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## SPECIAL INQUIRY

THE HONOURABLE THOMAS BATHURST AC KC

5 TENTH DAY: THURSDAY 23 FEBRUARY 2023

**INQUIRY INTO THE CONVICTIONS OF KATHLEEN MEGAN FOLBIGG**

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JUDICIAL OFFICER: Yes, Ms Callan.

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CALLAN: I was just going to say, your Honour, the expert witness report of Dr Joanna Garstang, which is the subject of the objection, is at Exhibit 33, tab 02.

JUDICIAL OFFICER: Thank you. Yes, Mr Jordan.

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JORDAN: Thank you, your Honour. Does your Honour have access to Dr Garstang's report?

JUDICIAL OFFICER: Yes.

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JORDAN: The objection relates from paragraph 8.4 right through to the end of the report. The essential basis for the objection is that in those portions Dr Garstang is offering opinions that fall well outside her expertise as a Paediatrician. It's clear from the report that she is deriving her opinions from a review of the literature and she refers to her clinical experience, which as is apparent from the report, is as a Paediatrician, not a psychologist and not a psychiatrist, and it would appear that that clinical experience is still relatively limited to only 15 cases of direct care. Our submission is essentially that in the absence of appropriate expertise Dr Garstang is merely reading and commenting upon the diaries, and, importantly, she's doing it in isolation, and by that we mean that she's only been asked to read the compilation of the diaries. She does not have the important context of a very substantial body of evidence including evidence from the trial, which included the police interview and listening device transcripts, and, importantly, also without the context of reviewing the evidence given by Ms Folbigg during the 2019 Inquiry which goes directly to these issues concerning the relevance of these entries and what can be made of them. In these circumstances our respectful submission is that the evidence is of such parlous weight that it cannot relevantly assist your Honour, particularly in circumstances where your Honour is assisted by the evidence to be heard from appropriately qualified experts being Mr Sheehan, Dr Eagle and Dr Dhansay, each of whom expressed their opinions in relation to diary entries with the benefit of that proper context of the evidence as a whole. That essentially in a nutshell is the basis for the submission and we also submit respectfully further and in the alternative, that in these circumstances your Honour will not be assisted by hearing oral evidence from Dr Garstang, particularly in circumstances where the Inquiry has commendably moved with expedition and efficiency. Those are our

submissions.

JUDICIAL OFFICER: Mr Jordan, you include paragraph 8.4.

5 JORDAN: Yes.

JUDICIAL OFFICER: Why doesn't that fall within her training, study or experience when you look at her CV?

10 JORDAN: Well, because, your Honour, it's expressed in isolation, she's only looked at the diaries. And she's not qualified, with respect, she doesn't have psychological or psychiatric expertise. She doesn't even have a proper basis in the evidence to support this. She's just been given the diaries to read in  
15 isolation and that really is in many respects the most problematic issue with the way that this evidence has been presented.

JUDICIAL OFFICER: Do you say, remind me, that she didn't read the whole of the diaries?

20 JORDAN: It's clear from the briefing materials that Dr Garstang read the diaries compilation, so she has read the whole body of the diaries, but our point is she's just done that, she has not had the context of any of the other substantial body of evidence which provides context to those diaries, most  
25 importantly some of the evidence from trial, in particular Ms Folbigg's police interview.

JUDICIAL OFFICER: That wouldn't necessarily make it inadmissible. It might undermine the basis for some of her conclusions. That doesn't mean there's  
30 not difficulties with paragraph 8.4. The real difficulty with 8.4 I think is the general description as described in her diaries does not really show the basis on which she formed the opinion.

JORDAN: That's right, your Honour.

35 JUDICIAL OFFICER: All right. I understand. Ms Callan, do you want to say anything about this?

CALLAN: Your Honour, the other dimension of 8.4 with respect is at its  
40 highest Dr Garstang expresses an expectation or anticipation which can really carry little to no probative weight in terms of the work of this Inquiry.

JUDICIAL OFFICER: In one sense it's not really a matter for expertise, people suffer grief from the death of a child.

45 CALLAN: Indeed. Your Honour, the basis for what appears at - sorry, the only other submission I would make--

JUDICIAL OFFICER: Let me make it clear. As presently advised I am inclined  
50 to reject the whole of paragraph 9.

CALLAN: I wouldn't be heard against that, your Honour, although as to whether or not Dr Garstang should nevertheless attend to give oral evidence, there may be other parties who have questions for her.

5 JUDICIAL OFFICER: What's your submission on it?

CALLAN: My submission is that what I would seek to do is nevertheless ask Dr Garstang by reference to question 9 and on the basis of her training and experience, which includes the subject matter of her PhD, which is the  
10 prevalence of self-blame and guilt following sudden infant death, and her clinical experience which is set out at paragraph 5.3, whether per paragraph 9 the expressions of guilt or self-blame contained in Ms Folbigg's diaries are consistent with her observed experience.

15 JUDICIAL OFFICER: Wouldn't that to some extent, again, it may go to the weight you place on it, but wouldn't that to some extent depend on the overall context? What's she's done in Annexures B and C is, I think, extract a series of extracts, hasn't she?

20 CALLAN: Your Honour, the Annexure B which formed part of the briefing material was the entire compilation of the diaries, Annexure C, which also formed part of the briefing material, that is drawn to her attention where the dates of specific entries that have either at trial or when Ms Folbigg was cross-examined in the 2019 Inquiry been the subject of specific attention, and  
25 submissions to the effect that those specific entries were indicative of veiled confessions or otherwise relevant to the question, directly relevant to the question of her guilt.

JUDICIAL OFFICER: All right. Does anyone else want to say anything?  
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WOODS: Yes, your Honour. We support the position taken by Counsel Assisting. It's really a matter of weight eventually, your Honour, but she is a witness of immense experience in this general field. I appreciate that Mr Jordan's points may have some technical merit. If the rules of evidence  
35 were being strictly applied, it is really a matter of weight and the points raised by Counsel Assisting seem to me to be valid.

JUDICIAL OFFICER: Does anyone else want to say anything in relation to this? I reject paragraph 8.4 and I reject the whole of paragraph 9. That does  
40 not preclude Counsel Assisting or anyone else asking a question of the nature of that foreshadowed by Ms Callan. I'll deal with any specific objections to any question as and when it's asked. In light of that ruling, do people still wish Dr Garstang to give oral evidence? Mr Woods, I think that's primarily directed to you.

45 WOODS: Your Honour, may I have a moment? Your Honour, we think she's sufficiently explained her position in the document.

JUDICIAL OFFICER: Ms Callan, you heard that.  
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CALLAN: In those circumstances, we don't press for her to remain on the witness list.

5 JUDICIAL OFFICER: Can someone tell her that? In those circumstances I don't propose to hear oral evidence from Dr Garstang. Her report will be admitted subject to exclusion of paragraph 8.4 and the whole of paragraph 9 and the appendices which relate to those paragraphs. Yes, what's next?

10 CALLAN: Your Honour, I call Dr Allan Cala.

<ALLAN DAVID CALA, SWORN(9.00AM)

<EXAMINATION BY MS CALLAN

5 Q. Can you tell the Court your full name?

A. Allan David Cala, spelt C-A-L-A.

10 Q. You've had lengthy involvement in relation to the investigation which occurred into the deaths of the four Folbigg children, in particular having conducted the autopsy of Laura Folbigg on 1 March 1999. Most recently it's the case, isn't it, Dr Cala, that you provided a report to this Inquiry dated 13 December 2022?

A. Yes.

15 CALLAN: Your Honour, for the record, that's at Exhibit 13-04.

Q. The Inquiry has a copy of a curriculum vitae for you which was received in December of 2022, is that up to date?

A. Yes.

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CALLAN: Your Honour, a copy of that CV appears at Exhibit 13-04, red page 69-1 and following.

Q. You hold degrees of a Bachelor of Medicine and Surgery?

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A. Yes.

Q. And you're a qualified specialist in pathology?

A. Yes, forensic pathology.

30 Q. Forensic pathology. And that dates back to 1994 when you commenced forensic pathology training at Glebe?

A. Yes.

35 Q. And you, subject to a period of time in 1995 in the UK, remained at Glebe until the end of 2002 as a Staff Specialist Forensic Pathologist whereupon you moved to Adelaide for five years as a Forensic Pathologist, and then in early 2008, it's the case isn't it, that you moved to Newcastle?

A. Yes.

40 Q. Are you currently the Senior Staff Specialist at the Newcastle Department of Forensic Medicine in New South Wales at the John Hunter Hospital?

A. Yes.

45 Q. I've already referenced this, but you performed the autopsy of Laura Folbigg on 1 March 1999?

A. Yes.

Q. At the time you were a pathologist at the NSW Institute of Forensic Medicine at Glebe?

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A. Yes.

Q. You knew at the time that she had three siblings who had died but you knew very little beyond that by way of information as to those other deaths?

A. That's correct.

5 CALLAN: Your Honour, within Exhibit 2-H are a number of, if I can describe them as, contemporaneous documents that were completed by Dr Cala in the context of performing that autopsy. Can I ask that the witness be shown Exhibit 2H?

10 Q. Dr Cala, within Exhibit 2-H are some tab numbers and if I could take you to tab number 45 which is red page 3646?

A. Yes.

15 Q. Do you recognise that as a document styled a pathologist data sheet that has certain details typed into it including Laura Folbigg's name and your name as the pathologist with some additional handwriting?

A. Yes.

20 Q. It's dated 1 March 1999 and the time indicated is 9pm?

A. Yes.

Q. Is that your handwriting?

A. Yes.

25 Q. Do you see there under "Cause of Death" it's listed as "Undetermined"?

A. Yes.

30 Q. You've given evidence previously about the nature and purpose of this document. Can I ask, in terms of you identifying the cause of death as undetermined, do you recall whether at this point in time you'd examined Laura's heart?

A. Not totally or comprehensively.

35 Q. This is very much a working preliminary document?

A. That's right.

Q. Could I ask you then to turn to tab 47?

A. Yes.

40 Q. That is titled "New South Wales Institute of Forensic Medicine Interim Report"?

A. Yes.

45 JUDICIAL OFFICER: What page?

CALLAN: Page 3651.

JUDICIAL OFFICER: I don't have tabs.

50 CALLAN: Yes, your Honour.

Q. Does that bear your signature?

A. Yes.

Q. Is that your handwriting?

5 A. Yes.

Q. As an interim report to the State Coroner, it indicated this relates to Laura Elizabeth Folbigg and it's dated 1 March 1999?

A. Yes.

10

Q. Against "Interim Cause of Death" you've indicated "Undetermined"?

A. Yes.

Q. At that point in time had you examined Laura's heart?

15 A. Again, not comprehensively.

Q. Again this is an interim, as it's clearly indicated on the document--

A. Yes.

20

Q. --view that you were expressing about cause of death?

A. Yes, that's right.

Q. Can I take you to, I think chronologically, the next document, which appears at red page 3704, tab 58?

25 A. Yes.

Q. Do you recognise that as a three-page letter under your hand dated 29 June 1999 to the police at Singleton?

A. Yes.

30

Q. Which, per the final page of that letter, expresses your opinion that the deaths of the Folbigg children should be investigated as a single unit?

A. Yes.

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Q. Still working chronologically through your involvement with this matter, could I ask you to turn back to red page 3686, which is tab 54?

A. Yes.

Q. Do you recognise that as the final form of the autopsy report that you completed?

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A. Yes.

Q. In relation to Laura Folbigg?

A. Yes.

45

Q. It's a 12-page document. Is that your signature on the final page?

A. Yes.

Q. It's dated 13 December 1999?

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A. Yes.

Q. Is it unusual for such a passage of time to pass before an autopsy report is finalised, by which I mean autopsy performed on 1 March of the year and a report submitted in December?

A. It's not unusual.

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Q. In the body of the report you, over at page 2 of 12, red page 3687, express your view as to the cause of death being undetermined?

A. Yes.

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Q. You go on to provide a summary of your opinion in relation to the cause of death?

A. Yes.

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Q. Do you see at the top - so it's page 4 of 12, red page 3689?

A. Yes.

Q. That first paragraph you describe in summary form the post-mortem examination of the body of Laura Folbigg?

A. Yes.

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Q. That was performed on the evening of 1 March 1999. You state, fourth sentence, "There were no significant injuries externally," aside from some minor bruises to the lower limbs, "no injuries to the face or in the oral cavity... no petechial haemorrhages on the face or on the eyelids, and re-examination the next day also failed to show petechial haemorrhages. The neck examination was normal... no injuries to the oral cavity." Insofar as you've described those observations you made, was that of some relevance to the question of smothering or mechanical asphyxiation?

A. Yes.

30

Q. You gave evidence at trial - I will find the transcript reference - that you were looking hard for any evidence of any facial injuries. Why was that?

A. To be detailed and thorough in the assessment of this child and to see whether trauma might have played some role in her sudden death.

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Q. You note that in your description of information made available to you that CPR had been commenced whilst dialling triple 0. This is at the bottom of page 3 of 12, red page 3688.

A. Yes.

40

Q. You also referred to Laura having been taken to Singleton Hospital, that attempts to resuscitate were unsuccessful?

A. Yes.

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Q. To the extent that resuscitation was undertaken on Laura Folbigg, it seems to have caused no damage or injury to her face or neck; is that the case? Does that follow from your--

A. Sorry. Would you mind repeating that?

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Q. To the extent that CPR was performed, resuscitation efforts were



undertaken, it seems not to have caused any injury to her face or neck; does that follow from your inspection of that area of her body?

A. Yes.

5 Q. Having completed the autopsy report in relation to Laura Folbigg, just again dealing chronologically with your involvement in that matter, could I ask you to turn to tab 61, red page 3730?

A. Yes.

10 Q. Do you recognise that as a letter under your hand to Detective Ryan at Singleton Police Station dated 19 June 2001 responding to some specific questions that were raised for your response?

A. Yes.

15 JUDICIAL OFFICER: Sorry, what page?

CALLAN: 3730.

JUDICIAL OFFICER: My pages are virtually incomprehensible on this.

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CALLAN: Yes.

JUDICIAL OFFICER: Just for my assistance, there's a number under that; what's that number there, if it's the same as mine?

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CALLAN: 210.

JUDICIAL OFFICER: Yes, thank you.

30 CALLAN

Q. Amongst other things, for instance, over the page, red page 3731, you were asked some more specific questions about myocarditis?

A. Yes.

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Q. In your view, the death of Laura was looked at in isolation and you provide an answer to that question?

A. Yes.

40 Q. You then, as I track it through, gave oral evidence at the trial of Kathleen Folbigg on - I can't recall the dates, but it was 15 and 16 April 2003?

A. Yes.

45 CALLAN: Your Honour, for the record, that transcript is Exhibit 2-F, red pages 2508 to 2569.

Q. Following that trial you recall providing a report to the 2019 Inquiry. Again you may not recall the date but it was dated 26 November 2018.

50 CALLAN: Perhaps the witness could be shown Exhibit 2-M.

Q. Do you see from the screen, Dr Cala, you recognise that as the first page of the report that you furnished dated 26 November 2018?

A. Yes.

5 CALLAN: Your Honour, that commences at red page 4094.

Q. At page 17 of your report, red page 4110, you recall there, towards the bottom of the page, you addressed the topic of deliberate smothering in infants and young children?

10 A. Yes.

Q. You set out a number of quotes from relevant literature?

A. Yes.

15 Q. Under that first quote in italics you commence with the observation that, "This is an area where much has been published but little is actually known. Witnesses are very few and perpetrators rarely confess." Is that comment from you reflective of your clinical experience and reading in the field?

20 A. Yes.

Q. I won't take you through what then appears but you recall you set out a combination of your opinion about the method of smothering, by deliberate asphyxiation in children, including whether it may leave or not a physical trace?

25 A. Yes.

Q. You do so by reference to extracting quotes from various texts and other articles on the subject?

30 A. Yes.

Q. You recognised in your report to this Inquiry, to which I'll take you, that it is obviously not something which can be the subject of experimentation?

35 A. Correct.

Q. That has real implications for what can be determined as to the extent to which smothering may leave no trace?

A. Correct.

40 Q. Just to continue through the chronology of your work in relation to this matter, you provided a letter to the 2019 Inquiry, which has been marked Exhibit 2-N in this Inquiry. It's a letter dated 13 February 2019 and it sets out your response to certain affidavits and reports furnished by Professor Hilton and Professor Cordner. I'll show you the first page of that.

45 A. Yes.

Q. Does that look familiar?

A. Yes.

50 Q. You then gave oral evidence before the 2019 Inquiry. I can tell you the

dates were 19, 20 and 21 March 2019.

CALLAN: Your Honour, that transcript is contained in Exhibit 4, red pages 57 to 314.

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Q. Dr Cala, in moving then to the further contribution that you've made on the topic of the deaths of the Folbigg children in this Inquiry you furnished a report dated 13 December 2022?

A. Yes.

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CALLAN: I mentioned that earlier, your Honour, it's at Exhibit 13-04, commencing at red page 49.

Q. It includes your comments on what's described as the Brohus article?

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A. Yes.

Q. It also sets out your comments in response to more recently received reports from Professor Duflou, Professor Cordner and Professor Hilton?

A. Yes.

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Q. It also contains your response or comments on the report of Professor Peter Fleming?

A. Yes.

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Q. I'll come back to that in a moment, that is your response to Professor Fleming's report, but just to complete the record, you very recently furnished a further document to this Inquiry on 21 February 2023, Exhibit 13-04A, in which you set out with more specificity the process by which tissue blocks were made in 1999 containing samples of Laura Folbigg's heart and certain slides which were cut from those tissue blocks that have been inspected by you over the years?

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A. Yes.

Q. Can I come back to the topic of smothering—

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A. Yes.

Q. —and it leaving no trace in an infant? Have you had an opportunity to consider a report which was furnished to this Inquiry by Professor Cordner in December of last year? Amongst other things it sets out a form of literature review and analysis to seek to put some figures around the instances of deliberate smothering and the extent to which that caused physical injury.

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A. Yes.

Q. Are you in a position to provide any comments or response to that part of Professor Cordner's report?

45

A. Yes.

Q. What is your response?

A. That the number of cases in that series is quite low, it's around 20, and he only included cases of intentional smothering. Accidental and other cases of

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smothering where it's unknown as to whether there was intent or not are excluded and I don't know how many cases would be in either of those groups. So although there's 20, and that's a good figure, it may in fact, if you included those other groups, be in fact much larger and conclusions drawn from that if you incorporated those other groups might be somewhat different.

## JUDICIAL OFFICER

Q. I think, Dr Cala, Professor Cordner revised his figure down to 17, from 20 to 17 yesterday. So I take it that wouldn't alter your answer?

A. Beg your pardon, your Honour?

Q. Dr Cordner yesterday revised his figure down from 20 to 17.

A. Yes.

Q. I take it that would not alter your answer?

A. No, I mean it's clearly a reduction yet again in his numbers, which makes the cases smaller, but overall it's roughly the same.

## CALLAN

Q. You did take up the opportunity of responding to Professor Fleming's report in the report you furnished to this Inquiry on 13 December?

A. Yes.

CALLAN: Your Honour, for the record it's Exhibit 13-04, red page 65.

Q. You set out those records - including by reference to what Professor Fleming has to say on the topic of suffocation. If I can take you to your response to his report, it's red page 68.

A. Yes.

Q. At the middle of the page, page 26, paragraph 5 of Professor Fleming's report where he says, "The reports from almost all of the experts involved in both the trial and the Inquiry in 2019 note that it is possible to suffocate a young infant by obstructing the upper airways without leaving any marks that might indicate that this has occurred"?

A. Yes.

Q. You indicate you agree with this sentence?

A. Yes.

Q. You note this an area of investigation that is not a subject for experimentation?

A. Yes.

Q. And you refer to the rarity of perpetrators confessing?

A. Yes.

Q. And autopsy findings being reviewed that it can be confirmed that on

occasions it's possible to smother an infant and leave no physical trace?

A. Yes.

5 Q. May I take you back to Professor Fleming's report - which is, your Honour, at Exhibit 11, tab 02 - and the particular part I wanted to take you to commences at red page 33. You see at the bottom of red page 33 - can you see that on the screen there?

A. Yes.

10 Q. That commences with the quote that you've then replicated in your report, that is "The reports from almost all of the experts involved in both the trial and the Inquiry", and then we move over the page?

A. Yes.

15 Q. I'm sorry, I'm not sure that part was visible to you--

A. No, it wasn't.

20 Q. --at that stage, it was the very last line of that page. We'll try that again. Do you see that commences, "The reports from almost all of the experts involved in both the trial and the Inquiry"?

A. Yes.

25 Q. We go over the page, it continues "2019" and goes on ending with the word "occurred"?

A. Yes.

30 Q. That was the part of Professor Fleming's report that you extracted in your report--

A. Yes.

35 Q. --and you indicated you agreed with?

A. That's right.

40 Q. Professor Fleming goes on to say:

"This assertion is very commonly made by experts when an externally applied upper airway obstruction is suspected as the potential cause of death of an infant or young child, but the evidence base for this assumption is very hard to identify."

45 Do you agree with that? Sorry, I should say, there's two particular concepts there, first, that it is an assumption, and second that the evidence base is hard to identify.

A. Yes.

50 Q. You agree with that?

A. I - I do, yes.

Q. Professor Fleming goes on to say, "I can find no published evidence to confirm or refute this assertion", do you regard that as a correct statement as

to the state of the literature in the area?

5 A. I think in the last few years, and I think it was in there, was an article, particularly in the tranche that was supplied to me from Professor Cordner's office, and it was in relation to an article by Brown et al from a *Journal of Forensic Sciences*, 2018, and in particular it set out a series of 20 homicidal asphyxial deaths in infants and went through injuries or not, and I think that would be the most up to date article that I have seen that makes comments about this situation.

10 Q. Further in Professor Fleming's report, commencing at line 812, the paragraph begins, "Whilst I cannot find published evidence to confirm that such "*gentle smothering*" may occur in the complete absence of any findings at post-mortem...", do you see he refers to his knowledge of young infants?

15 A. Yes.

20 Q. ...such that he can accept it "may be possible in infants in the first few weeks after birth." Does that accord with your understanding of the position from your field of forensic pathology? That is it certainly may be possible to smother without any findings at post-mortem an infant in the first few weeks after birth?

A. Yes.

Q. Professor Fleming goes on:

25 "I find it very hard to accept however, that three children aged 8, 10 and 19 months, [so he says] were allegedly suffocated in fits of rage by their mother and despite the presence of erupted anterior teeth in one and possibly all three of the children there were no physical findings to suggest smothering identified at post-mortem."

30 Pausing there for a moment. From your expertise and perspective as a forensic pathologist, do you agree with the contention that there could be no physical findings to suggest smothering of children aged 8, 10 and 19 months?

35 A. Did you say to 19 months?

Q. Correct. 8, 10 and 19 months.

A. Are you asking me if I would find it unusual or difficult to accept that there would be no injuries?

40 Q. Yes?

A. No, I don't find that difficult to accept that there would be no injuries.

Q. Why is that?

45 A. In my experience, and I've done many cases of deceased infants over many years now, where it appears that they have been bed sharing in particular and may have been accidentally smothered, in ages often less than 12 months in particular, findings of injuries around the mouth and on the face generally can be a commonplace event, that is there may be no injuries whatsoever to see on the faces or in the mouths of those children. Particularly  
50 under 12 months. I accept that the older the child with a larger individual and

more fulsome teeth, that's perhaps less likely, but it's been my experience that certainly less than 12 months I've seen many children in that situation and looked very hard for injuries and found none.

5 JUDICIAL OFFICER

Q. Dr Cala, if you assume the premise on which Professor Fleming based his opinion, namely that they were suffocated in a fit of rage, confining yourself to that set of circumstances, would that alter your view?

10 A. No, I don't think so, your Honour.

Q. One thing that I think underpins Professor Fleming's report, and even if it doesn't, I'll ask you, is that it would be very unusual to have four children smothered in fits of rage, none of which showed any signs of injuries. What's your comment on that?

15 A. I think the younger the child the more likely that I'd expect to find no injuries. As I said, with older children I would expect that with teeth erupting, that I would expect to find even subtle evidence on the lips or around the face, but particularly on the lips as their teeth may abrade the mucosa of the lips, that is the inner lining of the lips.

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CALLAN

Q. What do you say, if anything, to the suggestion that Professor Fleming is a Paediatric Intensivist is, by virtue of that area of specialisation, in a different or better position to you as a forensic pathologist to comment on the likelihood of smothering leaving no trace?

25

A. I think his realm is ICU and hospital environment.

30 Q. Yes.

A. Although I note he's had some involvement over the years in some work with paediatric forensic pathologists in western England, I think, from what I understand about his work he's almost universally been in a hospital environment. I'm never in a hospital environment and I'm in a department that sees people of all ranges, age ranges, die suddenly and unexpectedly in many environments, particularly in the home environment. So I don't think he sees quite what I see.

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Q. In your evidence in the 2003 trial - this is at Exhibit 2-F, transcript 713, red page 2517, I just ask for that to be shown up on the screen - at about line 18, you were asked if you were able to say approximately how long it would take to smother a child of 19 months of age?

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A. Yes.

Q. Do you see your answer there, "it would certainly not be an instantaneous process. I would believe that it may well take at least 20 to 30 seconds or possibly even longer, depending on the amount of struggling that the child performed during the act"? With that in mind, I just wanted to take you to some evidence that was given on this topic of time in the 2019 Inquiry. That's at Exhibit 4, red page 110. Yes, 110, page 108 of the transcript. Do you see

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there's an exchange between Professor Cordner and Counsel Assisting about the time taken and Professor Cordner, around line 22, says, "one of my bits of learning in preparing for this is that one of the authors has - with some reasonable evidence it seems, reckons that it's 60 to 70 seconds prior to the development of serious brain damage," and line 29, he goes on, "Well, it does sound sort of right," and then Counsel Assisting asks, "Does anyone have a view about the time taken?" and she first turns to Professor Duflou, and then over at the next page, so it's red page 111, once Professor Duflou has finished, at line 9, Counsel Assisting turn to you. At line 11 you say, "I don't want to put a figure or a time on the amount of time taken" and you refer to some relevant considerations which might come into play?

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10  
A. Yes.

Q. At line 21 and 22, "how long that process takes in any one case to smother to the point of death, I don't, I don't know." Can I ask you did the state of your knowledge change between when you gave evidence at trial in 2003 and when you gave evidence in the 2019 Inquiry on this topic of how long it takes or could take?

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A. No. My opinion hasn't changed. I adhere to what I say at page 109 where I don't know the time precisely for how long it would take, and the figure I gave at trial really was an estimate of sorts, but that may well be incorrect. I simply don't know.

Q. To be clear and fair, what you said at trial was "at least 20 to 30 seconds or possibly even longer"?

25  
A. That's right.

Q. There's one aspect of the position in terms of Patrick Folbigg that I wanted to ask you about. In your report to this Inquiry at Exhibit 13, tab 04, red page 55, you see at the top of the page you comment on the neuropathological examination of Patrick's brain?

30  
A. Yes.

Q. You say, "which disclosed very extensive hypoxic brain damage"?

35  
A. Yes.

Q. "Brain examination showed no features of an underlying metabolic encephalopathy or any other abnormality of brain development where epilepsy may be a feature."

40  
A. Yes.

Q. Can I show you a document which I understand may be the primary material upon which you made that observation? Can I have turned up the histology report that appears at Exhibit 2-H, tab 19, red page 3559? Do you see that is a report or letter under the hand of Dr Kan to Drs Bishop and Singh-Khaira?

45  
A. Yes.

Q. Just first, is that the neuropathological examination that you refer to in that part of your report for this Inquiry?

50



A. Yes.

Q. Can you assist: in terms of what it is in this neuropathological examination which you consider indicated, first, very extensive hypoxic brain damage?

5 A. Yes. The second sentence, "The major changes in this extensively  
sectioned brain", meaning multiple blocks taken for histology, extensively  
sectioned, "are old infarcts" - that's areas of ischaemic necrosis where cells die  
as a result of lack of blood supply, "and gliosis", which is a particular type of  
scarring that only occurs in the brain, and I'll carry on, "mostly in the form of old  
10 laminar necrosis". Old laminar necrosis - "old" meaning weeks or months  
earlier, "laminar" meaning in a line, as observable down the microscope, and  
"necrosis" death of cells, which - I'll quote again - "in keeping with the  
macroscopic finding" - that is the autopsy finding - "is most severe in the  
15 parietol-occipital area." Parietal area is that large part of the cerebral  
hemisphere sitting above the ear, and the occipital area is generally at the  
back of the brain but also in the cerebral hemisphere. "The only spongy  
change" - and that's a descriptive term, "spongy" as you look at it  
microscopically - "is seen in the gliotic cortical scars and the subjacent white  
matter, in the old infarcts." Would you like me to continue?

20

Q. In terms of relating that to what it is that caused you to consider that that is indicative of the hypoxic brain injury?

A. Yes.

25

Q. What is it about that which causes you to express the view that it reflects extensive hypoxic brain damage?

A. After many sections of the brain were examined the major findings were areas of ischaemic necrosis or infarction with gliosis or scarring. The scarring is a consequence of damage to the brain irrespective of what the cause of that damage is, and there is a little bit of scarring in the old infarcts. There's a bit of simple atrophy or reduction in the size of cells in some part of the cerebellum and the brain stem, which might be from hypoxia, but then he says they could have resulted from this baby's epileptic seizures, and I accept that. It's also important to point out what's not there.

35

Q. Yes.

A. So he's looked for underlying congenital and metabolic abnormalities of the neurons by saying sentence 1, "I have found no convincing evidence of any neuronal storage disease," and there's a whole lot of them that I needn't go in to but he found no evidence for those, "or any leucodystrophy",  
40 L-E-U-C-O-D-Y-S-T-R-O-P-H-Y, "in these sections", or abnormalities of white matter. He's referred to the major changes which I've already read out. He's ruled out Canavan's disease, again I don't think I need to go into details, but he's excluded that and he's also then excluded a large - in the second  
45 paragraph excluded major infective processes, meningitis, toxoplasmosis, cytomegalovirus infection and herpes simplex encephalitis. His final part of the last sentence, "the distribution of the lesions is unusual for herpes simplex encephalitis", as I said, "and they certainly appear far more likely to be the result of the episode of cardiorespiratory arrest this baby suffered at about 5  
50 months of age". So in other words, all the changes he's dating from a period

when Patrick was five months old.

5 Q. The reference to cardiorespiratory arrest, that did not occur. Is that relevant in terms of otherwise him referencing the episode the baby suffered at five months of age?

A. No, I mean that may be incorrect, but from what I do know, Patrick suffered a sublethal apparent life threatening event.

10 Q. Yes. With that exposition, by reference to this report, is that why you state in your report, Exhibit 13-04, red page 55, "brain examination showed no features of an underlying metabolic encephalopathic or of any other abnormality of brain development where epilepsy may be a feature"?

A. That's right.

15 Q. That is, to be clear, based on what appears is the extent to which Dr Kan looked for signs of that and found none?

A. That's correct.

20 Q. Is it beyond your expertise to comment on whether the event on 18 October 1990 was a hypoxic ischaemic brain injury?

A. I don't think it's beyond my expertise but I'm basing my answer to that of, yes, I think it is - it was a hypoxic ischemic event, but I don't know the underlying cause for that.

25 Q. In that respect, to the extent that paediatric neurologists have considered - expressed their views, do you defer to them on that specific question of any neurological dimension?

A. I would defer to a paediatric neurologist with respect to clinical assessment and clinical judgment, yes.

30 Q. Is there something specific in the histology report that you rely on as hypoxic brain injury?

A. Well it's old hypoxic brain injury, so the consequences of it are the laminar necrosis, the gliosis and the infarction.

35 Q. In relation to your most recent report to the Inquiry, that is more detailed explication of your involvement in an inspection of slides in relation to Laura's heart, that report appears at Exhibit 13, tab 04A. As I read the chronology, if you turn over to red page 69-17, page 2 of that report, it was on 2 March 1999 that you cut the tissue for tissue blocks A to R? That emerges from paragraph 10?

A. Yes.

45 Q. So, what inspection of Laura's heart had you conducted before that point in time?

A. I had done a naked eye assessment of Laura's heart and taken sections, in other words, cut pieces of heart muscle and put them into formalin for tissue fixation and blocking.

50 Q. I want to be clear, is that different to what you describe at paragraph 10(a)

which was--

A. No, it's not - sorry. At the conclusion of the autopsy I took a number of samples of all the major organs, of course the heart, then on 2 March, as I've said, from the preserved heart sections I have then made blocks B and C.

5

Q. In terms of the point in time that you first identified the presence of myocarditis, was that - did you do that on your naked eye examination of the heart?

A. No. No.

10

Q. Did you do that when you inspected slides taken from the tissue blocks?

A. That's right. So, just for completeness, the blocks are taken, in other words tissue is taken from the autopsy as I've said, fixed in formalin, then it's cut and put into plastic blocks in preparation for slide manufacture or slide making. That was done in house at Glebe at the time, but as to when that process happened, I was entirely reliant on histology laboratory technicians for that and that's often many days to weeks after the autopsy that the slides are returned from that cut-up.

15

Q. Do you recall if Professor Duflou examined those original slides that you examined at that point of undertaking Laura's autopsy?

A. He didn't examine them, as far as I'm aware, at that time. At some future time he must have examined them but I don't know when and I don't know whether he examined those slides or had re-cuts made and examined other slides.

20

25

Q. Do you recall, focussing on that period in March 1999 when you had conducted the post-mortem of Laura Folbigg and, as described in this report, cut tissue blocks, whether you caused slides made at that time to be shown to any of your colleagues at Glebe?

30

A. I didn't show all of the slides to my colleagues but I certainly showed the heart slides to Professor Hilton.

Q. You have a clear recollection of showing Professor Hilton, do you accept the possibility that you may have also shown Professor Duflou?

35

A. I don't recall.

<EXAMINATION BY DR WOODS

40

Q. I'll be very brief, Doctor.

A. That's fine.

Q. You would accept, I take it, that very experienced and well-qualified professionals can sometimes disagree, in good faith, about matters of professional judgment?

45

A. Yes.

Q. Amongst your areas of expertise, in your evidence you've carefully distinguished your own areas of expertise from areas where you wouldn't venture. Do you agree that you're not an expert on mathematical probabilities

50

or statistics?

A. Correct.

5 Q. Finally, did you take part, sometime in the early 2000s, in a television program about the Folbigg case, expressing your opinions about certain aspects of the case?

A. Yes.

10 Q. Is it correct to say that you felt entitled to do so and that it was proper to do so in your capacity as a citizen and as a person who knew something about the case?

A. Yes.

15 <EXAMINATION BY MS HORVATH

Q. Dr Cala, you recall Ms Callan referred you to the histopathology report in relation to Patrick that was signed by a Dr Kan, K-A-N?

A. Yes.

20 Q. Do you know who Dr Kan was or is?

A. Yes.

Q. Who is Dr Kan?

25 A. First name Alex, I knew him slightly, personally. He was one of the Paediatric Pathologists at the then Royal Alexandra Hospital for Children at Camperdown, and I knew him through his involvement with paediatric pathology and sometimes autopsies, hospital autopsies and occasionally because he was a very experienced Paediatric Pathologist on occasions people would go to him for opinions. So, I know him through those channels.

30 NO EXAMINATION BY MR JORDAN, MS LOVE, MR HASTINGS AND DR WATERHOUSE

35 <EXAMINATION BY MS CALLAN

Q. One matter of clarification, I apologise your Honour, it's not strictly in reply. The tissue blocks that you cut as you've described in your letter to the Inquiry of 21 February 2023, were they all taken from the left ventricle?

A. Yes.

40 Q. Why?

45 A. Because that was the main part of the heart that was retained at the time of the autopsy and I did that because it's the most important part of the heart, functionally, and if there were any disease processes occurring in the heart, such as myocarditis, the left ventricle is the most likely site, given its size and dominance over the rest of the heart, so that if there are any diseases it's more likely that they'll be identified in those sections of the left ventricle.

50 Q. Is there a particular relevance from the perspective of myocarditis with the conduction system being in the left ventricle?

A. The conduction system is - parts of it are in the left ventricle but the start of the conduction system is actually in the right atrium, and that wasn't sampled.

5 CALLAN: Your Honour, I should have indicated for the record, the article from Brown that the witness referenced in his evidence-in-chief, which is titled "A Retrospective Study of the Investigation of Homicidal Childhood Asphyxial Deaths," is at Exhibit 15, tab 134.

10 JUDICIAL OFFICER: Does anyone else wish to ask anything arising out of those questions?

<THE WITNESS WITHDREW

15 I call Patrick Sheehan.

JUDICIAL OFFICER: Just before you do, does anyone want me to give reasons for rejecting those portions of the evidence of Dr Garstang?

20 WOODS: Not on my part, your Honour.

<PATRICK SHEEHAN, AFFIRMED(10.03AM)

<EXAMINATION BY MS CALLAN

5 Q. Could you tell the Court your full name?

A. My full name is Patrick Sheehan.

Q. Is it the case, Mr Sheehan, that you're a Registered Psychologist having first been registered in 1996?

10 A. Yes.

Q. Your practice has predominantly been in the field of forensic psychology?

A. That's right.

15 Q. You're currently the Managing Director of Big Picture Psychology. Prior to that you had some 15 years experience in the custodial and community corrections setting working for Corrective Services New South Wales?

A. That's right.

20 Q. You also had some five years experience as a Senior Specialist Psychologist within the high risk offender review group?

A. Yes.

25 Q. It's the case, Mr Sheehan, that you provided a report at the request of the Inquiry dated 6 January 2023?

A. That's right.

CALLAN: Your Honour, for the record, that's at Exhibit 21, tab 2.

30 Q. I'll just get a copy of that report made available to you, Mr Sheehan. Is it correct that that report contains your opinion based on the material with which you have been briefed and your training, study, and experience as a Forensic Psychologist?

A. That's right.

35

Q. The opinion expressed in your report, does that reflect your current professional opinion in respect of the matters you were asked to address?

A. Yes.

40 Q. In preparing your report, it's the case, isn't it, that you spoke with Dr Yumna Dhansay and Dr Kerri Eagle?

A. That's right.

45 Q. You did so having been informed by those assisting the Inquiry that those two psychiatrists had also been engaged to address the series of questions that you had been equally asked to address?

A. Yes.

50 Q. You set out the extent of that consultation in your report at page 10, red page 41, that is a videoconference with those two psychiatrists on 3 January,

during which you say, "we shared our opinions and literature." Since providing the Inquiry with your report, have you read the reports of Dr Eagle and Dr Dhansay?

A. I have.

5

Q. The material with which you were brief included a number of reports from psychologists and psychiatrists about Ms Folbigg, many of whom had interviewed her over the years. To what extent did the content of those reports affect the content of your report? I can break it down. There are aspects of those reports which describe, for instance, accounts that Ms Folbigg may have given about events in her life or other primary documents to which those experts had access, and, if I can describe it, the other category would be the views or opinions expressed by the authors of those reports.

10

A. Certainly. It's very difficult for me to pick apart exactly how it influenced me, but I certainly found it invaluable to read all those reports, both for the information related to interviews with Ms Folbigg that I haven't had the advantage to do, and also to understand how they arrived at their views and opinions.

15

Q. Did they inform or affect the opinions that you ultimately expressed, for instance, in relation to diagnoses of Ms Folbigg?

20

A. Yes, they did. I mean, when I read through the material I formed my own views and then I've looked to the other experts to see how their views either accorded or differed from my own, so that I can then question my own process. It was through that process that I found those helpful.

25

Q. That process you've described as forming your own view and then testing, for want of a better word, that against the views that have been expressed by others, does that also apply to the videoconference that you had with Dr Eagle and Dr Dhansay shortly before you finalised your report?

30

A. Yes.

Q. You mentioned that you were unable to or you didn't personally interview Ms Folbigg. You addressed the implications of that in your report at page 40, red page 71. You indicate that without personally interviewing Ms Folbigg you're unable to form a current diagnosis?

35

A. Yes.

Q. But you say, "this would not seem to be a significant disadvantage for the purposes of the current proceedings", and I interpolate in terms of what you were asked to address, which are not focused on her contemporaneous mental state but her functioning between 1989 and - it says, "1990", I think it should be 1999.

40

A. I found that typo last night. I find my typos the night before I'm cross-examined.

45

Q. So that should read "1999"?

A. That's right.

Q. You say, "Even with interview, there are limitations as to the validity of such

50

retrospective diagnoses." What are the limitations if you'd interviewed Ms Folbigg now for the purposes of undertaking a retrospective diagnosis as to her functioning between 1989 and 1999?

5 A. Look, it's always my preference to interview someone when I'm writing a report concerning them. I suppose I would have asked her questions harkening back to that period, as the other experts have, who have had the benefit of clinical interview. So that would have been helpful, but there is such an amount of literature over such a lot of other previous reports that I didn't consider it a deal breaker in terms of being able to write a report.

10

Q. What is it about the task of undertaking a retrospective diagnosis which means the lack of interview now did not, you consider, create an impediment to expressing a view?

A. Can I have that question one more time, please?

15

Q. You've been asked to provide a retrospective diagnosis, that is as to the state of Ms Folbigg's functioning between 1989 and 1999. You say even with interview there are limitations as to the validity of such retrospective diagnosis?

A. Yes.

20

Q. You express you consider you are able to answer the questions raised with you without interview. What are the limitations as to the validity of a retrospective diagnosis?

A. Regardless of whether you interview a person or otherwise?

25

Q. Yes.

A. It's the passage of time. It's relying on memory. The further you get from that time the less reliable it can become over time.

30

JUDICIAL OFFICER

Q. You'd be better off having an interview in those circumstances or rather reading a transcripts of an interview conducted by some other professional?

35

A. I always prefer to have an interview, but, as I said, with the amount of material I didn't feel overly disadvantaged with that material available because there were so many interviews that occurred over, longitudinally, and also the diary entries which were also helpful to understand the frame of mind.

CALLAN

40

Q. Can I move to the diaries, as you've just mentioned? Is it an assumption in your approach in your report that Ms Folbigg's diary entries record or otherwise reflect her thought processes?

A. Impressionistically so.

45

Q. Yes.

A. In that sense, thoughts and emotions.

50

Q. That is, do you assume that they contained an accurate reflection of her thoughts and impressions, whether or not they accurately reflected reality?



A. It's a subjective impression of thoughts that were occurring to her at that time.

5 Q. Ms Folbigg has said that she used her diaries to record feelings that were negative. For example, in one of the letters, with which you were briefed, to her friend - for the record this is at Exhibit 13, tab 07, red page 222 - she said that they, the diaries, "were used to dump every negative emotion, feeling or thought I've ever had. I didn't use them like other people to record all the joyous happenings," and when Ms Folbigg was examined in the 2019 Inquiry 10 she was asked if, "the purpose of your diaries was for you to vent your frustrations?" and she agreed with that. For the record that's at Exhibit 4, red page 799. If you assume that is true, and that is the diary entries may not be reflective of the full spectrum of Ms Folbigg's feelings and emotions, does that affect how you used the diaries in formulating any diagnosis of her?

15 A. Yes, that's part of it. I also understand the diaries are incomplete.

Q. Yes.

A. So even with the fuller version, the 127 pages of transcribed diaries that I 20 was provided with, I understand that is not the complete collection of her diaries in totality, so yes, I took that into account.

Q. As a psychologist, can I just confirm, do you consider it within your area of expertise to express an opinion as to whether Ms Folbigg had or did not have a mental health condition in that period of time that you were asked to focus 25 upon, 1989 to 1999?

A. I think it's within my expertise to make a diagnostic formulation insofar as the evidence allows me to do so.

30 Q. I'll take you in a moment to the views that you've expressed about that in relation to Ms Folbigg, but again, just dealing with what you consider to be within the area of your expertise as a psychologist, do you consider it's within your area to express an opinion as to the potential effect of a mental health condition, on the content of Ms Folbigg's diaries?

35 A. Purely on the - so do I understand your question correctly, the totality of her mental health issues, am I in a position to then comment upon how that might affect what's written in the diaries?

Q. Yes?

40 A. Yes.

Q. The other side to that coin, maybe, do you consider it's within your area of expertise to express an opinion about whether Ms Folbigg's diary entries are consistent with or not the features of a mental health condition?

45 A. One more time, Ms Callan.

Q. Do you consider it within your area of expertise to express an opinion on whether Ms Folbigg's diary entries are consistent with or not the features of a mental health condition?

50 A. Yes.

Q. In your report at page 43 - your Honour, it's red page 74 - do you see in answer to question (ii) that you were asked, and to go back to the chapeau:

5 "Is there any aspect of Ms Folbigg's mental health which illuminates the manner in which specific content in Ms Folbigg's diaries... should be read or interpreted including but not limited to whether these entries indicate admissions of guilt as to harming her children"?

10 In answer to that you say, "I would propose that the statements of personal responsibility in relation to the death of her children can be viewed through the lens of grief and trauma". When you say viewed, is that another word for interpreted?

A. Yes.

15

Q. Is your answer to that question based on what you regard as consistency between the content of Ms Folbigg's diary entries and the mental health conditions and other mental health features that you diagnose in Ms Folbigg?

A. Yes.

20

Q. Do you accept that ultimately whether any of Ms Folbigg's diary entries are in fact admissions by her of harming her children, that does not fall within your area of expertise?

A. Whether they are admissions?

25

Q. Yes. Ultimately whether any of Ms Folbigg's diary entries are in fact admissions by her of harming her children, that does not fall within your area of expertise and is a matter for Mr Bathurst who is conducting this Inquiry?

A. Of course, I find it difficult to separate the two, that - I mean I think I've said that that is one interpretation, that I don't think it's the best fit in terms of how to interpret those - the diary entries.

30

JUDICIAL OFFICER

35 Q. You say there's basically two interpretations I think, the first one being the one that on one view underpins the cross-examination for example of Ms Folbigg in the Inquiry conducted by Mr Blanch, and the alternative view which you've put in your report, is that fair?

A. Ultimately yes.

40

CALLAN

45 Q. Dealing with page 74, I take it that your answer to question (ii) on that page was not limited to merely a consideration of the diaries but the other material which you read which you've referred to at paragraph 6 of your report, page 34 and following?

A. Sorry, can you repeat that please your Honour?

50 Q. Yes. In reaching a conclusion in subparagraph (ii), you not only took into account the contents of the diaries but the other material with which you had

been supplied?

A. Yes.

5 Q. Now, Mr Sheehan, the opinions expressed in your report occur in the context where you're aware that Ms Folbigg has been convicted for the murder of three of her children and manslaughter of one?

A. Yes.

10 Q. Are the opinions expressed in your report made with any assumption as to Ms Folbigg's innocence or guilt?

A. No, I - I made it a position and I think it's stated at the front end of the report that I've had to suspend any - because usually when I would write a report it's after a conviction and we're not used to questioning that conviction when we would do an assessment to make a formulation of the person's offending as some of the experts have done early in the - at the pre-sentence stage.

15 Q. Yes.

A. I think Dr Westmore had written a report from that perspective. So usually our involvement is at that point, but for the purposes of this assessment and the questions I was asked, it seemed to me that I had to suspend any view of ultimately whether she was guilty or not guilty of that offence in order to view those diary entries with fresh eyes.

20 Q. You include an executive summary in your report at page 10, red page 41?

A. Yes.

25 Q. The second paragraph which commences with Ms Folbigg's personal history, which is you say well-documented, and I'll come to it in some detail in a moment, but you say:

30 "pointing towards probable early trauma and certain inconsistency in care, associated with serious early childhood psychopathology and more enduring problems with insecure/ambivalent/avoidant attachment, complex trauma symptoms, negative identity and mood dysregulation."

35 You go on to say:

40 "Ms Folbigg's psychopathology is two-edged, operating both as a possible risk factor for engaging in harm towards her children (as has been the main focus in the judgments against her), but also an alternative means of explaining her presentation and the diary entries that have been part of the case against her."

45 What is it about Ms Folbigg's psychopathology that operates as a possible risk factor for engaging in harm towards her children?

A. So, in saying that I'm commenting on the material that I was given to read and comment on, and both in the cross-examinations and also in some of the reports that were written. So, anyone with psychopathology, with trauma psychopathology, attachment problems, and all of the psychopathology that is

mentioned throughout all of that file material, are more likely to engage in all manner of disordered behaviours and that can include aggression.

Q. Yes, and violence?

5 A. Yes.

Q. Is it in that respect that you recognise that gives rise to a possible risk factor of engaging in harm towards the children?

10 A. It's a massive stretch to draw that link, particularly if you were to draw it strongly and say, yes, ergo she was more likely to have committed those offences. I've never seen such a link made in assessments that I've done in the past, because it is such a leap. It's not like this is a common assault matter, these are serious matters occurring over a decade. So, no, I wouldn't - I would - I just wanted to contextualise because in some of the reports it didn't seem that that was made clear and I wanted it to be made clear that I understood this in drawing my conclusions. I took this into account and still drew the conclusions that I have.

Q. You, whilst in this transparent way, recognised as you say the two-edged dimension to her psychopathology?

20 A. Yep.

Q. Which you recognise you took into account. You go on to observe that her psychopathology provides an alternative means of explaining her presentation and the diary entries that have been part of the case against her?

25 A. Yes.

Q. What did you mean by presentation?

30 A. One of the - in all of the cross-examinations and some of the statements that were put in her - people have commented on a sense of detachment and had taken that to mean that she was indifferent towards her children, and that was put forward as an indication of her culpability.

Q. Can I take you to, sorry, jumping around a bit but, page 40 of your report, red page 71? Sorry, I've dealt with that. Back to page 17, red page 48, paragraph 22, in that first sentence of paragraph 22 you note there's been "general consensus amongst assessing experts that Ms Folbigg has no history of psychotic mental illness"?

35 A. Yes.

Q. Subsequently in your report - for the record, page 41, red page 72 - you state that, "the evidence is sufficient to allow us to exclude psychotic illness". Does that pertain to all of the years up to date in relation to Ms Folbigg and what you know of her from the briefing material?

40 A. Yes.

Q. You go on to state at paragraph 23, red page 48, "The evidence does point towards enduring problems with negative affectivity and negativistic cognition". You note that's reflected in Ms Folbigg's diaries and her discord on her life during various interviews, and they are interviews that are recounted in

50

the reports of the other experts to which we've referred?

A. Yes.

Q. Can you explain what negative affectivity is?

5 A. Low mood, negative mood.

Q. What about negativistic cognition?

10 A. Sorry about my use of wording. So negative thought, a tendency towards interpreting things negatively, seeing - perceiving hostility around her, the perception of threat, these are the sort of things, expecting things to go badly for her.

Q. About the middle of the page in that paragraph you observe that, "Her disaffection has likely been influenced by the loss of her four children regardless of whether it is believed she played an active role in their deaths". You then say, "There is a danger of inappropriately pathologising her grief, the depth of which is difficult to comprehend". What do you mean by commenting on the danger of inappropriately pathologising her grief?

15 A. It was one of the difficulties in arriving at a clear diagnosis, a diagnostic formulation. I much prefer it when the diagnostic formulation is really clear, it's watertight, and we can be confident about it, but whenever I was thinking diagnostically about the features that she's presented over the years, I was always brought back to the successive losses, and how that might influence someone, and the scale of that loss and what is normal and what is considered  
20 normal for grieving a loss of that magnitude - repeated loss of that magnitude and, certainly, the DSM is - draws - specifically draws caution to pathologising people who feel crappy after they've had a really terrible loss, that this is a  
25 normative reaction, and it's a bit weird if someone doesn't have that reaction, rather than thinking that, well, that means it's a clinical depression, or it's a  
30 prolonged grief disorder or something like that.

Q. In that respect, in terms of approaching this from a diagnostic framework, so the task involved considering whether there are deviations from what would be regarded as normal in someone's behaviour or thought processes, and  
35 here the difficulty is how do you assess what would be regarded as normal in the highly uncommon circumstances of a mother who's experienced the death of four babies?

A. Yeah, something along those lines.

Q. That being the case, do you see at the end of paragraph 23, you say "There is no clear diagnosis of prolonged grief disorder in Ms Folbigg's case"?

40 A. Yes.

Q. Prolonged grief disorder is a topic that was addressed in both Dr Eagle and  
45 Dr Dhansay's reports, and including, you might recall, Dr Dhansay set out the diagnostic criteria. Did you have regard to that diagnostic criteria when you observe there was no clear diagnosis of the disorder in Ms Folbigg's case?

50 A. Yes, I read through that - the diagnostic criteria and, in fact, this is a new - this diagnosis has only just made its way into the DSM in the last few months. It's - there was a recent review of the DSM-5-TR and it's - before that

5 there was no prolonged grief disorder in it, but it is one of the very few changes to the diagnosis, so that's made its way in now, and I did read through that material, but I kept asking myself what is normal for - she's - for that sort of grief. I mean, she's definitely impacted by the grief, and I do not believe that a diagnosis is necessary, and I've made this point several times through the report. You don't need to get hung up on a diagnosis to acknowledge that someone can be affected by these in enduring ways.

10 Q. Do you consider that such an effect, if I could describe it as grief, that it has other aspects that I'll come to, may be experienced whether the children died of natural causes or if Ms Folbigg played an active role in their deaths?

15 A. Yes, I do think that, and I think that's sometimes misunderstood. I've seen cases where someone clearly had PTSD, and they met all the full criteria for PTSD, although they were the assailant in that matter, and - but, nonetheless, they had all of the requisite symptoms, and so that can still occur, even if the person is guilty of that offence.

20 Q. At the bottom of page, still on page 17, red page 48, paragraph 24, you refer to some diagnoses which have been offered by Dr Giuffrida and Dr Diamond in the nature of chronic dysthymia and persistent depressive disorder--

A. Yes.

25 Q. --spilling into major depressive disorder, you go on to observe that that would appear justifiable on the available material, but you make the point that I've already asked you about, which is the element of speculation in applying these diagnoses retrospectively to the decade when the offences occurred.

A. Yes.

30 Q. You go on to say, "It is also important to note that prior to her arrest for the current matters, Ms Folbigg's adult functioning in the community could be described as adequate, without obvious impairment". Are the things which then appear in your report, "no substance use disorder, no criminality, no known violence" and having "stable residence", being in a "long-term relationship, maintaining employment, and having a social network", are they

35 the criteria by which you describe her adult functioning as adequate?

40 A. Yes. So, diagnostically, generally the criteria will say significant impairment and distress, so it's - and this is what separates normal - you know, difficult emotions from a disorder is when it generates impairment in functioning, and it's usually measured across those domains in functioning. That's how we might measure the severity - use a severity specifier.

45 Q. Notwithstanding her adult functioning being capable of being described as adequate, by reference to those domains, you address in some detail what, for instance, is described - page 16, bottom of paragraph 21 of Ms Folbigg's, you say - red page 47, your Honour - "habit of coping through avoidance and dissociation"?

A. Yes.

50 Q. In terms of reconciling that "habit of coping through avoidance and

dissociation” with her adequate adult functioning, you regard those coping mechanisms as enabling, to an extent, her to function adequately.

5 A. Yes. So it's - when people introduce a means of functioning, it often does assist them to function. That's why that becomes maintained, but it's often at the cost - at a cost of something else, and I think in her case, it was at the cost of being able to process things that - difficult experiences, and have to put them away.

10 Q. I'll come back to that in a moment.

A. Sure.

15 Q. In your conclusions as expressed at page 41 of your report, red page 72, in answer to the question whether Ms Folbigg was at any time she wrote a particular diary or journal entry suffering from a recognised, diagnosable psychiatric illness, you make the points that we've already touched upon about the difficulty making a retrospective diagnosis, and that, as I read it, “all diagnoses are best conceived of as a working hypothesis”. You say, “the evidence is sufficient to allow us to exclude psychotic illness”. You go on to say, though, “There is in my view, evidence of low mood and negative cognition, varying in intensity... throughout the diary/journal entries, and subsequently”, and you say on that basis, as I read it, “It is likely that a diagnosis of persistent depressive disorder is available”, and you go on to observe by way of summary as to your view, that:

25 “it is likely some form of trauma symptomatology has been present during the period of journaling (mostly evident through avoidance and emotional shutdown), however this has not presented in a way that is consistent with a DSM-5 diagnosis of post traumatic stress disorder.”

30 Insofar as you've said, “It is likely that a diagnosis of persistent depressive disorder is available”, is it your view that she had that disorder during the period 1989 to 1999?

35 A. I think that - I think it - I think that it's very likely that we could say that she had a mood disorder during that period, and there's been some differences of opinions as to whether it was - in experts whether that was a persistent depressive disorder, a major depressive disorder or both, and, I think, well, you know, that neatly sums up the three expert reports that have been put forward for this hearing, but I certainly think the evidence suggests strongly that there was some sort of mood disorder.

40 Q. Can I take you back to paragraph 27 of your report, page 18, red page 49. You say, in relation to the diagnosis of complex PTSD, “I am often wary of assuming the presence of trauma is a means of explaining subsequent psychopathology”. What do you mean by that?

45 A. Okay. What I mean by that is, and I've seen this happen in some rehabilitation settings, is the person comes in for treatment, they're - they have certain pathological behaviours or coping techniques and - but they have no memory of trauma or a very vague possibility that there may have been trauma, and it is then assumed that they had trauma to explain their

50

present - their current presentation. Now, I've got a problem with that, and I wrestled with the material here. Ultimately, I've landed to say that I think it's - you know, on balance it seems very likely that there was early trauma.

5 Q. You describe why you consider it's to be, I think you use the words, "heavily inferred" from the available reports and the material with which you were briefed that Ms Folbigg sustained early childhood trauma?

10 A. Yes. There's one particular reference, which, from memory, says, "As you know, she was misused by her father", or something along those lines. It's not made specific.

Q. There is also a circumstance of Ms Folbigg's father having murdered her mother.

15 A. Yes.

Q. And her entering care, I think at age 18 months.

A. And then bouncing around between different carers and having her name changed several times and those experiences I think could also produce the same issues that she's presented later.

20

Q. Indeed you express your view, if we continue at paragraph 27 of your report, at the top of page 19, red page 50, observing, "on balance my view is that it is most likely that Ms Folbigg did experience early childhood trauma that has impacted her development in enduring and fundamental ways." You say that's not neatly captured in the standard PTSD diagnostic framework. Is it recognised within your field that early childhood trauma is likely to impact development in enduring and fundamental ways?

25

A. Yes.

30 Q. You then describe a pattern of "distancing, emotional numbing, detachment and dissociation". Is that pattern reflective in your view of early childhood trauma?

A. It is.

35 Q. Are they recognised symptoms of early childhood trauma?

A. Are they recognised symptoms?

Q. Are they recognised symptoms of early childhood trauma?

40 A. Yes, they are, and there are observations of her behaviour when she was a little girl that are also indicative of that.

Q. What, from the field of psychology, is considered to be the relationship - if I can describe it that way - between early childhood trauma and patterns of distancing, emotional numbing, detachment and disassociation?

45

A. It's a mechanism by which human beings can cope with extreme hardship by shutting down, which allows them to get through that moment, but that can then generate problems later on.

Q. Again drawing on your--

50

A. And it can become a habit. Our lifelong habits are often formed in



5 childhood, how we view ourselves, how we view our position in the world, whether we think the world is a safe place, whether we think it is a hostile place; this is the formation of personality as well. It happens in childhood and then we carry it through into adulthood, our assumptions about ourselves, others and the world.

10 Q. As I read your report, you say, still on paragraph 27, that, aspects of Ms Folbigg's diaries and her presentation have "drawn criticism of emotional callousness (such as her avoidance of normal grief expression, absence of musings pertaining to loss)". Do you regard that as explicable by reference to patterns of distancing, emotional numbing, detachment and disassociation?  
A. Yes.

15 Q. You go on to emphasise at the end of paragraph 27, something that you've already raised in the witness box today, that is, in your view the importance of - that you've not regarded as important that a diagnostic label be applied in order to recognise the role of Ms Folbigg's early experiences in contributing to methods of coping that have been identified as salient here?  
A. Yes.

20 Q. Can I take you to the report of Dr Westmore of 16 June 2003? It's Exhibit 2-BB. I'll put it up on the screen.

25 JUDICIAL OFFICER: This was post conviction I think.

CALLAN: Yes, pre-sentence, post conviction.

30 Q. We're at page 7591, fourth paragraph, commencing with the words, "During my contacts with her"?  
A. Yes.

35 Q. Dr Westmore refers to Ms Folbigg described as a very controlled woman. He suggests "probably over controlled in view of the serious circumstances in which I was assessing her. She rarely showed emotional distress or, indeed, any emotional response, this despite the very traumatic nature of the charges against her and later, the outcome of the court case." Does that accord with your observation in Ms Folbigg's patterns of distancing, emotional numbing, detachment and disassociation?  
A. It does.

40 Q. Can I take you then back to your report at paragraph 32, page 20, red page 51?  
A. Yes.

45 Q. Where you address the topic of a personality disorder?  
A. Yes.

50 Q. You go through what you describe as a number of vulnerabilities and poor self concept; do you see over at page 21, red page 52?  
A. Yes.

Q. And "troubled interpersonal attachment" figuring heavily throughout the material, and you say, "insecure attachment is recognised as a risk factor for poor adaptation to loss"?

A. Yes.

5

Q. But you go on to say, "although these vulnerabilities are germane to personality disorder as a broader concept, they are not a clean fit with the personality disorders specified in the nomenclature." What do you mean in that respect?

10 A. She doesn't meet any of the specific personality disorders. She isn't cluster A, B or C. It's not like any of those would fit her. You're putting a square peg in a round hole to diagnose her with those disorders. However, there is clearly some personality vulnerabilities which have been noted, I think, by pretty much everyone who had assessed her, but they just don't meet that criteria of  
15 personality disorder, but if I was treating - and, it's certainly something I'd recognise and take into account.

Q. With that exercise having been laid out in your report in terms of diagnostic formulation that I've gone through, can I turn to paragraph 72 where you refer to those chapters from the Duncan and Byard text on SIDS and early  
20 childhood death?

A. Yes.

Q. You refer to that, that is certain comments made in that text, as possibly contextualising Ms Folbigg's statements, and you go on to note that, "erroneous beliefs of responsibility are also observed more broadly in trauma survivors. This is often embedded in a coping mechanism for anxiety and to sustain the idea of a just world." Then you say, "That is, it can be subjectively preferable to feel responsible for bad things happening, as opposed to accept  
25 the often random nature of tragedy or loss, with the implication being that the person feels they have some control over future events." Is that response to grief observed by you in clinical practice?

30 A. Yes. As a rookie error you'll find that inexperienced psychologists will look to dismantle someone's self-blame straightaway with trauma survivors, and then be surprised when that person then collapses when they have done that, because that individual was using that to cope, and I have seen that in clinical  
35 practice. It's also mentioned, I think, in another one of the more recent expert reports that was submitted after I wrote this report, Dr--

40 Q. Garstang?

A. Yes. Thank you. That it's actually - we all do it. We actually all uphold this hypothesis and whenever we hear someone say, "they got what they deserved," we are talking about the just world hypothesis that we all live  
45 thinking that good things will happen to us if we are good and bad things will happen to bad people. So it's tied into a broader way of coping that we have as people, but in trauma it takes on a different meaning, it takes on greater meaning and helps the person to think rather than seeing the world in the truthful way, which is that random and terrible things can happen at any given time and the things that we love could be taken away from us at short notice,  
50 without notice, which we'd all be riddled with anxiety if we went about our daily

lives believing that. It's more preferable for them to think, "well, it was my fault and so, therefore, it's under my control and I can control the future so I don't feel so anxious that I'm going to lose everything."

5 Q. Is it part of the task of a clinical psychologist to unpack whether there is a proper basis for that feeling of self-blame as a reaction to a traumatic event?

A. Can you explain that question to me?

10 Q. Is it part of the task of a clinical psychologist to unpack whether it is correct or accurate for a person to respond with those thoughts of self-blame in response to a trauma event?

JUDICIAL OFFICER: I must say I don't quite understand the question.

15 CALLAN: I'll approach it another way.

Q. You've said that a rookie error is dismantling the self-blame that may feature.

20 A. It's to rush in and dismantle that without doing any of the other work first.

Q. You've gone on to explain how common self-blame is in response to trauma. How does the field of psychology accommodate instances where that self-blame has a proper basis and instances where it does not?

25 A. I understand what you mean. I find it difficult to answer that question, but usually we would want to fully understand how it all works before we would go in to make changes; that's all. If anyone has seen Good Will Hunting, that's got a lot to blame for why people think that's what goes on in therapy, is you say, "It's not your fault. It's not your fault," and then the person all of a sudden - all their psychopathology falls away, and that's a classic example.

30 Q. Can I turn then to your consideration of Ms Folbigg's diaries, which you commence addressing at paragraph 57, red page 60? It's page 29 of your report.

35 CALLAN: Your Honour, I've just been reminded of the time, having regard to the 8.45 start. Would it be convenient to take morning tea now?

JUDICIAL OFFICER: If this is a convenient time, yes. I was proposing to take it at 11.15 but this is fine by me.

40 CALLAN: Perhaps if we take it now before I go into this topic.

SHORT ADJOURNMENT

45 JUDICIAL OFFICER: Yes, Ms Callan.

CALLAN

50 Q. Mr Sheehan, before we adjourned for morning tea I'd taken you to the point of your report where you address the relevance of Ms Folbigg's diary

5 entries. That commences at paragraph 57 of your report, page 29, red page 60. At paragraph 58 you give a general description of what emerges on your reading of the corpus of diaries with which you were briefed, and over at the end of that paragraph, so it's red page 61, you say, "Having read the diaries, it is clear that the entries thought to be admissions appear more significant when removed and listed, as opposed to being read within the full 175 pages of transcribed entries." Why do you say that they are less significant - if I can describe it that way - in the broader context of the entirety of the diary entries?

10 A. They're more impactful I think when they're taken out of context and just listed, but I found that when I read the full 175 pages of diary entries that they didn't take on that significance because they were all more easily interpretable in other ways than when they're just pulled out.

15 JUDICIAL OFFICER

Q. I understand that with a lot of them, but there was one that I remember - and I'm not quoting exactly but, "Sarah left," or something like that, "with a little bit of help." Does that fit in that type of analysis?

20 A. I think so. I think I made a point about the punctuation in that too.

Q. I probably didn't pick it up.

A. Because it bleeds into the next sentence too, "with a bit of help I won't ever do that again," or something.

25

Q. Yes.

A. So that added some ambiguity to that for me, but I still think that still could be understood - that, "with a bit of help" could be interpreted as ominous, meant to suggest that she'd helped them to pass on, but it could also be referring to these other interpretations or beliefs that she has about how that happened or how they came to leave her because of her own--

30

Q. Is there any significance these were written late at night or in the early hours of the morning?

35

A. Yes, I did twig to that actually, is, when I saw how many, I've made that note in the report too, that a lot of these were made in the middle of the night, being unable to sleep, where things do take - as psychologists we say to people, "just wait until the morning and things will seem not as dark or bleak than they do in the middle of the night." I really think that's something that everyone can relate to.

40

CALLAN

Q. You go on to state at paragraph 59, at the end of that sentence, having commented, as you do on the psychological report of Dr Garbutt, Ms Garbutt, that, "the diary entries take a different complexion in the absence or presence of medical factors that could explain the children's deaths." What do you mean by that?

45

A. In the analysis put forward - and from memory in Dr Garbutt's report - she's a Doctor now - and that's in the first part of the report, is a breakdown of logic

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as to why she's assumed that in the absence of other evidence it's most likely that there's been homicide, and then bases all of her other interpretations through that prism. I think that's what I mean. At that point there were absolutely no other indications that there could be any other reasons as to why those children might have died and there was some sort of - was it Meadow's Law or something - I think she'd mentioned something about - she quoted someone about the logic of if multiple SIDS deaths - the more there were the more likely it was that there was foul play, something along those lines. I think that is important because the way you interpret the diary entries, you have to be very careful in how you interpret them, and it struck me, as an aside, just how I came to think of these diary entries and why I've presented that information the way I have. It reminds me a little of projective tests that you have in psychiatry and psychology. They've been around for many, many years, where the most well known example is the Rorschach and there's the Thematic Apperception Test, that you present someone with vague stimulus and they'll often then interpret that story - it will tell you what's on their mind.

#### JUDICIAL OFFICER

20 Q. What assumptions, if any, did you make as to the children dying of natural causes?

A. I'm sorry, your Honour?

25 Q. What assumptions, if any, did you make as to the potential alternative causes of death?

A. I kept right out of it. Whenever I was tempted to think down those lines or understand it, I thought, "what the hell do I know about genetics?"

30 Q. But does that put you in basically the same position as Dr Garbutt?

A. No, I don't think so because I have not bought into the biological side of it, because I knew that if I did I couldn't do a good job of it because I'm not an expert in that area.

35 Q. As a matter of logic, if there were clear identified causes of death, these diary entries would never be interpreted as admissions. You don't need to be a scholar just to know that. On the other hand, if you go to the other extreme, if there is no identifiable possible natural cause - making that assumption - then it's perhaps more difficult to reach the conclusions which you've in fact reached. Is that fair or not?

40 A. I think more difficult but I think I would have drawn the same conclusion as a primary hypothesis. I imagine if I was giving evidence in a Coroners Court or something like that, my view is that I would have arrived at the hypothesis that I have because it's the neatest fit.

45 CALLAN

Q. On that, just to be clear about how you've approached the exercise, you refer at paragraph 70 of your report, page 35, red page 66, to a portion of the report of Dr Betts?

50 A. Yes.

Q. Which includes, "especially in light of her denials in police interviews of any homicidal admissions or intent in her diary entries." Just focusing on the denials in police interviews of any homicidal admissions, what weight, if at all, do you put on Ms Folbigg's denials?

5 A. As a Forensic Psychologist we don't put a lot of weight on to denials because a significant proportion of the offender population who we see will deny their offences. The weight I give it - and it's not much weight - is just about consistency over time. It would certainly muddy the waters if there had  
10 been an admission at any stage, but in my experience of longitudinal involvement with long-term prisoners, who are convicted of serious offences, there is a plasticity in their account of their offences and it is not necessarily linear either. One might imagine that it would be a pathway from denial to acceptance. Sometimes that happens, but in other times it waxes and wanes, they'll make an admission and then they'll retract it. There is a lot of secondary  
15 gain in custody for admitting your offences. If jail is your universe, as it is for long-term prisoners, that can be a real incentive for people to acknowledge their offences because they're more likely to then get a reduction in classification, that they're more likely to get extra - to go to a nicer jail, and there are, you know, some jails are nicer than others. There are benefits for  
20 admitting your offences. There is constantly having to go in front of the Serious Offenders Review Council as a long-term offender and having to - they'll say, "you're still in denial. Have you acknowledged your offence? Have you addressed your offending behaviour?" which are then barriers to progression through custody. So I didn't give it much weight, but I  
25 acknowledge it.

Q. What relevance could it have, does it have, to the approach you've taken to consideration of Ms Folbigg's diaries?

30 A. The fact that she's--

Q. Denied?

A. --denied.

35 Q. You say you don't give it much weight, but it's acknowledged. How, if at all, does that play a part in your approach to answering the questions you had about her diaries?

A. If there had been any periods of acknowledging the offences I would want to know more about that and I'd certainly be wanting to interview her about that to understand those admissions. I guess that's my answer.

40

Q. Can I take you to paragraph 75? Sorry, before going there, at paragraph 71 you referred to the report of Professor Pennebaker, who used a computerised analysis.

45 JUDICIAL OFFICER: Computerised text analysis, it's called.

CALLAN

50 Q. Text analysis of the diaries; is that, in Australia, a recognised method of--

JUDICIAL OFFICER: Psychological evaluation.

CALLAN

5 Q. --approaching psychological evaluation?

A. I don't know. I'm not that familiar with it. I have heard of this before, but I've generally heard it in other contexts rather than sort of forensic psychology context. Certainly I think in research context it's used - it's quite common and in sociology and other pursuits, but I didn't fully understand it. I thought it best  
10 to declare that I didn't fully understand the methods by which those conclusions were found. You know, if I'd spent more time on it I probably could have understood it, but there was a lot to get through and I didn't think that much turned on it.

15 Q. Before getting to the view you express at paragraph 75, there are just two reports that precede you, well precede you, that I wanted to raise. One is the report of Dr Skinner of 22 January 2003, which formed part of your briefing material. That was a report which was drawn having read a number of documents supplied to Ms Skinner, but in the absence of an interview with  
20 Ms Folbigg. Do you recall reading that report as part of the material?

A. I'll admit to you I don't.

Q. I'll have it turned up please. It's Exhibit 2-BC. Do you see there it's a report of 22 January 2003, so it's before Ms Folbigg was convicted, and there  
25 is a list of the documents that have been provided to Dr Skinner by the prosecution service including the diaries of Ms Folbigg?

A. Mm-hmm.

30 Q. Letters she's written and certain statements and the ERISP, that is the police interview with Ms Folbigg that was conducted in July of 1999. By reference to the then pending charges and the various other documents that were furnished to Dr Skinner, she goes over - it's red page 7605, page 13 of the report - to say, under summary and opinion, second paragraph:

35 "I have examined the documents provided, as set out above. I am not able to find any evidence to suggest that Mrs Folbigg might have been suffering from a mental illness or mental disorder. I am not able to find any evidence to suggest that she was suffering from a significant degree of depression."  
40

So if you assume that that is an opinion expressed by reference to broadly the decade that you've also been asked to consider, 1989 to 1999, you have expressed a different view as to the likelihood of Ms Folbigg suffering a mental illness during that period of time?

45 A. Mm.

Q. What is your response in circumstances where Dr Skinner--

A. Sure.

50 Q. --expresses a contrary view?

5 A. Firstly, it's not clear to me from reading that if Dr Skinner is talking about that decade. I mean she might be just playing the cards in front of her and saying that Ms Folbigg did not present with a mental disorder or depression at the time of assessing her. Because usually that's what we would say. We would talk about what's in front of us, unless specifically referring to a different period of time. Are you asking me to account for the differences in our opinions?

10 Q. Yes. At least I wanted to give you an opportunity to respond.

10 A. Okay. I would say that there's been a lot more written material of interactions with Ms Folbigg since then and perhaps that was an added advantage in understanding her history, and the presence of psychopathology retrospectively. I don't understand how you could read the diaries, those diary entries, and not think that there's something - that there's - that they're not happy, they are not happy entries, and I would - you know, it's unclear to me how you could read through those and not have a suspicion at the least that there's problems with mood, recurring problems with mood and negative thinking.

20 Q. In the final paragraph Dr Skinner says, "After carefully reviewing the documents provided, I am not able to find any evidence that Kathleen Folbigg might have suffered a postpartum psychiatric disorder." Do you differ in your view?

25 A. Well I haven't diagnosed that either. I think Dr Dhansay has said that she has several risk factors for postpartum depression, which is true and that accords with my view as well, but no, I didn't find any particular - I couldn't arrive at a diagnosis of that on the basis of the information that I was given. So, I - we - I don't suppose we have much of a difference in opinion in regards to that.

30 Q. Turning to the views that you express at paragraph 75, page 36, red page 69, you commence by observing that, "the diary entries, particularly when isolated and listed, still have the potential to be interpreted as inferring that Ms Folbigg refers indirectly to having played a role in causing the death of her children". You go on, "On review of the evidence, I do not believe that this interpretation is made entirely untenable and it is one of the possible interpretations available". However, you observe, "interpretation is not fact, but a deductive process resulting in a proposition", and you go on to observe you don't agree "with the contention that this is the only possible, likely or plain English explanation for the diary entries", and at that point you go on to reference a number of the symptoms that you have identified earlier in your report that you have found in Ms Folbigg, namely "self-blame, fragile/negative self-image, trauma symptomology, and insecure attachment". You say they are "plausible and realistic explanations for the diary entries". What do you mean by that, in terms of explanation?

45 A. They explain why she would word things, why the wording would be as it is, as it's been observed in those diaries.

50 Q. Just teasing that out, is it your view that those symptoms have a role or potentially have a role in Ms Folbigg's thought processes as they are reflected



in the diaries?

A. Yes.

5 Q. You go on to suggest that in your view, insufficient weight has been given to an alternate interpretation of Ms Folbigg's diaries against the background of trauma and the various symptoms that you've just referred to. You go on to say in the penultimate sentence, "At worst, the diaries are inconclusive in my opinion"?

A. Mm.

10

Q. What do you mean by that?

A. Did I say inclusive?

Q. Sorry, inclusive. Sorry.

15

A. That's a typo guys, I meant to say inconclusive. Thank you for picking it up.

Q. Sorry, that is how I read it, what did you mean by that?

20

A. That nothing can be - you know, that you can't draw firm conclusions from it, and I go back to my analogy of a projective test, is when you have - there's - because I was wondering how we got into this situation where there was being such a singular interpretation of these diaries, and for, people just believed that and just looked to hang their hat on that - on that interpretation. I think that's what happens when you, or can happen when you have a vague or a - what's the word I'm looking for, it's where the wording that you can't be quite sure exactly what is meant by that, people will often then project their own - what their own beliefs are onto, well it means this.

25

Q. Yes.

30

A. I was very careful, and when I was writing this report in asking myself, my thinking was that I was - that I remained objective with that, and I asked myself, you know, could I, if I were under cross-examination and I was asked, can I exclude the possibility that the other interpretation is the truth? And I'd say, well I couldn't exclude that I think the most probable interpretation is that which I've offered.

35

Q. In answer to some of the specific questions raised of you, I turn you back to page 43 of your report, red page 74. At the top of that page, "In my view there is", that is whether there is any aspect of Ms Folbigg's mental health which illuminates what is written in her diaries. You say, "I would propose that the absence of grief expression that was thought to be conspicuous in the diaries would most likely be an artefact of avoidance coping characteristic of trauma psychopathology". Can I ask you to enlarge on that. First, what do you mean by an "artefact of avoidance coping characteristic"?

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45

A. The result of it. Because when you read through the diaries, and just see one entry, that Patrick died on this date, and then nothing, and then there's then discussions of what car they're going to buy or something like that a couple of months down the track, that's quite jarring when you read that, but it makes much more sense to me that that is a result of avoidance and shutting down, and long held coping mechanisms that Ms Folbigg has had throughout her life since a very difficult childhood, that makes more sense to me.

50

Q. When you say makes more sense to you, from your clinical perspective as a Psychologist?

A. From my own experience, from what I've read, from experience with – in treatment or assessment with people.

5

Q. You go on, "Ms Folbigg seeks to circumvent grief by being future focussed, which has assisted her to function and not collapse but has not allowed her to process grief". On what basis do you say that? That is that first she seeks to circumvent grief by being future focussed?

10 A. It's notable in the diaries where she will go straight from a terrible loss to thinking about the gym or losing weight or what we're going to have, what we've got in our future together, which is normal as people start to pull out of grief but she would try and go straight there, it seems to me through reading that material. And, in all of the interviews with her, that seems to be a repeated theme as well. So, have I answered that question?

15

Q. That sentence appears immediately after your reference to "avoidance coping characteristic of trauma psychopathology"?

A. Maybe if I just try and find it, which?

20

Q. That's all right, it's the top of page 43, red page 74.

A. I am on the wrong page, that's why I couldn't find it. Yes, and also, this is a formulation as well, this is my understanding from reading all the material and synthesising it, and that is my hypothesis as to what has happened and why she would respond that way. I don't think it's going out on a limb either, I reckon it's really, it's quite clear that that's what's going on.

25

Q. That is that being future focussed is a method of circumventing grief?

A. Yes.

30

Q. That is either consistent with or reflective of an avoidance coping characteristic of trauma psychopathology?

A. Yes.

35

Q. That is a method of circumventing grief, that is being future focussed which you've observed in your clinical practice?

A. I have yes.

40

Q. When you say, "which has assisted her to function and not collapse", that's a reference to a coping mechanism?

A. Yes.

45

Q. You go on to say, "but has not allowed her to process grief". How is it that that doesn't permit a person to process grief?

A. So there's no way around grief, and people get themselves into trouble when they try and go around grief, and there's many ways that people can do that, by drugs and alcohol are a really common way, throwing themselves into another activity straightaway, or just by shutting down or by dissociating, even, which is - Dr Diamond has observed in situ, what he thought was dissociation, and some of the descriptions that we've seen from other - from those earlier

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5 reports, you could also - that could also be interpreted as dissociation - why is this person so flat and so unemotional, when they've just come in, everyone in the wing hates them, threatening to kill them, why would they - why wouldn't they come in as a wreck and be, sort of, sobbing and blubbing? That could also be dissociation. I've taken you off-track, but--

Q. Not at all.

A. Ms Callan, I apologise.

10 Q. If it was suggested that some of those expressions that you've described as dissociation might be more in keeping with some kind of psychotic disorder, what's your response to that? In Ms Folbigg?

A. Why would it - I don't understand why that would be considered as a psychotic disorder.

15

Q. Then you don't consider that to be a--

A. To be a symptom - to be evidence of psychosis?

Q. Yes.

20

A. No, not really. I mean, I - her flatness or--

Q. Yes.

A. --jumping on to cope - to be future-focused rather than dealing with grief?

25

Q. Correct.

A. No, it's not a symptom of psychosis, as far as I know.

30 Q. Over the page, at the end of your report, page 44, red page 75. You suggest that, "the diary entries and the manner in which they have been interpreted are embedded in a sociocultural maternal guilt paradigm", which you say is "well-explored in the professional publications, including in the briefing material." Just to ensure that we understand what you're referring to there, what do you mean when you express your view that, "the diary entries and the manner in which they have been interpreted are embedded in a

35

sociocultural maternal guilt paradigm"?

A. What a word salad, but I'll explain it. So - I'm aware, also, that I don't have all the material. It - what I've been sent to read are the details of the cross-examinations of Ms Folbigg and the police interview with Ms Folbigg, so I don't have the other cross-examinations or the judgments, but - so I'm sure

40

that I don't have a - you know, a total understanding of what those court processes were, but in the cross-examinations she was held to - any aspect of resentment is - so in the following sentence, I've clarified what I meant by that. So if she had expressed resentment towards her children, if she had expressed any sense of desperation or anger or a fantasy of escape, that

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was - she was held to account by that and held to account for those expressions, or they were held against her during those cross-examinations as to set her apart from other parents, to distinguish her separately from other people, so that that would count towards her culpability, whereas, in fact, it's quite clear that those reactions are quite normative, having read through that literature.

50

## JUDICIAL OFFICER

5 Q. Can I just ask you this. On page 43 of your report, Ms Callan just took you to it, you say you would propose that the "statements of personal responsibility in relation to the death of her children can be viewed through the lens of grief and trauma." She may be grieving at the fact that the children all died of natural causes and trying to cope with that, but she also may be grieving, presumably, that she in fact killed them. Is all you say necessarily inconsistent with grief and trauma resulting from her murdering her four children?

10 A. That's possible.

## NO EXAMINATION BY MR HASTINGS AND DR WOODS

## &lt;EXAMINATION BY MR JORDAN

15

Q. Mr Sheehan, it might surprise you, but I'm appearing for the Director of Public Prosecutions in this Inquiry, just so you understand. Your report is very comprehensive and, if I might say, commendably so. It's comprehensive because you intended that it would be comprehensive?

20 A. Yes, it is. It's comprehensive because I intended it to be comprehensive.

Q. You have been careful to identify all of the source material and other matters of significance in your report?

25 A. Yes.

Q. Have you identified within your report all of the matters of significance to your opinion?

A. I'd like to think that I have.

30 Q. In relation to the evidence given by Ms Folbigg during the 2019 Inquiry, did you listen to the audio recording of that evidence?

A. I listened to some of the recording and - but I mostly read the transcript.

Q. How much of the audio recording did you listen to?

35 A. I - honestly, I couldn't tell you. It was probably an hour or so of it, and then I realised that I - I'd probably be better reading the transcript, because I could move through it quicker and understand and get more of a sense of it.

40 Q. The piece of audio that you listened to, was that at the very beginning of her evidence or was it in the middle somewhere or towards the end?

A. Yeah, it would've been at the beginning.

Q. So is what happened that you started listening to the audio and you realised it would take quite a long time to listen to the audio to completion?

45 A. I was actually having trouble keeping track of it - of the audio. Whether it was because it wasn't clear or because of the way it progressed, I found that I was - that I was able to keep track of it better through reading it.

50 Q. I just need some clarity on this. Are you saying that you couldn't hear the audio or there was some technical difficulty?

5 A. There was a little technical difficulty with it, but I - that wasn't the main issue. It was the flow of it and I just - I thought, well, if I have an audio copy and I have a transcript, I'd prefer to read the transcript so I could understand it better and be able to more easily look back and re-read as I was going through it.

Q. Are you sure that the amount of time involved in listening to the audio was not something that influenced your decision not to listen to all of the audio?

10 A. It was the amount of time to read it and to listen to it. I thought it was unnecessary to do so.

Q. Why did you think it would be unnecessary to listen to the interchange between the questioners and Ms Folbigg, given the task that you'd been given?

15 A. Because I had an all - a written version of it, so I would understand the interchange through reading the transcript.

Q. Do you accept that listening to how a person gives evidence allows for a more informed assessment of that evidence than merely reading a transcript?

20 A. It could.

Q. Might I suggest to you that listening to the audio, all of the audio, of Ms Folbigg's evidence under questioning may have been particularly useful in this case, because you were denied the opportunity to interview her yourself?

25 A. No, I don't see those two as related. I - the advantage of interviewing is that I would be able to follow my nose during the interview and ask questions spontaneously when matters come up. That's - for me, that's the benefit of the clinical interview.

30 Q. Is it fair to say that a central task that you had been allocated to assist the Inquiry was to assess Ms Folbigg's historical diary entries in the context of the evidence she gave in the 2019 Inquiry?

35 A. That's not how I interpreted it. I interpreted it in my instructions that the main thrust of my instructions were to understand the diary entries from a - from my position, for my - through my expertise as a Forensic Psychologist, and then take into account the other material, but I did not - I was curious as to why, actually, that the cross-examinations were included in the brief, because they seemed to sit outside the questions that I - the main questions that I was asked, which was to examine the diaries and consider it from a psychological, 40 psychological viewpoint.

Q. But you were also asked specifically to consider whether what was written in those diaries might or might not constitute admissions of guilt by Ms Folbigg; correct?

45 A. Yeah.

Q. In relation to that specific question, do you agree that Ms Folbigg's own explanations of those entries in sworn evidence is highly relevant to the task given to you?

50 A. It's relevant. That's why I read them.

Q. As you read through the transcript and you saw the extent of that cross-examination, did it occur to you that, "perhaps I should have a listen to this audio, because this is going on for a bit and it would be interesting to hear how the questions are being put and how Ms Folbigg is responding"?

5 A. When you say that, Mr Jordan, do you refer - are you referring to tone of voice or volume or something along those lines, when you point to the importance to your view that it's more important to listen rather than read the transcript?

10 Q. Yes, that's right. Let me give you a hypothetical, which I think is a fair hypothetical, because it occurs all the time in Courts. You can read a piece of transcript and you can form your own impression as to how that might have been said, whether an answer was given very quietly and passively or whether an answer was given in a shouting and forceful way, how it was given would be very useful in understanding what that person was thinking when they gave that answer; do you accept that hypothesis?

15 A. I still think that reading the transcript is valuable. For me, it worked better.

20 Q. I'm not suggesting that reading the transcript is not valuable. What I am suggesting, to be clear, is that you would have been better equipped in fulfilling your task if you had taken the time to listen to the audio of all of that evidence; what do you say to that?

25 A. It might be more helpful for me to answer your question in fullness. If you tell me what it is that you think that I may have gotten out of listening to the transcript as opposed to reading the transcript. So I might be missing something important, and so if you explain it to me.

30 Q. Okay. I'm happy to actually answer your question from my own personal experience. So I did listen to all of that audio and the audio was very clear, and I found it very informative to understand more about Ms Folbigg's evidence in terms of the tone of her voice, also in terms of how she was treated by questioners, and I can tell you, in answer to your question, that I found listening to the audio much more informative than simply reading the transcript; what do you say to that?

35 A. My question was in what way, what could I draw from it?

40 JUDICIAL OFFICER: Mr Jordan, I think in fairness to the witness, it should be put to him squarely what you say would have been relevant to his assessment had he listened to the whole of the audio. I'm conscious, for example, of the fact the Court of Criminal Appeal on reasonable verdicts never does.

JORDAN: Yes.

45 JUDICIAL OFFICER: There's always been a debate about that. I think he's entitled to know directly.

JORDAN: All right.

50 Q. What I'm suggesting to you is that if you had listened to all of the evidence it would have given you a better insight into assessing Ms Folbigg's evidence

because you would have been able to hear the tone of her voice, you would have been able to assess how she was being treated by the questioners, and that would have better informed your assessment of her answers than simply reading the transcript.

5 A. I'll say that I thought I did get a sense of that just through reading the transcript.

JUDICIAL OFFICER

10 Q. What sense did you get as far as the way she was treated by the two persons who cross-examined her on the same topic?

A. It was a difficult read, I thought, your Honour. I don't do a lot of trial work. I don't do a lot of trial work, so I don't sit through a lot of cross-examinations like that. It came across as quite brutal, the cross-examination, but then I thought, well, prosecutors prosecute, that's what they do, so I put that to bed, but I  
15 thought it was a very lengthy and very pressing cross-examination. I felt that the two cross-examiners were convinced of her guilt and they wanted to press that point clearly, but I suppose that was entirely in their domain to do that.

20 Q. Certainly it's the prosecutor's job, whether it was Mr Folbigg's Counsel's job, minds might differ. I don't want to take it any further than that.

JORDAN

25 Q. I'm moving topics. In your review of the diaries, do you recall seeing any references where Ms Folbigg asks or poses a question along the lines of, "Why are my children dying?"

A. No, and it's one of the things that occurs to, I think, the people when they  
30 read that diary.

Q. Just to put it openly to you, what do you say about that omission occurring in that long body of diaries over that period of time?

A. I think she has an alternative hypothesis as to why her children would leave her, to do with her own badness or something she's carried on through her  
35 terrible childhood or the sins of her father, or her failings as a mother, and then that's a repeated thing, I think, in the diaries as well. So that's my explanation of that. It also fits in with her grieving as well, with her approach to grieving, with her shutting down. Yes, because you would imagine - and I would  
40 imagine - that a natural response would be, "Why does this keep happening to me? Why have I lost one baby after another?" but that's part of grief. That questioning is part of the grief process which is even in Kübler-Ross, that's one of the stages of grief, but because she circumvents grief and she moves straight to thinking about other things, not wanting to process that, so that is consistent with that dynamic.

45 Q. When you say - asking a question like, "Why are my children dying?" would be a natural question to ask because that's what you said.

A. It would be a process that we'd all go through, that it would be a natural  
50 process to go through, yes.

Q. What then is your hypothesis as to why Ms Folbigg does not ask herself that natural question?

5 A. I'm pretty sure I just explained it. So two main points: one is that she has an alternative - a hypothesis as to why - an alternative explanation as to why her children would leave her, the terminology that she's used in her diaries, and, secondly, is through a circumvention of the normal grief process. So those are two possible explanations as to why. The other explanation that would be hedged at, and was hedged at during her cross-examination in the past, was that it's because she's murdered her children, so that is that other option, but it seems to me that that is explicable through her own personality and her psychopathology.

10 Q. Let me just put it back to you, to make sure we've got it right. You have offered what might be described as an innocent hypothesis for Ms Folbigg not asking that question; correct?

15 A. Yes.

20 Q. But you also accept that there is another possibility which is that the reason Ms Folbigg did not question the cause of her children's death is because she knew how they died; correct?

25 A. Sure. I mean, I've tried to stay away from the ultimate conclusions. It would be my cheek to be making proposals about that and I've reminded myself constantly through that assessment not to do that, but how I've laid it up in the end is what seems to be most probable in my view, what are the most probable explanations, and that's why I've spelled it out the way I have in my conclusions.

30 I wonder if we could please bring up for Mr Sheehan the typed diaries compilation which is Exhibit 18 - I think it's Exhibit 18-07.

35 CALLAN: While that's happening, your Honour, can I just make sure, if it's not readily apparent from the question and the answer, that insofar as it's being put to Mr Sheehan that Ms Folbigg did or did not question something or think something, that must be by reference only to what does or does not appear in her diaries, as a reflection of her thought.

JUDICIAL OFFICER: I think that's fair.

40 JORDAN: That is absolutely what was intended.

JUDICIAL OFFICER: That's how I took it.

JORDAN

45 Q. Just to assure everybody that this is not going to take a great deal of time, there are only three entries that I would like to take you to specifically. For Ms Thorne's benefit, the first one I'd like to go to is on red page 201. We'll be going only, for the moment, to entry 315. If that could possibly be made a little bit bigger for everyone. Mr Sheehan, in fairness to you, would you please just read to yourself, so you've got the proper context, all of that entry 315 for



25 October 1997, and let us know when you've completed that.

A. Yes.

5 Q. I'm not going to read it all back to you but in order for the transcript to make  
some sense, let me just put on to the record the last portion of that entry,  
"Looking at the video, Sarah was boyish looking. Laura has definite feminine  
features, they are chalk & cheese. And truthfully just as well. Wouldn't of  
10 handled another one like Sarah. She saved her life by being different." Is it  
your position that this entry reflects Ms Folbigg's innocent grief and self-blame  
over the death of Sarah?

A. Yes.

15 Q. How do you come to that conclusion in relation to this particular entry?

A. One aspect of the entry — the whole thing or?

20 Q. In relation to this particular entry, most pertinently the bit I read back to you,  
how do you come to the conclusion that this reflects Ms Folbigg's innocent  
grief and self-blame?

A. So starting from—

JUDICIAL OFFICER

25 Q. Taking what Mr Jordan said to you in the context of the whole entry.

JORDAN: Thank you, your Honour.

30 WITNESS: I lost track of where the specific point you were drawing me to  
started.

JORDAN

35 Q. I'm sorry.

JUDICIAL OFFICER

40 Q. I think the last three lines in particular.

A. So, "Looking at the video, Sarah was boyish looking. Laura has definite  
feminine features, they are chalk & cheese. And truthfully just as  
well. Wouldn't of handled another one like Sarah. She saved her life by being  
different" - that?

45 Q. Yes.

A. I think it could go towards her belief that the children leave her, that they  
die because of the way she is, because of her problems with bonding, her  
problems if she loses her temper or if she's short with her children, all of the  
criticisms, self-criticisms she has, that we see later with Laura as well, towards  
the end of Laura's life. So I think it could be explained in that context.

50 JORDAN

Q. What about the passage, "Wouldn't of handled another one like Sarah"?

A. She says similar things throughout the diary about her previous children, that, "I know I didn't bond with the other ones, but this one's different," that, "I was cruel with the other ones. I was short tempered with the other ones, and they left," so I interpret that through that.

5

Q. Do you accept that, "Wouldn't of handled another one like Sarah", reads a lot more like her blaming Sarah than blaming herself?

A. I think it could be interpreted that way and it has been interpreted that way.

10

Q. I'm suggesting to you that it reads much more naturally that way, what do you say?

A. No, I don't think so. No, not in - not to me, not to my mind in the totality of looking through all that material, all of the information that's been in front of me. I don't think that's the best fit from my view as a psychologist. I think one of the reasons that Ms Folbigg would retrospectively say it was bad before, I was hopeless before, you know, it was all my fault before, but this time is different, this time this child has these attributes and it's going to be okay. I - as a means of that trauma coping, which is to say well, you know, I blame myself for what's happened before and if it's my fault therefore we can handle this better, we can handle this better. If I am less grouchy or more - less short tempered, and more available, and more relaxed around this child, then they will survive. That's how I interpret that to mean.

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20

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Q. You do accept, however, that there's the alternative interpretation which is open?

A. Yeah, and I don't blame - it's not like I look through those diaries and think, well why did anyone ever seize on that. I understand why an investigator would look through that diary and seize on several of those entries. You know, I - to not acknowledge that would be to suggest that, what, everyone was mad during the original investigation and subsequent inquiries. I don't think so, I think that there is - the statements are jarring and it would get - it gets their attention, but I think if you look more fully through her psychopathology and then comparing it to the literature, that seems to be a better explanation from where I sit.

35

Q. Do you accept that this entry can be read as a confidential musing by Ms Folbigg with the knowledge that she killed Sarah?

A. Yes.

40

Q. Could we go please to entry 320, which I think you will find at red page 203?

A. Thank you.

45

Q. Once again, Mr Sheehan, I'm going to take you to a specific portion of it and I want to make sure you've had an opportunity to read that entire entry of number 320 for 8 November 1997.

A. Thank you, Mr Jordan.

50

WOODS: Your Honour, I'm just concerned that this may not be a full

reproduction of the entry. Your Honour needs to look at the original.

JUDICIAL OFFICER: That's what I'm doing. Whereabouts is it? 7153.

5 CALLAN: 7153.

JUDICIAL OFFICER: Sorry, Mr Jordan, just bear with me for a moment.

10 JORDAN: No, your Honour, I must say, just so it's clear, I have proceeded on the basis that the compilation is comprehensive--

JUDICIAL OFFICER: I understand that, so was I. 7153 is it? No.

15 WOODS: No, that's it. Your Honour, I understand the point is that at the very top it reads, "Bub at four months old".

JUDICIAL OFFICER: No.

20 CALLAN: For completeness, in the 2019 Inquiry when Ms Folbigg gave evidence about this entry, she indicated that she'd erroneously written November and it should have been December.

JORDAN: Yes. I see.

25 WOODS: That's the only difference.

JORDAN

30 Q. I really don't with respect think those differences are material, but as long as Mr Sheehan is comfortable with understanding those differences?

A. I understand them, can we - but I'd rather go to the printed version.

Q. All right. Let us know when you've had an opportunity to read it in full.

35 A. Yes.

Q. If I could ask you to focus on the passage towards the end of the entry, so I'm going to the third line from the bottom and for the record, "Must try to release my stress somehow. I'm starting to take it out on her. Bad move. Bad things & thoughts happen when that happen. It will never happen again."

40 A. Yes.

Q. What's your interpretation, accepting the proper context of "it will never happen again"?

45 A. Well, I took that to mean she was referring to when she lost it with Laura. I thought that - I assumed that's what she was referring to there, I mean I don't know, but I assumed in my interpretation of it, in my analysis of it, in imposing whatever I think on top of that text.

Q. Of course.

50 A. That's what I thought that she'd be referring to, to having lost it with Laura

earlier in the preceding page.

5 Q. Do you accept that that passage that I read to you in that context could also be interpreted to reflect Ms Folbigg's desire to avoid killing Laura in circumstances where she knows that she's killed her children previously?

A. Yeah, I understand that's the prevailing interpretation.

Q. Do you accept that that interpretation is open when read in context?

10 A. The interpretation is possible but, again, I do not believe that that is the most likely interpretation.

Q. Finally in relation to diary entry, entry 345 please. That's entry 345 for 28 January 1998 and once again, Mr Sheehan, if we could adopt the same method, I'll allow you an opportunity to read that entry in full?

15 A. Thank you, Mr Jordan. Yes.

JUDICIAL OFFICER: I think this was the one I asked about before.

JORDAN: Yes, your Honour.

20

Q. Now with the context of having read the entire entry, can I take you to a specific portion which commences on the second line:

25 "I've done it. I lost it with her. I yelled at her so angrily that it scared her, she hasn't stopped crying. Got so bad I nearly purposely dropped her on the floor & left her. I restrained enough to put her on the floor & walk away. Went to my room & left her to cry. Was gone probably only 5 mins but it seemed like a lifetime. I feel like the worst mother on this earth. Scared that she'll leave me now.  
30 Like Sarah did. I knew I was short tempered & cruel sometimes to her & she left with a bit of help."

35 "...Scared that she will leave me now. Like Sarah did. I knew I was short tempered & cruel sometimes to her & she left with a bit of help." In the context of that passage, how do you maintain an innocent explanation for this entry?

40 A. Well, I'll tell you, Mr Jordan, it's not hard to do so from my perspective. I'd also, just for fullness, just if it's not too much of a bother, like to look at the original version of that, because I was just worried about punctuation and I think I'd raised this earlier with his Honour when he raised the same diary entry.

Q. Yes.

45 A. Just because it may change the context of that, and it may not, I actually cannot remember where the commas were in that, or even if there was any punctuation in there. Thank you very much. Now, so one of the things that I thought when I read this was - I mean it's messy writing, obviously it's not meant for - it wasn't meant to be neat, it was scribbled out late at night in a state of distress - it looks to me that there's a full stop or a comma after short  
50 tempered. I'm sorry, "& cruel sometimes & she left", then there's a marking on there. I can't tell if it's a full stop or a comma, none of us are ever going to

know if that was a full stop or a comma, but I can tell you that it does change - it does change that sentence, that passage. "I knew I was short tempered & cruel sometimes with her & she left. With a bit of help I don't want that ever to happen again."

5

JUDICIAL OFFICER

Q. Mr Sheehan, I was concerned about the punctuation when I read this, but I was concerned because on one view it could be thought it was a rather sardonic remark referring to her killing or helping Sarah to die. The punctuation concerned me, in fact, when I read this entry. I should raise it for your consideration.

A. So is it - it's probably best if I answer the question both ways. If the full stop was a - if there is a full stop there, then the sentence actually reads, "I knew I was short tempered & cruel sometimes to her & she left. With a bit of help. I don't want that to ever happen again", or if it reads, "I knew I was short tempered & cruel sometimes to her & she left with a bit of help", although it does seem that's a capital, the "With" is a capital. So - but even so, "With a bit of help", even if that was a standalone sentence, that could infer that when she's referring to "a bit of help", she's referring to her own actions, that's what you're saying, is that she's referred - she's actually referring to the help that she gave in her child passing on. I still think that "with a bit of help" could be referring to these outside forces that she thinks are - have, sort of, cursed her in her life, that these terrible things happen to her, that the children leave her, that she's doomed to having one rotten thing occur after another. So - or that her shortcomings--

JORDAN

Q. Sorry. On that hypothesis--

A. Yes.

Q. --what is the help and who is giving it? On that hypothesis you just gave us.

A. Well, she refers to, sort of, to the children leaving her.

Q. That's covered by the clause immediately before that.

A. Because she's responsible as a parent and when the children leave and the children die, it's because of her, which is a common feeling that grieving parents have that "I should have done more. I could have done more", but--

Q. Sorry, just so I--

A. It's - I assume she's--

Q. I just need to break it down a bit.

A. Yes.

Q. Just so I've understood what you've been saying, are you hypothesising that on this hypothesis "a bit of help" refers to her own perception of her own poor mothering? Is that what you're saying?

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A. "With a bit of help" from external forces that she feels are working in the background in her life.

JUDICIAL OFFICER

5

Q. Is this the nub of it, is this what you're saying, that she regarded herself as a bad mother and that caused or - sorry, was part of the cause of the death of Sarah? Is it any more than that?

10 A. But it's that she feels that the children leaving her is volitional in some way. That seems to be a - that terminology that she uses, "And they left", which is that passive, sort of--

JORDAN

15 Q. Can I just try and assist you in terms of your appropriate caution as to the correct punctuation in the original.

A. Yes.

20 Q. I think the original is still on the screen before you?

A. Yes, it is.

25 Q. You've suggested we get to it. On the lines on the original entry, if we go up one, two, three, four, the entry we're talking about is on the fifth line from the bottom, and you've raised a note of caution as to whether there is a comma after "and she left"; correct?

A. "And she" - yes.

30 Q. But can I ask you to look at this. As you continue to the next line--

A. Yes.

35 Q. --do you see that where it says, "I don't want that to happen again", is indented?

A. Yes, I can see that it is indented.

40 Q. You see that when you read that entry as a whole, there are logical indents which appear to correspond with the beginning of new paragraphs?

A. I suppose we could debate, Mr Jordan, the - how many millimetres her text is in from the edge of the page, but we - I just don't think it's very compelling. I think we - the best we can say is we're not sure. I think that's the best I could say from reading that, because I'm not sure, and I wasn't sure which way to interpret that.

45 Q. Let me put it to you this way. If you proceed on the assumption that the typed compilation that I took you to originally is a correct representation of the punctuation--

A. Yes.

50 Q. --on that understanding, do you accept that that entry can be naturally read as Ms Folbigg reflecting upon how she helped Sarah to leave by smothering her?

A. I think if you assume that Ms Folbigg murdered her children, then that is how you would interpret that, but if you don't assume Ms Folbigg murdered her children, then I don't think that is a natural interpretation. That's not how it landed in my viewing of that.

5

Q. Is it your position that this entry cannot be interpreted as Ms Folbigg reflecting upon how she helped Sarah to leave by killing her? Do you go that far in your evidence?

A. No, I don't. No. And I think I've made it quite clear in the report as far - that I've only gone as far as I think I can go, and I've made that point, that I don't think - you know, I imagine if I was asked, "Could they mean any - could they actually be - she be referring to these other more dangerous things", then, I think, well, I couldn't say - I couldn't exclude it as a possibility, and that's why I took it - that's why I've taken it into account in my conclusions.

15

Q. I'd like to take you to a small bundle of other documents, which, to try and assist the Inquiry, we provided Ms Thorne with earlier, but before we go to those documents, let me just provide some context. It is clear from your report that you had been through all of the material that was provided to you; correct?

20

A. Yes, I don't think I missed anything. It did take me a week to get through it.

Q. You do make specific references in your report reflecting your review of the police interview of Ms Folbigg in July 1999?

25

A. You'll have to take me to it. I can't remember.

Q. If you can take it from me you do.

A. Okay.

30

Q. Do you also have any recollection now of reviewing the transcripts of conversations that were recorded by listening device? Do you recall reading those?

A. Yeah, I do remember those.

35

Q. We're going into this line of territory now.

A. Okay.

40

Q. Could I take you, please, to this bundle, which Ms Thorne very helpfully has lined up. Before I ask you a question in relation to that particular document, could I just explore with you whether or not you are familiar with the various answers given by Ms Folbigg during--

JUDICIAL OFFICER: Just for the records, the document being shown is an extract from Ms Folbigg's ERISP. It's at page 236 of the bundle.

45

CALLAN: Per the top-right hand corner, the labelling which has been applied, this is Exhibit 19-01, also at Exhibit 2-AZ.

JORDAN

50

Q. In fairness to you, you've had to review a great deal of material; correct?

A. Not as much as you, Mr Jordan, but yes.

5 Q. In that understandable context, can I just ask you this. Do you currently now have any particular recollection of the answers given by Ms Folbigg during the police interview concerning whether or not there were other diaries in existence?

10 A. I couldn't remember it word-by-word, but I remember, from memory, she was asked if there were other diaries. She said there were no other diaries, and it turned out that there in fact was--

15 Q. So you are reasonably familiar with where we're going. For the record, Ms Callan's put it on and his Honour have placed it. The first page on this small bundle, red number 236 and red number 237. In fairness to you, can I just give you the opportunity to read those two pages before I ask you some questions.

A. Starting from, "So he's still taking them, is he"?

20 Q. You can start at question 853.

A. 853. Thank you.

25 Q. And then read logically through to the end of red number 237, which is the second page.

A. Okay. I'll tell you when I get to the bottom of this page. Can we go to the next page, please. Do you want me to read it right to the bottom?

30 Q. Yes.

A. Yes.

35 Q. As a matter of context, this is during the course of that police interview, which occurred on 23 July 1999. Understood?

A. Yes.

40 Q. Do you accept that, as is apparent from particularly the answer to question 853 and also the answer to question 862, the effect of what Ms Folbigg is telling police is that she had disposed of all her diaries the previous Mother's Day?

A. Yes.

45 Q. As a matter of context, would you accept from me that this is what Ms Folbigg said to police before she had any knowledge that there would be a search of her premises later that day.

A. Sure.

50 Q. If you could go to the next page in this small bundle, which is an extract from the transcript of the trial, the evidence of Detective Ryan, and for the record, it's part of Exhibit 2, commencing at red page 2769. I'll just take you through some of these. You see at about line 7, question, this is after the interview is completed:

"Q. Did you then inform Mrs Folbigg that you were going to execute



a search warrant at the flat where she had been living and also at 8 Millard Close?

A. Yes.

5 Q. What did you say to her?

A. I said, 'We are now going to execute search warrants at your flat at 2/32 Andrew Street and your house at 8 Millard Close, do you understand that?' She said, 'Yes.' I said, 'We are looking for other diaries which relate to the death of your children. Do you have any  
10 more diaries?' She said, 'I just started a new diary and it's up at the house.'"

So pausing there, do you accept that there is a significant change in Ms Folbigg's account to police on this particular issue as to the existence of diaries immediately after she learns that her premises are to be searched?

15

A. Yep.

Q. You understand that?

A. Yes, I do.

20

Q. Moving on, you'll see at line 30 there's reference to the police executing the search warrant at the house at Millard Close at about 7.15pm that same night. Then moving down to line 55 on red page 2769:

25 "Q. What did you say to her?

A. 'What we are actually doing here is that we are here to look for diaries, like we did at the last flat. Are there any diaries here?' and she said, 'Yeah, one that I bought yesterday.'

30 Q. Did she then go in to a room and give you something?

A. Yes.

Q. What did she do?

A. Mrs Folbigg walked in to the main bedroom of the house, where  
35 she opened the built-in wardrobe and removed a personal diary. She handed the diary to Detective Frith who then handed it to Detective Wells."

40 Pausing there, you understand in the context that Ms Folbigg's conduct in providing this diary at this point in time is consistent with her recently changed account, namely, "I have a diary that I bought recently"; do you understand that context?

A. Yes.

45 Q. Then moving on to about line 20, "After she had given you that diary, a short time later did one of the police officers find something in the main bedroom of the house?"

50 JUDICIAL OFFICER: I don't think this is on the screen, Mr Jordan. It may not matter.

JORDAN: I'm sorry, it's on the next page. That's my fault. I didn't give Ms Thorne the heads-up.

JUDICIAL OFFICER: It's there now.

5

JORDAN: I apologise. Where were we?

JUDICIAL OFFICER: You're at line 20 on this page.

10

JORDAN: I was at line 20, that's right, and I've just read that out.

Q. I think, answer, "Yes, he did." At about line 28:

15

"Q. Would you tell the Court what happened?

A. I went to the main bedroom and saw Sergeant Gralton, and he was holding another personal diary. I took Mrs Folbigg to the room and I said, 'Sergeant Gralton has just found another diary in your wardrobe. Is that something - would you like to make a comment in relation to that?' and she said, 'I didn't know it was here. I thought it was gone.'"

20

Okay. So in all of that context we've got essentially a sequence of events - again this is just context in terms of where we're going with this. There initially Ms Folbigg tells police she's disposed of all of her diaries. When she learns that there is to be a search she revises her position and says she had one diary. She then provides one diary to police when they search her premises that same evening, and then the police manage to find yet another diary, which Ms Folbigg did not volunteer, within a wardrobe.

25

A. Yes.

30

Q. You understand that context. If we could move then to the next page in this small bundle of documents. For the record this page forms part of Exhibit 16-06 in the Inquiry, commencing at red page 108. Do you see there, Mr Sheehan, this is one of the transcripts of things that were said and recorded by a listening device in Ms Folbigg's house? For the record, this one is Transcription 4. You see there it bears the date 24 July 1999?

35

A. Yes.

Q. The time 07.53, which accords with relatively early the morning after the police had been at her premises and found that diary. You'll see that the transcript records, "Mrs Folbigg enters bedroom and appears to open a cupboard or drawer causing a loud noise," and then the transcript records this, "Kathy: 'I should have fucking done what I was gunna do, stuck it underneath that.'" Do you see that?

40

45

A. Yes.

Q. You will see below that what the police believed this to be, namely that Ms Folbigg was talking about the diary police had found in the warrant which had not been volunteered by her. Do you see that?

50

A. Yes.

5 Q. Just to complete this exercise, if we go to the next page, which forms part of the same exhibit. It's another transcription of a listening device in the house. This one commences at page 109. It reflects a recording taken very shortly thereafter, this time at 8.02am the same morning, 24 July 1999. I would ask you, please, Mr Sheehan, to - actually what I'll do, because I'm conscious of the time, could you please take the time, Mr Sheehan, to read to yourself the remainder of that transcript.  
A. I've read that page.

10 Q. The transcript reflects a situation where Ms Folbigg appears to be speaking to herself.  
A. Yes.

15 Q. You accept that? At times apparently using something along the lines of an American accent?  
A. Mm-hmm.

20 Q. Also appearing at times to be acting out the role of a witness and a lawyer in a court case?  
A. Yes.

25 Q. In that context could I take you to a couple of specific entries here. On red page 109, this is Ms Folbigg talking to herself, "Considering that you actually know her... do you think that you are capable of an unbiased report considering... circumstantial at the best. Attempting to accuse my client of murdering all four of her children. What are your thoughts on that? Reply: Um I don't have thoughts on that. I don't have thoughts on that. Um, does she strike you as sort of a person that would considering that you do know her slightly? Reply: No she doesn't, but it's not to say that I won't see the other side and change my mind. It's not to say that I wouldn't see the other side and change my mind." In the context of what happened the previous day concerning the diaries and the search, what do you make of these exchanges that Ms Folbigg is having with herself?

35 WOODS: Your Honour, I object. Your Honour, we've just been advised that there are some large number of tape recordings taken in the bedroom and the house of the Folbiggs, which had never been disclosed to us before, and to take these extracts and invite the witness to respond in relation to them alone is not fair, and we will be seeking the opportunity of examining those other  
40 tape recordings in due course, but at the moment this is material that was not at the trial. This material was at the trial, but the other material which has just been - due to the efforts of the Inquiry - produced from police sources apparently, we don't know what the context is. This is all very bare bones and we object to this question.

45 JUDICIAL OFFICER: What's the position, Ms Callan?

50 CALLAN: Your Honour, as has been recognised, the audio of this particular transcript was the subject of a tender at trial.

JUDICIAL OFFICER: Yes.

5 CALLAN: As opposed to the other tapes, they have quite recently been received by the Inquiry. In my submission, none of that constitutes a legitimate objection to this witness answering the question that Mr Jordan has asked, which is necessarily confined to what--

10 JUDICIAL OFFICER: I just want to know the position about the other material. How much is there?

CALLAN: There are boxes of cassettes. I'm told something in the order of 200 tapes.

15 JUDICIAL OFFICER: Dr Woods, I propose to allow the question because I think the material was available. You'll have an opportunity to look at these cassettes and if you need to I'll give you an opportunity at some stage to ask Mr Riordan (as said) something about it. It will be by AVL, so we won't drag you in here again. I think that's the fairest way I can deal with it.

20 WOODS: Your Honour, I've got no difficulty with that but we just want to put it on record that there is this material.

JUDICIAL OFFICER: I understand.

25 JORDAN: Your Honour, I can also put on the record that we, that is the Office of the Director, have not had access to any of that audio. We're proceeding on the basis--

30 JUDICIAL OFFICER: Mr Jordan, I wasn't suggesting for a moment you had, but I've experienced over the last ten years a number of trials that have been adjourned for this very problem. Yes, go on.

JORDAN

35 Q. Can you remember my question?

A. I think so. I do remember reading this, and I didn't think much of it. I think the interpretation had been that she was playing out what might happen in court, but this--

40 Q. How else would you interpret it?

A. No, that is how I interpret it. I think that's a reasonable interpretation, and I also think it's after a day of police interviews and then having police come to her house and confiscate diaries and being accused, through that police interview, of murdering her children. I imagine that this is exactly the sort of thing that someone might do, to be sort of imagining that they're in court. They've been charged of these serious matters. What are the scenarios? Are people going to say things about her? Are people going to seize on her problems with her character, and that sort of thing. So I didn't actually put much weight on this stuff at all.

50

Q. Even when, as I've attempted to do, what is said here is understood as being very closely proximate to Ms Folbigg's changing story to police as to the existence of diaries, even then?

5 A. Look, I - I assumed that - my most likely interpretation was that she lied about the diaries. That was that she didn't want people to read her diaries. That's how I read it.

Q. What is your interpretation as to why Ms Folbigg might have lied about the existence of other diaries? How do you interpret that?

10 A. Because she didn't want anyone to read her diaries. That's how I read it, is that she did not want anyone to read her diaries, and I think, and the night before after she's come home with the recordings from memory, I think it's the night before this, before this. It was a - she talked about the diaries, you know, and I think she said it's something along the lines of, and I'm paraphrasing as it  
15 was, you know, I've put down the walls, I've put stuff in the diary and now it's come back to bite me in the arse and this is what you get, this is what you get for opening up, or something along those lines.

Q. In other words do you accept it's a fair inference from this that she appreciated the diaries might contain material which incriminated her?

20 A. Yeah. Or to - or that would make her sound bad. Or would draw attention, as the other diary entries had done through her admissions.

Q. Just to conclude, do you accept that Ms Folbigg's conduct during this sequence of events I've just taken you to could also be interpreted to reflect her own consciousness of guilt in relation to the unlawful deaths of her children?

25 A. Yes, I do, but I don't think it's necessary. I think it's entirely - I imagine it's entirely reasonable that she wouldn't want anyone to read those  
30 diaries. Particularly with the way she's wired with being such a private person and she has trouble even communicating with her own husband, and puts things in a diary that she will - can't share with anyone else. I imagine that it would be horrifying to her to have her diaries taken. So, yes, I - I concede your point, I mean and it's no different to any of the concessions that I've already  
35 made in the report that that is one available interpretation, but it - I actually didn't put a lot of weight on that, I thought on balance it's most likely that she has been dishonest about that and she tried to hide the diaries because she didn't want them to read it because it would say, you know, would be more evidence of her - having a bad temper or a - being a bad parent or having  
40 misgivings about the children, that sort of thing, that had been brought up to her in a police interview.

NO EXAMINATION BY MS HORVATH, MS LOVE AND DR WATERHOUSE

45 <EXAMINATION BY MS CALLAN

Q. Mr Sheehan, you were taken by Mr Jordan to entry number 345, if I can use that description from the diaries compilation, which is Exhibit 18, tab 07. You were asked to look at the photocopy of the handwritten diary?

50 A. Yes.

Q. That was shown to you - your Honour at page 7170 of Exhibit 2-AZ. Can I hand up the original diary which has been tendered and marked Exhibit 18-04 in the proceedings? Sorry, can I provide the witness. Do you see that that is opened at the page with the date 28 January 1998 at the top?

5 A. Yes.

Q. And commences, "I'm very depressed with myself, angry and upset"?

A. Yes.

10 Q. As you read it through to that particular part where there's been a fair bit of attention on the topic of punctuation, you see six lines up from the bottom half way along commences the words, "with a bit of help"?

A. Yes.

15 Q. Do you see with the benefit of the original diary as opposed to any photocopy that immediately after the word help would appear to be a full stop?

A. Yes.

Q. Then the following line, "I don't want that to ever happen"--

20 A. Again, yeah.

Q. --"again", it appears per the photocopy?

A. Yes. Well thank you for that.

25 Q. With the benefit of access to the original diary, does that change any of the opinion that you've expressed in relation to how this diary entry might be understood by reference to Ms Folbigg's psychopathology?

30 A. Well, in terms of the ambiguity as to the punctuation, yes, it does, it resolves that because you could, yes, I'm - I'm convinced that, yes, there is a punctuation stop after the word help, but I think the evidence I gave earlier was to say even if that was a standalone sentence, so I believe I've covered that ground and said what my opinions are of that, even in the case that that is a standalone sentence "with a bit of help" by itself after that prior sentence.

35 Q. Still bearing in mind the evidence you've given about this entry, can I seek to ensure that we understand aspects of your report correctly? You refer to those words "a bit of help" as being capable of being understood as a reference to outside forces?

A. Yes.

40

CALLAN: We might have that diary returned.

45 Q. In your report at paragraph 22, page 17, red page 48, second sentence, in the context of addressing the notion of a psychotic mental illness you say, "She has expressed odd mystical/superstitious beliefs surrounding her karma and the deaths of her children", you go on to indicate they don't have the flavour of delusion, "and are more tied to her idiosyncratic way of coping and of her negative self view". Your comment about "odd mystical/superstitious beliefs surrounding her karma and the deaths of her children", is it by  
50 reference to that that you've offered your view as to what "a bit of help", how

that might be viewed?

A. Yes.

5 Q. I took you to this in your evidence-in-chief by reference to paragraph 72 of  
your report, page 36, red page 67, where you refer to what emerges from  
those chapters of Duncan and Byard, in particular high levels of self-blame as  
part of the parental psychopathology response to sudden infant death. Can  
10 one reconcile from your perspective on the one hand Ms Folbigg expressing  
mystical/superstitious beliefs, for instance blaming outside forces, whilst on  
other occasions reflecting what you observe would be consistent with the  
self-blame and guilt that is recognised as part of the parental psychopathology  
in response to sudden infant death?

15 A. Yeah. I'll say two things - is one, you don't have to reconcile it. She had  
entirely contradictory beliefs going on and that's part of - that is - it's no good in  
law but that's human nature. But I can reconcile that because the external,  
"with a bit of help", with a bit of - with external intervention, it's to do - it's still to  
do with her own - with her own failings. Because of my failings there's a - this  
20 intervention that people were going to leave me and that things are going to go  
bad. So I think it's, you know, so when people try and make sense of - of loss,  
it doesn't have to all read rationally and it seldom does. You can - people are  
entirely capable of having contradictory beliefs as well.

<THE WITNESS WITHDREW

25 LUNCHEON ADJOURNMENT

<KERRI EAGLE, AFFIRMED(2.20PM)

<EXAMINATION BY MS WOOTTON

5 Q. Doctor, could you say your full name for the record?  
A. Yes. Kerri Eagle.

10 Q. You're a Consultant Forensic Psychiatrist?  
A. Yes, that's correct.

15 Q. It's correct you're currently the Clinical Director at the Community Forensic  
Mental Health Service, which is part of Justice Health and Forensic Mental  
Health Service?  
A. Yes.

20 Q. You're also a Consultant Forensic Psychiatrist in private practice?  
A. Yes.

25 Q. And you have been so since 2014?  
A. Yes, that's correct.

30 Q. In your role as a Consultant Forensic Psychiatrist, it's correct you prepare  
reports, including forensic psychiatric assessments and reports for legal  
proceedings?  
A. Yes, I do.

35 Q. You provided a report at the request of this Inquiry on 10 January  
2023. For the record, that's at tab 20-02; is that correct?  
A. Yes, I did.

40 Q. You should have that in front of you right now.  
A. Thank you. I also have my own copy of that, as well.

45 Q. You're welcome to refer to your own copy, if you'd like. Doctor, are you  
satisfied that the matters of opinion in your report reflect your current  
professional opinion in respect of the matters you were asked to address?  
A. Yes.

50 Q. After you provided your report, it's correct that you were sent an update to  
the briefing material on 31 January 2023?  
A. Yes.

55 Q. For the record, your Honour, that's at page 31-1 of tab 20-01. Is there  
anything in that additional material that you received after that causes you to  
change the opinions expressed in your report?  
A. No.

60 Q. In preparing your report, you consulted with Dr Yumna Dhansay and  
Mr Patrick Sheehan?  
A. Yes.



Q. And you have set out the extent of that consultation at paragraphs 6 to 9 of your report; is that correct?

A. Yes, that is.

5 Q. Is that the whole extent of the consultation that you had with them?

A. Yes, it is.

Q. You discussed your opinions in relation to the questions you were asked and any significant difference in your opinions?

10 A. That's correct.

Q. Since providing the Inquiry with your report, have you read the reports of Dr Dhansay and Mr Sheehan for this Inquiry?

15 A. Yes, I have.

Q. The material with which you were briefed included other psychologist and psychiatrist reports, many of whom had interviewed Ms Folbigg; is that correct?

20 A. Yes.

Q. Those reports contained references to both primary material, references to interviews with Ms Folbigg and, indeed, opinions of those relevant experts; is that right?

25 A. Yes.

Q. To what extent did those reports and any of the three categories of material I've just described inform or affect the opinions you ultimately expressed, for example, in relation to a diagnosis?

30 A. Well, I didn't get the opportunity to personally assess Ms Folbigg, so I had to rely on the individuals who did assess Ms Folbigg, and their documentation or account of that interview and, to some degree, I guess, their impressions of her mental state, and what I - the process that I would go through in evaluating those is look for the overriding consistencies between the experts about features of, for instance, her descriptions and her mental state and how and to what extent they are consistent with my understanding of certain mental health conditions and experiences, but beyond that, my opinions are my own.

35 Q. You have set out the limitations of not having consulted with Ms Folbigg at paragraph 198.1, which is red page 67 to 68, and also at paragraph 10, which is red page 34. Do we understand you to say that not conducting an interview does have some impact on diagnostic formulation?

40 A. Yes, it does.

45 Q. Would you accept that, to the extent you were asked to make a retrospective diagnosis, that is a diagnosis of Ms Folbigg's mental state at the time she was writing in the diaries, there would be limitations on Ms Folbigg's ability to recollect those matters now?

A. Yes.

50 Q. Does this mitigate the absence of an interview on your diagnostic

formulation?

5 A. It's one of the factors that mitigates the absence of the diagnostic interview. The other mitigating effect is the psychiatric evidence and psychological evidence that was already available based on a clinical interview, and some of the other material, such as her interview with police and her evidence at the Inquiry in 2019.

Q. Are you able to say to what extent it mitigates the impact of not doing your own diagnostic assessment?

10 A. Well, it's an unusual amount of information provided by Ms Folbigg in response to interviews, although they were provided in a specific context. I was at least able to hear and observe, at least in the police interview, her mental state and the way she described her symptoms and her - and the way she - or her account of some of her thoughts and processes at the time.

15

Q. Coming back to some overarching themes in your report, is it a foundational assumption in your report that Ms Folbigg's diary entries record or otherwise reflect her thought processes?

20 A. I don't believe it's as straightforward as that. I think that her - and I have discussed what I think the diaries can and can't reflect in terms of that type of tool, but, I mean, the diaries just reflect, I suppose, a stream of consciousness type of thought, which may or may not be fragmented or unfragmented, and is influenced by her fluctuating emotional state at the time, and is largely determined by what her subjective intention was at the time of writing it. So it's an extremely difficult thing to, really, interpret, from a psychiatric perspective, in terms of having a clear account of what her actual thought processes, or her persistent thought processes might have been at that time.

25

Q. Do I understand you then to be saying that you don't make an assumption that any particular line of text is a consecutive line of thought, that it may be fragmented?

30

A. Yes, I don't make that assumption. In fact, I would never be able to make that assumption from a psychiatric perspective.

35 Q. Ms Folbigg's given evidence about her diaries that she used them to record feelings which are negative, and so one example is a letter to Tracy Chapman, your Honour, which is at Exhibit 32-07, page 222, we don't need to turn it up, "All I can say is at the times in question I wasn't in a good positive frame of mind. Gee, how can I explain it? They were used to dump every negative emotion, feeling, thought I've ever had". If you assume that is a correct reflection of how Ms Folbigg used her diaries, do you accept that the diaries would, therefore, not be reflective of the full spectrum of her feelings and emotions during that period?

40

A. Yes.

45

Q. Does that affect your use of the diaries in formulating a diagnosis?

A. Yes.

Q. How does it do so?

50 A. Well, it doesn't reflect the full extent of her feelings, as you've put it, at the

time. In making a diagnostic formulation, you don't - you do rely on a person's account of their feelings, their subjective state, but you need to rely on other features, such as signs of, say, a mental illness or a mental health condition, and they might be the way she presents, the way she functions, or an individual functions. That might be biological signs, such as whether she's sleeping or not sleeping, whether she's losing weight due to loss of appetite, the reason she's losing weight, due to loss of appetite, specific cognitions that she might not be aware of that other people - experts might be aware are associated with specific conditions.

5

Q. Do we take that to then - is it the case that in formulating your diagnostic assessment of Ms Folbigg, you take into account both her subjective thought processes, the objective material in the diaries insofar as it exists, for example, "I'm putting on weight. I'm not sleeping", and what was reported to other people at the time?

10

A. Yes.

Q. As a psychiatrist, do you consider it's within your area of expertise to express an opinion as to whether Ms Folbigg does or does not have a mental health or psychiatric condition?

15

A. Yes.

Q. I'll take you in a moment to the views that you actually express about this, but going through, do you consider it's within your area of expertise to express an opinion about the potential effect, in a causative sense, of her mental health conditions on the content of her diaries?

20

A. Yes.

Q. Do you consider it's within your area of expertise to express an opinion as to whether Ms Folbigg's diary entries are consistent or not with features of the mental health conditions with which you diagnose her?

25

A. Yes.

Q. In your report at page 41, red page 72, as part of your answer to question 2(c), you propose how Ms Folbigg's diary entries are to be interpreted.

30

A. Yes.

Q. Is your opinion in that regard based on the consistency between the content of the diaries and cognitions of the mental health conditions that you diagnose?

35

A. Yes.

Q. Do you also consider it's within your area of expertise to express a view as to whether the statements made would be reliable as admissions by Ms Folbigg as to having harmed her children?

40

A. Yes, from a psychiatric perspective, at least.

Q. You do use that term "from a psychiatric perspective" in your report at paragraphs 198 and 197. Could I just ask that you explain for his Honour what

45

you mean when you employ that term?

5 A. Certainly. Certain legal concepts, such as whether something is an admission, is a question of fact. A psychiatrist is not able to make an expert opinion on what is a question - you know, what is as a matter of fact an admission, but a psychiatrist can give information about the impact of  
10 someone's mental state and mental health conditions, in terms of providing some insight into whether something could reliably be interpreted one way or another as actual evidence of someone's thought process at the time or someone's intention or someone's motive or whether someone did something. So I think that's the limit of my expertise, noting that, ultimately, it's up to a Court to determine whether something is, as a matter of fact, an admission or not.

15 Q. Turning to some assumptions that you may or may not have made in the preparation of your report. The opinions expressed are in the knowledge that Ms Folbigg has been convicted for the murder of three of her children and the manslaughter of one?

A. They are made in the knowledge of that, yes.

20 Q. Are the opinions expressed in your report made consistently with any assumption as to innocence or guilt?

A. No, they are not.

25 Q. It's correct that your view does not assume murder or a natural cause of death?

A. No, it does not.

30 Q. Coming to the overall views which you express. At paragraph 197.2, which is red page 67. You confirm your view that, "there is nothing contained in the diaries... that would clearly indicate" - I think that's "in and of itself" - "an admission, including an admission by Ms Folbigg as to harming her children".

A. Yes.

35 Q. If I can just take you forward to page 72, which is paragraph 198.3. It's page 41 of your report.

A. Yes.

40 Q. You say there that your view is that "any interpretation of the entries as reflecting admissions of guilt... would be highly unreliable"?

A. Yes.

45 Q. Are you able to explain for his Honour what you mean by "unreliable" in this context?

A. What I mean is from a psychiatric perspective, the nature of Ms Folbigg's diaries in and of themselves were unreliable as a reflection of any motivation or intention, because of the purpose for which they were written, the way in which they were written, the fact that they were influenced heavily by her emotional state. In addition to that, Ms Folbigg, from - in my opinion, was experiencing a number of mental health conditions that would have been  
50 operating on her mental state. Certainly, she was experiencing maternal grief

5 following the loss of her children, and we know that there are certain cognitive distortions, common feelings and common emotions that are associated with maternal grief that can influence a person's perspective of what may or may not have happened and how they may or may not have been responsible, for instance.

JUDICIAL OFFICER

10 Q. Can I just ask you two questions arising out of this. You say the purpose of writing the diaries. What are you referring to when you say that, Doctor?

15 A. So, a diary in and of itself is written for a number of subjective potential purposes. They're generally written for the purpose of someone's - to record someone's either thoughts or emotions, or as a therapeutic tool to cope with stress. In Ms Folbigg's case she has given evidence that they were written for the purpose of recording her emotions as a coping mechanism, and they certainly appear to be, given their presentation as a sort of fragmented and disorganised contemporaneous account over time, to have been used as a way of just recording fluctuating emotional states rather than any specific sort of fact or chronological organised account.

20 Q. The other thing you refer to is maternal grief. One thing that's been remarked on in these diaries or has been suggested in relation to these diaries is an absence of maternal grief as a surprising feature. How does that reconcile with the answer you just gave?

25 A. I mean I don't agree that there's an absence of features of maternal grief, I think that the - I mean almost every piece of information that I was provided would suggest that she was experiencing maternal grief, she may not have been grieving in a way that certain people felt was acceptable or appropriate but she--

30 Q. Or conventional?

35 A. --or conventional, thank you, your Honour, but she certainly showed what I understand to be and what the literature says are strikingly consistent hallmarks of a person who was grieving for her children.

WOOTTON

40 Q. Following on from those questions about maternal grief I might just jump forward to that if that's convenient. You do discuss this at paragraph 192, page 65 in the red and page 34 of your own numbering. I did want to ask you, what is it that you mean by maternal grief in the sense that I understand it's not a formal diagnosis in DSM-5 for example?

45 A. It's not a diagnosis because it's considered to be a normal reaction to the loss of a person that's close to somebody, and in Ms Folbigg's case I thought she displayed a number of features of typical maternal grief and that would've - for instance, she was reported in one statement at least of displaying emotional distress at the time of her children's deaths and at funerals. She can be observed during her interview with police of actually in my view, exhibiting grief and unbearable distress. She was, during her  
50 evidence at the first Inquiry she became distressed and upset when she had to

5 provide an account of the loss of her children. During the documented interviews with Dr Giuffrida and Dr Diamond, Dr Seidler and Dr Touma and Dr Betts, she described the hallmarks of maternal grief, she described feeling hopeless, responsible, worthless, having difficulty sleeping, trying to rationalise what had happened to the children, tried to reassure herself about where they might have gone, and these are all very characteristic of someone who's lost a child.

10 Q. I asked you earlier about your assumptions with respect to guilt or innocence. Do I take it from the answer that you gave earlier that your view of Ms Folbigg displaying these cognitions of maternal guilt takes into account in both possibilities, maternal grief? It takes into account in both possibilities, that is that she did kill her children and she did not?

15 A. Certainly.

Q. Is it then the case that grief may be experienced whether a child died of natural causes or whether the parent played an active role in their deaths?

A. Yes.

20 Q. His Honour asked you some questions about the nature of a diary and you discuss this at page 39 of your numbering, 70 in the red numbering of your report?

A. Yes.

25 Q. Are you able to just explain what it is you mean when you use the words transitional object in that paragraph?

30 A. Yes. A transitional object, I think it was described by Dr Touma as well, is something that is really done for the purpose of comfort or reassurance or as a coping tool in certain contexts. Often transitional objects are things that children hold onto for periods of time, like they might have a blanket, they call it a blankie, which is a symbol of comfort or something that they hold onto for security.

35 Q. I asked you earlier about how you understand the diary to record thoughts and you gave an answer as to that. Taking into account what you said about that, do you treat the diaries and the statements made in the diaries in a similar way to the way that a patient communicates to a psychiatrist or psychologist in something like cognitive behaviour therapy or do you have to treat it with some difference?

40 A. I'm sorry, can you just re - or go through that question again please?

Q. No, it's certainly my fault. Do you treat the diaries when you read them in a similar way to the way that you would treat the communication of thoughts to a psychiatrist in something like cognitive behaviour therapy?

45 A. Not strictly. I think that that's two different approaches. A diary could be used as a tool in cognitive behaviour therapy as a way of teaching people how to use a healthy coping mechanism instead of someone's emotions controlling them, they might write them into a diary to vent them - I think was actually a term Ms Folbigg used. So, that's a commonly used tool and purpose for a diary or a journal. I think when you're working through cognitive distortions in

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cognitive behaviour therapy, you help teach people the difference between say a thought and a feeling and a behaviour, as three separate entities. So just because you think something, doesn't mean that you've done something, just because you feel something, doesn't mean it's true.

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Q. I did want to come to that. You record at page 71 that thoughts are not facts and emotions are not intentions, and you do state this is well understood in cognitive behaviour therapy, and you also state that the emotions which you've listed there can produce powerful cognitive distortions which do not reflect intentions. Do I take it that you transpose that experience onto the experience of reading the diaries and your approach to them?

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A. Yes.

Q. Is it possible for a psychiatrist to distinguish in the context of, for example, engaging in a consultation with a patient, between those thoughts which are not facts? Is that something that is--

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A. No, I don't think it's possible for anybody to really distinguish between what is purely a thought and what is a fact.

Q. Does that mean that as a psychiatrist, that is why you treat those kinds of statements as unreliable in terms of predictors of past or future behaviour?

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A. Yes.

Q. I want to turn to your diagnostic formulations, and I start at paragraph 191, which is red page 65 or page 34 of your report.

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A. Yes.

Q. First, you've diagnosed Ms Folbigg with a major depressive disorder with likely onset from early adulthood or late adolescence; is that correct?

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A. Yes, that's correct.

Q. You've taken into account what was reported to various different psychologists in making that diagnosis?

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A. Yes.

Q. And psychiatrists?

A. Yes.

Q. Can I ask, to what extent is there a difference between postnatal depression and major depressive disorder?

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A. Postnatal depression refers to a depressive episode arising in the immediate postnatal period. Under DSM-5 classification system, it's actually a major depressive disorder with a depressive episode occurring in the peripartum period, or with peripartum onset, which is just the period either during pregnancy or within the four weeks after, and it's similar to, say, saying that something is a depressive episode occurring with atypical features or with psychosis or - you know, so there's certain descriptors, but, ultimately, the disorder is a major depressive disorder and if it's postnatal depression, it means it has been limited to that period of - following the birth of a child.

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Q. I take it from your review of the material, you don't limit Ms Folbigg's diagnosis to that period around the births of her children?

5 A. No, I don't. In fact, I think the evidence is that she experienced depressive episodes largely after the death of her children, rather than after the birth of her children, and she also experienced depressive episodes possibly before the death of any of her children.

10 Q. I don't need to take you to it, but if you can accept from me, or perhaps from your own recollection, that Mr Sheehan refers to the fact that Ms Folbigg appeared to be functioning in the community prior to her arrest, and that these are the domains by which the degree of impact of disorders, such as, for example, depression, are often measured. To what extent do you disagree or agree with that proposition?

15 A. I mean, I think it's difficult to know the precise periods of time without talking to Ms Folbigg, exactly when she was experiencing all of these symptoms of depression and when they remitted, when they started to end. So I don't know if that timeframe is correct. I think that there was evidence she wasn't functioning for periods of time. She was described as socially isolating. She described gaining weight, being pervasively depressed and her thought processes in her diary reflected those emotional states to a large degree. So there were consistencies between what she said to the  
20 psychiatrist and the psychologist. So I do think she had periods of depression following the death of her children. She did seem to recover, though, for periods of time, as well, where she felt things were going well. For instance, it  
25 seemed to be that she recovered to some degree between the death of her third child and the birth of her fourth child.

30 Q. Turning to the next diagnosis, jumping from 191 over to 192, and at the start you talk about maternal grief, which I understand you to say is not a diagnosis, and then you say that the features "may be consistent with the proposed criteria for persistent complex bereavement disorder, although not an existing diagnosis in DSM-5". And it's correct that at the time that you wrote this report, it was contained in a section of the DSM-5, which is a condition for further study with proposed criteria?

35 A. That's my understanding, yes.

Q. Can I ask, to what extent are the symptoms of a persistent complex bereavement disorder capable of being differentiated from a major depressive disorder?

40 A. It comes down, really, to the relationship between the grief process and the depressive disorder, largely, but if something ultimately satisfies criteria for a major depressive disorder, that is, there are enough psychological and biological symptoms of a major depressive disorder that impact on a person's function beyond a period of expected grief, then that would be a major  
45 depressive disorder by definition.

Q. Is it correct, from your understanding, and you say this at the top of paragraph 66, "Ms Folbigg's circumstances (having lost four children) are unusual", and it's--

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JUDICIAL OFFICER: Paragraph 66?

WOOTTON: I apologise, page 66, paragraph 192 at the top of page 66.

5 Q. In your view, is it just simply not possible to identify what would be expected norms for loss of this kind?

A. Yes.

10 Q. Because of that, Ms Folbigg does not satisfy the diagnosis for a persistent complex bereavement disorder?

A. I think it's - you just can't say, given the circumstances, whether she does or doesn't.

15 Q. Other than that feature, which is a grief that goes beyond that which is usual, would Ms Folbigg otherwise display the symptoms of a complex grief disorder?

A. Yes. She certainly displayed features of complicated grief over a considerable period of time following the death of her children, yes, and that would be consistent with that type of disorder that's proposed.

20 Q. Going to the next paragraph, you describe Ms Folbigg as possibly having an anxious attachment style, but that her presentation is complicated by her circumstances of grief?

A. Yes.

25 Q. Is it correct in your view that it's not possible to definitively state whether her presentation, being her presentation that you describe in the second last sentence of paragraph 193, is attributable to an anxious attachment style, grief, or both?

30 A. Yes, it would be very difficult to separate out those conditions.

35 Q. Then turning to complex post traumatic stress disorder, which you refer to in paragraph 194, your view differs from the view of Dr Michael Diamond, who prepared a report dated 16 April 2019 - for the record, that's Exhibit 2-BA - is that correct, that your view differs?

A. Yes.

40 Q. Complex PTSD is not a diagnosis on the DSM-5 but you understand it to be a diagnosis in the ICD-11?

A. Yes, that's correct.

Q. Is the ICD-11 an accepted tool for diagnosis in the field of psychiatry?

A. Yes, it is.

45 Q. Are you able to explain what the difference is between the ICD-11 and the DSM-5?

50 A. The DSM-5 is essentially a classification system that's been developed in North America and the ICD-11 is an international classification system. In Australia, and in a lot of countries, there just seems to have been more use or more common use of the DSM-5 as a classification system, but they both get

used. In fact a lot of the forms and reporting in New South Wales Health offer the ICD-11 criteria.

5 Q. In your view Ms Folbigg displayed some features which would be consistent with PTSD?

A. Yes.

10 Q. You note that there's not been significant impairment in a number of areas of functioning which you list out.

A. Yes.

15 Q. It's correct that in your view Ms Folbigg is not currently suffering from complex PTSD; is that right?

A. That's correct.

20 Q. Are you able to form a view as to whether she was during the period 1989 to 1999?

25 A. Generally, complex PTSD is considered to be a pervasive disorder, but in my view, Ms Folbigg didn't appear to - and it's very difficult again to separate - and I haven't interviewed her, but difficult to separate out her maternal grief and her depressive symptoms from features of PTSD. But she didn't appear to show signs of the re-experiencing phenomena that you would ordinarily expect in a complex PTSD patient. You have to satisfy the criteria for the standard post traumatic stress disorder in addition to some additional features that reflect the impact of recurrent trauma, and her symptoms didn't appear to impact on her function in a chronic sense that would generally be seen with someone with complex PTSD, so although I thought she had features of complex PTSD, I didn't think she would likely meet the criteria.

30 Q. I just would like to take you to Exhibit 2-BA, which is the report of Dr Diamond. I think it will be put on the screen, if that suits you, that small screen in front of you.

A. Thanks.

35 Q. Could we go to page 7566 of that report which is at page 39 of the report itself?

A. Yes.

40 Q. Dr Diamond reports there that Ms Folbigg was exposed to trauma at a stage of her life when she was preverbal?

A. Yes.

45 Q. In fact can I take you back to page 38 of the report, 7565 - are you familiar with this report, Doctor?

A. Yes, I am.

50 Q. If you need more time to read it then please do so, but reading from there is the suggestion that the extent of disruption within the first two years of her life, which is the second paragraph from the bottom, if you assume the trauma that is being described there is the early childhood trauma discussed on the

next page.

A. Yes.

5 Q. Dr Diamond then expresses the view that she has expressed the effects of that trauma experienced at a preverbal stage, through lifelong patterns of distancing, emotional numbing, detachment and disassociation. In your view are those patterns consistent with early childhood trauma experienced at a preverbal stage?

10 A. Yes. They can be, yes.

15 Q. In your report - we can take that off the screen - at paragraph 198, red page 70, you say that Ms Folbigg has been exposed to "significant and repeated childhood trauma, ...compounded by the trauma of losing her four children", and then that it's difficult to know the extent to which they're pervasive and enduring beyond the impact of the death of her children. Does it follow that in your view it's not possible to attribute any particular symptom that you have identified in the material to the childhood trauma as compared to the experiences between 1989 and 1999?

20 A. Yes, it is. I think there were added complexities in this case but it's not uncommon, for instance, for people who have been exposed to trauma to be more prone to having mental health conditions such as depression, and so you can identify features of trauma in someone's presentation, but whether they are having a re-experiencing phenomena, for instance, as would be required in a PTSD, would be more difficult to confirm, but I did note that Dr Diamond also said that she had not had re-experiencing phenomena such as flashbacks and nightmares, which, on my knowledge of the diagnostic criteria, means she couldn't meet criteria in any event. So there's actually not a lot of difference when you look at it between our opinions in that sense.

25 Q. If I can then go to paragraph 196, in fact going back in your report to red page 67, report page 36, you state that Ms Folbigg would not satisfy the criteria for a borderline, antisocial or other personality disorder?

30 A. That's correct.

35 Q. Do we read your assessment as being a current one, that is at the present day?

A. Yes. Personality disorders by definition are enduring and pervasive, so that would continue, she would continue to present with features over time if she had any of those traits.

40

Q. You've anticipated my next question, is it possible for a person to suffer from a personality disorder that does not subsist, that is is it capable of being a transient condition?

45 A. It's not a transient condition by definition. It is – you can have traits that abate over time or be modified where, by interventions so that they don't impact on a person's function. So in that context you might see some improvement in a person's function, but the traits are otherwise expected to be enduring to be able to meet that criteria.

50 Q. You do state at paragraph 196 that Ms Folbigg has not engaged in

repeated behaviours over her lifetime that show a disregard for the law or social norms. To what extent do you account for or discount the convictions with which we're concerned here?

5 A. Well even if you took into account convictions, they were in a specific context, and they wouldn't generally be considered to reflect a pattern of antisocial behaviour.

Q. Can I then ask, what are the kinds of repeated behaviours that would lead to that kind of diagnosis, just so we understand?

10 A. Certainly. So you might see somebody from adolescence or early adulthood, in fact you need to see it from adolescence, so below the age of 15, engaging in things such as stealing, as well as aggression, as well as drug use, so flagrant rule breaking, truanting from school, so just anything that would be a departure from what would be socially expected, including law  
15 breaking.

Q. In your opinion those are not things that you've seen in the material relating to Ms Folbigg?

20 A. Yes, I have not seen any other evidence of law breaking or rule breaking in her life.

Q. You don't diagnose Ms Folbigg as suffering from any psychopathic disorder?

25 A. No.

Q. Do you agree with Mr Sheehan, this is at tab 21-02, 48, again we don't need to go to it, that there has been a general consensus that Ms Folbigg has no history of psychotic mental illness?

30 A. Yes.

Q. Is there anything in the material with which you were briefed which would give rise to a doubt about that?

35 A. I haven't seen any signs or symptoms of a psychotic disorder in the material, no.

Q. Do you have a personal view as to whether she has ever suffered from a psychotic mental illness?

40 A. I don't believe she's ever suffered from a psychotic illness from what I've been shown in terms of the material.

Q. To what extent would expressions of grief be associated with someone who had psychosis?

A. Sorry, can you repeat that question?

45 Q. Certainly. To what extent would expressions of grief, so maternal grief which you note in your report as being exhibited, be associated with someone who had psychosis?

A. Well, expressions of maternal grief are a different process to psychosis.

50 Q. I'll ask in a different way.

A. Sorry, I must be misunderstanding that.

5 Q. No, I'm not asking it well. Would it be inconsistent with a diagnosis of Ms Folbigg having suffered from psychosis or a psychotic mental illness between 1989 to 1999 that she expressed cognitions of maternal grief?

JUDICIAL OFFICER: Could I ask it another way?

10 Q. Could you have psychosis and maternal grief at the same time?

A. Yes, you could. Yes.

15 Q. But they're separate conditions?

A. Absolutely separate conditions, but yes, I mean somebody could be psychotic but still grieve. They might grieve for someone they actually lost, they might even grieve for someone they thought they lost but that didn't happen, if that makes sense - so in response to a delusion. Yes, there's nothing that would prevent a person who experienced psychosis having a grief process.

20 WOOTTON

Q. Can I then ask this, what is it that you read in the material that leads you to the conclusion that Ms Folbigg did not have a psychotic mental illness or psychosis?

25 A. There were no signs and symptoms of psychosis that were identified. So signs and symptoms of psychosis would be things like formal thought disorder where she had disconnected thoughts, auditory hallucinations or visual hallucinations, so she either heard or saw things that weren't there, and delusions such as fixed false beliefs - a belief that for instance her children were possessed by the devil or a belief that she was going to be killed or the world was going to end if she didn't act in a certain way. There were no signs of any sort of fixed false beliefs that would be delusional.

35 Q. I now want to turn to the question you were asked in respect of what the diaries disclosed about her mental state. You've answered this at paragraph 198 and following, red page 67. You've identified some symptoms in the second paragraph from the bottom on page 69 and you've said she appeared to clearly be experiencing grief and bereavement reflected in her diaries, description of her thought processes, her evidence and the account of her mental state. Do you have that paragraph?

40 A. What page of my report is this?

JUDICIAL OFFICER

45 Q. Page 38 of your report?

A. Page 38, thank you.

WOOTTON

50 Q. 38 of your report.

A. Yes. Yep.

Q. Is it your view then that the emotion or thought or feeling that she was a failure as a mother is a symptom of grief or bereavement?

5 A. Yes.

Q. Is it the same in respect of feeling responsible for her children's death?

A. Yes.

10 Q. It's the same in terms of her finding meaning in her children's death?

A. Yes.

Q. Periods of frustration, short tempered and anger, is that also in your view a symptom of grief or bereavement?

15 A. It's certainly consistent, yes, with grief and bereavement.

Q. The intense distress and detachment from unbearable emotions?

A. Yes.

20 Q. Feelings of loss of control?

A. Yes.

Q. And jealousy and difficulty trusting others?

A. Yes.

25

Q. In the last part of your report, you refer to emotional coping styles, and you note that aspects of Ms Folbigg's presentation have drawn criticism of having lacked emotion?

A. Yes.

30

Q. In your experience, individuals who are emotionally detached due to trauma can appear emotionless and cold when, in fact, their emotions are so unbearable they are unable to tolerate them.

A. Yes, that's correct.

35

Q. Are you able to just explain--

JUDICIAL OFFICER: Whereabouts are you referring to?

40 WOOTTON: It's the very last part of the report. I've jumped way ahead on to page 72 to 73, 41 to 42.

Q. Are you able to explain for his Honour how you have formed that view, based on your - is it something that you've formed based on your clinical experience of research experience or--

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A. Clinical experience and forensic experience. Mental health clinicians and lots of individuals, family members, friends, in my experience, can often misinterpret somebody who controls their emotions, because they are unable to bear to express them, and it's a defence mechanism to control the emotions as opposed to display them. It's a well recognised emotional coping

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5 mechanism and it is particularly the case when people have experienced trauma, because they have less ability to tolerate emotional responses, but, unfortunately, to society, and to - even to mental health clinicians in some cases, that can appear cold and it can appear like the person isn't experiencing the emotions, but, in fact, that are definitely experiencing those emotions. They just can't bear to express them in a normal way.

10 Q. If I could take you just to one further report, it's Exhibit 2-BB. It'll appear on the screen again. A report of Dr Bruce Westmore dated 16 June 2003. Do you recall reading that in the voluminous material with which you were briefed?  
A. Yes, I did read that.

15 Q. If we could just go to page 7591. In the fourth paragraph from the top, Dr Westmore says:

20 "During my contacts with her I always felt that she was a very controlled woman, probably overly controlled in view of the serious circumstances in which I was assessing her. She rarely showed emotional distress or, indeed, any emotional response".

25 Are you familiar with that paragraph or would you like some time?

A. I know I recall reading it, and I've - I'm - I've read it again, yes.

30 Q. What Dr Westmore then does is draws a connection between these cognitions and a possibility she would be prone to episodes of extreme angry outbursts. Is that a link that you would draw?

A. It's not a link I would draw in these circumstances.

35 JUDICIAL OFFICER

40 Q. You should remember, Doctor, that Dr Westmore was doing this report after she'd been convicted of the murders and the manslaughter.

45 A. Absolutely, your Honour. It was written for the purposes of sentencing on the assumption that she had been convicted and was guilty, that's correct, and he was formulating - which is not uncommon, to try to provide an explanation as to why this might have happened in the circumstances. So I read this as assuming that she had done what she was alleged to have done.

50 WOOTTON

Q. What I am attempting to ask is, from a psychiatric perspective, is there a recognised link between someone who appears overly controlled or, for example, has the emotional detachment that you describe and being prone to angry outbursts, or is that--

55 A. It's not an association that I have known to be considered significant, no. I think there are some theories in certain types of violence that violence might be due to an over control, but it's certainly not in a context of looking at the impact of trauma on how someone manages their emotions. It's - for instance, I've heard of it in the context of domestic violence offences and how people might become violent in domestic situations after a long period of time in the

5 absence of any mental health disorder, and that might be due to, say, an over control of anger and an under expression or an under communication of emotions in the context of that relationship, so that the anger boils to the surface over time. I've certainly never seen it described in this circumstance where Dr Westmore is drawing simply an association between someone controlling their emotions, which is actually very common, and someone having or being prone to an extreme violent outburst or angry outburst.

10 Q. In your view, is the description of Ms Folbigg, assuming it to be correct, as controlled, rarely showing emotion or distress, more likely to be attributable to her early traumatic experiences?

A. Yes.

15 Q. Those are my - those are not my questions.

JUDICIAL OFFICER: You're not sure yet.

WOOTTON

20 Q. Doctor, when you answered a question in respect of emotional detachment, I think you said words to the effect of, "feeling emotions but someone who can't or doesn't express them in a normal way."

A. Yes.

25 Q. Could you explain "normal" by reference to what?

A. Yes, that's a good question. I probably shouldn't have used the word "normal" given it's such a subjective and broad term, although we use it all the time in psychiatry, but, I guess, "in a socially acceptable way" was probably more accurate. So people very commonly will control their emotions for lots of reasons. One of those reasons might be because they can't tolerate them and that's a situation that would arise when someone's been exposed to trauma and might have that vulnerability in terms of being able to tolerate strong emotions. Obviously people also control their emotions as a defence in social circumstances or in lots of situations, but I guess what I meant was she is unable to tolerate emotions and she's much more unable to tolerate those emotions potentially because of the trauma that she's been exposed to, and so, therefore, she makes a considerable effort to control them.

40 Q. You see that as an explanation, in a way, for the appearance of being overly controlled or emotionless?

A. Yes. For instance, after the death of her children she didn't feel safe being able to be unhappy and teary and distressed in certain circumstances because she couldn't tolerate those emotions and, as she's gone, as time has passed and those emotions have become less intolerable, she's been able to talk about them and experience them and reflect on them with others, for instance, clinicians over more recent years.

50 Q. Going back to some questions I had earlier on this afternoon, you had said that it appears Ms Folbigg suffered depressive episodes after the death of the children, as compared to immediately after the birth of each of the children,



when we were discussing postpartum depressive disorder as compared to major depressive disorder.

A. Yes.

5 Q. You also said it appears she suffered depressive episodes before the death of any of her children in the sense of pre-birth of any of the children?

A. Do I think she suffered depressive episodes before the birth of her children?

10 Q. Before she had children, yes?

A. I can't say for sure. I think the accounts I got clearly said that it, clearly contained descriptions of her experiencing depressive episodes after the death of her children. I couldn't say with certainty whether she'd actually had a depressive episode prior to the death of any of her children, no.

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NO EXAMINATION BY DR WOODS AND MR HASTINGS

<EXAMINATION BY MR JORDAN

20 Q. Dr Eagle, just for your information, in this Inquiry I'm appearing for the Director of Public Prosecutions.

A. Thank you.

25 Q. You have been commendably careful in your comprehensive report to identify all of the source material and other matters that are of significance to your opinion.

A. Thank you.

30 Q. One thing that I noticed as you were giving your evidence in answer to Ms Wootton's questions, on a couple of occasions you referred to how you had been able to observe Ms Folbigg and also listen to her.

A. Yes.

35 Q. By those references were you referring to, firstly, the admittedly very limited video available of the police interview?

A. That's correct.

40 Q. Were you also referring to the audio of her examinations during the 2019 Inquiry?

A. Yes, and the audio of some sessions with, I think, Dr Touma.

Q. Yes. In what ways did it assist you to have access to that other form of material, being non-written - how did that help you in your task?

45 A. Well, it helps, I think in terms of being able to process information generally, multiple sources or manners of receiving that information is helpful for everybody. So even just reading what she's saying in a certain context, for instance, during the police interview, being able to see her speak, even for a short period of time, and see her manner and her way of speaking, enables me to then match that with the transcript and process in my head the presence or  
50 potential absence of, for instance, phenomena that might suggest she has

psychological problems, mental health problems.

Q. Although you didn't have video, were you similarly assisted by the audio of a rather long series of questions and answers during the 2019 Inquiry?

5 A. Yes. So I could hear during the audio - it's actually very difficult to interpret from a transcript how someone is saying something.

Q. Yes.

10 A. But from the audio I could hear the tone of her voice, I could hear emotion in her voice, I could hear the way she communicated, I could hear the spontaneity of her answers, I could hear the logic and coherence of her communication style, so, yes, it enables me to process that information a bit better than just reading the transcript.

15 Q. Yes. In your review of the diaries, did you see any references where Ms Folbigg said or mused words along the lines of, "Why are my children dying?"

A. I can't recall that specifically, no. I may be mistaken though. There were a number of pages, but I'll accept that there was nothing there to that.

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Q. You can at least accept from me that we've looked at it and we haven't been able to find any?

A. I'm certainly happy to accept that, yes.

25 Q. What do you say about the absence of what would appear to be such a natural line of questioning?

A. I'm not sure it is a natural line of questioning for someone writing in a diary necessarily. I'm not sure what a natural line of questioning would be in a diary in those circumstances. I think she was simply writing whatever emotions she was experiencing at the time, and even then she didn't write in the diaries regularly or routinely. She wrote in them when she had some emotional impetus to do so, it seemed.

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Q. What would you say to the proposition that one reason why Ms Folbigg did not question the cause of her children's death is because she knew how they died?

35

A. I don't think I could interpret her not questioning the cause of their death from reading the diaries. In fact I suppose the same could be said as to why she didn't write in the diary immediately after the children's death and write down what she'd done and how bad she felt about it. I mean I don't think those are matters for psychiatric expertise to be honest, I think that what I can take from the diaries is the expression of emotions that are very consistent with someone who's grieving.

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Q. I'd like to take you to just a couple of the diary entries, and if again, Ms Thorne could help us again with that, it's Exhibit 18-07. Could we go please to red page 201? If possible could we expand it to focus upon entry 315 for 25 October 1997. Do you see that, Dr Eagle? Please take as much time as you need to reacquaint yourself with that entry before I go to a specific portion of it.

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A. Thanks. Yes, I've read that.

Q. The portion I'd like you to focus upon is right towards the end of this entry, five lines up from the bottom, and I'll quote it for the record:

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"Looking at the video, Sarah was boyish looking. Laura has definite feminine features. They are chalk & cheese. And truthfully just as well. Wouldn't of handled another one like Sarah. She saved her life by being different."

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What is your interpretation of that passage?

A. It's hard for me to interpret anything written in a diary like that. I think there are other references to her saying similar things in the context of trying to rationalise or explain why the children died from a spiritual context, but from a psychiatric perspective she is enjoying having a living baby who she is relishing in terms of her features and her relationship with her. Parents unfortunately say things all the time about their children that aren't considered socially acceptable or a reflection of the gold standard parent, but there's nothing in that that necessarily suggests from a psychiatric perspective that it could be a motivation or an intention or a reflection of something that would have happened. So I can't really add to that.

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JUDICIAL OFFICER

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Q. What about the last line?

A. Certainly, your Honour, yes. "She saved her life by being different", I mean that could be interpreted in a number of different ways and that's sort of beyond my expertise to interpret it in that way, but there's nothing specific in that. She did speak at times of having a spiritual belief that the children were taken from her. I don't think you can say for instance, interpret that, at least from my expertise, as suggesting that she had done something to harm the child; but that's beyond otherwise the extent of my expertise.

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Q. Let me ask you this, and Mr Jordan may object to it.

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A. Yes, your Honour.

Q. You've seen through these diaries a number of matters which could be construed as admissions of wrongdoing in relation to the children, this one's an example. Is it consistent with the mental state which you have referred to in your report of someone writing some things like this which would not necessarily bear - which would not in the circumstances bear a literal interpretation?

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A. Your Honour, I'm not sure I heard all of--

45

Q. I'll try again, sorry.

A. --sorry, your question, but I think, yes, I don't believe you can necessarily literally interpret what somebody writes in a diary for their own emotional purposes, no, and I don't know that you could without understanding the context of why she wrote that, with more information, necessarily believe that that means that she did something.

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Q. Would that be all the more so in the case of a person with her mental state as distinct from someone who didn't have the same, perhaps, breeding, didn't have the same degree of difficulties?

5 A. Yes. So this is an individual who's experienced - who's grieving for three of her children and it's quite clear that she's got feelings of responsibility, feelings of guilt, feelings of self-blame, maybe I didn't go in early enough and check on them, maybe I didn't monitor them closely enough. She might be reflecting on the fact that her bond with this baby is stronger and that that's saving this child because she is paying closer attention to her, for instance. But I'm really  
10 speculating, but yes, that - that is, I suppose, one possible explanation.

JORDAN

15 Q. Is your quite, quite appropriate reluctance, to speculate on what these things could mean, is that reflecting your overarching approach, which is, firstly, you're making no assumptions as to whether or not Ms Folbigg is innocent or, indeed, possibly guilty of the charges that she is currently imprisoned for?

20 A. Certainly. I'm certainly trying to make no assumptions, yes.

Q. Also, is it reflective of your, again, appropriate caution, in making it very clear in your report and in your oral evidence that you're only speaking from a psychiatric perspective?

25 A. Yes.

Q. And you are not seeking to offer opinions in relation to questions of fact?

A. That's correct.

30 Q. Thank you. I think in that context, I won't trouble you with the other entries.

A. I appreciate that.

JORDAN: Could I move please, Ms Thorne, do you still have the bundle that we had for the last witness? I'll just bring up another document on the--

35 WOOTTON: Your Honour it might be convenient to have that marked for identification.

JUDICIAL OFFICER: Yes.

40 WOOTTON: MFI 11, 10.

JUDICIAL OFFICER: 10.

MFI #10 BUNDLE OF DOCUMENTS

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Q. Can I just ask you, to what extent in your review of the material are you familiar with the answers given by Ms Folbigg at various times in relation to the existence of other diaries? This is in the early stages of the police investigation.

50 A. I'm aware of the transcript from the surveillance and I'm aware of - I mean, I

was provided some material about that.

Q. I'm just going to take you to some of that.

A. Thank you.

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Q. In MFI 10, if you just take time to reacquaint yourself with the first two pages, red numbers 236 to 237, and I'll take you to some specific portions.

A. I'm finished the first page.

10

Q. If you could read onto the next page, as well, please, 237.

A. Yes. That's fine. Thank you. That's fine. Thank you.

15

Q. To put it in context, this is during her interview by police on 23 July 1999. Do you see there that particularly by her answer to question 853 and also question 862--

A. Can I just go back a page? Thanks. Thank you. Yes.

20

Q. The effect of what Ms Folbigg is saying to police at this time in the interview is that she had disposed of all of her diaries the previous Mother's Day?

A. Yes.

25

Q. Again, as a matter of context, this is what Ms Folbigg is telling police before she had any knowledge that there would be a search of her premises later that day, as context for your understanding.

A. Thank you.

30

Q. If you move then to the next page in this bundle MFI 10, and I'll take you to the relevant portions. This is an extract of transcript from the trial, and it's an excerpt of the evidence given by Detective Ryan. What this evidence is doing is picking up the sequence of events after the conclusion of the interview and after Detective Ryan informed Ms Folbigg for the first time that there would be a search of her premises that evening. You'll see there on the first page, red number 2769 at about line 7, Detective Ryan's evidence is that he informed Ms Folbigg that there would be a search warrant. And he then goes on to relate what Ms Folbigg said when she heard that, and, in particular, his evidence is she was asked, "Do you have any more diaries?" and she said, "I've just started a new diary and it's up at the house." Do you see that?

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A. Yes.

40

Q. As a matter of context, that is a change of significance to what she had told police that afternoon, namely that she had disposed of all of her diaries?

A. Certainly.

45

Q. Detective Ryan's evidence in this portion of that transcript then goes on to outline the fact that the search was conducted, and, if you go down to the bottom of red page 269 and over to the next page, you'll see he gives evidence where Ms Folbigg, consistent with her most recent statement, provides them with a diary from the house. Do you see that?

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A. Yes.

Q. Then further down that page, red page 2770, at around about line 29, Detective Ryan recounts the discovery by searching police of another diary that had not been provided by Ms Folbigg and had not been referred to previously even in her revised answer. Do you see that?

5 A. Certainly.

Q. Again this is all context. So that's the evening of 23 July 1999.

A. Yes.

10 Q. Moving on to the next page of MFI 10, and this is red page 108, there is a transcript of a listening device and you'll see from the top of the page, "This is a recording of things that were said and heard the following morning, 24 July 1999, at around 7.53am." Do you see that?

A. Yes.

15

Q. The transcript records, "Noises consistent with Ms Folbigg entering the bedroom, appearing to open a cupboard or drawer causing a loud noise." She is then recorded as saying, that is Ms Folbigg, "I should have fucking done what I was gunna do, stuck it underneath that." Do you see that?

20

A. Yes.

Q. You'll see that on the transcript the police have indicated what they take that to mean, namely, she is talking about the diary that was found by police which she had not provided?

25

A. Certainly.

Q. Firstly, pausing there, in that context what is your interpretation of what Ms Folbigg is saying on that page in the quote that I just read to you?

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A. I mean, I couldn't - that's not a matter for psychiatric evidence, what my interpretation is of what she's saying on that last page.

Q. Let me just explore that with you.

A. Certainly.

35

Q. Is it not at least potentially important context as to your understanding of these diaries to consider whether Ms Folbigg was acting in relation to those diaries in ways that could be said to be consistent with a consciousness of guilt? Is that not important context for your purposes?

40

A. It's context, but the context that I take away from this is that she was in a police interview where they were asking her and enquiring of her and putting to her that she was potentially involved in the death of her children. That interview had occurred because of a report of a diary. She would have been aware that in the diary she would not have been portrayed well, given that they were full of her uncensored emotional states and feelings, and feelings of responsibility and self-hatred as a mother, and she's decided she doesn't want anyone else to read those diaries because it would possibly make her look even worse, but that's not uncommon in my experience as a Forensic Psychiatrist and I think that shows poor judgment, certainly, on her part. I'm not sure that I would say it could go as far as, from a psychiatric perspective,

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indicating a consciousness of guilt, but that's a matter for the Court.

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5 Q. Yes, very good. I'm going to conclude on this small bundle of documents. If you go to the next page, which is red page 109, you'll see that is another transcript of a listening device. You'll also see from the top of the page that it's only very shortly after the last transcript, 8.02am on 24 July, and just take as much time as you need to reacquaint yourself with that transcript.

A. Thank you. Yes, so I might need some context for it, but I've read the page.

10 Q. In short the effect of that transcript is to record what appears to be a conversation by Ms Folbigg with herself or talking to herself.

A. Mm-hmm.

15 Q. And during that exchange with herself, apparently playing different roles, possibly as a witness and a lawyer in a court case, do you see that?

A. Yes.

20 Q. In particular at one point towards the middle of the page 109, there's record of her saying, "Considering that you actually know her... do you think that you are capable of an unbiased report considering... circumstantial at the best. Attempting to accuse my client of murdering all four of her children. What are your thoughts on that?" Further down there's what appears to be a response, when she takes her lawyer hat off and puts her witness hat on, and I guess my question for you is, in the context of that relatively close sequence of events that I have taken you to, what, if anything, do you make of this?

25 A. I mean I don't know really what to make of it. There could be a number of possible scenarios and I don't have Ms Folbigg's explanation as to what that might have been about.

30 Q. What are the possible scenarios?

35 A. She's just been interviewed by police; it's been put to her that she's been involved in the death of her children; she's worried that people are going to accuse her of the death of her children; she's not intellectually compromised, so presumably she understands the consequences of that. This may be a coping mechanism, it may be thinking things through as to how things are going to play out, it may be lots of - it may be silliness on her part, but I am not really sure how else I could interpret that.

40 Q. Consistent with your position throughout your evidence, is it your position that it is not within your expertise to comment on whether or not Ms Folbigg's conduct during the sequence of events I've just taken you to can be interpreted to reflect a consciousness of guilt?

A. I don't think that psychiatric expertise can really contribute in any meaningful way to that issue, no.

45 Q. Thank you for your patience.

A. Thank you.

NO EXAMINATION BY MS HORVATH, MS LOVE AND DR WATERHOUSE

50 JUDICIAL OFFICER: I take it no one else wants to ask any questions. Thank

you, Doctor.

WITNESS: Thank you, your Honour.

5 <THE WITNESS WITHDREW

WOOTTON: Your Honour, the hearing schedule for tomorrow has been revised and we are to commence at 9am with the evidence of Professor Corder followed by Dr Yumna Dhansay in light of Dr Garstang being stood down. Your Honour, for tender to be added at tab 32-09 are documents received from the NSW Commissioner for Police pursuant to an order for production that your Honour made. The first at tab A is an ERISP transcript of Craig Folbigg dated 19 April 2001. The second is a statement of Craig Folbigg dated 23 May 1999. The third is a statement of Craig Folbigg dated 19 April 2001. We haven't been notified of any objections to that material being tendered but I understand that my friend, Dr Woods, wishes to make an application for non-publication.

WOODS: Your Honour, may I, under the statute, under s 12B of the *Royal Commissions Act* (NSW) ask that your Honour order that the following content is not to be published without the direction of the Inquirer or the judge of the Supreme Court? (a), questions 76 to 91 inclusive of the electronically recorded interview between police and Craig Folbigg dated 19 April 2001, and (b), questions 267 to 276 inclusive of the same interview?

JUDICIAL OFFICER: Could I have a look at the material? What's the first batch?

WOODS: The first parts are questions 76 to 91, your Honour, inclusive.

WOOTTON: If it assists your Honour, that's page 365 in the red numbering, continuing on.

JUDICIAL OFFICER: Thank you. Mr Hastings, what do you say about this?

HASTINGS: Nothing. Basically, your Honour, it's not a matter that we have any concern about from Mr Folbigg's perspective. It's a matter for the Inquiry.

JUDICIAL OFFICER: Does anyone else want to say anything? Mr Woods, some of this material may be relevant to a couple of issues in the proceedings. I'm prepared to make it, but I can't guarantee that part of it might find its way into the report. As long as you understand that.

WOODS: If your Honour would make it until the end of - until your Honour reports.

JUDICIAL OFFICER: I'm prepared to do that, but the difficulty with that is that if it's not in the report, the order lapses. I'll make it until - I'll make the order with a proviso to it that the order does not prohibit publication of any of the material in those questions to be included in my report.



Epiq:DAT

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WOODS: The next part is 267 to 2--

JUDICIAL OFFICER: I was talking about all of them.

5 WOODS: Thank you, your Honour.

WOOTTON: Nothing further, your Honour.

10 ADJOURNED PART HEARD TO FRIDAY 24 FEBRUARY 2023 AT 9AM