

1 Thursday, 4 December 2008

2 (10.00 am)

3 (Proceedings delayed)

7 (1.45 pm)

8 (In the presence of the jury)

9 SUMMING-UP (continued)

10 SIR MICHAEL WRIGHT: Well, I was going to say good morning,
11 ladies and gentlemen, but I will in fact say good
12 afternoon. First of all, I am very, very sorry that you
13 have been held up for such a long time, and I am sure it
14 will have bored you very considerably, but I have had to
15 deal with a number of legal submissions and
16 administrative matters, and it has taken quite a long
17 time, but they have now been dealt with and we are in
18 a position to go on.

19 The first thing you may notice that Mr Mansfield and
20 Ms Hill and their instructing solicitors are no longer
21 in their places. The evidence and legal submissions of
22 course are now all over, and we have all had their
23 assistance throughout those very important stages.
24 I understand, however, that from this point they will no
25 longer be here. There is absolutely no difficulty about

1 that, no disrespect is meant by it to anyone, and I am
2 sure that you will have been greatly assisted by their
3 work over the course of this inquest.

4 The other representation remains as before.

5 Now, we have our inquiry to continue, and I'm going
6 to resume my summing-up to you. Inevitably there are
7 three corrections that I have to make from what I said
8 to you yesterday, for which I take full responsibility.

9 The first two corrections come at the request of the
10 command team. I told you that on the morning of
11 22 July, DCI Purser had been telephoned at home and told
12 to be at New Scotland Yard by 6.30. In fact I'm told
13 that I was wrong about that. He was in fact in a hotel.

14 MR HILLIARD: Sir, I am sorry to interrupt. We have
15 probably all had our attention elsewhere. When that's
16 quietened down, I wonder whether it might be best to
17 start that correction again, because I am sure I didn't
18 catch it.

19 SIR MICHAEL WRIGHT: Yes. There are three corrections. The
20 first two come at the request of the command team, and
21 I am very happy to make these corrections. I told you
22 that on the morning of 22 July Mr Purser had been
23 telephoned at home, and told to be at New Scotland Yard
24 by 6.30 am. In fact he was in a nearby hotel.

25 The second correction is that I have told you that

1 at 9.55 am on 22 July, Mr Purser had been sitting --
2 apparently the words I used was "in the control room at
3 the TA Centre". Of course he was not in the control
4 room. There wasn't one there. He was in the control
5 car of the firearms team.

6 The third correction is one of a little more
7 substance. I reminded you yesterday that Charlie 2 and
8 Charlie 12 had said that Jean Charles' jacket appeared
9 bulky, and I went on to say that I understood that
10 Mr Mansfield was not pressing a suggestion that this
11 description was anything other than a mistaken
12 perception. I was in error when I said that to you.
13 Please ignore what I said and let me now give you the
14 correct position.

15 It is suggested by the family that the officers
16 undertook no threat assessment when they entered the
17 carriage, and it is not accepted that there is any
18 question of mistaken perception about the jacket. The
19 suggestion is maintained that this was merely something
20 that the officers came up with later to try to justify
21 their claim that they thought that Mr de Menezes was
22 going to detonate a bomb which could have been concealed
23 under bulky clothing. So you must consider, consider
24 that and whether it was a lie, and I have directed you
25 already, and you will remember this, how you should

1 approach lies if you find that they have been told.

2 Mr Stern, on the other hand, says that this was
3 a split-second decision, a split-second assessment made
4 in good faith and that much depends upon how the person
5 wearing the jacket is sitting, and how their clothing is
6 arranged. He says that the officers thought that closed
7 circuit television film would be available, and the
8 jacket would inevitably be recovered in the
9 investigation, so that there would be no point in
10 telling deliberate lies about it.

11 Charlie 2 told you, suggested to you at any rate
12 that his impression of the jacket could be the result of
13 perceptual distortion at the time. But this was, he
14 told you, his honest impression at that time. Mr Stern
15 points out on behalf of the two officers that the
16 bystanders Mark Whitby and Robert Preston made a similar
17 mistake with regard to Ivor. Whitby described Ivor's
18 denim jacket as a sort of heavy jacket and Preston said
19 that Ivor either seemed to be wearing a lot of baggy
20 clothing or he was very large, and this he says is how
21 easily genuine mistakes can be made. These are all
22 matters for you to consider in the light of the
23 direction that I have just given you.

24 Finally now, and it is finally, I want to review
25 with you the two verdicts and the questions that I am

1 leaving for your consideration. Will you please have in
2 front of you again the verdict questionnaire, not the
3 actual inquisition, the questionnaire, and the written
4 legal directions that I handed out to you at the start
5 of this summing-up.

6 First of all you should decide which of two short
7 form verdicts to return. The two verdicts are, as you
8 will remember, lawful killing and open verdict. Do we
9 have spare copies?

10 MR HILLIARD: They have been handed out.

11 SIR MICHAEL WRIGHT: I know that. If it's anything like me,
12 Mr Hilliard, the space on the desk is such that they
13 disappear under piles of paper.

14 MR HILLIARD: How many do we need?

15 SIR MICHAEL WRIGHT: Two. Can you share between you in the
16 back row for the time being? I'll make sure that others
17 come down.

18 I will start that paragraph again. First of all you
19 should decide which of two short form verdicts to
20 return. The two verdicts are lawful killing and open
21 verdict. You should return a verdict of lawful killing
22 if you are satisfied of two matters on the balance of
23 probabilities: (a) that at the time they fired,
24 Charlie 2 and Charlie 12 honestly believed that
25 Mr de Menezes represented an imminent mortal danger to

1 them and/or others around them; and (b) that they used
2 no more force than was reasonably necessary in the
3 circumstances as they honestly believed them to be.

4 If you are satisfied of both those matters, then
5 your verdict should be one of lawful killing, even if
6 the mistake that the officers made when objectively
7 viewed may not have been a reasonable one in the
8 circumstances as you find them to be.

9 If you agree upon a verdict of lawful killing, then
10 you should write "lawful killing" in the box on the
11 right-hand column at the top of the questionnaire.

12 If you are not satisfied that those necessary
13 elements of a lawful killing verdict are established as
14 being more likely than not, then you should return
15 an open verdict, and if you agree upon an open verdict
16 then you write "open verdict" in that box.

17 Please bear in mind, and you will find it set out in
18 your written directions, the points that I made to you
19 yesterday about open verdicts.

20 I now turn to the three factual questions that
21 I have asked you to consider. When you consider each
22 question, that's to say questions 1, 2 and 3 on the same
23 page, when you consider each question, if you agree that
24 the answer is probably yes, you tick that word. If you
25 agree that the answer is probably no, there are no

1 prizes for guessing, you tick the word "no".

2 If, on all the evidence, you simply cannot decide,
3 you tick "cannot decide". I am going to deal with these
4 questions separately.

5 Question number 1: did officer Charlie 12 shout
6 "armed police" at Mr de Menezes before firing? As you
7 know, Charlie 12 asserts positively that he did. When
8 Mr de Menezes stood up and moved forward to close the
9 distance between him and the two officers, Charlie 12
10 said that he shouted "armed police" and brought his gun
11 up facing his head in the hope that he might see it.

12 Charlie 2 does not claim to have shouted anything at
13 that time, nor indeed did he hear anyone else say
14 anything.

15 Charlie 5 remembers hearing more than one shout of
16 "armed police", and they occurred as Mr de Menezes was
17 being forced back by Ivor, but he was focusing so
18 intently on Ivor that he cannot say whether the shouts
19 had come from the platform or from Charlie 2 or from
20 Charlie 12.

21 He cannot be precise as to the point at which those
22 two shouts were made, but he is positive that they were.
23 No other witness, civilian or police, has any specific
24 recollection of Charlie 12 shouting at the time in the
25 sequence of events that he gives.

1 On the other hand, a number of police officers say
2 that shouts of "police" or "armed police", coupled with
3 exhortations to get down or get out, were shouted at
4 various points between the concourse, down the
5 escalators, and on the platform. Some of the bystander
6 witnesses heard shouting at various stages, but none
7 recalled having heard the words "armed police" shouted
8 by the officers when they confronted Mr de Menezes in
9 the carriage.

10 I am, however, and I will, asked by Mr Stern to
11 remind you of two short extracts from witnesses who were
12 read to you, so you didn't actually see them, which may
13 assist you to some extent in this aspect.

14 The first witness was a Mr Robert Lowe, who said
15 this: he had seen a man who I think it is plain was
16 Ivor, and he described people getting on the carriage
17 and he then said this:

18 "After they got on the tube I recall some shouting.
19 I cannot recall what was said as it happened so quick.
20 The shouting seemed urgent and as far as I recall the
21 voices were male. Then I heard bangs, they sounded like
22 "bangers" [he means fireworks] I did not know it was
23 gunfire until later on that day. I believe I heard four
24 or five bangs. The interval between each bang was only
25 a split second. The loud bangs were coming from the

1 bottom of the carriage I was in (I was sat at the top of
2 the carriage). I then saw smoke."

3 So that witness indicates shouting before any shots
4 were heard.

5 The second of those witnesses is Terri Godley, who
6 said this, she was on the platform:

7 "I then heard shouting, which I couldn't
8 distinguish. We were all looking around. Three or four
9 white men ran on to the platform from the same direction
10 I had come from [she got on at Stockwell]. I had
11 entered the platform from the first available entrance
12 at the bottom of the escalator. These men were
13 shouting. They were all shouting different things like,
14 'get out, get out', 'run', 'get up the stairs'. I knew
15 at this point something serious was happening. I had
16 seen one of the men had a gun shoulder holster on. They
17 had walkie-talkies, and I heard someone shout, "armed
18 police!" Everything I heard was designed for getting
19 people out of the way. I heard someone saying, 'He's on
20 the tube, he's on the tube'. The person who said this
21 was a white male, quite tall. He could have been
22 a civilian or a plain clothed policeman. He indicated
23 that he was on the tube at the platform. I had no idea
24 who they were talking about."

25 Then a little later on, she says:

1 "As soon as I realised that this was a serious
2 situation I started to run back the way I had come.
3 I could see other plain clothed officers running down
4 the stairs. I started to run up the stairs to the left
5 of the up escalator. I had only gone a few steps when
6 I heard a number, six or seven, loud pops. I heard
7 shouting as well but, I don't know what they were
8 shouting. Instinctively I thought the loud pops were
9 gunshots but because of the events of yesterday
10 I thought they might be detonators going off. At this
11 stage I thought I was going to get shot in the back or
12 blown up. I was terrified."

13 You will have to ask yourselves, therefore, when you
14 are looking at this question, bearing in mind that it
15 refers to Charlie 12: did the officer shout those words
16 which were then not remembered by bystander witnesses in
17 the immediate area, or is the officer wrong about having
18 said those words at that stage? Even if he is, you may
19 think that that might not necessarily be surprising if,
20 as the officers say, they thought that they were
21 confronting a suicide bomber with a bomb.

22 Question number 2, go back to your document: did
23 Mr de Menezes stand up from his seat before he was
24 grabbed in a bear hug by officer Ivor? Both Charlie 2
25 and Charlie 12 say that he did. So also do Ivor, Ken,

1 Geoff and Delta 9. None of the civilian witnesses
2 recall any movement from Mr de Menezes. The few who
3 were close by did not see him stand up or move.
4 However, they were not paying any particular attention
5 before the disturbance began, and their recollection of
6 the sequence of events was patchy.

7 In considering this question, you may wish to ask
8 yourselves this: if Mr de Menezes did not stand up or
9 leave his seat, how could Ivor have got his arms round
10 him in the way that he describes? You will want to
11 remember also that Ivor's account of his bear hug is not
12 only supported by his fellow officers but also by the
13 physical evidence of the blood on his clothing as
14 interpreted by the scientific evidence. Again, that was
15 read to you.

16 If you think that the weight of the evidence is to
17 the effect that Mr de Menezes probably did rise from his
18 seat, you should answer this question "yes". If not, of
19 course, "no", and if you can't make up your minds,
20 "can't decide".

21 Question number 3, did Mr de Menezes move towards
22 officer Charlie 12 before he was grabbed in a bear hug
23 by officer Ivor? Again the principal witnesses in
24 support of this contention are Charlie 12 and Charlie 2
25 themselves. Charlie 12 said, "If he had stopped coming

1 forward so that I didn't perceive a threat, I would not
2 have fired". Charlie 2 described Mr de Menezes as
3 looking at him, standing up very quickly, and advancing
4 towards the three officers. Delta 9, who was just about
5 to enter the train, also describes Mr de Menezes
6 suddenly standing up and trying to get away. "I cannot
7 say how far he got but he moved away from his seat".

8 None of the bystander witnesses in the carriage saw
9 Mr de Menezes move forward. However, it is fair to say
10 that they didn't see him stand up either, if you come to
11 the conclusion that he did, and none of them gave
12 an entirely detailed and accurate account of the tackle
13 by Ivor. In any case the distances involved here, as
14 you will appreciate, are relatively small.

15 Those are the three specific questions.

16 Let me now turn, if you turn over the page, to the
17 various possible contributory factors which you are
18 asked to consider under question 4. You are asked to
19 question nine possible factors which may have caused or
20 contributed to the death of Mr de Menezes. As you will
21 see, you are asked to tick "yes" only if you find that
22 the sentence reasonably accurately describes something
23 which happened and which made some causal contribution
24 to the death of Mr de Menezes which was more than
25 minimal in effect. If it's trivial then obviously you

1 don't take it into account. If you conclude that the
2 sentence does not describe something which happened, or
3 you conclude that if it did happen, it did not
4 contribute to his death, you should tick "no". If on
5 all the evidence you can't say either yes or no, you
6 should tick "cannot decide".

7 In considering all these matters, the standard you
8 should apply is again the balance of probabilities: is
9 it more probable than not that any particular factor did
10 or did not make a contribution? Then we will go through
11 them.

12 (a), the suicide attacks and attempted attacks of
13 July 2005 and the pressure placed on the
14 Metropolitan Police in responding to this threat.

15 I can do little better than to remind you of the
16 evidence of Mr Peter Clarke, and the evidence that he
17 gave about the enormous increase in the burden of police
18 work in investigating these attacks, together with the
19 atmosphere of tension that surrounded everybody's lives
20 at that time.

21 You may also remember the evidence of Mr Macbrayne,
22 the Detective Superintendent in command of the forensic
23 wing of the anti-terrorist squad, who told you that the
24 impact of the explosions of 7/7 on his department was
25 enormous. They had to call in reinforcements from all

1 over the country to cover the forensic work arising out
2 of the four explosions, together with the finding of the
3 bomb factory in Yorkshire, so that the teams were still
4 working for example on the site at Russell Square
5 a fortnight after those explosions when the next crisis
6 arose on 21 July.

7 You will also remember the evidence from Mr Purser
8 and Trojan 84 of how anxious they were to ensure that
9 the officers being briefed were fully aware of the level
10 of threat that they were facing, hence the use of the
11 words "deadly and determined" and the impact that these
12 words had upon their hearers.

13 The atmosphere, and I quote from one of the
14 witnesses, was sombre. Charlie 12 particularly
15 described the level of emotion that he felt as he, and
16 indeed Charlie 2 both realised, that if things went
17 wrong they might not be going home that night. You may
18 wish to consider the extent to which the commission of
19 these attacks would have increased the state of
20 nervousness and tension in the front line police
21 officers who were having to contemplate direct
22 confrontation with such terrorists and if you conclude
23 that the heightened pressure influenced the entire chain
24 of events leading to death, then it's important that
25 this inquisition should record that fact.

1 (b) is a failure to obtain and provide better
2 photographic images of the suspect Hussain Osman for the
3 surveillance team. The question has been asked whether
4 or not the police could and should have provided three
5 kinds of photographs. First of all, photographs from
6 the DVLA and the immigration services; secondly,
7 photographs from Operation Ragstone; and three, what's
8 been called the wedding photographs or at any rate
9 photographs of those photographs.

10 You will need to ask yourselves whether or not the
11 police could and should have obtained better photographs
12 from any of these sources and provided them to the
13 surveillance officers in the time available. In the
14 event, there is an interesting difference of opinion on
15 the quality of the image that was actually provided.
16 That was the, you remember, gym card photograph.

17 The forensics officers who originally tracked down
18 the photograph associated with the gym card regarded it
19 as a fairly good image. The members of the surveillance
20 team who were called upon to use it regarded it as
21 pretty poor. It was the view of James, you may
22 remember, the grey team leader, that he could have gone
23 on using that gym card for a week without ever getting
24 a firm or reliable confirmation of identity.

25 That's the position about the gym card photograph.

1 Turning to the DVLA and immigration photographs, you
2 heard what steps the police went to in order to obtain
3 photographs of Osman on the morning of the 22nd. As
4 I told you yesterday, even on an out of hours approach
5 to the DVLA, they should have been able to obtain those
6 photographs after a delay of about one and a half hours.
7 Should they, therefore, have done more? Would any other
8 steps have produced better photographs by the time the
9 surveillance of Mr de Menezes was going on?

10 As for the photographs from Operation Ragstone, you
11 heard that topic investigated at some length. Osman's
12 name had never been attributed to any of the persons
13 shown in the Ragstone photographs. Mr Mellody and
14 Mr Southworth said that it would have been impossible to
15 identify Osman and provide the photographs in the time
16 available.

17 While a closer analysis of the Ragstone photographs
18 might have teased out the link between the man in the
19 photograph and the car registered to Yesh Girma, who of
20 course was Osman's wife. This had not been done prior
21 to 22 July. You may think, it's a matter for you, that
22 that could hardly have been done in the time available
23 once the gym card and the Scotia Road address had been
24 found.

25 The wedding photographs were found at the scene of

1 the attempted bombing, and were being viewed by those at
2 the scene in the early hours of 22 July. You will
3 remember there had been considerable delay while the
4 experts first of all checked the explosive nature and
5 also the possibility that there was some biological or
6 other complication.

7 You heard from Mr Macbrayne that these photographs
8 were preserved for the purposes of DNA and fingerprint
9 evidence, although you may think that photographs of
10 them could have been taken and then passed on. Would
11 those photographs of photographs have been useful to the
12 surveillance officer? Look at the whole topic about
13 this -- consider the entire topic, ask yourselves
14 whether photographs could and should have been provided
15 which would probably have made some difference to the
16 ultimate outcome.

17 The next factor for consideration is a failure by
18 the police to ensure that Mr de Menezes was stopped
19 before he reached public transport. Mr Mansfield was
20 critical of the fact that Mr de Menezes was not stopped
21 before he got on a bus. He suggested that a plan should
22 have been devised to ensure that all persons leaving the
23 block were viewed by a sufficient number of surveillance
24 officers, and that those persons regarded as possible
25 suspects were stopped by firearms officers before they

1 got to a bus stop. He suggested that that was not just
2 hindsight, and if such a tactic was feasible and
3 practicable, it might have given the police the
4 opportunity to challenge a suspect from a safe distance,
5 possibly the safest form of challenge for all concerned.

6 So Mr Mansfield says that the police were not alert
7 enough to the need to try to make identifications in
8 what he called the window of opportunity, and that not
9 enough attention was paid in the operations room to the
10 fact that Mr de Menezes had emerged from the Scotia Road
11 premises.

12 You may wish to consider whether such a tactic could
13 have been set, or any tactic could have been set which
14 required all possible suspects coming from the block to
15 be stopped before they got on public transport. In
16 considering this, it's very important, you may think,
17 that you should bear in mind these matters.

18 First of all, could a tactic of this kind have been
19 used in practice?

20 Secondly, should it have been used, given that the
21 police were very concerned to ensure that the operation
22 remained covert? They didn't want a repeat of the
23 tragedy in Madrid, you remember, when the terrorists
24 became aware of the fact that they were under
25 surveillance by the police.

1 Third, did the fact that no such tactic was used
2 contribute to the death of Mr de Menezes in Stockwell
3 station? Only if you think that the tactic could have
4 been used, should have been used, and would have made
5 a difference to the outcome should you answer "yes" on
6 this point. It is suggested by the police that there
7 are obvious impediments to setting such a tactic. For
8 example, what if suspects could simply not be positively
9 identified or positively discounted in the time
10 available between leaving Scotia Road and getting on
11 public transport, which was a few minutes' walk?

12 You know that Mr de Menezes was never positively
13 identified or discounted at any stage. You might soon
14 find that you were stopping a large number of possible
15 suspects or indeed anyone who came out of the communal
16 door, at a location fairly close to the premises, with
17 the obvious risk that the operation would soon cease to
18 be covert or secret.

19 It's been referred to as the window of opportunity,
20 but you may think that a good deal depends on the size
21 of the window and the possible consequences of opening
22 it.

23 So it is said there are many unknowns. Which bus
24 stop? To what level would the person have to be
25 identified? By what stage? What form should the

1 intervention take? Because, for example, loud shouts of
2 "armed police" from a distance might have an effect on
3 the covert nature of the whole operation.

4 No matter what delays there might have been, were
5 there in fact enough resources in the area of
6 Scotia Road at the vital time? As for the surveillance
7 resources, you know that two teams had been deployed to
8 Scotia Road and there must be a limit to the available
9 resources that the Metropolitan Police can deploy.
10 There is also a limit, you may think, to how many vans
11 and officers on foot you can suddenly put into a area
12 and still remain covert.

13 As for firearms resources you know that some
14 specialist firearms officers were at the TA Centre
15 before Mr de Menezes actually left. But Mr Mansfield
16 says that at that stage, when they had only just
17 arrived, the police were simply not directing their
18 minds and efforts to setting up stops before any subject
19 reached public transport.

20 A very important question for you to consider is
21 whether such a tactic as has been canvassed should have
22 been employed. In other words, should it have been
23 realised at the time that it should be used, and not
24 simply with the benefit of hindsight.

25 At the time, you may think it was a judgment that

1 had to be made. There were pros and cons, no doubt, on
2 each side.

3 You would only answer the question "yes" if amongst
4 other things you can say that it should have been
5 appreciated at the time that this was a tactic that
6 should have been employed.

7 Finally on that, I told you that you will have to
8 consider whether a different tactical plan would have
9 made a difference to the outcome. On this question
10 something may turn on whether or not a challenge from
11 distance could have been achieved. If there was no time
12 for that and no place at which it could be arranged,
13 might not the outcome have been exactly the same?

14 These are all matters for you to consider.

15 (d), the general difficulty in providing
16 an identification for the man under surveillance,
17 Mr de Menezes, in the time available and in the
18 circumstances after he had left the block at
19 Scotia Road. The fundamental difficulty, as you may
20 remember, is that we were told that in intelligence-led
21 surveillance of this kind, it is generally not regarded
22 as practicable to obtain a firm and confident
23 identification of an otherwise unidentified person in
24 the very early stages of the surveillance. This
25 particular surveillance only lasted for about half

1 an hour.

2 In that time, the opportunities consisted of
3 a series of relatively brief glimpses from officers
4 driving by, and on the one walk-by by Ken when
5 unfortunately Mr de Menezes was looking in the wrong
6 direction.

7 There was one rather more extended opportunity
8 afforded to Ivor, for some minutes on the number 2 bus
9 but understandably he didn't wish to attract attention
10 to himself by staring too obviously.

11 As the surveillance officers themselves indicated,
12 they didn't regard themselves as having obtained
13 a reliable positive identification at any stage.

14 If you think that the difficulty in obtaining
15 an identification in the circumstances played a part in
16 the outcome, you should say so. If a correct
17 identification had been made, then of course everyone
18 would have known that the person being followed was
19 Mr de Menezes and not Hussain Osman.

20 Turn over the page, please, to factor (e), the
21 innocent behaviour of Mr de Menezes which increased the
22 suspicion of some officers. The behaviour referred to
23 relates first to Mr de Menezes observed glancing over
24 his shoulder as he walked along Upper Tulse Hill.

25 Second, it concerns the fact that he alighted from

1 and then reboarded the same bus at Brixton, which
2 apparently was regarded as a possible
3 counter-surveillance manoeuvre, certainly when the
4 watching officers did not appreciate that
5 Brixton Underground station was closed.

6 Thirdly, it concerns the fact that Mr de Menezes was
7 seen to be using his mobile phone either to make a call
8 or to send text messages.

9 Fourthly, it concerns his apparent nervousness or
10 "twitchiness", to use the word that was used, when on
11 the stairs of the bus immediately prior to getting off
12 at Stockwell station.

13 I stress, of course, as I have again and again, that
14 Mr de Menezes was in truth an entirely innocent man.

15 We know, as the officers did not, that Mr de Menezes
16 was late for work that morning and no doubt needed to
17 keep his colleague informed. If you were to answer
18 "yes" on this point, you would be simply saying that the
19 behaviour I have identified influenced the officers and
20 probably played a part in the events which led to death,
21 not that there was anything inappropriate about what
22 Mr de Menezes did.

23 Factor (f), the fact that the views of the
24 surveillance officers regarding identification were not
25 accurately communicated to the command team and the

1 firearms officers.

2 As I have said, the surveillance officers' evidence
3 is that no firm positive identification was ever
4 transmitted. The highest they ever got was possibly
5 identical with, PIW, and from James, the team leader,
6 "for what it is worth I think it is him".

7 That expression of opinion was passed on to the
8 command team by Pat, the surveillance monitor, as "they
9 think it's him". At some point, and by someone, those
10 words were transmuted into "certain" or "definitely our
11 man" which is what a number of the firearms officers say
12 they heard, and which, according to Charlie 12 and to
13 Charlie 2, led them to form the honest belief that
14 Mr de Menezes had been positively identified as one of
15 the attempted suicide bombers from the previous day.

16 Mr Mansfield is prepared to accept that on the
17 evidence they did have that belief, but that's still of
18 course a matter, like all other matters of fact, it's
19 a matter for you to decide. If you conclude that in the
20 chain of communication there was a failure to pass on
21 accurately the views of the surveillance officers, and
22 that this contributed to the outcome, then you should
23 tick "yes" on this point; if not, "no"; and if you can't
24 decide, "cannot decide".

25 (g), the next factor. The fact that the position of

1 the cars containing the firearms officers was not
2 accurately known to the command team as the firearms
3 officers were approaching Stockwell station. This
4 question is based upon the fact that Trojan 84, in the
5 belief that the bus behind which his car was, at the
6 junction between Stockwell Road and Clapham Road, was
7 the wrong number 2 bus, expressed the view to
8 Mr Esposito that the firearms team were not in position.

9 This view was contradicted by Charlie 12, whose car
10 at that time was at the most 100 metres from Stockwell
11 station, he then being on the Clapham Road, and also
12 apparently by a number of firearms officers who,
13 according to some witnesses, could be heard shouting
14 over the radio that they were indeed in position.

15 However that may be, those views do not appear to
16 have got through to the control room. You should begin
17 by asking yourselves whether the position of the
18 firearms team could and should have been more accurately
19 understood by the senior officers in the control room at
20 this critical stage. On the other hand, you will want
21 to consider whether it's practicable to know precisely
22 where all the officers and for that matter all the cars
23 were.

24 On the other hand, you will want to bear in mind
25 that this was an important point in the follow. If you

1 consider that the position of the officers could and
2 should have been better understood in the control room,
3 then you should consider whether it would probably have
4 made any difference to the ultimate outcome. Would it
5 have changed the orders that were made in the last few
6 minutes? Would different orders at that stage have
7 resulted in the officers confronting Mr de Menezes above
8 ground? Would such a confrontation have had a different
9 result?

10 Factor (h), any significant shortcomings in the
11 communications system as it was operating on the day
12 between the various police teams on the ground and New
13 Scotland Yard. I'll start this topic by saying
14 something about the physical workings of the Cougar
15 wireless system which was the only system then available
16 that could link teams both with the operations room or
17 the control room and with each other.

18 You know that Frank had problems with his set, the
19 motorcycle officers were out of action because of
20 problems with their sets, and a number of witnesses
21 including Charlie 12 told you about problems with the
22 quality of coverage and reception above ground, at any
23 rate in some areas, although it seemed to have improved
24 as they got nearer to Stockwell station.

25 I have in the course of my summing-up referred to

1 examples of witnesses saying that they did not or do
2 not -- they did not receive or do not recall having
3 received instructions or information via the
4 communications systems that other people say that they
5 sent.

6 Are these examples of failures of recollection, or
7 are they the actual results of a poor communications
8 system that was operating that day?

9 If you conclude that there were significant
10 shortcomings in the system, would the outcome have been
11 different if messages had been getting through between
12 teams and to and from New Scotland Yard in a clear
13 manner?

14 Finally item (i), a failure to conclude at the time
15 that surveillance officers should still be used to carry
16 out the stop of Mr de Menezes at Stockwell station, even
17 after it was reported that specialist firearms officers
18 could perform the stop.

19 As you will recall, Commander Dick initially wanted
20 the firearms team to carry out the stop, but she was
21 told that they were not in position. The surveillance
22 officers then offered to carry out the stop. After
23 consulting other senior officers she gave the order for
24 them to do it. According to the surveillance officers,
25 that order never reached them.

1 In any event, the order was quickly countermanded
2 when Commander Dick heard that the firearms officers
3 were now in position.

4 She preferred to use the more experienced and highly
5 trained CO19 officers to carry out an operation that
6 everybody regarded as highly hazardous. It has been
7 suggested that she should have used the surveillance
8 officers to carry out the stop and they gave evidence
9 about what they would have done.

10 You will recall what Ivor said about his plan to
11 grab Mr de Menezes at the ticket barrier. The argument
12 that Commander Dick should have used the surveillance
13 officers to perform the stop only carries weight if you
14 conclude that she should never have countermanded her
15 order but should have stuck with her original order to
16 use the surveillance officers.

17 The senior police officers have made the point that
18 this was a judgment call, and it was entirely reasonable
19 for Commander Dick to choose the more experienced
20 officers. You should answer "yes" on this point if you
21 conclude that she should not have decided as she did in
22 those fraught moments shortly after 10 o'clock that
23 morning and that a different decision would have altered
24 the ultimate outcome.

25 Those are the nine possible factors that are put

1 before you for your consideration. That, therefore,
2 concludes my summing-up, and I'm about to ask you to
3 retire to consider your verdicts.

4 There are just two further things that I have to say
5 to you. First of all, I have no doubt that you have all
6 heard of majority verdicts, and accordingly it's
7 necessary for me to say to you at this stage that I can
8 only accept a verdict or an answer to any question which
9 is one with which you all agree, a unanimous verdict.
10 Therefore, please, will you approach your deliberations
11 on the basis of unanimity on the verdict and on all
12 matters contained in the questionnaire.

13 Should the time ever come that I am in a position to
14 accept a verdict which is less than unanimous, I will
15 ask you to come back to the court and I will give you
16 a direction on that matter.

17 Secondly, when you retire, the first task that you
18 should undertake will be to choose from among your
19 members a foreman or forewoman -- but I do not
20 particularly like the word foreperson; foreman or
21 forewoman -- please, who can preside over your
22 deliberations and to speak on your behalf when you
23 return to the courtroom with your decisions.

24 Finally, may I say this: you are under absolutely no
25 pressure of time. I mention that because I know that

1 one of your number has a commitment which will require
2 him to leave for overseas if you have not reached
3 decisions by the time of his departure. It's obviously
4 right that he should leave when he has to. I relieve
5 his mind on that, whoever it is, straightaway. But it
6 does not mean that your deliberations have to end at
7 that point. You will take as long as you need. Of
8 course, it may be for all we know that you may reach
9 your decisions before he goes, I know not, but you are
10 under absolutely no pressure.

11 Finally, remember, although you have all got copies
12 of the inquisition and the questionnaire, one only of
13 each is to be filled in for you all.

14 Ladies and gentlemen, I thank you for your patience.
15 When the jury bailiffs have been sworn, I will ask you,
16 please, to retire to consider your verdict and your
17 answers to the questionnaire and in due course please
18 let me know how you find.

19 MR HILLIARD: Sir, just before that happens, just two
20 matters. I am grateful to Ms Studd for one of them.

21 SIR MICHAEL WRIGHT: Have I done it again?

22 MR HILLIARD: Twice. She tells me that it was Ivor and not
23 James who said that he could have used the photograph
24 for a week and not made an identification, so I am very
25 grateful to her.

1 SIR MICHAEL WRIGHT: It's right that it should be attributed
2 to the right person but the point is the same.

3 MR HILLIARD: Absolutely. Then as far as the wedding
4 photographs are concerned, you said that the jury might
5 think that photographs of them could have been taken and
6 passed on. In fact, they were taken, so the question is
7 could they have been passed on.

8 SIR MICHAEL WRIGHT: Thank you. Yes, Mr Stern.

9 MR STERN: Sir, I am sorry, may I mention one other matter?
10 In relation to question 3, I am sure it was
11 an oversight.

12 SIR MICHAEL WRIGHT: I am sure it was.

13 MR STERN: The witnesses who deal with the issue of coming
14 towards the officers are not just 2 and 12 and D9 but of
15 course Ivor, and you omitted to mention Ivor and his
16 evidence in that regard.

17 SIR MICHAEL WRIGHT: Of course. I am sure the jury will
18 have that in mind and also Delta 9 to some extent.

19 MR STERN: Yes. You mentioned Delta 9, C2, C12 but not
20 Ivor.

21 SIR MICHAEL WRIGHT: And Ivor. I am absolutely sure that
22 the jury have Ivor's evidence in mind, precisely what
23 happened when he finally tackled Mr de Menezes.

24 Jury question

25 MEMBER OF THE JURY: Can I ask a question, please? I have

1 in my mind I am not 100 per cent clear what an open
2 verdict means. I have read the statement on the open
3 verdict, and it has widened the parameters for me of
4 what lawful killing means, but it hasn't been specific
5 in telling me what an open verdict means.

6 SIR MICHAEL WRIGHT: Really it is the alternative to the
7 verdict of lawful killing. I have already directed you
8 that you have to be -- you have to conclude on the
9 balance of probabilities of two things, if you are going
10 to return a lawful killing verdict: that is to say (a)
11 an honest, albeit mistaken belief that Mr de Menezes
12 represented an imminent mortal danger; and that force
13 used was no more than was reasonably necessary in the
14 circumstances as the officers honestly believed them to
15 be.

16 If your answer is yes to both those factors on the
17 balance of probabilities, then it's lawful killing. If
18 you are unable to give an answer, "yes", to either of
19 those questions, then the open verdict is what remains.
20 In other words, that the officers did inflict injuries
21 which caused Mr de Menezes' death but not in
22 circumstances in which you can return a verdict of
23 lawful killing.

24 In that sense it's really, as it were, what's left
25 over. Do you follow? Mr Hilliard, can I usefully add

1 to that?

2 MR HILLIARD: No, only to say that it's set out, I think, if
3 the jury have the written legal directions.

4 SIR MICHAEL WRIGHT: That's right, page 2.

5 MR HILLIARD: No, page 1. You have explained there you
6 should consider lawful killing first; and then you have
7 explained about the elements of lawful killing which
8 have to be satisfied; and then if you go on page 2 to
9 open verdict, you explain there in that written
10 direction when it is that the open verdict arises;
11 namely if having considered all the evidence you
12 consider that the necessary elements of a lawful killing
13 are not established as being more likely than not, then
14 you should return an open verdict. So it's the
15 combination of those passages on page 1 and 2.

16 SIR MICHAEL WRIGHT: That's the alternative to the lawful
17 killing verdict. Thank you very much. Would you just
18 like to wait for a moment while the ushers are sworn.

19 (Jury bailiffs sworn)

20 SIR MICHAEL WRIGHT: Thank you very much. Would you go with
21 the ushers, please. Take all your papers with you. If
22 you need any help, the ushers will bring anything else
23 that you need up for you.

24 (2.40 pm)

25

1 (The jury retire)

2 SIR MICHAEL WRIGHT: So that people may plan their lives,
3 I would propose to adjourn at about 5 o'clock unless you
4 think, Mr Hilliard, that nobody will be ready to go home
5 by then.

6 MR HILLIARD: No.

7 (2.41 pm)

8 (Court rise)

9 (5.00 pm)

10 SIR MICHAEL WRIGHT: I hope you have all seen the question.

11 I propose to tell the jury I will deal with it in the
12 morning.

13 MR HILLIARD: Yes.

14 (5.03 pm)

15 (In the presence of the jury)

16 SIR MICHAEL WRIGHT: I have received a question from you,
17 two questions actually, for which I thank you. It is my
18 invariable practice when I receive questions from the
19 jury at this stage of the hearing of an inquest that
20 I consult with all counsel as to what answer I should
21 give you, and that I will do, and I will give you the
22 answer in the morning.

23 I am going to ask you now to stop your deliberations
24 for the day. What I say to you now will apply at every
25 break that we have during your deliberations. We have

1 made arrangements for you to be taken from here -- it
2 sounds as though you are being taken to prison but it
3 isn't going to happen -- by bus to, and collected by bus
4 tomorrow and henceforth from, a central location. This
5 is so we can be sure that you all arrive and depart
6 together, we can all start at the same time, and we know
7 when the clock starts running for the computation of
8 your consideration times.

9 That will be after, of course, I ask you to come
10 back into court in the morning in order to effectively
11 send you out again to start your deliberations again.

12 Arrangements will be made for tomorrow, which you
13 will hear about from your ushers, so that we can start
14 again tomorrow at 10.

15 The first thing I want to say to you is to ask you
16 to remember yet again that you decide this case only
17 upon the evidence that you have heard in court, and not
18 anything that you may see or hear outside court.

19 Secondly, you must not -- I'm sorry to be boring,
20 but I'm going to repeat it and repeat it -- seek any
21 more evidence or information about the case, and in
22 particular that means absolutely no internet searches,
23 because that is a recipe for injustice.

24 Thirdly, do not talk to anyone about this case; do
25 not allow anyone to talk to you about this case, even

1 your nearest and dearest; and even if they bang on to
2 you about it, don't, don't talk to them about it,
3 explain to them that you are under strict instructions
4 and you must not talk; and indeed you must only talk
5 about it among yourselves when you are in the privacy of
6 your jury room, not anywhere where you might be
7 overheard.

8 Fourthly, and this I have no doubt will relieve you,
9 it's the end of the day's work, put the case on one
10 side, put it to the back of your mind now until you come
11 back in the morning and I send you out back to your jury
12 room to start your deliberations again. Just put it on
13 one side. I don't say forget about it, but just stop
14 worrying about it until tomorrow morning.

15 Finally this: as you will appreciate, it's vital
16 that you should all reach verdicts and conclusions
17 without feeling under pressure of any kind, and without
18 the effect of any outside influences. Inevitably a case
19 like this, by it's very nature, is going to produce high
20 feelings, high emotions, and I have already told you --
21 and I repeat it -- that you must put feelings and
22 emotions on one side and decide the case solely on the
23 evidence.

24 That is what you took an oath or affirmed that you
25 would do at the start of the case and so please, please

1 ignore anything, from whatever quarter it may come,
2 because that is the way you will do justice, impartially
3 and without fear or favour for everyone who is concerned
4 in this terribly sad case.

5 I look forward to seeing you again, I don't say
6 bright eyed and bushy tailed but near enough, at
7 10 o'clock tomorrow morning, please.

8 (5.09 pm)

22 (The court adjourned until 9.45 am on
23 Friday, 5 December 2008)

24

25

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