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## SPECIAL INQUIRY

THE HONOURABLE THOMAS BATHURST AC KC

5 ELEVENTH DAY: FRIDAY 24 FEBRUARY 2023

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

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&lt;STEPHEN MOILE CORDNER, RECALLED(9.03AM)

JUDICIAL OFFICER: Thank you for making yourself available again,  
Professor.

15

WITNESS: Thank you for your flexibility, your Honour.

CALLAN: Your Honour we yesterday received an amended form of Professor  
Cordner's report, reflective of those change in numbers.

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JUDICIAL OFFICER: Thank you, for that. Thank you.

CALLAN: When the printing is complete, we'll be in a position to tender  
that. We don't propose to replace the report as received in December, but it  
will accompany that, and it will be made clear when it was provided, and the  
changes will be shown in a way that's meaningful.

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JUDICIAL OFFICER: Good, good. Thank you. Yes, Ms Horvath.

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HORVATH: Thank you, your Honour. May I ask that Exhibit 15-127A is  
brought up? And when it is brought up, red page 1984-9. And if it can be  
made a little bigger so that the left hand column is easy to read, in particular  
the third paragraph, which starts "In relation to infants". That's the one I just  
wanted to draw Professor Cordner's attention to.

35

&lt;EXAMINATION BY MS HORVATH

Q. Professor Cordner, this is Knight's 4th edition, so the one after the one you  
have quoted in your report, but I think the paragraph that you are referring to,  
is the one starting "In relation to infants"; correct?

40

A. I'll just read it.

Q. Of course.

A. Yes, that's correct.

45

Q. Now, the "classic signs" in quotes that the authors are referring to, there  
are four of them, are there not?

A. Well, you keep going.

50

Q. Well, they refer to "classic signs" and the authors specifically nominate four

classic signs of asphyxia which are, first, petechial haemorrhages, yes?

A. Well, there's a discussion about petechial haemorrhages because there are some that are regarded as relevant and some not or less so.

5 Q. I'm just trying to identify what the classic signs are that the authors are talking about just so that we're not at cross-purposes. The first is petechial haemorrhages, correct?

A. Yes.

10 Q. The second one is congestion and oedema in the face and neck?

A. Well, I wouldn't agree that oedema, but yes, congestion and oedema, yes, I know what you mean.

Q. The third one is cyanosis?

15 A. Yes, I know that that has been used as, in that, in that way, yes.

Q. The fourth one is engorgement of the right heart and fluidity of the blood, yes?

20 A. Well, that's a word classic as in antiquity.

Q. When the authors referred to the so called "classic signs" of asphyxia for what they are worth, those are the four classic signs that these authors were referring to, correct?

25 A. Okay, yes. Yes, happy with that.

HORVATH: I'm happy if that comes down.

JUDICIAL OFFICER: Thank you.

30 HORVATH: Thank you, your Honour.

Q. Of those four classic signs, the one that you investigated in your literature review was petechial haemorrhages, correct?

35 A. And injuries.

Q. I'm coming to that, I'm asking about the classic signs that--

A. Okay.

Q. --they referred to. So the one--

40 A. Yes.

Q. --that you looked at was of the four classic signs that this text refers to is petechial haemorrhages, correct?

45 A. Yes, some of them, yes.

Q. These authors don't identify facial injuries as one of the classic signs of smothering, correct?

A. Well they don't use that, no.

50 Q. Is one of the problems, with facial injuries as a sign of smothering, is that a

pathologist may not know when looking at the injuries whether they bear any connection to the actual smothering?

A. Well that will be a problem, yes.

5 Q. So, for example, they may predate the event of smothering by hours?

A. Yes, it'll depend upon the circumstances.

Q. Yes, and also facial marks could have been caused by things such as resuscitation?

10 A. Possible. Yes.

Q. So facial injuries have the potential to mislead a pathologist, you would agree?

15 A. They could do.

Q. Now, petechial haemorrhages, and I'm happy to take you to this, but tell me if you need it, it's correct, isn't it, that petechial haemorrhages are highly unreliable indicators of an asphyxia process?

20 A. Well, you see I wouldn't be using the phrase "an asphyxia process", so if you're using the--

Q. No, no, let me assist you, no, no, let me assist you.

A. --word asphyxia to mean--

25 JUDICIAL OFFICER: Let him finish.

HORVATH: Let me assist you.

JUDICIAL OFFICER: No, Ms Horvath. Finish your answer, Doctor.

30 HORVATH

Q. I'm sorry.

35 A. If you're using the word asphyxia as a shorthand for mechanical processes interfering with breathing such as smothering, such as compression of the neck, then maybe we can have a discussion but I don't really understand the phrase "an asphyxial process".

40 Q. Let me assist you. By "asphyxial process" I'm referring to a hypoxic state, does that assist?

A. Well, a hypoxic state, we all have an hypoxic state before we die, so I am not sure that that's what you really mean.

45 Q. I'm actually quoting from what the authors used and I'm just trying to say a lack of oxygen rather than referring you to a particular mechanism?

A. I don't want to be difficult but--

50 JUDICIAL OFFICER: Perhaps you could put - no, Professor, please. Perhaps it might be helpful if you put what you're reading from directly to Professor Corder.

HORVATH: Yes, certainly, your Honour. Actually I'll keep moving, I'll move past it.

5 Q. Professor, in your literature review - and whilst I don't need to put it up, just for the record I'm talking about Exhibit 13-02A at part 4.4 - in the literature review in your report it's correct, isn't it, that you've only included cases where intentional smothering has been established, and by established I mean either proven or a confession?

10 A. Established to the satisfaction of the authors I think is the best way of putting it.

15 Q. Presumably - and in addition, for the ones where intentional smothering has been proven to the satisfaction of the authors, you've also only included those cases where the article expressly refers to the presence or absence of either petechiae or facial injuries, correct?

A. That's correct, yes.

20 Q. So, does it follow from that that cases of intentional smothering where the report was or the journal article was silent about the presence of petechiae or facial injuries have been excluded?

A. Say that again please?

25 Q. So does it follow from that that you have excluded, from your pool of 17 cases, any cases of intentional smothering if the journal article doesn't refer to the presence or absence of petechiae or facial injuries?

A. That's right, because we had no way of knowing whether they were present or not because it wasn't mentioned.

30 Q. So, for example, if you go to page 12 of your report and you refer to 1.8, it talks about two twins that were smothered, and you've included the female but not the male because the article didn't refer to whether or not the autopsy found facial injuries or petechiae, correct?

A. Correct.

35 Q. Is it also the case, just to be clear, that if the article referred in detail to a full autopsy but didn't specifically refer to petechiae or facial injuries, they were excluded as well, yes?

40 A. If there was no reference to the presence or absence of petechiae, and if there was no reference to the presence or absence of injuries, then the case was excluded because there was no mention of it, so we couldn't know whether they were present or absent.

45 Q. You didn't think about including those cases in your pool, the denominator where you have 17 cases of intentional smothering?

A. So, that, sorry, you'll have to ask me that question again.

50 Q. Of course. Did you consider including those types of cases in your denominator, your pool of intentional smothering cases?

A. The 17 cases are the cases that meet the inclusion criteria, so, no, I'm not quite sure what you're asking me. Are you asking me whether the 17 includes

cases where there was no mention of petechiae--

Q. No.

A. --or no mention of injuries?

5

JUDICIAL OFFICER

Q. Professor, I think what Ms Horvath is asking is, for the purpose of calculating your percentages, did you consider putting in the - leaving the numerator the same, but putting in the denominator, cases where there was no mention one way of the presence or absence of facial injuries?

A. Okay. Thank you. No, I didn't consider putting them in there, because I didn't think they were relevant to the analysis I was undertaking. There was no knowledge about those cases. I was interested in the presence or absence of petechiae and/or the presence or absence of injuries in those cases where either or both were mentioned.

Q. Professor, could I ask you this, I can fully understand the reason you left those out, but had the position been shown in relation to those cases, it could've altered your percentages one way or the other quite significantly?

A. Well, I--

Q. That's a possibility, you can't say for certain?

A. Yes, I'm not quite sure what we would learn from it because it would include cases which may or may not have had either or both of the features that I was interested in.

Q. No, no, no, no. What I'm suggesting to you is, had you been able to ascertain the position in relation to those unknown cases--

A. No, I haven't been able to.

Q. No, I understand you weren't able to, but had you been able to, they would have first been included in your table?

A. I have not been able to ascertain the situation in those cases not included in my table. Can I just say, your Honour, I have a little difficulty hearing and it is aggravated by the fact that the vision is a couple of seconds behind the audio, and I have a cochlea and I rely a bit on lip reading, so it is just a little challenging, the audio on this connection and I apologise for that.

Q. Thank you. If you have any difficulty in hearing or interpreting the question, we fully understand, please don't hesitate to say so. Thank you for telling us.

A. Thank you.

HORVATH

45

Q. Professor, you've already included in your figures a number of "unknowns" being people who you knew about for example facial injuries but you didn't know about whether they did or didn't have petechiae, correct?

A. Yes.

50

Q. So you could have included the ones of, the cases of, intentional smothering where you didn't know about either petechiae or facial injuries and included them as unknowns, couldn't you?

5 A. I could have done that but I didn't, and I'm not sure what additional value there would have been to do that, and happy to turn my mind to that if you'd like me to, but it wasn't what I was seeking to do.

10 Q. Can I ask that Exhibit 15-136 come up briefly, and, in particular, to page 2031? To assist you, Professor, that's the Bohnert article headed "Three subsequent infanticides covered up as SIDS," which is the third of the articles you used for your table, I believe.

A. Yes.

15 Q. If we can perhaps make that bigger. What I'm after is Case 3, there we go. Case 3 is the one that you excluded because there was no specific reference to facial injury or petechiae; correct?

A. Yes, I'll just check that. Excuse me.

20 Q. Of course.

A. Yes.

25 Q. I take it that you weren't prepared to take an educated guess that in the two paragraphs which describes the autopsy at the bottom of the left-hand side of the page and the top of the right-hand side of the page, you weren't prepared to take an educated guess that if petechiae was present it would have been referred to; is that right?

A. No, I wasn't prepared to take what you call an educated guess. That would have defeated the whole purpose of what I was doing.

30 Q. When you're dealing with a set of only 17 cases of intentional smothering, you would agree, wouldn't you, that when you're dealing with a pool of only 17 cases, even including two additional cases of known intentional smothering, could be quite significant to your percentages; would you agree?

35 A. I don't know about "quite significant", but I thought the approach I took was - I think the approach I took was justified and so two more cases with negative findings, I don't know what difference that would make; it wouldn't make a lot of difference; it would make a bit of difference.

40 Q. Do you know how many cases of intentional smothering you excluded from your review on the basis that there was no specific reference to petechiae or facial trauma?

A. The cases were excluded because they didn't meet the selection criteria.

45 JUDICIAL OFFICER

Q. Yes, Professor, we understand that.

A. Yes, I do understand.

50 Q. But what I think you're being asked is how many of those cases were there that were excluded?

5 A. So there were 32 cases in total in the four papers, and 17 met the inclusion criteria. One of the inclusion criteria we have just been discussing, the mention of the presence or absence of petechiae and/or the mention of the presence or absence of injury, that was one of the inclusion criteria. Other inclusion criteria included age because we were dealing with four infants under the age of two. Another inclusion criteria was how long there was survival after the event, and the undertaking of an autopsy.

10 HORVATH

Q. Professor, I wasn't just asking about the four papers, but originally the literature search that you asked to be done included, as search terms, abrasions, bruises and petechiae, and then you received 133 papers you say?

15 A. Yes.

Q. And discarded a number. My question is, overall do you know - and it's okay if you don't, but do you know how many cases of intentional smothering you excluded from your review based on the fact that the reports didn't expressly refer to facial trauma or conjunctival petechiae?

20 A. No. I can tell you that that first cut was really papers that had little or nothing to do with the issue, so definitely was not papers with cases of intentional smothering of any sort in that 133, going down to 64.

25 JUDICIAL OFFICER

Q. Can I ask you this, Professor, I think this may be what this is being directed to, how many cases were excluded solely because of the absence of petechiae or facial injuries?

30 A. I would have to take that slightly on notice, your Honour, but there were 32 cases in total in the four papers. I don't think there were many, if any, cases of intentional smothering in all the rest of the papers with any degree of case report information, so we're really down to the 32 cases in the four papers. Some of those 32 were older than two, some of those 32 died after 24 hours, in which case the findings we're interested in might have 35 disappeared, and there were none where there was no mention of either petechiae or facial injuries. I can't give you that breakdown. I'm happy to go away and do that bit, it might take me a few minutes to do that, but I could do that in five or ten minutes if you like.

40 HORVATH: I've got a bit further go before. Perhaps we can revisit that at the end because I want to move to unintentional smothering.

JUDICIAL OFFICER: Okay.

45 HORVATH: Thank you, your Honour.

Q. You would agree, wouldn't you, Professor, that by limiting your search to only intentional smothering you excluded an unknown number of deaths where the evidence was insufficient to establish intentional smothering; do you agree with that?

50

A. Well, yes.

5 Q. Because I think a lot of the literature - and I'm happy to take you to some - agrees that there's a percentage, an unknown percentage, of infant deaths which are caused by intentional smothering and the percentages as to what they are are guesstimates and vary; do you agree with that?

10 A. Well, so what you really mean is we don't know how many people are smothered because some can be smothered and leave no signs, and so that's a true statement and we'll never know anything about those unless there's confessions.

Q. Or unless there's sufficient evidence to lead to a conviction perhaps; yes?

A. So what's your question, please?

15 Q. I just want to confirm that you acknowledge and agree that by limiting your search to cases where intentional smothering was established either by a confession or to the satisfaction of the authors, which is I think what you said at the start, that that excludes an unknown number of cases of intentional smothering where either the evidence was not sufficient to lead to a conviction or there was no confession; do you agree with that?

20 A. It excludes an unknown number of unknown cases of unknown smothering, yes.

25 Q. The cases that do fall within your literature search are ones that there was sufficient evidence to either lead to a determination of intentional smothering or to have a confession; do you agree?

30 A. Well, I don't know what drove people to confess and really I'm not so interested in the confessions. I'm interested in the signs, so I think what you're saying is that there were confessions here because there were some signs. I mean, I've got no knowledge about that.

Q. No. What I'm trying to suggest is that your conclusions are skewed by selection bias because you have left out all of the smotherings which are not established to be intentional; do you accept that?

35 A. Well, yes, I have, because if they're not established to be intentional then we can't say they're intentional smotherings and the point we're trying to get to in this matter, I believe, is whether or not the four Folbigg children can be said to have been intentionally smothered.

40 Q. I'm just trying to focus on your literature review, Professor, because you rely upon the conclusions that you reach in the literature review to say that it's more probable than not that in intentional smothering there will be one of these two signs; correct?

45 A. It's the only material we have that's got any sort of evidence base to enable us to understand what it means to say it is possible to smother a child, an infant, and leave no signs.

50 Q. But you have excluded from your review any of the potential smotherings of babies and children where there hasn't been sufficient evidence to either lead to a conviction or potentially a confession; do you agree with that?



A. I can't obviously include, in a study of intentional smothering, cases which are not known or unclear as to whether they are intentional smotherings. So they can't be included, they haven't been included, and the material is as it is.

5 Q. You didn't search for suffocation, did you?

A. Say that again.

Q. You didn't include in your search the search term "suffocation"?

A. No, I didn't.

10

Q. Suffocation is often used almost in exchange for smothering; you would agree?

A. It certainly was in the trial, yes.

15

Q. Well, and it is also in Knight's textbook, isn't it?

A. Well, smothering is a subset of suffocation, yes.

Q. But in suffocation cases, there is less likelihood of having petechial haemorrhages; correct?

20

A. Well suffocation in, you know, properly used, that term includes lots of deaths which are not smothering.

Q. Just turning back to my question for a minute, in suffocation cases, for example using a piece of plastic to suffocate someone, there is less likelihood of signs of petechial haemorrhages.

25

WOODS: Your Honour, I object to this question. There's absolutely no evidence in this trial of the use of plastic.

30

JUDICIAL OFFICER: Dr Woods, what Ms Horvath is trying to do is to undermine the statistical basis on which Dr Cordner has prepared his report. Now I think she's entitled to do that, although I think that you could only do so much, but I - one--

35

WOODS: But I'm sure your Honour's aware of the evidence anyway.

JUDICIAL OFFICER: One difficulty obviously in this case is that assuming against you, for the moment, that Ms Folbigg killed the children, we don't know obviously what mechanism was used. In the trial there was a suggestion of a fit of rage, and I think Ms Horvath put to someone else, the possibility of a pillow being or a plastic bag being used. My task is to see if there is reasonable doubt, and in doing so, I'm not going to go into any great degree of speculation as to how, the mechanism by which the deaths occurred, if they were done mechanically. Does that help?

40

WOODS: Yes, thank you, your Honour.

HORVATH: Thank you, your Honour, and I'm almost done, this is the last part of it.

45

Q. It's correct, isn't it Professor, that, in cases of suffocation, for example using plastic, it's unlikely that there will be petechial haemorrhages; correct?

5 A. Well, for example, if you're talking about wrapping plastic around somebody's mouth and nose, and around their head, for me, as far as I am concerned, that's a case of smothering, and there was indeed one such case in the cases in my report that was picked up by smothering. So, you know, suffocation includes other sorts of deaths, including being in an atmosphere where there's gases other than oxygen, or where there is insufficient oxygen, for example. So the term suffocation, I'm prepared - I accept it would've been 10 better if I had put it in there, and we would've gotten a lot more cases, and I would've had to sift them. So I accept that. But it isn't a substitute in the proper literature for smothering, and - yes.

15 Q. Did you leave out suffocation because you were concerned it would skew the results?

A. No, I just didn't use it. I'm not sure, I think I was so focused on smothering, and that's what this matter has been all about. I know that other people have been using the word suffocation to mean smothering, but in my mind what we were focused on was something, so yes. I do accept that it would've been - I 20 would've liked to have included that word in retrospect.

HORVATH: I have nothing further your Honour.

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

JUDICIAL OFFICER: Thank you. Anything?

30 CALLAN: Only this, your Honour, Professor Corder indicated that he was in a position to review the cases that had been excluded in the various articles to ascertain the number, as I understood it, that were excluded only on the basis that the case report was silent as to the presence or absence of petechiae, or facial injuries, he ought be given an opportunity to do so.

35 JUDICIAL OFFICER: Did you hear that Professor?

WITNESS: I can do that.

40 JUDICIAL OFFICER: Just a couple of things I'd like to ask.

Q. People who drown, drown by suffocation, don't they?

A. I'm sorry your Honour, I didn't hear that.

45 Q. People who drown, suffocate, don't they?

A. I'm sorry your Honour, you'll have to say that again.

Q. People who die as a result of drowning, die by suffocation, don't they?

A. Well, drowning is complicated.

50 Q. Well don't worry then.

A. They don't die of smothering, they don't die of suffocation, they die of drowning, which includes blocking the airway with water, plus very complicated biochemical consequences of water being absorbed into the bloodstream.

5 JUDICIAL OFFICER: All right, I won't take it any further. Thank you, Professor.

CALLAN: Thank you, Professor.

10 WITNESS: So, do you want me to do that little exercise and put it in writing?

JUDICIAL OFFICER: If you'd be so kind, yes please.

WITNESS: Yes, I'll do that now.

15 JUDICIAL OFFICER: Thank you Professor.

WITNESS: Okay, thank you your Honour.

20 <THE WITNESS WITHDREW

JUDICIAL OFFICER: Dr Woods, I should say this. One thing that I think can legitimately be put is that it would be possible, as a submission, it would be possible to smother these children by particular means which would not leave a mark.

25

WOODS: Yes.

JUDICIAL OFFICER: But I'm certainly not precluding that submission. I just thought I should let you know that.

30

WOODS: Well, yes, your Honour, we understand that, yes. Of course we will be making the opposite--

35 JUDICIAL OFFICER: Well I understand that no, but--

WOODS: Yes, yes, yes.

JUDICIAL OFFICER: --I just I would - that type of submission which I think probably will be made, doesn't take you by surprise. Mr Jordan, I'm so sorry, did you want to cross examine Dr Corder?

40

JORDAN: No, I did not, your Honour.

45 JUDICIAL OFFICER: That's fortunate.

JORDAN: It's all right, I would've said something.

JUDICIAL OFFICER: Where do we go now, Ms Callan?

50

CALLAN: Your Honour the next witness who is not present and is scheduled to commence at 10 o'clock is Dr Yumna Dhansay. In the interim we have some documents to tender.

5 EXHIBIT #13-02B SUPPLEMENTARY REPORT OF PROFESSOR  
CORDNER DATED 13/12/22 WITH CORRECTIONS AS AT 22/02/23,  
ADMITTED WITHOUT OBJECTION

10 Next, your Honour would recall there was a further report furnished by  
Professor Schwartz which was marked Exhibit 8-08. The content of that report  
in particular, information about certain details contained in the Calm Registry,  
gave rise to further questions of clarification from those assisting your  
Honour. That has given rise to two consequences.

15 EXHIBIT #8-08 FURTHER REPORT OF PROFESSOR SCHWARTZ DATED  
20/02/22 INCLUDING EMAIL DATED 23/02/23 EXPLAINING CORRECTIONS

20 Your Honour I note that Dr Dhansay is the last witness to be - from whom we'll  
hear oral evidence. After her evidence concludes there may be one or two  
documents that we'll tender, it will include, as foreshadowed, a folder  
containing the unredacted versions of certain exhibits that are the subject of  
Non-Publication Orders, and that's to be tendered on a confidential basis, so  
that it is plain for the record that all the material is before this Inquiry, and is  
25 available to this Inquiry, and the redactions reflect Non-Publication Orders  
only.

30 After the hearing adjourns today I note your Honour made orders on the  
6 September last year for the provision of written submissions of Counsel  
Assisting by--

JUDICIAL OFFICER: My recollection is 25 March.

35 CALLAN: --24 March. And then submissions from the parties 14 April, with  
the matter to return for the purposes of closing oral submissions on the  
26 April.

WOODS: I'm sorry is that closing submissions on the 26, or directions?

40 CALLAN: Closing submissions.

JUDICIAL OFFICER: Closing submissions. We've got to--

45 CALLAN: Your Honour I've understood the sequencing to mean that there is  
no accommodation for, nor need for anything by way of written reply  
submissions, because that can all be dealt with in the closing oral  
submissions, which are to occur on the 26 April.

JUDICIAL OFFICER: That's the basis I was proceeding, yes.

50 CALLAN: Yes. I'm not sure if there's anything else I can deal with usefully.

JUDICIAL OFFICER: There's the question of these tapes that were produced by the police. I understand that Dr Woods wants them reviewed, is that correct?

5 WOODS: Yes, we want the opportunity of having a look at them, your Honour.

JUDICIAL OFFICER: You can have a look at them. Ms Roy, what's the- I think you're the person who knows them well. Ms Wootton, I'm sorry.

10 WOOTTON: Yes, your Honour. The position is there's - I'm not sure how to describe it, but a box that's full of cassette tapes. What those assisting have done is identify those tapes, which are the subject of transcripts which were tendered in this Inquiry, and compared the tape - first converted the cassette  
15 tape into a USB format, and then listened to that and ensured that the transcript accurately recorded what was said on the tape. There are otherwise - we're informed approximately 38 weeks of tapes that it would take to listen to, and those assisting have not sought to convert those into a USB form or to listen to them in the circumstances.

20 WOODS: Your Honour, that places us in a difficult position.

LOVE: Can I assist? With the 38-week timeframe my understanding was the 38 weeks was for it to be, all of the cassette tapes to be transferred onto an electronic form. I understand it hasn't been determined exactly how many  
25 hours are contained on the cassette tapes, but the most generous estimate is about 530 hours.

JUDICIAL OFFICER: You're appearing for the?

30 LOVE: Sorry, I'm Ms Love and I'm appearing for the Commissioner of Police.

JUDICIAL OFFICER: It really is very unsatisfactory what's occurred. It's not much use me saying very much more than that, but it does put Dr Woods in a very difficult position.

35 LOVE: I can say that those tapes have been looked for for some time. On 20 December 2022 there was a request made for those tapes and the Commissioner and the police conducted an extensive search looking for them. They were only found this year and--

40 JUDICIAL OFFICER: Were they searched for for the purposes of the trial?

LOVE: My understanding is they were not. The listening device cassettes that were for the purpose of the trial were disclosed, so my understanding is that  
45 they are not, but I haven't got instructions as to which at the moment.

JUDICIAL OFFICER: Were they ever produced to the Director of Public Prosecutions to your knowledge?

50 LOVE: My understanding is that the cassettes that would've fallen within the

police disclosure obligations would've been produced within the brief of evidence.

5 JUDICIAL OFFICER: The police have got large resources, why shouldn't I direct the police to provide typed scripts of all those tapes within seven days, if I have power to do so?

10 LOVE: It would take a considerable amount of time, your Honour, but enquiries can be made.

JUDICIAL OFFICER: I don't want Ms Folbigg waiting for a considerable amount of time for my report either. What I'll do is I will - the tapes will be made available to Dr Woods. It's a matter for him to make any application in relation to this matter, but it is a matter of real concern that they were only produced so late - I won't go any further than that at the moment.

20 WOODS: Your Honour, may I just mention a couple of complications? First of all, my instructing solicitors don't have any funding to engage in a lengthy exercise. Can I say as well that I personally, and I'm not sure if I know anybody who actually has a tape device that is able to listen to cassettes. It's not clear to me whether or not the time involved reflects anything that was recorded at all, whether it was 50 hours or 200 hours of silence. Was it material that was generated by voice activation, which would make it compressed, I don't know. It's extraordinary that the DPP apparently didn't have the material and - well your Honour obviously understands the difficulties and we'll do our best and we will certainly be making an application of some sort.

30 JUDICIAL OFFICER: Mr Jordan, do you want to make any submissions on behalf of the Director in relation to this?

JORDAN: Your Honour, there's a couple of observations that I'd like to offer. One is, just as a matter of context, my instructing solicitor made a number of attempts during the latter half of last year to try and obtain the audio for the listening devices. Those involved her own requests to police in the Hunter region and they were unsuccessful. So we were, like Mr Woods and his team, also somewhat thrown off balance when we received this audio on the evening of, what was it, Wednesday evening. So, in that regard we identify with the concerns raised by Mr Woods. It is a problem. I also however, more on a basis potentially of general experience, endorse what, sorry, Dr Woods has said as to it being probably as a matter of reality very unlikely that there is anything of relevance in a great body of tapes. As a matter of general experience my understanding is that police practice at this time would have involved the taking of logs while devices were being listened to. Those logs would very quickly expedite and assist a more directed enquiry as to any of the audio and my submission would be that those logs should be made available urgently to try and help resolve this problem.

50 JUDICIAL OFFICER: Thank you.

WOODS: Your Honour, may I say, endorsing what my friend Mr Jordan says, if your Honour would make an order under the Act for the immediate production of all surveillance logs and records related thereto, that would certainly expedite matters.

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JUDICIAL OFFICER: I'd be prepared I think - Ms Callan, do you want to say anything about this?

CALLAN: There certainly would appear merit in your Honour making such an order. Whether or not the Commissioner of Police is able to locate and produce such logs is a separate question or a subsequent question. I do however consider it necessary to recognise that that may not provide the expedited solution that is suggested. The other matter I would wish to make clear for the record is that at this stage, whilst it raises questions and concerns which have been expressed in valid terms, there is a degree of necessary uncertainty as to whether, as Mr Jordan points out, there is anything of relevance on those tapes and that in turn is the only thing that can provide an indication as to whether there's been any disclosure, failure or other basis upon which to criticise the Commissioner of Police. At the moment, in my submission, there is an insufficient basis to arrive at any conclusions in relation to the position as to the NSW Commissioner of Police. Other than the deeply regrettable situation that we do find ourselves in in terms of the late production, that production is the result of what appear to have been fairly conscientious efforts to seek to locate and produce material otherwise not appreciated to be within the custody of the Commissioner.

25

WOODS: Your Honour, can I say that we make no criticism of the staff of this Inquiry because they have produced the material, but there is relevance in that in the trial there was tendered, and as there's been tendered here, a couple of items upon which some considerable reliance was apparently placed at trial, suggesting that certain things were overheard in the house of relevance, and we don't know what else there might be.

30

JUDICIAL OFFICER: Pardon me one moment. Yes.

35

WOODS: We don't know what else there might be that explains things which may assist Ms Folbigg and the material should've been disclosed. I'm not making any final accusations about anybody but it is of concern that the trial was conducted and this Inquiry has proceeded without that material being fully exposed. Your Honour, I will draft up the terms of what I would seek as an order under the Act.

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JUDICIAL OFFICER: If you would do that and show it to Ms Love. If she has any objections to it, she can - we'll be here during the course of the morning so that should be dealt with. Ms Love, let me make it clear. While in fairness to the Commissioner, whilst I'm concerned about these not having been produced, there may be an explanation for it, I accept that, but I am concerned that this Inquiry proceed with the knowledge that there's something there that might reveal something. It can't go any higher than that, it might not as Mr Jordan says, but I do urge you to inform those instructing you that this is a

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matter of concern and I'd hope to have their cooperation in resolving it as much as possible. If needs be, I'll make some orders but at the moment I'll just make the one that Dr Woods suggests.

5 LOVE: Yes, your Honour.

CALLAN: Your Honour, Dr Dhansay is here. Ms Wootton is taking her oral evidence and has just gone to introduce herself to the witness. Could we adjourn for five minutes?

10

JUDICIAL OFFICER: Yes, of course.

HORVATH: May I be excused, your Honour, I didn't bother--

15

JUDICIAL OFFICER: Yes, Ms Horvath, yes.

HORVATH: --your Honour yesterday, but.

20

JUDICIAL OFFICER: I assumed you only come when it's necessary. No, that's fine.

HORVATH: Thank you.

SHORT ADJOURNMENT

25

WOOTTON: Your Honour, before we proceed with the next witness, I understand there's an application to be made on the part of Ms von Reisner, can I hand up that application which was provided to those assisting this morning?

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JUDICIAL OFFICER: Yes. Ms von Reisner, are you present?

VON REISNER: Yes.

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JUDICIAL OFFICER: I've read your application. It is entirely without merit, and I propose to dismiss it. You've asked for reasons, and I'll give reasons in a moment. But let me make this clear. You're not a person who has a right of appearance in this Commission. You're not a person who falls within subsection 2 of section 7 of the *Royal Commissions Act 1923* (NSW) so as to give you right to appear. In those circumstances, no further application will be entertained in open court. Any application you choose to make, notwithstanding your lack of right of appearance will be dealt with on the papers.

40

45

I now propose to give reasons.

Ms Koidu von Reisner has made a further application seeking certain orders in relation to the conduct of this Inquiry. Like her previous two applications it discloses no basis to give her a right of appearance under subsection 2 of section 7 of the *Royal Commissions Act 1923* (NSW), nor does the application,

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and as with the previous applications, on its face, it has absolutely no merit whatsoever.

In those circumstances, I propose to dismiss the application.

5

Although Ms von Reisner has no right of appearance, or any right to make applications, any application that she chooses to make notwithstanding this will be dealt with on the papers, and I direct the Commission, I direct Counsel Assisting and the staff of the Commission, not to deal with Ms von Reisner in any other way, other than in writing.

10

Thank you, Ms von Reisner, you are free to witness the proceedings if you wish, but you have no right to make any application or to appear. Do you understand?

15

VON REISNER: Yes, I understand. Can I please have the text in writing?

JUDICIAL OFFICER: I've just given you that, you've heard what I've said. Just--

20

VON REISNER: Your Honour, I need it in writing, because it was long text, and I am not capable to remember every word of the reasons.

JUDICIAL OFFICER: It will be on the transcript, Ms Von Reisner, you can look at it on the transcript.

25

VON REISNER: I will need it by Monday.

JUDICIAL OFFICER: Well I don't know if I can give it to you, if the transcript's available by Monday or Tuesday on the website. You can see it. You may take a seat now, or leave, whichever you prefer.

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VON REISNER: Your Honour did you read actually the text of my - this application.

35

JUDICIAL OFFICER: I'm sorry.

VON REISNER: Your Honour, did you read precisely every word which was written which was in the last application?

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JUDICIAL OFFICER: I read every word of your application.

VON REISNER: Thank you.

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MFI #11 APPLICATION OF MS KOIDU VON REISNER

<YUMNA DHANSAY, AFFIRMED(10.24AM)

<EXAMINATION BY MS WOOTTON

5 Q. Doctor, could you please say your full name, for the record.  
A. Yumna Dhansay.

Q. And you're a Consultant Psychiatrist?  
A. I am, yes.

10 Q. You've provided a curriculum vitae to the Inquiry for the record that  
appears at tab 22-02, page 58, if you'd like to turn to it it would be the red  
number 58 in front of you. Is that an up to date curriculum vitae?  
A. Yes.

15 Q. Doctor, you have particular qualifications, am I right, as a Forensic  
Psychiatrist, Perinatal and Adult Psychiatrist, and Child and Family  
Psychiatrist?  
A. That's correct, yes.

20 Q. And you have a special interest in women's mental health, including infant  
loss, adjustment to parenting, and issues relating to the perinatal periods.  
A. Correct.

25 Q. And is it correct that you're currently a visiting psychiatrist at the Karitane  
Residential Unit, where you assess and treat mothers admitted for problems  
relating to adjustment to parenting?  
A. I actually just left that job at the end of January.

30 Q. How long were you a visiting psychiatrist there?  
A. About 18 months.

Q. And it's correct that in your role as a Consultant Psychiatrist, you've  
prepared reports for legal proceedings relating to parenting capacity and  
parental psychology.  
35 A. That's correct.

Q. You provided a report at the request of this Inquiry on the 13 January 2023.  
A. Yes.

40 Q. For the record that's at tab 22-02. Are you satisfied that the matters of  
opinion in your report reflect your current professional opinion in respect of  
those questions you were asked to address?  
A. Yes.

45 Q. You were provided with some updated briefing material after you provided  
your report on 31 January 2023, that's at tab 22-01 page 27-1, and if you'd like  
to turn to it, you can see the additional material in red.  
A. Yes.

50

Q. Does any of that material which you were provided after you gave your report change your opinions in any way?

A. No.

5 Q. In preparing your report it's correct you've consulted with Dr Kerri Eagle and Mr Patrick Sheehan?

A. Yes, I did.

10 Q. And you did that having been informed by those assisting that those experts had also been engaged to answer the same questions you were asked?

A. Yes.

15 Q. You conducted a literature review of perinatal literature, and you've shared 28 peer reviewed articles with Dr Eagle and Mr Sheehan.

A. That's correct.

20 Q. And you also participated in a conference with Mr Sheehan and Dr Eagle on 3 January 2023.

A. Yes.

25 Q. Is that the extent of the consultation that you had with Dr Eagle and Mr Sheehan?

A. Yes, that's correct.

Q. And since providing the Inquiry with your report, have you had the opportunity to read the reports of Dr Eagle and Mr Sheehan?

A. Yes, I have.

30 Q. The material with which you were briefed includes reports of other expert psychologists and psychiatrists, many of whom interviewed Ms Folbigg?

A. Yes.

35 Q. And those reports contained both accounts Ms Folbigg gave, references to documentary material, and the opinions of those experts; is that right?

A. That's correct, yes.

Q. To what extent did those reports, or any particular part that's contained therein inform or affect the opinions you expressed in your report?

40 A. Well, I used all of that information to compile my report, but there were certain aspects that I gave more - you know, that carried more weight in my opinion, and those would be the ones that specifically where experts had interviewed Ms Folbigg directly. So, you know, because we didn't interview Ms Folbigg, that was the closest, you know, to doing an interview with  
45 her. And obviously there was information in some of the older reports that was not available to us. So, like her early history. So obviously that was important information.

50 Q. And so I understand you to be saying that the primary material which is referenced in those reports to which you did not have access, as well as the

information which Ms Folbigg gave to those people, was important to you in forming your opinion?

A. That's correct.

5 Q. And then in terms of that third category, which is the opinions of those experts themselves, how did that inform or affect the opinion that you gave?

A. Not as much as the - I mean I obviously read their opinions, but I didn't really take that into account in forming my own opinion at the end.

10 Q. You've mentioned that you did not personally interview Ms Folbigg, and you've said in your report that this was not a disadvantage, because you were focused not on her current mental state, but her functioning between 1989 and 1999.

15 A. Yes. I wouldn't say it's no disadvantage at all, but I think that I was still able to do what I'd been asked to do without interviewing her.

Q. And to, what utility in your view would it have had in interviewing Ms Folbigg now, with respect to her mental state in 1989 to 1999?

20 A. I think - as I said in my report, it would have limited utility, given that so much time has passed, and she might not remember exactly, you know, what she was feeling or thinking at the time. But it might have been useful to possibly clarify, or try to clarify some statements that she had made, or statements that she had made to the psychiatrist who assessed her at the time.

25 Q. It's correct that the diagnoses that you make in your report are made with the knowledge that Ms Folbigg has been convicted for the murder of three of her children and the manslaughter of one?

30 A. Yes.

Q. Is it correct that your diagnoses are made consistently with that knowledge in the sense that you have not assumed innocence or guilt?

A. Yes, that's correct.

35 Q. So it follows that your view does not assume murder, nor a natural cause of death for any of the children?

A. No.

40 Q. I'd like to ask you some questions about the scope of your expertise as a psychiatrist in terms of the opinions that you've given. As a psychiatrist, do you consider it's within your area of expertise to express an opinion as to whether Ms Folbigg had or did not have a mental health or psychiatric condition in the time period you were asked to focus on?

A. I do.

45 Q. You consider it's within your area of expertise to express your opinion as to the potential effect in a causative sense of those mental health conditions on Ms Folbigg's statements in her diaries?

A. Yes.

50

Q. Do you consider it's within your area of expertise to express an opinion on whether her diaries are consistent or not with features of those mental health conditions?

A. Yes.

5

Q. In your report, it's red page 56, page 29 of your report, if you could turn that up?

A. Yes.

10

Q. You refer there to in essence how Ms Folbigg's diaries should be interpreted, that's in the second last paragraph before the bold type?

A. Yeah.

15

Q. In doing so, is it correct that you're referring to interpretation in the sense of consistency between the content of the diaries with cognitions of the mental health conditions you identify?

A. Yes.

20

Q. As a psychiatrist, do you consider you're able to form a view as to whether the statements made would be reliable as admissions by Ms Folbigg as to having harmed her children?

A. Yes.

25

Q. Do you accept that as a matter of fact whether these are admissions or not as to Ms Folbigg's harming her children is not something that falls within your area of expertise?

A. Yes.

30

Q. When you have approached question 2 and particularly question 2(c), is it an assumption in the way that you form your opinion that Ms Folbigg's diary entries record or otherwise reflect her thoughts and/or feelings?

A. Sorry, where are you referring to? Question 2(c)?

35

Q. Not your answer, just in - but if you'd like to turn up question 2(c), we can do so. It's recorded in your report --

JUDICIAL OFFICER: Page 55, page 28 of your report.

40

WOOTTON: Page 55, I'm grateful to your Honour.

JUDICIAL OFFICER: Page 28 of your report.

WOOTTON

45

Q. So, in the bold type you've extracted (c)(i) and then at the bottom of the page you've extracted (c)(ii)?

A. Okay.

50

Q. Is it an assumption in your approach to those questions that Ms Folbigg's diary entries record or otherwise reflect her thoughts or feelings?

A. Yes.

5 Q. Ms Folbigg has given evidence to the 2019 Inquiry and made other statements which are in evidence in this proceeding that she used her diaries to record feelings which were negative. If you can take that as an assumption from me, is it true then that the diary entries are not necessarily reflective of a full spectrum of Ms Folbigg's feelings or emotions?

A. Yes.

10 Q. Does that affect the way that you use the diaries in formulating your diagnoses of her?

A. Yes.

Q. How does it do so?

15 A. Well, I'm presuming that, as you said, she wouldn't have written all her feelings or all her thoughts down in the diary, so I basically, you know, based on what mental state I feel that she is in I can infer that there might have been other things she might be feeling or thinking and that her mental state would influence her, you know, her thoughts and her feelings and therefore the  
20 writing in the diary.

Q. The fact that Ms Folbigg's diaries were used to primarily record negative feelings, does that mitigate the extent to which you can form a diagnosis of, for example, depressive disorder, based solely on the diaries?

25 A. Sorry, can you repeat the question?

Q. If you assume that it's correct that Ms Folbigg used the diaries to record negative emotions primarily, does that mitigate the extent to which you can form a diagnosis of something like depressive disorder or a depressive  
30 disorder based solely on those diaries in the sense that they don't reflect the full spectrum of her emotional state?

A. Yes.

35 Q. Does it follow then that you've taken into account informing your diagnoses not only the diaries but the other material with which you were briefed?

A. Yes.

40 Q. I'll come in a moment to your observations about the diagnoses, but just in terms of your overall views and in particular on question 2(c), which was related broadly to the impact of Ms Folbigg's mental health conditions as it illuminates what is written in her diaries, it's correct that you formed the view first that the diaries are written in the context of the mental health conditions you identified and their cognitions as expressed in the paragraph commencing, "Overall", it's on page 56?

45 A. Yes.

Q. Your own view is that, read in light of those conditions, the content of her diaries do not contain admissions of guilt as to harming her children?

50 A. Correct, yes.

Q. Turning to your diagnostic formulation, if you'd like to turn up page 46 to 47 of your report, the red pages, you consider that the descriptions given by Ms Folbigg to Dr Seidler are indicative of a major depressive disorder, is that correct?

5 A. Yes.

Q. Dr Seidler and Dr Giuffrida?

A. Yes. That's correct, yes.

10 Q. You've later said that these are consistent with some of the entries in her diaries, and that's at the bottom of page 47 and turning over to 48?

A. Yes, that's correct.

15 Q. The time period of some of those diary entries, and indeed the full spectrum of 1989 to 1989 (as said) coincides with various postpartum periods, is that correct?

A. That's correct, yes.

20 Q. Do you diagnose Ms Folbigg during that period with a postpartum depressive disorder?

A. Well, it's - she definitely had depression, so basically if someone presents with depression in the postpartum period and they haven't had depression before that period, then you would say it's a postpartum depression. However, if she already had a history of depression before the birth of the baby and then, you know, she either still has it or she has a relapse in that postpartum period, you would rather call it a postpartum relapse or exacerbation of the previous existing depressive disorder. So, it could be regarded as a postpartum depression, but it's within a bigger picture of a major depressive disorder. Does that make sense? Clinically she would present - you would present with the same symptoms if it was major depression at any other time or postpartum depression, it's more about the context within which that presentation occurs.

35 Q. So the difference between a diagnosis of postpartum depression and other depressive disorder is purely based on the time period in which it occurs?

A. The time period yes, and also if you look at aetiology, it's thought that postpartum, the very high hormone levels that are present during pregnancy, they drop quite precipitously after birth and that sudden fluctuation can precipitate a depressive disorder.

40

Q. Going through very quickly, on page 48 you note that Ms Folbigg had symptoms that were indicative of anxiety, but is it correct that you don't diagnose her particularly of an anxiety disorder?

45 A. I didn't because I didn't feel I had enough information, but that doesn't mean that she didn't have one. I just didn't find enough there to make that confidently.

Q. Then turning to the bottom of page 48 and 49, in your view Ms Folbigg has features of complex PTSD?

50 A. Yes. She - yeah.

Q. But again you don't consider she fulfils the requirements for a formal diagnosis?

A. That's correct.

5 Q. You do not consider that Ms Folbigg suffered a psychotic illness when she wrote in her diaries?

A. Yes, that's correct.

Q. Have you based this solely on the content of her diaries?

10 A. No. The content of her diary but also interviews that she did with, you know the authors of those reports that I had as part of the material I was given, and also just looking at her current functioning, you'd expect someone with a psychosis to have had significant functional decline with time and she doesn't seem to have had that.

15 Q. Do I take from that that there's nothing in the whole of the brief that caused you to doubt that diagnosis that she did not have a psychotic illness at any point?

A. Yes, that's correct.

20 Q. You turn then to a personality disorder and you describe it as an "enduring pattern of inner experience and behaviour that deviates markedly from ... expectations". That's at the bottom of page 49 under the heading "Personality disorder"?

25 A. Mm-hmm.

#### JUDICIAL OFFICER

30 Q. Could I just ask this on that? Under the heading "Personality disorder" you say in the first sentence, "Given the charges for which Ms Folbigg was convicted, the diagnosis of personality disorder", et cetera, "should be considered". I rather thought you said that your opinions were reached without any regard to whether she was guilty or innocent of those charges. How does that particular sentence fit in with that?

35 A. Yes. Well, what I'm saying is I'm not basing my opinion on whether she's, you know, guilty or not of the charges, but obviously the matter at hand is in the context of that so I'm just addressing if you consider that then you would need to look at the personality disorder, does that make sense? That I'm not making my decision ultimately based on whether I think she's guilty or not  
40 guilty, but I think knowing what Ms Folbigg's been convicted of, I need to anticipate that people would be wondering about personality disorder and that's why I've made a comment on it.

#### WOOTTON

45 Q. Is it correct that a symptom or perhaps a signal of a personality disorder is behaviour inconsistent with the law of societal norms?

A. For antisocial personality disorder specifically, yes.

50 Q. Is the fact that she has been convicted of these offences why it causes you



to look to that?

A. Yes.

5 Q. Your view is that she doesn't fulfil the criteria for an antisocial personality disorder because her only significant contact with the criminal justice system is these charges, is that correct?

A. Yes, for that reason and also, you know, she doesn't - while she was in custody she didn't

10 but other than that, you know, she doesn't really have that pattern of aggression and, you know, breaking rules of society, yeah.

WOOTTON: Your Honour, can I just note for the record, part of that answer I think may be subject to an NPO and I'll make that clear before we conclude today. I apologise, a Non-Publication Order, not an NPO.

15

JUDICIAL OFFICER: Yes.

WOOTTON

20 Q. Doctor, do we understand then that in your view if Ms Folbigg suffered from a personality disorder, it would be manifesting in other areas of her life and that was not apparent on the material you've been briefed?

A. That's correct, yes.

25 Q. I'd like to turn to the concept of matrescence?

A. Yep.

Q. I may not have pronounced that correctly?

A. No, that's correct.

30

Q. You describe this as the transition to motherhood; is that an accurate way to summarise it?

A. Yeah.

35 Q. This is at red pages 51 to 53, 24 to 26 of your report. To what extent is matrescence a recognised psychological phenomenon?

A. It is recognised but it's not very widely recognised. I think just in general, you know, you can see that it was first spoken about in the 70s, but it's only now, as I understand, sort of being read about or spoken about in the context of perinatal mental health and more in psychological sort of areas rather than psychiatric. So it's sort of more - it's not used clinically very often, but if you read about, you know, sort of, people who work in that area, what they are writing, they will refer to this, but it's very much sort of an emerging term now if you look at social media and blogs and things like that.

45

Q. Would it be correct then that it's a concept that assists you to understand the symptoms with which patients might present in a postpartum period but it's not something with which you'd diagnose patients?

A. Yes. I would say they're not actually symptoms. They're more - because symptoms imply disease or disorders. It's more, you know, ways they might

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present that are representative of normal maternal adjustment. It's not a symptom really. It could be seen as a symptom but it's actually part of that normal transition.

5 Q. Is it something that in your clinical experience you would say that all new mothers experience?

A. Yes, I think so, unless there's a problem. I would say all normal mothers, if I can put it that way.

10 Q. What might be abnormal?

A. Say if a woman was psychotic at the time she gave birth and she wasn't fully comprehending the situation or bonding with the baby, yep.

15 Q. Is it something that - and tell me if this is not something you can answer as a psychiatrist, but is it something that in your clinical experience some women will experience to a greater extent than others?

A. Yes.

20 Q. Are there any reasons why that might be the case, from a psychiatric perspective?

25 A. Yes. For example, if they're already - either there's already a mental health problem or personality vulnerabilities where they are already not coping with things or if they have limited supports, they're isolated, if their family is not available, or overseas, if there are problems or difficulties between the mother and the father of the baby, if there's maybe a medical problem with the baby so that the usual sleep and settling routines are even harder to achieve than with an average baby, so all those types of things that impact on the ability of the mother to make the transition from being a woman without a baby to a woman with a baby.

30 Q. You describe at red page 53, 26 of your report, at the top of paragraph 860, that Ms Folbigg likely would have struggled with maternal adjustment by reason of her young age and relationship with her mothers parenting experience, poor sense of self, low self-esteem and the fact that

35 most parenting duties were her responsibility. Can I ask, is it the case that you think it's likely that Ms Folbigg did struggle with adjustment because of these pre-existing factors, or you have identified indicators that she in fact did struggle? It's a very fine distinction. I can say it again if--

40 A. Yes, please.

45 Q. Is it the case that you think it's likely Ms Folbigg did struggle because of - is it likely that she did because of the presence of those factors, or, from your review of the material, you are saying that she actually did struggle?

50 A. No, she did struggle, yes. Sorry, the other thing I didn't add is the attachment. So if your own attachment to your mother has been insecure then that makes it harder for you to have a secure attachment with your baby or when you're trying to do that, the insecure attachment that you had with your mother can get triggered in that process of you trying to form a bond with your baby, yeah.

Q. It's the case that you consider that Ms Folbigg had an insecure attachment with both her mothers?

A. Yes.

5 Q. On the same page, page 53, report page 26, you say that it's possible Ms Folbigg developed prolonged grief disorder with the duration and severity of bereavement lasting several years; is that correct? In the first paragraph on 53?

A. Yes, that's correct, yes.

10

Q. I don't need to take you to it but are you aware that Dr Eagle and Mr Sheehan have indicated it's difficult to diagnose a persistent complex bereavement disorder or a prolonged grief disorder, as you have described it, because there is no normal by which to compare Ms Folbigg's experience?

15

A. Yes, in terms of the multiple losses, yes.

Q. Do you agree it's not possible to diagnose that disorder here?

20

A. Well, I think it could. If I understand correctly I think the difficulty is that with the timeframe, because she's had, you know, with prolonged grief disorder it's more than 12 months that the person is still grieving, so if she's had - she's going to have prolonged grief from the first baby, but then she has the second one, then the 12 months gets extended, if you know what I mean. So I guess it's hard to stick with the timeframe but I think you could still use your clinical judgment and still make that decision.

25

Q. Can I just take you briefly to the report of Dr Eagle. It's at tab 20, red page 66, tab page 20-02. It will be on the screen. I'm not sure if the version you have will have - it won't have 20. So if you could just look--

30

A. I do have 20.

Q. You do have 20?

A. Tab 20, yes.

35

Q. Perfect.

JUDICIAL OFFICER: Red 66.

WOOTTON: Red 66.

40

Q. If you could just turn.

A. Yep.

45

Q. At the top of that page - and if you'd like to read from 65, if it gives you some context, Dr Eagle is describing that the features may be consistent with the proposed criteria for persistent complex bereavement disorder, although not an existing diagnosis, and I'll come back to that in a moment. "this disorder is a condition for further study," and then on page 66 Dr Eagle goes on to say, "Complicated or complex grief is a reference to a heightened and prolonged state of grieving that extends beyond what would be expected... it is acknowledged that Ms Folbigg's circumstances ... are unusual and a normal

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grief process would be difficult to describe". It's correct that a diagnosis of persistent complex bereavement disorder or prolonged grief disorder, as you've described it, does it require, in your view, a grieving reaction that is beyond that which would be considered normal in the circumstances?

5 A. Yes.

Q. In those circumstances do you agree that it's not possible, in the case of Ms Folbigg, to determine what would be considered a normal grief reaction, by reason of the unusual circumstances of having lost four children?

10 A. Yes.

Q. Would you agree, in those circumstances, it's not possible to formally diagnose Ms Folbigg with a persistent complex bereavement disorder?

15 A. I guess so, yes. Yes, I do.

Q. Going back to your answer to my question earlier--

A. I've changed my mind there.

Q. Can I ask, is that only because of the formal criteria but you nevertheless consider she would suffer very similar symptoms?

20

A. Yes. That's sort of what I was trying to say by saying, like, I've used my clinical judgment to - you know, because you can't really measure it exactly in her very unique circumstances, that's why I said that, but if you're going to stick with the criteria very strictly then I would say, no, you can't really formally make that diagnosis.

25

Q. Just so I make sure your answer is clear, if you were following the criteria very strictly you could not make that diagnosis?

A. Yes.

30

Q. But in your clinical practice you would make that diagnosis because it's a matter of clinical judgment?

A. Yes, and it's also - you make the diagnosis more to inform your treatment, so it's not just a matter of putting a label for the sake of putting a label. It's more so that you can inform treatment. So if I'm saying she's got a grief disorder then, for example, therapy specifically relating to grief would be appropriate, yep.

35

Q. I just want to deal with the criteria that you've used. So if we could go back to your report on red page 53, you've said there in the italics, "Prolonged grief disorder has the following diagnostic criteria," and there's a footnote 7, I don't need to take you back to it but footnote 7 appears earlier and that's the DSM-5?

40

A. Yes.

45

Q. Do I understand that you were using DSM-5-TR, an update in September 2022, which contained a new entry for a differential diagnosis of major depressive disorder for prolonged grief disorder?

A. Yes, that's correct.

50

Q. It's the case that before that, prolonged grief disorder was not a diagnosis contained in the DSM-5?

A. That's correct, yes.

5 Q. In your report on page 54, report page 27, in the second paragraph you say, "Loss of self-esteem, in turn, is associated with a sense of failure, guilt and shame. The literature suggests that guilt- and shame- proneness actuate prolonged maternal grief." Are you able to just explain a little bit further what you mean in respect of the actuation of prolonged maternal grief?

10 A. So basically the more guilt and shame you feel around the death is more likely to result in prolonged maternal grief. So, yep, it leads to the development of prolonged maternal grief.

15 Q. Is the converse also true, that if you had prolonged maternal grief you were more likely to experience guilt and shame, or does the actuation only work one way?

A. I think, I haven't read in the literature about it working the other way, so I can't really comment on that.

20 Q. You were asked earlier by me, and also by his Honour, about the assumptions that you made as to Ms Folbigg's guilt or innocence and you've said that you didn't make an assumption one way or another. Is it correct, in the context of your discussion then of maternal grief, that you consider Ms Folbigg could experience grief including a grief disorder if she was guilty of the charges?

25 A. Sorry, could you repeat that?

Q. Certainly. I had asked you earlier about the assumptions that you made.

30 A. Yeah.

Q. You've stated that you did not presume guilt or innocence?

A. Yep.

35 Q. Is it correct then that you consider Ms Folbigg could still have experienced grief or prolonged maternal grief if she had been responsible or had an active role in the deaths of her children?

A. Yes.

40 Q. I'd now like to turn to the answers that you've given in respect of the diaries, which are at pages 55 to 57 in the red. In the fourth and fifth dot point on that page, of page 55, you identify that Ms Folbigg's self-blame and guilt and belief that she was a bad mother are consistent with adjustment to parenting, or what you've already earlier called matrescence in the context of motherhood; is that correct?

45 A. That's correct, yes.

50 Q. Does the fact that Ms Folbigg is in a - I withdraw that - Earlier in your report, and I don't need to take you back to it, but you identified that Ms Folbigg would have been experiencing matrescence particularly after the birth of Caleb and Patrick. Does it follow that this period of adjustment would

not have occurred with Sarah or Laura, because Ms Folbigg had already made that transition to motherhood?

5 A. No, I think in her case it could still be happening with subsequent babies, because she - that process or transition was interrupted. Obviously with the first child who only lived 19 days, you know she didn't have time really to adjust. Then with the second child who did live longer, I think there would still have been, the transition would still not have been complete. You know it would've still - she would've had time to adjust to certain things, but I think again it, some - it got interrupted, so maybe the transition wasn't complete. I  
10 can't say whether or not it was, but it's often a process that takes more than just a few months.

15 Q. To what extent is - I withdraw that. In your view would there have been a lesser influence of matrescence or adjustment to motherhood in respect of the time period after the birth of Laura and Sarah?

A. Yes.

20 Q. And does it follow then that when you engage in your assessment or opinion of the dairies, that as time goes on, did you give less weight to the possible impact of that adjustment to parenting and the cognitions that are associated with it?

25 A. Yes, but it was - yes, but it's not just the - it's not that she just had that one factor that was contributing to her cognitions, and you know she also had the depression and the attachment disorder, and the - you know the trauma history. So, and a lot of those vulnerabilities would, you know, could have similar - would give a similar vulnerabilities as the matrescence. It all sort of interlocks. So just because the matrescence might not have been there, it doesn't mean those other vulnerabilities were not there.

30 Q. And you've set out those other vulnerabilities, I think on page 55(i).

A. Yes.

35 Q. Does it follow from the answer that you've given then that you don't consider the fact that matrescence was perhaps of lesser significance, impacts the way in which those other disorders or cognitions affect her dairies?

A. Sorry that was a long sentence, can you just repeat that please?

40 Q. That was a very long sentence and I'll reword it. In fact I think you've made your answer clear, I might move on. At page 56 of your report, you have noted that the dairies are "written with little emotion", and that's at the very top of the page your Honour, and in your view the absence of emotion is a coping mechanism or response to early trauma, and you've described this as a compartmentalisation of emotions in the second paragraph.

45 A. Yes.

50 Q. I don't need to take you to it, but you have read the report of Mr Sheehan. He describes this lack of emotion as potentially an artefact of avoidant coping - of avoidance, and a coping characteristic of trauma psychopathology. Do you agree with that characterisation?

A. Yes, I do.

Q. And Dr Eagle has given evidence that, in her report, that "individuals who are emotionally detached ... can appear 'emotionless' or 'cold' when in fact their emotions are so unbearable, that they are unable to tolerate them." Do you agree with that statement as well?

5 A. Yes, I do.

Q. And is that consistent with your clinical experience?

A. Yes.

10 Q. On page 57 you describe the diaries as presenting an individual's thoughts, and that depending on their mental state at the time their thought content may be skewed. That's in the last paragraph. Is it your view that the disorders and the mental health concerns that you identify would've been causative on Ms Folbigg's thoughts, as recorded in the diaries between 1989 and 1999?

15 A. Yes, I do.

Q. Are you aware that Mr Sheehan has stated he doesn't consider it untenable, or unavailable, to view the entries as admissions on the part of Ms Folbigg as having had a role in causing the death of Patrick, Caleb, Laura or Sarah, but does not consider it to be the likely explanation?

20 A. Yes.

Q. Your own view is that if interpreted as you consider, they should be having regard to those mental health conditions, they do not contain any admissions of guilt as to harming her children. Do you accept that your view is somewhat more definitive than that of Mr Sheehan?

25 A. Yes, I do.

Q. Do you allow for the possibility that the entries could be read in a different way?

30 A. Yes.

Q. In your view, would you expect to see something else in the dairies, which is not there, if Ms Folbigg had harmed her children? Is there some aspect of what's absent that influences your opinion?

35 A. I think you know if you look at the diaries as she described them as, you know, I think she said at one point it was like, you know, like loading off to a friend. I would have expected something - she spoke in quite a lot of detail about, you know, how she blamed herself for all her children being taken away, or leaving, so I would've thought that if she was guilty, there would've been something more implicating. I would've expected her then to be grappling even more with guilt as a result of what she had done, if she had killed the children, and there's nothing like that there. I would've expected that, but you know, I can't say definitively yes or no.

45

Q. Is there anything about the fact that Ms Folbigg's given evidence that she didn't hide her diaries from, for example, Craig Folbigg, that they were around and people knew she was writing in them. Is there anything about that fact that affects the answer you've just given?

50 A. Yes, I think if she was guilty she probably would not have just left the

diaries out on the bedside table, or wherever she left them.

NO EXAMINATION BY MR HASTINGS

5 <EXAMINATION BY DR CAVANAGH

Q. I just have a couple of questions for you. You mentioned that she left the diaries out on tables for others to see if they wanted to, do you view that as significant?

10 A. I think that if she was guilty, and if she wanted to hide something that she'd written, she wouldn't leave them out. That's just.

Q. And later, when she was interviewed by the police, or shortly thereafter, there was a suggestion that she was attempting to hide a diary. Do you see anything unusual in that?

15 A. Well, I don't know I can comment on that within my psychiatric expertise.

Q. All right. I think you'll also probably be asked a question about--

20 JUDICIAL OFFICER: You just ask your questions.

CAVANAGH: Of course.

Q. --about her speaking in an accent, about how she might answer questions. Do you see anything unusual in that?

25 A. I guess one could speculate that she was just practising what she would say, which I don't think is unusual.

Q. Not indicative of a consciousness of guilt?

30 A. Not necessarily, I think lots of people, when they're going to speak in public, they might practise what they would say beforehand.

Q. There's one diary entry that's been concentrated on quite a bit, and that is, "she left with a little bit of help." Do you remember that entry?

35 A. Yes, I think she was referring to Sarah.

Q. Yes, and what do you draw from that?

40 A. Well, my understanding was that, when she made that comment, my understanding was that the help was not - the help that she was referring to was more from God or, you know, some higher power, that Sarah died with help from God, for example, not from her.

Q. Does that fall into any diagnostic criteria, that is a belief in some spiritual being, is that a delusional state one could be in?

45 A. No, I think that would just be keeping perhaps with her spiritual belief.

Q. Have you come across religious people, people believing in spirits or the like who have a view that some sort of God intervened in the death of their children, is that unusual?

50 A. I think it - no, I think it's quite common when there's death or loss that



5 people try and find an explanation, and if they are religious then that would definitely come into it, but even people who aren't normally very religious when there's loss or, you know, they're trying to make sense of what's happened in their lives, they often then fall back on to, you know, maybe religion that they might of, religious practices they might have had as a child. So you know, if you were brought up, say as Catholic, and then you're not really very religious, but when you have a loss you're searching and then you kind of go back to your beliefs from earlier.

10 Q. There's also a reference in the diaries to where she refers to "snapping her cog" and having to walk away for a short time.

A. Yes.

15 Q. Is there anything unusual, in your experience, in a mother doing that?

A. No. It's actually very common that I see mothers - and I'm often referred mothers for those kinds of - because if they make a statement like that, and they for example, you know if a child or family nurse might hear that they get quite concerned, and then they'll think that maybe they need to make a mandatory notification because the mother is going to do something, and I might get referred a lady like that. And it's usually there's no intention there, and I would say the majority of mothers, especially in that initial period when there is sleep deprivation, I would say the majority of mothers have some negative thought or thoughts about their baby, and how they might lose their temper, or even, you know, do something to the baby because they are just so exhausted, they haven't slept, and the baby, as the babies do, they just keep crying. So I don't see it as very uncommon.

20 Q. Walking away from the baby, or putting the baby in a room for five minutes on their own, is that shocking to you?

25 A. No, that's actually advice that we might give a mother who's struggling.

30 Q. There was a concept once of controlled crying, do you know that concept?

A. Yes.

35 JUDICIAL OFFICER: Dr Cavanagh, I really don't see - you go on.

CAVANAGH: If you want to stop me your Honour, I'll stop.

40 JUDICIAL OFFICER: No, you can go on, you ask your question.

CAVANAGH: These are questions about - do you want me to explain why I'm asking them?

45 JUDICIAL OFFICER: No, just ask the question.

CAVANAGH

50 Q. If we could go to page 56 of your report, if that could be brought up, there's just one aspect of that that I want to go to. Red page 56, the third paragraph.

JUDICIAL OFFICER: Page 29 of your report, Doctor.

CAVANAGH: Yes.

5 Q. Do you see that there, so the absence of emotion is noteworthy.  
A. Yes.

10 Q. And you've partially answered to Counsel Assisting in regard to that, but you go on further to say you would - expected "more intense emotion, such as anger, in her diaries", if indeed she had harmed her children. Why do you say that?

15 A. Well, my understanding was that, if she's so frustrated and exasperated to the point of losing control, then I would expect her to also be quite impulsive and emotive in other aspects, so I would have thought she would've commented on that in the diary, or just the tone of her writing would reflect that.

20 Q. You went through all her journal diary entries?

A. Yes, I did.

Q. Did you see the diary entries in respect of Caleb, the youngest one?

A. Yes.

25 Q. There are a series of notations, feeding times and--

A. Yes, it's very sort of matter of fact and limited.

Q. Yes. Anything unusual about that with a new mother?

30 A. No. I think it probably just reflects maybe her anxiety to make sure, not anxiety as in a pathological sense, but you know, her trying to make sure that she's doing the right thing as a new mum, so she's recording the mils of milk and that sort of thing.

35 Q. If you can accept from me that there's some extensive note taking on behalf of Ms Folbigg about Patrick, especially when he becomes ill in hospital and she's going back and forth to hospital with him, extensive note taking about his treatment. Anything unusual about that?

A. No. I think it probably would reflect again her trying to make sure she's got everything right so she can take care of him appropriately.

40 Q. Yes, and it also shows concern, doesn't it?

A. Yes.

<EXAMINATION BY MR JORDAN

45 Q. Dr Dhansay, I appear for the Director of Public Prosecutions. Your evidence is given from your specialist position, your perspective as a psychiatrist, correct?

A. Correct, yes.

50 Q. In your report and your evidence you're only seeking to offer opinions from

that psychiatric perspective?

A. Correct, yes.

5 Q. You are not seeking to offer any opinion in relation to any questions of fact?

A. That's correct, yes.

10 Q. Did you in preparing your report and reviewing the materials listen to all of the available audio recordings involving dealings with Ms Folbigg?

A. I listened to the 2019 Inquiry, is that what you're referring to?

Q. Well, there are a number of recordings from a number of different sources but let's just deal with that one firstly.

15 A. Yep.

Q. Did you listen to the audio recording of all of the evidence given by Ms Folbigg in the 2019 Inquiry?

A. Yes, I did.

20 Q. Did you also listen to the recordings of the various interviews of Ms Folbigg by Dr Touma?

A. Yes, I did.

25 Q. Did you spend any time looking at the limited available audio and video of the police interview?

A. From the ERISP?

Q. Yes?

30 A. Yes.

Q. You did, so, can we proceed on the understanding that you did, in preparing your report listen to any available audio and/or video provided to you?

35 A. I did, but I might - it was a few months ago so I might need some, you know, I might not remember everything without some prompting.

Q. You can relax, I'm not going to test you, I'm not going to ask - it's just so that we understand that you've taken the time--

40 A. Yes, I did.

Q. --to go beyond just the written transcripts?

A. Yes, I did.

45 Q. Do you agree that throughout all of the diaries there does not appear to be any entry by Ms Folbigg along the lines of a question, "why are my children dying?"

A. I think so. I'm just - yes.

50 Q. From your perspective, your psychiatric perspective, what, if anything can you say about the absence of that question in all of these diaries in

circumstances where Ms Folbigg has lost four children?

5 A. It - I guess you could - you might expect that, but I think maybe because she's so avoidant that she doesn't want to go there because it's too painful, so she doesn't go there. It's I think she's got an avoidant aspect to her personality, so she - it's the same like when she dissociates, so I think she's avoiding addressing that or trying to deal with that, but yes, I would - if she had written about it, I wouldn't have been surprised.

10 Q. Well are you surprised that she didn't write it?

A. I wouldn't say I'm surprised, but I do think it is noteworthy.

15 Q. Why is it noteworthy?

A. Just for the reason you said, that if she'd lost the four children she might've questioned why.

20 Q. What do you say to the proposition that one reason Ms Folbigg did not question the cause of her children's death is because she knew how they died?

A. Sorry, what is the question?

25 Q. What do you say--

A. What do I say to it?

30 Q. --to the proposition that the reason Ms Folbigg did not ask the question, "why are my children dying?", is because she knew how they died?

A. Well it's possible.

35 Q. There's a part of your evidence where you said something along the lines that you thought that if Ms Folbigg had been, to use your words, grappling with guilt, you would've expected to see something more in the diaries, remember that evidence?

A. Yes.

40 Q. Have I accurately reflected it?

A. No. I meant something--

45 Q. What is your position on that, if anything?

50 A. When I said more, I meant like more emotion or more, you know, in the tone, her tone in the diaries are quite - it's not very emotionally laden, so I feel like if the - if she got to a point where she was so stressed or so angry or exasperated that she went so far as to actually kill a baby, then I would expect her to have more of that reactivity of emotion reflected in her - in the way she wrote, but you don't - I don't see it there.

55 Q. What about as a possible example of something that might reflect guilt, that is criminal guilt, an entry reflecting a sort of sardonic humour over the loss of one of the children, would that be the sort of thing that you might be looking or?

A. No, I'm looking more for emotion.

JORDAN: Could we please bring up the Diary Compilation at 18-07? Please go to - I've just got to turn it up myself but it's entry 345 from memory. Yes.

5 Q. That entry's been brought up, it's entry 345 of 28 January 1998. In fairness to you, Dr Dhansay, take as much time as you need to reacquaint yourself with the totality of the entry before I ask you any more questions.

A. Mm.

10 JUDICIAL OFFICER: Mr Jordan, I take it your cross-examination's going to be about the same length of time as it was with Mr Reardon (as said) and Dr Eagle, is that right?

JORDAN: I was actually expecting it to be quite a bit shorter.

15 JUDICIAL OFFICER: I was only going to ask whether you wanted to take an adjournment, but if not.

JORDAN: I'm happy to, your Honour. I'm in your Honour's hands.

20 JUDICIAL OFFICER: Whichever the parties prefer. I'm happy to go on.

JORDAN: I don't think I'll be terribly much longer.

25 JUDICIAL OFFICER: Well go on, go on.

JORDAN: All right.

JUDICIAL OFFICER: Sorry, Dr Dhansay, I interrupted.

30 JORDAN

Q. Obviously you're answering these questions having the context of all of the diaries and also just reacquainted yourself with that entire entry. On that basis let me just put onto the record a portion of it and it begins on the second line:

35

"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. Like Sarah did. I knew I was short tempered & cruel sometimes to her & she left with a bit of help."

40

45 By the last part of that entry, scared that Laura will leave me now like Sarah did. I knew I was short tempered and cruel sometimes to her and she, that is Sarah, left with a bit of help. What is your interpretation of that?

A. I think I answered that earlier with Mr Cavanagh - Dr Cavanagh sorry, but my impression of that was when she said with a bit of help, I think she was referring to God or some equivalent higher power.

50

Q. So that's one alternative explanation--

A. Sorry?

5 Q. --let me propose to you another alternative. When she says she left with a bit of help, do you accept that an available alternative explanation is that she's saying that Sarah left with a bit of help from Ms Folbigg?

A. Yes, I do accept that that's an alternative explanation.

10 Q. In that context, if that was in fact what Ms Folbigg meant, do you agree that that is the kind of entry that would reflect the sort of guilt that you said was otherwise missing in the diaries?

A. No. I was looking more for something, you know, more emotive or more maybe like swear words or something extreme. I think this is still written fairly, you know, in a sort of blandish way, like she's just relating what's happened.

15

Q. You don't think that's capable of being understood as potentially a sardonic and somewhat cold comment in circumstances where Ms Folbigg knows that the reason that Sarah left is because she helped her to leave? Is it not capable of that interpretation?

20

A. Yes, I think I said it's possible, but it's just not the way that I read it.

25 Q. Another observation that you offered in your oral evidence this morning was that you hypothesised that you thought that if Ms Folbigg had been guilty of the crimes for which she is currently imprisoned, she would've tried to hide her diaries?

A. Yes, that's correct.

30 Q. Do you maintain that position?

A. For the most part, yes.

35 Q. Are you familiar with the various answers given by Ms Folbigg to police during the early stages of the investigation as to whether or not there were any other diaries in existence?

A. Yes. I don't remember it all in detail, but I did listen to that, yes.

40 Q. What do you remember of it?

A. I do remember that there was one diary that apparently - I think she spoke about - I think it was on the recording device, she spoke about putting it under something else. Is that what you're referring to?

45 Q. I'm just asking for what you can recall.

A. Yeah, from what I recall there was one reference to, I think, one diary that she'd put under a bag or something to that effect.

50 Q. Let me put it to you this way: if there was in fact evidence that showed conduct by Ms Folbigg by which she was seeking to hide the existence of diaries from investigating police, would that change your opinions as expressed in your evidence today?

A. Look, it's really difficult to say what was happening at the time. I'm not sure if, when she made that comment, she'd already been, you know--

Q. Let's forget about the comment.

A. Yep.

5 Q. You, in your evidence, yourself advanced this hypothesis that if Ms Folbigg had been guilty of the crimes for which she is currently convicted, you would have expected that she would have done something more to hide her diaries. You advanced that in your evidence.

A. Yes, but just because she--

10 Q. I'm just seeking to advance - I'm seeking to--

WOODS: You should let the witness answer the question.

15 WITNESS: Just because she hides a diary doesn't mean that she's guilty though. It's not - because if I wrote something in my diary - again I'll talk about myself, but if someone wrote something in their diary - diaries are quite personal, so you might not want someone to read it for a variety of reasons, not just because you're admitting to guilt of a murder.

20 JORDAN

Q. Allow me to offer you this opportunity. Now do you still maintain your evidence that you would have expected Ms Folbigg to have hidden her diaries if she had been guilty of the crimes for which she is convicted? Do you still  
25 maintain that position?

A. I maintain that she may have hidden them if she was guilty, but just because she hid them doesn't mean that she was guilty, that's what I - my evidence.

30 Q. What do you say to the evidence where, in her interview with police, the first thing that she told police in terms of the existence of any further diaries was that she had destroyed them all the previous Mother's Day? What do you say to that?

A. And had she destroyed them all?

35

Q. Can you answer my question please?

A. I need to know the context.

Q. This is what she told the police.

40 A. But I can't answer that because I don't know the context. Sorry.

JORDAN: Your Honour, I'm happy to proceed. I don't think it will take terribly much longer, but I will have to go to MFI 10.

45 JUDICIAL OFFICER: Sorry?

JORDAN: I'm happy to proceed. It will take a little longer and I'll need to take the witness to MFI 10 to do this properly.

50 JUDICIAL OFFICER: Perhaps we'll take an adjournment for ten minutes.

## SHORT ADJOURNMENT

JUDICIAL OFFICER: Yes, Dr Woods.

5 WOODS: Your Honour, the Order for Production which we spoke about before, does your Honour have a copy of the document?

JUDICIAL OFFICER: I do.

10 WOODS: I can say that I've spoken with Counsel for the Police and I think that the terms of the schedule will be doable, at least shouldn't create any objections or claims of privilege.

JUDICIAL OFFICER: Ms Love, have you seen this?

15

LOVE: Yes.

JUDICIAL OFFICER: Do you have a difficulty with it?

20

LOVE: No.

JUDICIAL OFFICER: I make that Order.

WOODS: Thank you, your Honour.

25

JUDICIAL OFFICER: Yes, Mr Jordan.

JORDAN: Thank you, your Honour. Could we please provide Dr Dhansay with MFI 10 and bring that up on the screen?

30

Q. Looking at this first page on this MFI 10, red number 236, to provide you with some context, this is an extract from the transcript of Ms Folbigg's interview by police on 23 July 1999. If I could just take you to question and answer 853:

35

"Q. Tell me about Mother's Day, what happened at Mother's Day this year?

40

A. Mother's Day was just depressing, and I tried to make it as normal as possible without paying any attention to it. And I was gonna write in my diary again and sort of let loose but I sort of flicked back a few pages and was sort of readin' things that I had written and got the shits with my life and got the shits with writin' it all in here and sort of thought how stupid is this, I should be talking to Craig, not writing in a bloody book and I just threw them all and I decided I'd never write in them again."

45

Then towards the bottom of the next page, red 237, you see at the bottom there there's question 862:

50

"Q. Did you destroy or throw the diaries away after Craig had told



you that he had given the police a diary?

A. No, he didn't tell, it was after that 'cause he told me that he had given you a diary and he said he told you he saw one on my night stand and I said, Well I haven't got it anymore, and I told him that I had gotten rid of it that day, so, Mother's Day."

5

Do you see that the effect of Ms Folbigg's answers to police at this time, 23 July 1999, is that she has destroyed or gotten rid of all of her diaries, and for context, that is what Ms Folbigg told the police before she had any knowledge that there would be a search of her home later that evening?

10

A. (No verbal reply)

Q. If we could move to the next page please which is red page 2769. This, for your information, Dr Dhansay, is an extract from the transcript of the trial and is part of the evidence given by Detective Ryan. This picks up what happened after the conclusion of the interview in the late afternoon of 23 July 1999. I'll just take you to some of those portions. Do you see there at line 7:

15

"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?

20

A. Yes.

Q. What did you say to her?

25

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 more diaries?'. She said, 'I've just started a new diary and it's up at the house'."

30

Just pausing there, do you accept there that there is a significant change to what Ms Folbigg is now telling the police as to the existence of any more diaries?

35

A. Yes. Yes, yes.

Q. Moving on a little bit further, you will see that Detective Ryan recounts the execution of the search at the house, and then at line 55, red page 2769, do you see there Detective Ryan recounts how Ms Folbigg, going onto the next page, volunteered a diary consistent with her recent change in her account, do you see that?

40

A. Yes, I do.

Q. Further on, at line 20 on red page 2770:

45

"Q. 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?

A. Yes, he did.

50

Q. Would you tell the Court what happened?

5 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'."

10 Pausing there. You see and accept that this evidence shows that having provided the police with a diary consistent with her recent change of account, police then conducted a search and found another diary in a wardrobe which had not been volunteered by Ms Folbigg. Do you understand that?

A. Yes. Yes, I do.

15 Q. Then if we go to the next page of this MFI 10 which is red page 108, this is a transcription of a listening device which was operating inside the house. You'll note from the date and time that this is the following morning, so it's 24 July 1999 at 7.53am. Do you see there that the transcript records Ms Folbigg entering a bedroom, appearing to open a cupboard or drawer

20 causing a loud noise and then this is recorded "Kathy, I should have fucking done what I was gunna do, stuck it underneath that". And below that you have the police commentary as to their belief that here Ms Folbigg is talking about the diary police found which she had not volunteered, do you see that?

A. Yes, I do.

25 Q. I've just taken the time to go through that material with you because of the evidence you gave earlier today in answer to, in fact volunteering something to Ms Wootton, which was along the lines that you would have expected that if Ms Folbigg was guilty of the crimes for which she is currently convicted she would have done more to hide her diaries. Now with the benefit of seeing that evidence, what is your position on that?

30

A. Well, there was probably something in that diary that she was trying to hide or that she didn't want someone to read.

35 Q. Do you accept that this material shows Ms Folbigg lying about whether or not other diaries were in existence?

A. Yes.

40 Q. It also shows that she was frustrated when police found the diary that she appears to have tried to keep hidden?

A. Yes.

45 Q. Do you accept that that conduct can be interpreted to reflect her own consciousness of guilt in relation to the unlawful deaths of her children?

A. It could, yes.

JUDICIAL OFFICER: Ms Wootton.

50 WOOTTON: Just a few matters arising, the first one is not a question per se but I just note for the record that Mr Jordan asked a question that was in terms

5 of one reason she did not question why her children died was because she knew how they died. That question although not limited in terms in my submission must be understood as limited to Ms Folbigg not questioning that in her diaries, being those diaries which are actually available, and if my learned friend intended it to be brought up, I would submit there's not a proper basis for it noting there is material which demonstrates Ms Folbigg did elsewhere question why her children died, for example, to medical professionals, and noting that the diaries cannot be taken to reflect every thought that Ms Folbigg had between 1989 and 1999.

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JUDICIAL OFFICER: That's a matter for submissions in due course, Ms Wootton.

15

WOOTTON: I say it now only that if Mr Jordan wishes to re-ask the question in a different way he has that opportunity now before I re-examine.

JORDAN: Your Honour, I thought I did put the question specifically in terms of there not being a question in the diaries.

20

JUDICIAL OFFICER: I thought you did too, but it is to be understood that way I take it, Mr Jordan.

WOOTTON: I'll re-examine now and then deal with the issue of the Non-Publication Order which I had mentioned.

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JUDICIAL OFFICER: I think perhaps I'll ask, I'd like to ask a couple of questions first.

30

Q. Doctor, I only want you to answer these questions to the extent that you're applying your psychiatric expertise to it, because there's always a boundary overlapping between what amounts to expert opinion and lay conjecture if I can call it that in this area. If you could be shown again page 212 of tab 18-07, the entry 345, "she left with a bit of help". What I want to ask you is, having regard to your observation or the conclusions, the matters you reached in your report, would you from a psychiatric point of view regard it as possible that what Ms Folbigg was referring to was a belief that something else had happened out of her control?

35

A. Yes, I would.

40

Q. The other thing I wanted to ask you about was this, that you said that in relation to - if she killed these children you would've expected entries showing some sort of rage or frustration of that matter, and that the entry at 345 didn't reflect that. Now, would that sort of expressions of rage and frustration be more likely to be contemporaneously with, or more or less contemporaneously with the death of the particular child?

45

A. Yes, it would.

50

Q. The entry you were shown there was an entry of January 1998, which was some five years after Sarah Folbigg died. I want to take you, if I may, to, in the same Exhibit, an entry on page 162 of the 30 August 1993. Page 162. Is it

showing on your screen? It's not showing - yes. It's a fairly short entry. It's entry 210, "Sarah left us. 1am"; do you see that?

A. Yes, your Honour.

5 Q. Does that reflect the rage or frustration you believe would have been there had Ms Folbigg killed the child?

A. No, your Honour.

10 NO EXAMINATION BY MS HORVATH, MS LOVE AND DR WATERHOUSE

<EXAMINATION BY MS WOOTTON

15 Q. You've been asked by Dr Cavanagh, Mr Jordan and his Honour about an entry which referred to "with a bit of help". You referred to the possibility that Ms Folbigg was talking about God or a higher power; those were the words that you used.

20 WOOTTON: Could I just ask that the witness be shown Exhibit 4, red page 677?

JUDICIAL OFFICER: Just before you do, Mr Jordan, do you want to ask any questions arising out of what I just asked the witness?

25 JORDAN: No, thank you.

JUDICIAL OFFICER: Sorry.

WOOTTON

30 Q. If we could just go to the very bottom of that page, the last question and answer. Do you recall reading this and listening to what this is a transcript of, being the evidence of Ms Folbigg in the 2019 Inquiry?

A. Yes, I do.

35 Q. To what extent was your answer in relation to that entry "a bit of help" informed by what Ms Folbigg has said about it, if at all?

40 A. I'm obviously aware of that statement that she made, but I feel that it is in keeping with what - I think her statement is - it makes sense, and so reading the quote "with a bit of help", I would agree with what she's written, but I'm not basing my decision on that. You know, I haven't come to that conclusion by reading that. I've made that - I've come to that conclusion based on my experience with seeing mums and clinical experience.

<THE WITNESS WITHDREW

45 CALLAN: Your Honour, yesterday morning, very shortly before Dr Cala gave his evidence, the Inquiry received communication by way of email which, most relevantly, records the recollection of Professor Duflou in relation to examining the histology slides of Laura Folbigg's heart at or about the time that Dr Cala was performing the autopsy. To ensure that the evidence before your Honour

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is as complete as it can be, at least on that topic, and having regard to what is set out in Professor Duflou's email, I tender the email. I do so noting that, although not put in precise terms to Dr Cala, his evidence was that he had no recollection of showing Professor Duflou. From my perspective, there will be no submission that Dr Cala has been anything other than honest with this Inquiry and I made that clear to those acting for Dr Cala before they sought to be excused. Could this be marked Exhibit 13-01B?

JUDICIAL OFFICER: Yes.

EXHIBIT #13-01B EMAIL FROM PROFESSOR DUFLOU DATED 23/02/23 REGARDING THE MICROSCOPY SLIDES OF LAURA FOLBIGG, ADMITTED WITHOUT OBJECTION

CALLAN: Next, as foreshadowed, we have compiled two folders which it's proposed will be marked Exhibit 36, setting out, containing, in unredacted form, those particular exhibits that have otherwise had redactions applied to them.

EXHIBIT #36 FOLDERS (2) CONTAINING UNREDACTED EXHIBITS, ADMITTED WITHOUT OBJECTION

Your Honour, can I hand up a List of Exhibits, current as at 24 February 2023, which includes those two folders in anticipation of your Honour receiving them into evidence.

JUDICIAL OFFICER: Yes.

CALLAN: The index or List of Exhibits includes a cross-reference to demonstrate where the evidence otherwise appears and the exhibit number.

JUDICIAL OFFICER: The List of Exhibits will be MFI 12.

MFI #12 LIST OF EXHIBITS DATED 24/02/23

CALLAN: Ms Wootton wishes to return specifically to the Non-Publication Order that would be engaged by certain of the evidence of Dr Dhansay. Subject to that, I seek your Honour adjourn the proceedings.

JUDICIAL OFFICER: Yes, Ms Wootton.

WOOTTON: Thank you, your Honour. I did indicate I would return to it and then failed to do so. During the course of Dr Dhansay's evidence she gave an answer, and following that answer I indicated that it was my understanding that answer would be covered by the terms of a Non-Publication Order. Can I make clear for the record that your Honour made an order on 15 February 2023 and part of that answer would be covered by Order 3(iii) and I just state that for the record for the benefit of media listening. The Non-Publication Orders are available on the website and the media can have access to them.

JUDICIAL OFFICER: Thank you.

5 CALLAN: I should have made it plain or at least sought to have your Honour confirm for the record that the two folders which are suggested would be marked Exhibit 36--

JUDICIAL OFFICER: Sorry, I thought I did.

10 CALLAN: --should be treated as a confidential exhibit.

JUDICIAL OFFICER: Exhibit 36 is a confidential exhibit. It only adds the particular redacted portion of the earlier ones.

15 CALLAN: Yes.

20 JUDICIAL OFFICER: I will adjourn the hearing of the Inquiry now until 26 April. There are directions plainly as to submissions. Can I say this, a lot of material has come in during the course of it, and there is a possibility it will come in subsequently. The only material I will have regard to from now on is material that has been sought to be tendered and either is tendered without objection from all the parties or only after argument before me, because it's impossible to manage this case otherwise, quite frankly. On that basis, thank you all for your assistance, and I'll adjourn til 26 April.

25 ADJOURNED PART HEARD TO WEDNESDAY 26 APRIL 2023