) on your  
22          paper. When considering that second question, which is  
23          about the reasonableness of the force used, you should  
24          bear this in mind: the law says that a person who is  
25          facing a threat or an attack does not have to judge too

1 precisely how much force he should use. He may not have  
2 very much time. It can be reasonable to use lethal  
3 force in self-defence.

4 You should also bear this in mind when considering  
5 this verdict: the law does not require a person who is  
6 under attack or is fearing an attack to wait for  
7 an attack before he takes defensive action. You don't  
8 have to wait until somebody is shooting at you before  
9 you take appropriate defensive action. A pre-emptive  
10 strike, to use the tactical expression, can be justified  
11 depending on the circumstances.

12 If you think that the officers genuinely believed  
13 that Mr de Menezes presented an immediate and mortal  
14 threat to all around him, then you may think -- although  
15 it's a matter for you -- that the use of lethal force by  
16 the officers was reasonable in order to counter that  
17 threat.

18 In any case, where the threat perceived is so  
19 extreme, then the measures taken to deal with such  
20 a threat may also have to be of an extreme nature. In  
21 that respect, even if you think that more shots may have  
22 been fired than was strictly necessary to ensure that  
23 Mr de Menezes was incapacitated or dead, which in these  
24 circumstances probably amounted to the same thing, then  
25 you may think that the suggested overreaction that was

1 put to the officers may not perhaps be so unexpected  
2 under the influence of extreme pressure, and in any case  
3 you may well think that the precise number of shots may  
4 have made no difference to the ultimate outcome when you  
5 remember the evidence of Dr Shorrocks and Mr Tomei that  
6 Mr de Menezes might very well have been killed by the  
7 very first shot.

8 I will remind you again of all these legal questions  
9 when I come to review the evidence on these aspects of  
10 matters.

11 May I now ask you, please, to look over the page of  
12 the written legal directions? Again you will find set  
13 out, at the top half of the second page, the directions  
14 that I have just given you, and I am not going to read  
15 them again.

16 Coming now to the section of the document which is  
17 headed "Open Verdict". If, having considered all the  
18 evidence, you consider that the necessary elements of  
19 a lawful killing verdict are not established as being  
20 more likely than not, then you should return an open  
21 verdict; in other words if you did not conclude that the  
22 officers probably held the requisite honest belief, or  
23 if you did not conclude that they probably used  
24 reasonable force, then you should return an open  
25 verdict.

1           Please bear in mind the following points, and they  
2           are in the document: first, you should not return  
3           an open verdict just because you cannot establish  
4           a peripheral point of fact about the death. Secondly,  
5           you should not return an open verdict because you  
6           disagree among yourselves. Whichever verdict you  
7           return, as I shall be telling you at the very end of  
8           this summing-up, you must all agree on it.

9           Thirdly, you should not return an open verdict as  
10          a mark of disapproval or to make any sort of statement.

11          Fourthly, if you were to return an open verdict,  
12          that would not represent a failure on your part, nor  
13          a failure on the part of the inquest. It would be  
14          simply a reflection of your view of the state of the  
15          evidence that you have heard.

16          In order to enable you to give your conclusions on  
17          the other central factual issues that have been debated  
18          during the course of this inquest, I intend to put  
19          before you a number of questions for you to consider,  
20          and now, if I may, I am going to ask my usher to put  
21          before you a draft form of inquisition and a draft  
22          verdict questionnaire. (Handed). You should each have  
23          two documents. (Pause). Please look first at the  
24          inquisition. That one (indicated). You will see the  
25          formal introduction. In the box, firstly it tells you

1           where this is all happening and the dates that we have  
2           been sitting. It tells you who I am and who you are,  
3           and then box 1 is written in the name of the deceased.  
4           These are all uncontroversial and I have written them in  
5           in advance.

6           In box number 2, the medical cause of death is  
7           given: severe disruption of the brain resulting from  
8           multiple gunshot wounds to the head. That you remember  
9           was Dr Shorrocks's finding on the post-mortem.

10          In box 3 there is the neutral and uncontroversial  
11          description of the circumstances of death. It sets out  
12          that Jean Charles de Menezes died as a result of being  
13          shot by armed police officers of the Metropolitan Police  
14          in an Underground train at Stockwell Underground station  
15          at approximately six minutes past 10 on 22 July 2005.

16          In box 5, jumping 4 for a moment, are the various  
17          particulars which are required for registration of  
18          death. Mr de Menezes' date and place of birth, date and  
19          place of death, his full name, his address at the time,  
20          his occupation and so on. I am hoping, I hope with some  
21          confidence, that you will find all those entries  
22          uncontroversial and that you will be entirely happy to  
23          subscribe to them. If you are not content with any of  
24          them, please write me a note.

25          Box 4 is the key section, and as you will see, I am

1 not asking you to write anything in there, the  
2 conclusion of the jury as to the death, because I am now  
3 going to look, please, at the separate document, which  
4 is the attached questionnaire, the verdict  
5 questionnaire.

6 Can we look, please, at that one now. First of all,  
7 there is a section for the short form verdicts that  
8 I have left to you. When you have decided whether to  
9 return a lawful killing verdict or an open verdict, you  
10 should write that into the box marked towards the top,  
11 alongside those two choices.

12 By choosing between those verdicts you will be able  
13 to express your conclusion on the legal justification of  
14 the force that was actually used.

15 Next, you should consider three factual questions  
16 which are again central questions that have been debated  
17 over the course of this inquest. The first question is:  
18 did officer Charlie 12 shout the words "armed police" at  
19 Mr de Menezes before firing? The second question: did  
20 Mr de Menezes stand up from his seat before he was  
21 grabbed in a bear hug by an officer going under the name  
22 of Ivor? Third, did Mr de Menezes move towards officer  
23 Charlie 12 before he was grabbed in a bear hug by  
24 officer Ivor?

25 Just going back to question 1 for a moment, you will

1 see what is set out in the parallel box against that  
2 question 1. If you conclude that it is more likely than  
3 not that the officer shouted the words before firing,  
4 place a tick against "yes". If you decide that it is  
5 more likely than not that the officer did not shout  
6 those words before firing, tick "no". If you cannot  
7 give a yes or no answer on the evidence before you, tick  
8 "cannot decide". It's all pretty basic, but I need to  
9 recite it with you.

10 These questions, those three questions, will allow  
11 you to express your conclusions about what happened in  
12 the railway carriage.

13 Turn over. Question number 4 asks you to consider  
14 which, if any, of a number of factors contributed to the  
15 death of Mr de Menezes. There are in fact nine  
16 sentences there, (a) to (i), each of which expresses  
17 a factor which in the course of this inquest it has been  
18 suggested made some contribution, and let me read them  
19 out to you. (a), the suicide attacks and attempted  
20 attacks of July 2005 and the pressure placed upon the  
21 Metropolitan Police in responding to the threat.

22 (b), a failure to obtain and provide better  
23 photographic images of the suspect Hussain Osman for the  
24 surveillance teams.

25 (c), a failure by the police to ensure that



1 Mr de Menezes was stopped before he reached public  
2 transport.

3 (d), the general difficulty in providing  
4 an identification of the man under surveillance, that's  
5 Mr de Menezes, in the time available and in the  
6 circumstances after he had left the block at  
7 Scotia Road.

8 (e), the innocent behaviour of Mr de Menezes which  
9 increased the suspicions of some of the officers.

10 (f), the fact that the views of the surveillance  
11 officers regarding identification were not accurately  
12 communicated to the command team and to the firearms  
13 officers.

14 (g), the fact that the position of the cars  
15 containing the firearms officers was not accurately  
16 known to the command team as the firearms officers were  
17 approaching Stockwell station.

18 (h), any significant shortcomings in the  
19 communications system as it was operating on the day,  
20 between the various police teams on the ground and with  
21 New Scotland Yard.

22 Finally, (i), a failure to conclude at the time that  
23 surveillance officers should still be used to carry out  
24 the stop of Mr de Menezes at Stockwell station, even  
25 after it was reported that specialist firearms officers

1           could perform the stop.

2           Again, you will see, same series of choices, yes, no  
3           or we can't decide.

4           Consider each of these, (a) to (i) separately. When  
5           considering each, again you apply the balance of  
6           probabilities standard: is it more likely than not? If  
7           you decide that the sentence reasonably accurately  
8           describes something which happened and that it caused or  
9           made a more than minimal contribution to the death of  
10          Mr de Menezes, then you should tick "yes" in the box  
11          next to the sentence. If you decide that the sentence  
12          either does not describe something which happened or, if  
13          it did happen, you think that it did not cause or  
14          contribute to the death of Mr de Menezes, you should  
15          tick "no" in the box next to the particular sentence.  
16          But if, on all the evidence before you, you cannot  
17          decide, then you so say by ticking against the words  
18          "cannot decide".

19          Now, these questions have been drafted carefully to  
20          ensure that you can express your conclusions on various  
21          matters which may or may not have played some part in  
22          causing the death, but they are also drafted in such  
23          a way, the wording has been chosen in such a way that  
24          there is no risk of you infringing the legal rules that  
25          I have told you about. You remember about criminal

1 liability and civil liability and so forth.

2 Here again in relation to those questions and  
3 factors, I shall remind you of the issues raised when  
4 I have concluded my review of the evidence, which I am  
5 about to start. I say again that this is necessarily  
6 for your sake and for mine, this is a selective review,  
7 and that you should consider all the evidence that you  
8 regard as significant and not just what I remind you  
9 about now.

10 The strong temptation is to break off at this point.

11 You have probably had enough for a bit, and I will start  
12 my review of the evidence at 2 o'clock.

13 (12.35 pm)

14 (The short adjournment)

15 (2.00 pm)

4 (2.13 pm)

5 (In the presence of the jury)

6 SUMMING-UP (continued)

7 SIR MICHAEL WRIGHT: Two things, ladies and gentlemen.

8 First of all, I am afraid it happens from time to time,  
9 there was a slip of the tongue in the directions I gave  
10 you about unlawful killing, and what I am going to do,  
11 instead of saying, as I now know having looked at the  
12 LiveNote, instead of saying "unlawful killing verdict",  
13 I said "unlawful verdict". I am going to correct it and  
14 read you the paragraph again so you get the full effect  
15 as it should have been. This is what I said:

16 "In directing you that you cannot return a verdict  
17 of unlawful killing, I am not saying that nothing went  
18 wrong in a police operation which resulted in the  
19 killing of an innocent man. All interested persons  
20 agree that a verdict of unlawful killing could only be  
21 left to you if you could be sure that a specific officer  
22 had committed a very serious crime, murder or  
23 manslaughter. In these circumstances, the law does not  
24 allow for an unlawful killing verdict to be left or  
25 returned on the basis that a number of people made

1 mistakes, the cumulative effect of which was to result  
2 in the death of Mr de Menezes."

3 I hope it's clear. Thank you.

4 The other thing is, before I embark on a review of  
5 the evidence, I gave you -- I'll take you back  
6 momentarily to the inquisition. I have given each of  
7 you a copy of the inquisition document, but can I make  
8 clear that when you come to return your verdict, you  
9 should return one only, which you all -- I say you can  
10 fill them out how you like, but what you must produce at  
11 the end is a single document containing your agreed  
12 answers, and if you look over the second page you will  
13 see that there is provision for your signatures.

14 Thank you very much.

15 Now, I return, then, to my review of the evidence  
16 which I tell you again is a summary, and that it does  
17 not in any way replace your consideration of the  
18 evidence which you regard as significant, not just what  
19 I remind you about now. I start with the background to  
20 terrorism insofar as it's relevant to this case.

21 The story really starts with the attack on the  
22 Twin Towers in New York in September 2001. That was  
23 an unprecedented event. Before that date, there had  
24 never been a suicide terrorist attack on any Western  
25 democracy. At that time there were no detailed

1 strategies or guidance developed in the United Kingdom  
2 about suicide terrorism and indeed, there had been no  
3 single case in the United Kingdom. It was rapidly  
4 appreciated in this country that there was a need to  
5 research and develop such strategies, and this led to  
6 the setting up by the Metropolitan Police of a working  
7 party to look at suicide terrorism and how to respond to  
8 it.

9 Mr Swain, Mr Steve Swain, I am sure you will  
10 remember, was a leading member of that working party,  
11 and he was leading the strand of the research dealing  
12 with tactics, training and the equipment of front line  
13 police officers. This involved leading a team with  
14 representatives from all the relevant parts of the  
15 Metropolitan Police, S012, S013, C019, and the other  
16 departments connected with the public order,  
17 intelligence, the information room, organisation and  
18 traffic.

19 In the course of their researches, the team visited  
20 over 20 countries but their principal attention was  
21 focused on the three main hot spots for suicide  
22 terrorism: Israel, Sri Lanka and Russia.

23 The products of Mr Swain's research can be  
24 summarised in the following way. Point 1: it's not easy  
25 to identify a potential suicide bomber from his

1           behaviour. In the early stages, it was thought that  
2           nervousness, sweating, praying, reading from the Koran  
3           or something of that kind was indicative, and indeed  
4           that aspect of matters was still considered to be quite  
5           important in July 2005. But more recent experience,  
6           including the 7/7 attacks themselves, has led to the  
7           conclusion that these behavioural characteristics are by  
8           no means always present and nor indeed are they of  
9           themselves reliable indications that the subject is  
10          a suicide bomber.

11           Point 2, the commonest forms of detonation are by  
12          means of a switch on the device itself which is carried  
13          around the body, with a cut-out pocket or something like  
14          that, to allow access by hand or a rocker switch held in  
15          the hand with wires passing up the sleeve to explosives  
16          carried elsewhere on the body.

17           Accordingly, in these, the commonest versions of  
18          such devices, the bomber needs to have at least one of  
19          his hands free in order to initiate the device.

20           The explosive used in both the 7/7 and the 21/7  
21          attacks was a peroxide-based explosive. While this is  
22          an explosive that can be made from chemicals that are  
23          readily accessible, it is exceptionally volatile and  
24          dangerous. It's so volatile that it doesn't actually  
25          need a detonator. It can be set off by friction or

1 a blow or even by the static electricity within the  
2 human body.

3 In fact, the usual detonation device will be a torch  
4 bulb with the glass removed, connected to a 9-volt  
5 battery. The typical size of a peroxide bomb is between  
6 3 and 5 kilograms, made up into a sheet of perhaps  
7 an inch thick wrapped around the body. The killing  
8 range of such a bomb is something between 10 and  
9 15 metres. If the bomb is covered with metal  
10 fragmentation material, such as ball bearings or nuts  
11 and bolts, the killing range extends out to something  
12 like 150 metres.

13 I have jumped point 3, I think, without mentioning  
14 it. Yes, that's the explosives.

15 Point 4, according to Mr Swain, the general method  
16 of concealing such bombs is to carry them under the  
17 body, concealed under clothing. A bomb of the type  
18 described can be concealed -- can be concealed -- under  
19 English summer clothing. There is not much variation in  
20 concealment techniques. The whole point of a suicide  
21 bomber is to defeat security measures and to achieve  
22 penetration into an area where maximum damage can be  
23 caused; and for that reason, rucksacks are extremely  
24 unusual, and Mr Swain had never encountered the use of  
25 a rucksack prior to the attacks of 7/7.



1           Point 5, when speaking about the techniques or  
2           tactics developed in the rest of the world about  
3           challenging suicide bombers, Mr Swain said this, and  
4           I quote:

5           "It is very clear from the evidence of all the  
6           places we visited that if you challenge these people  
7           [and by that he was referring to suicide bombers] they  
8           will blow the device up."

9           That was a very clear pattern throughout all the  
10          research: if you challenge suicide bombers, they will  
11          detonate the device.

12          Point 6, Mr Swain added this about tactics for  
13          confrontations:

14          "In a crowded environment where it is not possible  
15          to challenge from a safe distance, or to obtain suitable  
16          cover, the police officer will have to get fairly close  
17          and then neutralise the threat by the use of firearms."

18          I quote again:

19          "You would not want to give an oral challenge,  
20          because if you did, that would give the bomber that very  
21          short space of time to actually detonate the device so  
22          that the whole thing about this is that you have to do  
23          it covertly."

24          You will consider the more generalised guidelines  
25          that are contained in the ACPO manual, Association of

1 Chief Police Officers, and other documents about the use  
2 of firearms, and the necessity for a challenge in most  
3 but importantly not all circumstances, and referring to  
4 a wide variety of situations which may call for the  
5 involvement of specialist firearms officers.

6 When you are considering such general guidelines,  
7 you may wish to put into the scales of your  
8 consideration the specific expertise that Mr Swain has  
9 been able to give you when dealing with the very special  
10 area of the tactics to be used when dealing with suicide  
11 bombers.

12 Point 7, in that context, Mr Swain was able to  
13 respond to the suggestion that was made by Mr Mansfield,  
14 particularly to Mr Esposito and to Trojan 84, that in  
15 Israel there is a rule that an officer must actually see  
16 some kind of visible evidence of an explosive device on  
17 a subject before he fires a critical shot. Mr Swain  
18 told you there is no such rule, and indeed it's pretty  
19 clear from what he had been told that there were  
20 occasions -- in Israel at any rate -- where a critical  
21 shot had been delivered when the officer concerned did  
22 not have full evidence.

23 Point 8, Mr Swain also dealt with the possibility of  
24 using a baton round, rubber bullet, or a taser, to  
25 neutralise the suspected suicide bomber. The nature of

1 this peroxide-based explosive is such that a baton round  
2 to the body will set the bomb off. Tasers were not in  
3 general use in 2005, but if they had been, they also  
4 would have set off a bomb.

5 The tactic of controlling someone by forcing him to  
6 the ground, which he had heard about in Israel but had  
7 never seen used in real life, notwithstanding that Ivor  
8 had suggested it, he regards as too hazardous because  
9 the force involved might itself be likely to cause  
10 an explosion.

11 In any event, you may remember Mr Tillbrook, one of  
12 the last witnesses you saw, who is the current  
13 Operational Command Unit Commander in the firearms  
14 branch, the C019, he told you that in July 2005 this was  
15 not a technique that the Metropolitan Police would have  
16 used.

17 Point 9, by January 2003 the working party had  
18 produced a presentation, both for the  
19 Metropolitan Police and indeed for police within the  
20 United Kingdom as a whole, setting out the policies and  
21 lessons that had been learned.

22 At tab 62 of your bundle, you have two pages,  
23 I simply show you to remind you what it looks like.  
24 That's the Kratos People Firearms Officer Awareness  
25 package. The first page deals with the position where

1 a person is suspected of carrying a bomb but this has  
2 not been confirmed. The guidance there, as you can see,  
3 is that the suspect should be challenged from a position  
4 of safety. The second page relates to the situation  
5 where a suspect has been identified and immediate action  
6 is absolutely necessary. In such circumstances,  
7 a critical head shot can be delivered.

8 The thinking behind this guidance, Mr Swain said,  
9 was that in the vast majority of cases, because it would  
10 be very difficult to know whether this was a suicide  
11 bomber at all, then the approach would have to be  
12 a challenge. But what this guidance does not deal with,  
13 of course, is where a person is believed to be a suicide  
14 bomber but this is not confirmed, and there is no  
15 position of safety and members of the public may be in  
16 a position of apparent danger.

17 Point 10, Mr Swain was asked to consider the  
18 tactical options document prepared by Mr Esposito and  
19 Andrew on the evening of 21 July. That's tab 42 in your  
20 bundle. Just to remind you what it looks like, you will  
21 find it at tab 42 in your bundle. He agreed that the  
22 advice contained in that document correctly recognises  
23 that where there is intelligence to suggest that the  
24 suspect is a suicide bomber and is carrying an explosive  
25 device, with the means of detonating it, overt

1 deployment is likely to endanger those around, and the  
2 use of conventional tactics must be carefully considered  
3 and risk assessed prior to use.

4 Then there come in the document these words, and  
5 again quotes:

6 "In all these options there exists a real  
7 possibility that should the subject be non-compliant  
8 with the commands of the officers initiating the  
9 interception, then an immediate critical shot may be  
10 taken."

11 Point 11, Mr Swain pointed out that this passage,  
12 which I have just read to you, reflects the position set  
13 out by Section 3 of the Criminal Law Act 1967 which  
14 gives officers the powers to use lethal force if they  
15 think they are faced with somebody who poses such  
16 an extreme threat.

17 That is something that is trained into every  
18 firearms officer so that he would expect that this is  
19 what they would have uppermost in their minds in that  
20 situation. The Criminal Law Act 1967, in summary,  
21 provides that no more force may be used than it  
22 reasonably or absolutely necessary, and that is printed  
23 on the blue card that every firearms officer carries.  
24 Remember, you have one in your jury bundle.

25 It must be for the officer on the ground to exercise

1 judgment whether the subject under surveillance is  
2 a bomber, and if so whether he is actually carrying  
3 a bomb, and is threatening to detonate. The officer  
4 involved needs to make that assessment based on any  
5 intelligence that he may have, plus any other indicators  
6 that he may derive from the situation as it is  
7 developing in front of him, but so much depends upon the  
8 circumstances.

9 While non-compliance is a factor of importance when  
10 a firearms officer is deciding what he has to do, the  
11 caution against alerting a person who is thought to be  
12 presenting a threat means that in many cases a challenge  
13 is not appropriate. If there can be no challenge, then  
14 there may be no basis upon which compliance or  
15 non-compliance can be fully judged, and this is another  
16 of those dilemmas to which there is no answer.

17 Point 12, although the Metropolitan Police has been  
18 seeking to learn the lessons from the events of 22 July  
19 ever since, with a review body which is still running,  
20 the whole policy is continually being reviewed. But the  
21 reality is, said Mr Swain, that these are extremely  
22 difficult things to deal with. He said this:

23 "Life will always be in danger in these types of  
24 things, and I don't know what the answer to that is.  
25 I am not even sure that there is an answer."

1           Mr Swain observed that there is no written guidance  
2           to help officers in the exercise of the discretion one  
3           way or another as to whether to fire without having  
4           issued a challenge or warning, because any such guidance  
5           that was attempted would simply produce a lot of  
6           different "what ifs". It's not possible to cover every  
7           conceivable set of circumstances. His view is that it  
8           is not practicable to produce any abstract, generalised  
9           words of guidance other than those that are already  
10          available.

11          Point 13, Mr Swain described to you how the two  
12          policies known as Operation Kratos and  
13          Operation Clydesdale were developed. Kratos was for  
14          situations where information comes into the police which  
15          suggests the prospect of a spontaneous attack.  
16          Clydesdale was for situations where an attack is  
17          anticipated at a pre-planned event. For some reason the  
18          Trooping of the Colour seems to crop up on every  
19          occasion.

20          However, by 2005, the word "Kratos" appears to have  
21          been used by some officers colloquially to cover any  
22          kind of suicide bomber incident. Designated senior  
23          officer or DSO was the term for the senior officer  
24          nominated to take charge under the Clydesdale strategy.  
25          However, by 2005, DSOs were being used for oncall

1 response to Kratos incidents. Mr Swain acknowledged  
2 that before 2005 neither in this country nor, so far as  
3 he was aware, anywhere else in the world had anyone  
4 considered the problems that might arise that a suicide  
5 bombing attack failed because the bomb didn't go off.  
6 It was not something that was expected to happen.

7 Accordingly, and he accepts this, when the situation  
8 of the 21/7 attacks presented itself, there was no  
9 pre-prepared strategy to deal with it. That strategy  
10 was evolved with some input from Mr Swain himself in the  
11 series of meetings that took place on the 21st and into  
12 the early hours of the morning of 22 July. That is the  
13 strategy that would be used by the Metropolitan Police  
14 in the unlikely event that a similar situation arose  
15 again today. He considers that it is sound, and he says  
16 that it is generally accepted as being sound.

17 Point 14, Mr Swain was asked about the criticisms  
18 levelled by Mr Paddick at the strategy that was  
19 developed. In general, he regards them as being based  
20 on a lack of understanding, a lack of understanding of  
21 the situation that was being dealt with. Mr Paddick's  
22 experience in previous years with the Notting Hill  
23 Carnival did not, in Mr Swain's view, enable him to  
24 offer informed criticism in the context of a previously  
25 unplanned, fast-moving and dynamic situation such as



1           that which obtained on 22 July.

2           The only point upon which he had some sympathy with  
3           Mr Paddick was the suggestion that there should have  
4           been a system of code words in use for the operation,  
5           and in particular for the giving of an instruction to  
6           take a critical shot. That's to say an order to use  
7           lethal force.

8           However, as Mr Swain pointed out, there is nothing  
9           unambiguous about the words "critical shot authorised",  
10          and he would never have thought that the order "stop"  
11          means "shoot". And in any event again, as no officer  
12          that you have heard from ever considered that a critical  
13          shot had been authorised so that the responsibility for  
14          taking a decision remained fairly and squarely on the  
15          frontline officers, you may conclude that Mr Paddick's  
16          criticism, even if having some merit, is in no way of  
17          significance in the circumstances which led to  
18          Mr de Menezes' death.

19          Those are the points that Mr Swain made to you.  
20          I am going to move on now from his evidence to summarise  
21          other evidence about background events.

22          While London had been the subject of sporadic  
23          terrorist attacks over a number of years before 2005,  
24          mostly at the hands of the Provisional IRA, the four  
25          suicide bomb attacks on 7 July were totally

1           unprecedented in the British experience of such matters.  
2           You remember over 50 people died and hundreds of people  
3           were injured.

4           Mr Peter Clarke -- who was, until he retired, the  
5           Assistant Commissioner Special Operations and head of  
6           the Anti-Terrorist Branch -- told you that Irish  
7           terrorism was a totally different experience, because  
8           the Irish terrorists were not intent on blowing  
9           themselves up as well as any other persons who might  
10          have been around, and they usually transmitted coded  
11          warnings which would enable evacuations to take place.

12          The dangers presented by this new form of terrorism,  
13          so far as Great Britain was concerned, presented  
14          entirely new problems for the police in general and the  
15          Metropolitan Police in particular.

16          The effect upon London of the 7/7 attacks was  
17          extreme. In the two weeks after 7 July, the number of  
18          calls from the public about suspected terrorist threats  
19          rose from two to 104. Reports about suspect objects  
20          rose from 215 to 2,406. The anti-terrorist hotline  
21          received more than 3,900 calls in the fortnight between  
22          7 and 21 July, while the number of extra days worked by  
23          police officers over and above their normal policing  
24          duties nearly doubled.

25          It became necessary to institute a system of 24-hour

1            oncall DSOs, and also to put into operation a filtering  
2            system to ensure that they did not get swamped by the  
3            deluge. The exercise by police officers of the power to  
4            stop and search, which is vested in them by the  
5            Home Secretary under the Terrorism Act, rose by a factor  
6            of nearly four, and as Mr Clarke said, the fortnight  
7            between 7 and 21 July was one of unprecedented intensity  
8            in terms of policing activity, investigation,  
9            expectation and fear of further attacks.

10           The assessment of the threat posed to the  
11           United Kingdom from international terrorism was raised  
12           for the first time to its very highest level, the level  
13           being critical.

14           You will remember hearing some evidence from the  
15           bystander witnesses who were on the train who gave  
16           evidence about the state of nervous tension that existed  
17           on the train on that morning, and I dare say you will  
18           all be able to remember it for yourselves. There is no  
19           reason to suppose, you may think, that police officers  
20           who would be in the front line of defence of the threat  
21           presented by suicide bombers would be otherwise than  
22           similarly affected.

23           I come to the events of 21 July. On 21 July  
24           terrorists attempted to explode bombs on three tube  
25           trains, at the Oval, Shepherd's Bush and Warren Street

1 and on a bus in Hackney. Later, a fifth bomb was found  
2 near Wormwood Scrubs prison. All the attempts were made  
3 between 12.30 and 1.15 pm. Three of the bombers had  
4 entered the tube system at Stockwell, a fact which  
5 became known to the police quite soon, and which led  
6 some on the following day to have a particular concern  
7 about that station.

8 It was soon discovered that the devices were of  
9 a very similar kind to those used on 7 July. Teams of  
10 police were at the scene of each attempted attack very  
11 soon afterwards, and it became apparent that the bombers  
12 had left rucksacks containing the devices behind them.  
13 But these could not be examined immediately. Monitoring  
14 devices and the reactions of the bystanders led police  
15 to be concerned that the devices might represent  
16 a chemical or biological hazard, and in addition the  
17 devices proved to contain highly unstable explosive  
18 material. It was therefore necessary to have specialist  
19 experts from the Ministry of Defence, as well as  
20 explosives officers, brought to the scene.

21 Commander McDowall was the Deputy National  
22 Co-ordinator for terrorist investigations, deputy to  
23 Mr Clarke. You will remember that he was one of the  
24 first witnesses, and he gave evidence by videolink. He  
25 was on his way back to London from important meetings in

1 West Yorkshire when he received a phone call about the  
2 attempted bombings. He took on the role of  
3 Gold Commander for the investigations into these  
4 attacks. You will recall that very broadly speaking,  
5 the remit of a Gold Commander is to set the overall  
6 strategy for an operation, but he still has some  
7 continuing responsibility to oversee it.

8 The Silver Commander then decides on tactics to  
9 implement that strategy, and Bronze Commanders then  
10 command particular groups of police officers on the  
11 ground.

12 I am now going to deal with you with the  
13 chronological sequence of events which we can piece  
14 together from the evidence of the witnesses, from the  
15 contemporaneous documents, from the closed-circuit  
16 television footage and from the telephone records. It's  
17 only fair, only fair indeed, that I should acknowledge  
18 the assistance I have had in this task from all the  
19 interested persons, in particular the legal  
20 representatives of the senior officers and the IPCC,  
21 Independent Police Complaints Commission.

22 Mr McDowall arrived back at New Scotland Yard in the  
23 early afternoon of the 21st, and began convening  
24 meetings of senior officers. He decided that  
25 Detective Superintendent Boutcher should be the senior

1           investigating officer for the proactive investigation  
2           aimed at finding those who had attempted the bombings.  
3           He decided that Detective Superintendent Prunty should  
4           be in charge of the investigation of the scenes of the  
5           attempted bombings.

6           Over the course of the afternoon, Mr McDowall was  
7           involved in meetings with colleagues concerned with the  
8           investigations into the 7 July bombings, and the  
9           attempted attacks, and he had very many commitments on  
10          his time.

11          Later in the afternoon, Mr Boutcher appointed  
12          a deputy, Detective Chief Inspector Angela Scott, and  
13          from then on they were directly responsible for the  
14          manhunt to find the suicide bombers.

15          While that operation was going on, the police had to  
16          have a separate group of officers manning an information  
17          room at New Scotland Yard, and they were responsible for  
18          receiving calls from the public about suspected  
19          terrorist activity. Within those officers was  
20          a designated senior officer in a small room called "the  
21          bubble", who would be asked to take over if information  
22          about a suspected suicide bomber came in from a member  
23          of the public.

24          You were told by Mr Swain that a filtering system  
25          had been introduced to prevent that DSO, the oncall DSO,

1 from being swamped with calls.

2 Just to remind you, the information room of course  
3 is not room 1600. That is the information room at New  
4 Scotland Yard. 1600 was the ops room for the operation  
5 to track down the attempted suicide bombers.

6 At 5.15 on the 21st, Mr McDowall held a meeting of  
7 the command team in the S013 conference room.

8 A briefing was given by explosives officers about the  
9 devices used in the failed attacks. They could not say  
10 why the devices had not detonated, but they were able to  
11 give a 90 per cent assessment that the devices were  
12 peroxide-based, and this gave rise to immediate concerns  
13 that there was a link with the 7 July attacks.

14 After this meeting, arrangements were made to ensure  
15 that there were sufficient resources of firearms teams  
16 from CO19, the firearms department. About half past 5  
17 Mr Boutcher and Ms Scott met Inspector -- who has  
18 a pseudonym -- ZAJ, who was the firearms tactical  
19 adviser to Commander Carter, who was the DSO in the  
20 bubble.

21 They asked ZAJ to ensure that specialist firearms  
22 teams were in place for possible deployment 24 hours  
23 a day. It was envisaged that there would be one team on  
24 duty overnight and later, as the investigation went on,  
25 there would be two early turn firearms teams and two

1 late turn teams.

2 After that meeting, Inspector ZAJ passed on the  
3 request to Andrew, a Chief Inspector in the firearms  
4 department who was the night duty tactical adviser, and  
5 it was his general responsibility to ensure that proper  
6 arrangements were made overnight to provide firearms  
7 teams for operations which might need them.

8 He recorded ZAJ's request in the CO19 operation  
9 policy log and recorded that the oncall night duty  
10 firearms team would be the orange team under its leader,  
11 Alpha 1.

12 At 6 o'clock that evening, Mr McDowall briefed  
13 a group of about 100 officers on the events of the  
14 afternoon. At 6.15, there was a further meeting of the  
15 command team under Mr McDowall. He says that he wanted  
16 to ensure that the scenes were being examined with  
17 fingertip precision and that thorough attempts were  
18 being made to find witnesses. Also by this time  
19 Mr McDowall had identified the operations room on the  
20 16th floor of New Scotland Yard as the appropriate room  
21 from which to run the manhunt for the suspected bombers.

22 He told you that he chose it because it was well  
23 connected to the Cougar radio system, and because it had  
24 a linked intelligence cell which could be used to bring  
25 in intelligence from other parts of the police, from the



1 security services, and so on; and to assist in the  
2 manhunt Mr McDowall ordered an intensive trawl of  
3 closed-circuit television footage from the stations  
4 where the bomb attacks had been attempted, the purpose  
5 being to obtain photographs of the attempted bombers.

6 Over the course of these meetings in the late  
7 afternoon, Mr McDowall asked that steps be taken to  
8 ensure that there were sufficient surveillance and  
9 firearms officers available for operations which might  
10 have to be mounted as intelligence came in. As the  
11 evening went on, he had further meetings. Consideration  
12 began to be given to a possible media appeal, calling on  
13 the public to help find the bombers.

14 At 8.15, Mr McDowall saw Superintendent -- as he  
15 then was -- Mr Swain. He discussed the possibility of  
16 having to use the tactics developed under  
17 Operation Kratos. It was only by 9 o'clock that evening  
18 that the experts at the various tube stations had  
19 completed their assessment of the devices and regarded  
20 it as safe for scene examiners to look at the bomb bags,  
21 and the careful process then began of opening the bags  
22 and taking photographs of their contents. This process  
23 took some hours.

24 Shortly after 10 o'clock, Mr McDowall had a meeting  
25 of the command team. Commander Carter, the oncall DSO,

1 Mr Boutcher, Mr Prunty and Ms Scott were there. From  
2 CO19, Inspector ZAJ was there, as was Andrew. As I have  
3 mentioned, Andrew had already recorded that the orange  
4 firearms team were to be the night duty team of  
5 specialist firearms officers. He had also given  
6 authority for firearms teams involved in the manhunt to  
7 use hollow point ammunition which was considered  
8 particularly suitable for incapacitating a target while  
9 causing the least collateral damage to those around.

10 Also at the 10 o'clock meeting was Detective Chief  
11 Inspector Noel Baker, a senior officer from  
12 Special Branch, who was to be the co-ordinator of the  
13 16th floor operations room overnight.

14 At this meeting, the senior officers discussed  
15 whether or not there should be a media appeal. By the  
16 end of the meeting, this overt strategy seemed to be  
17 favoured, probably because at that stage no information  
18 had come in giving the names or much less the addresses  
19 of the suspected bombers. It was decided that firearms  
20 authorisation would be required on a contingency basis,  
21 so that CO19 firearms officers could be deployed in  
22 armed teams at short notice. There was a preliminary  
23 discussion about the possibility of appointing  
24 a designated senior officer, DSO, specifically for the  
25 manhunt. As you have heard, this was a novel suggestion

1 for an intelligence-led operation.

2 Following on from that meeting, at 10 to midnight,  
3 11.50, Detective Chief Superintendent White of CO19  
4 orally gave authority for the use of firearms by  
5 officers of that department. Just before midnight,  
6 Andrew, the night duty firearms tactical adviser, gave  
7 to Mr Boutcher a tactical options document which he and  
8 Chief Inspector Esposito had produced the previous day.

9 It dealt with a number of different possible  
10 scenarios, one of which involved interception of  
11 a suicide bomber on foot. The advisers gave a range of  
12 tactical options for dealing with that scenario, some  
13 involving a stop, some involving containment and  
14 challenge. They set out the types of firearms officers  
15 who could be used for the various options, and in the  
16 document they acknowledged that if officers faced  
17 a person who was believed to be a suicide bomber with  
18 a bomb, they would have to consider whether ordinary  
19 conventional firearms tactics could be used.

20 Past midnight, 22 July. Shortly after 1 o'clock on  
21 22 July, there was a meeting at a hotel near New  
22 Scotland Yard, the purpose of which was to decide on  
23 appointing a DSO for the manhunt. Mr Boutcher and  
24 Ms Scott consulted with Commanders Allison and Carter.  
25 Mr Swain and Andrew were there as well. They agreed

1 that a DSO should be appointed, and they settled on  
2 Commander Dick as she then was. She was particularly  
3 experienced in the role, having been one of the first  
4 senior officers to receive training to be a DSO for  
5 Operation Kratos situations.

6 When she gave evidence, she dealt with the career  
7 experience she had which made her particularly suitable  
8 for that role. A call was made to her at around  
9 1.30 am, when she was asked to arrive at Scotland Yard  
10 by 7 o'clock that morning.

11 Andrew recorded his work in an operational policy  
12 log. After the meeting at the hotel, he recorded in the  
13 log that two photographs of suspects were to be released  
14 as part of a media appeal, and that there might be,  
15 accordingly, a need for two firearms teams to deploy  
16 simultaneously. He recorded that the grey team was  
17 nearing the end of its duty and was to bed down in  
18 a hotel until 10 o'clock on the morning of the 22nd. He  
19 also recorded that Ms Scott was to be the night duty  
20 Silver.

21 At 2 o'clock in the morning, Mr McDowall left New  
22 Scotland Yard to go to a nearby hotel for some rest.  
23 His loggist, a Detective Inspector Forteath, remained at  
24 New Scotland Yard. By that time, it still seemed likely  
25 that a media appeal would take place. Ms Scott also

1 left for a short break at about 2 o'clock in the  
2 morning, and Mr Boutcher left at about 2.30.

3 While they were away, the operations room on the  
4 16th floor was under the control of Detective Chief  
5 Inspector Noel Baker of Special Branch, and Andrew of  
6 CO19 was also in the room at times.

7 However, criticism has been made of the fact that  
8 Mr Boutcher and his deputy were both away from New  
9 Scotland Yard at the same time, and there was nobody  
10 formally nominated as Silver Commander for the manhunt  
11 while they were away.

12 Be that as it may, the investigation continued. At  
13 around five past 2, just after Mr McDowall had left,  
14 information came in from those examining the rucksack at  
15 Shepherd's Bush to Mr Macbrayne, who was a senior  
16 officer in SO13, the anti-terrorist squad. The  
17 information was that a gym card had been found in the  
18 name of Hussain Osman, and that the card bore  
19 a photograph of that man. According to the records kept  
20 by Mr Forteath, the loggist, he received the information  
21 about Osman at about 2.15 in the morning. Mr Macbrayne  
22 also discussed this new information with  
23 Detective Chief Inspector Mellody, who is  
24 a Special Branch officer with responsibility for  
25 intelligence.

1           Police enquiries then turned to the gym, and  
2           officers tracked down the keyholder of the gym in order  
3           to get access to its records. They were at the gym by  
4           3 o'clock in the morning, and had recovered duplicate  
5           membership cards held at the gym. This showed that the  
6           membership was jointly held by Hussain Osman and  
7           Abdi Omar, who had both given as their address  
8           21 Scotia Road in the Tulse Hill area.

9           The duplicate cards had photographs of both the men,  
10          and these were taken back to New Scotland Yard. The  
11          police now had photographs of the two men, taken from  
12          the gym membership cards, but did not know when those  
13          photographs had been taken.

14          All the time that these enquiries were going on,  
15          police officers at the scenes of the various attempted  
16          bombings were continuing to photograph the contents of  
17          the bags. Those at the Shepherd's Bush scene were  
18          photographing some torn up photographs which had been in  
19          the rucksack and which showed a man and a woman. These  
20          have been called the wedding photos and we now know that  
21          they show Mr Osman and his wife, Yeshiembet Girma.

22          At about ten past 3 one of the officers at the scene  
23          told Mr Macbrayne that the man in the wedding  
24          photographs was the same as the man on the gym card  
25          photograph. Mr Macbrayne told you that a decision was

1 taken not to forward on the wedding photographs to New  
2 Scotland Yard because they might be an important source  
3 of fingerprint and DNA evidence and because a photograph  
4 from the gym card had already been sent through. Of  
5 course, a photograph of the wedding photographs could  
6 have been sent through.

7 At 4 o'clock in the morning, Mr McDowall returned to  
8 New Scotland Yard, and his loggist, Mr Forteath, went  
9 off duty. At around this time, Mr McDowall and other  
10 officers were able to compare the photographs taken from  
11 the gym with closed-circuit television stills which had  
12 been obtained from the various scenes of the attempted  
13 bombings.

14 It was concluded that Hussain Osman was a good  
15 likeness for the man shown attempting to detonate  
16 a device at Shepherd's Bush.

17 On that score, they were right; he was  
18 Hussain Osman, the failed bomber.

19 They concluded that Abdi Omar was a good likeness  
20 for the Warren Street suspect shown on CCTV stills from  
21 that station. They were wrong about that. Abdi Omar  
22 was, so far as we can tell, entirely innocent in  
23 relation to these attacks.

24 Therefore, by the time that Mr McDowall was back,  
25 the situation had changed dramatically. The police now

1 had two names, photographs associated with those names,  
2 closed-circuit television stills, and an address,  
3 21 Scotia Road.

4 It is 3 o'clock, I could do with a break and I dare  
5 say you could too.

6 (3.05 pm)

7 (A short break)

8 (3.20 pm)

9 (In the presence of the jury)

10 SIR MICHAEL WRIGHT: I had just got to the establishment of  
11 the names and addresses. We are now down to 4 o'clock  
12 in the morning. Very shortly after 4 o'clock in the  
13 morning, instructions were given to research  
14 intelligence on Hussain Osman. Those researches were to  
15 reveal that he had been stopped by police on a driving  
16 matter. Officers were told to contact the driving  
17 licensing authorities and the immigration authorities to  
18 obtain photographs and other information about him.  
19 However, it appears that the DVLA photographs did not  
20 come through until about midday on the 22nd, and that of  
21 course was after the shooting in Stockwell, and the  
22 immigration authority's photographs came through later  
23 in the afternoon.

24 Detective Chief Inspector Southworth explained how  
25 these things work and that it can take some hours to get



1 such photographs or intelligence from those sources.

2 I did, you may remember, ask him what the  
3 accessibility was of the DVLA for such enquiries, and he  
4 said, well, we can only access them in office hours.  
5 That, as it happens, has turned out to be wrong. Having  
6 told you that you are not going to hear any more  
7 evidence, you now are. But that is a statement that  
8 came in before the guillotine came down, and this is the  
9 most convenient moment to tell you what it is.

10 I am going to read to you extracts, what we need,  
11 anyway, from a witness statement of Martin Edwards, who  
12 is a police officer working within the  
13 Metropolitan Police intelligence bureau. He says that:

14 "Any enquiries made to the DVLA have to be made  
15 through a DVLA liaison officer, of which I am one of two  
16 such officers. In 2005 this would have included checks  
17 with the DVLA for terrorism. DVLA will only deal in the  
18 first instance with authorised liaison officers. I make  
19 this statement in relation to the call-out procedure  
20 operated by DVLA for out-of-hours requests from police.  
21 This call-out procedure has been in operation since  
22 1985. The call-out procedure in 2005 is the identical  
23 procedure as is used today. DVLA hours of operation are  
24 8.15 am to 4.30 pm Monday to Friday. DVLA do not  
25 operate 24 hours a day."

1 (3.25 pm)

2 (A short break)

3 (3.45 pm)

4 (The court adjourned until 10.00 am on  
5 Wednesday, 3 December 2008)

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