

26 June 2023 (Day 136)

Defence Closing Speech Day 1: The Prosecution & Evidence, Lucy Letby, Expert witnesses.

Discussion with the Judge

Monday, 26 June 2023

(10.26 am)

(In the absence of the jury)

MR MYERS: My Lord, can I thank you for the directions which we received on Friday. There may be some minor points to raise, but nothing of any substance.

MR JUSTICE GOSS: Thank you, Mr Myers. I wasn't expecting any detailed response yet, but I just wanted you to be alert to the basic areas. Thank you, Mr Johnson and Mr Astbury, for the suggestions and the amended suggestions and the withdrawn suggestions. Thank you very much.

You choose your moment, Mr Myers.

MR MYERS: Thank you, my Lord.

(In the presence of the jury)

Closing Speech by MR MYERS

MR MYERS: Ladies and gentlemen, I've been sitting next to you for nearly 9 months and I hardly know you, but I can hazard a guess what a number of you will be thinking at the moment, and that will probably be, "5 days? 5 days!" I should say the other thing that's happened in the course of 9 months is I've moved from someone who doesn't wear spectacles to someone who does wear them, so these will make an appearance.

But before I start, can I thank you all on behalf of myself and Mr Maher and Ms Clancy and also Mr Thomas and Mr Learmont. We are grateful, as is everybody in court, not just us. Obviously everybody in court is grateful for the close attention that you have been paying to this case. It is a difficult case in many ways. It is distressing. There is a huge amount of material to deal with and I know that although talking at length can be demanding, listening takes even more stamina, so thank you.

I've listened very carefully to what the prosecution have had to say to you for the past 4 days and now this is our opportunity to speak to you on behalf of Ms Letby, and I hope, and I expect, that everybody in court will do me the courtesy and you the courtesy of sitting and listening to what I say on her behalf, just as respectfully as we have been doing.

What struck me as I've been listening to the prosecution, what really struck me, is that when we listen and look at the evidence in this case, whatever Ms Letby has done or hasn't done or said or not said, whatever it is according to the prosecution, that makes her guilty. Whatever it is. Just cast your minds back to everything, every single thing, as if the prosecution have a theory and no matter what happens, no matter what the evidence is or whatever the evidence isn't, the evidence or the absence of evidence is treated in whatever way is required to keep that theory going.

It doesn't matter how inconsistent that theory is or how the supposed patterns don't stack up. It doesn't matter in fact, it seems, how often that theory has to change shape. And it doesn't matter that different standards are applied to Ms Letby from the standards applied to everybody else in this trial. The theory is endlessly flexible and the patterns vary according to the point the prosecution want to make and everything -- everything -- is treated as evidence of her guilt.

If I go through some of the things in this case, if I just quickly run through some of them, you will see what I mean. So Ms Letby is present when something happens: guilty. Ms Letby isn't there when something happens: guilty. She's just left the unit: guilty. She's just turned up for work: guilty. She makes a note: guilty. She doesn't make a note: guilty. She fails to sign off observations, just like other nurses fail to sign the observations -- well, yes, it happens, but when Lucy Letby is doing it, guilty. She signs observations on another nurse's chart, exactly like other nurses do -- well, yeah, that happens too, but in the case of Lucy Letby, guilty.

A baby in her care shows no sign of deterioration before an event. The prosecution say, that's easy, that's guilty. All right. A baby in her care does show signs of deterioration before an event, guilty too, say the prosecution, because she made those up and put them in her notes. She can't win.

Even if there are signs of deterioration, she invented them. Ah, the signs of deterioration are referred to in another nurse's notes, which you may think, that's good evidence of deterioration. No, guilty, the theory changes: she's got them to put that in there. Okay. The signs of deterioration are referred to in a different nurse's notes and they happened when Lucy Letby wasn't even on the unit. Yes? That's a tricky one, isn't it? But guilty because she somehow set it all up beforehand and you have seen that time after time, this twisting and turning.

She cries when she gives evidence: guilty. She doesn't cry or she doesn't cry in the right places: guilty. You've watched that

for months. How about this? Dozens and dozens of alleged incidents of force-feeding, pushing air down tubes, injecting air down tubes, spiking insulin bags repeatedly on a busy ward in front of everybody, performing assaults with unidentified objects in a unit where anyone can walk into any room at any moment, and they do, and where for nearly 12 months Lucy Letby is under suspicion, we are told, by an ever-increasing number of doctors, and there is not one occasion where there is evidence of Ms Letby doing -- doing -- even one of the harmful acts alleged against her. Not guilty.

The prosecution keep on saying we should look at all the cases and we agree. When I say not guilty like that at that point, that's what we're doing. Or do we just ignore that glaring absence in the evidence because it doesn't fit with the prosecution theory of guilt? In 22 -- in fact, on about 30 occasions, given the number that were thrown in as we went through the defence case, and just about everything became an allegation if it gave the prosecution a shot at Lucy Letby.

There's been reference in this case to something called confirmation bias, but I think there is a better way of describing what is happening, and we can see it now the prosecution have put their case, and that is that what is really at work is best described as the presumption of guilt. That is what is being used, a presumption of guilt. And this prosecution case is fuelled by it and riddled by it.

No matter what Lucy Letby says, does or doesn't do, it is slotted into an ever-flexible, ever-changing theory of guilt. It doesn't matter how inconsistent that is or how many standards are applied to Ms Letby that are different from those applied to any other witness you've heard from. It can be slotted in there because everything is treated as evidence of guilt. Well, ladies and gentlemen, I'm going to ask you, if you would, to do something different and I'm going to ask you to approach this evidence, the evidence, with something else at the forefront of your minds, and that is something called the presumption of innocence. It comes like a bucket of cold water over everybody in at this point in this case, I bet. Yes? The presumption of innocence. And if you have been doing that for the past 9 months, if you have, and we put faith in you that you have done, good, because that's the way it works. Being fair and working on the basis that somebody is innocent until proven guilty is the way our law works, that is all we ask of you, that is all, that you make sure your consideration of the evidence is fair and balanced in accordance with his Lordship's directions and that the prosecution make you sure of what they have to prove.

Now, 5 days sounds quite a long time, quite a lot to listen to, so that you know where we're going, what I'm going to do and it

will probably take most of today, maybe just into tomorrow, is just to look at matters in the case generally and then I will, with you, go through the individual counts on this indictment in order. So you may be listening to me, thinking these are all very good general points, the sort of thing we expect a defence barrister to be saying to us, but then I'm going to take this and we will go through the counts and look at it. So we'll look at the evidence.

I won't be referring to everything, but we recognise the enormity of what you are dealing with. There's a huge amount of material in this case. But you know the enormity of what Ms Letby is faced with and there is a lot to consider and we know it takes time to unpick all of this. We respect the fact of the evidence and we respect the task that faces you.

During this trial, while defending Ms Letby, and plainly that is what we're doing, there are two sides here so far as the parties are concerned, and neither side is neutral or automatically right. There are two sides.

Whilst defending Ms Letby during this trial we've also endeavoured to assist you by unravelling at times what has been a mass of information poured out, literally a spaghetti soup of dates and events sometimes as if, throw it all in, shake it all around, say some awful things, point to pieces of evidence, some of which you'll want to look at very closely, we recognise that, some of which we say carry little weight at all, but then see what comes out at the other end. And there is a danger, we suggest in a case like this, of an accumulation of material overwhelming fair consideration of the individual parts, not disputing the business of circumstantial evidence, of course you can look across the counts, but you must look at the detail too.

As you know from his Lordship's directions, the law is for his Lordship, and anything we do, anything I say, anything anybody says or does in this case is subject to his Lordship's directions on the law. But when it comes to the evidence, the facts, what happened, that is your territory, ladies and gentlemen, entirely yours. Questions, speeches by counsel, comments, they don't count if you disagree on what you see in the evidence.

So it doesn't matter, actually, what I say to you by way of comment on the evidence. If you don't agree with it, dismiss it. It's not up to me. And it doesn't matter what the prosecution say to you about the evidence, it doesn't matter at all if you disagree with it because it's your view that takes precedence. And as his Lordship directed you, whilst his Lordship will review the evidence with you, it isn't his views, were there to be any, it isn't his views, were you to perceive any that

matter, it is your views of the evidence that matter. That is absolutely crucial.

So as you listen to what I say on behalf of Ms Letby and as you think of what the prosecution said, can I ask you -- it's your notes and your recollections of the evidence, you saw this for months on end, that is what matters most of all. All the rest of it from the parties is comment and we would both say it's important because it's both sides of the case. But you have listened, and it's obvious you have listened so carefully, you've absorbed so much, you've made so many notes, please don't disregard that, don't forget that. What your views were of a witness or of a part of the evidence when you heard it, that's what matters. Of course you'll put it alongside other bits of evidence, but it's not up to any of us to tell you what to think of the evidence when you go back to it or to pick one bit and ignore another bit if you find it elsewhere. That really is for you.

It follows, doesn't it, that no matter how anyone reacts as these submissions are made, that doesn't matter. Reactions to what I say to you don't matter from the parties, from in the well of the court. Guard your right to form your own view of the evidence on each count in accordance with his Lordship's directions and do so, we ask and we trust you will, fairly and with balance. That's all we ask. It's all we ask.

When it comes to forming a view of the evidence, may I observe this: attempts by the prosecution to draw Ms Letby into agreeing with them in cross-examination about things that she cannot be the final authority on and then presenting that to you as if the matter is beyond dispute does not shut out the issues in this case. I'll explain what I mean.

You saw the prosecution each time we went through the various counts with Ms Letby say things like, "Did staffing pressures contribute to this? Did sub-optimal care contribute to it? What do you say about this? What do you say about that?" Well, the effect of staffing pressures combined with taking too many babies with too high needs for this unit and the quality of medical care in any given case isn't something that she is the final judge of. In fact, you are. So a nice try, maybe, to shut it out by positioning the defendant into a place where she says, "I can't say", but you, as you were told repeatedly last week, have a benefit over anybody else here because you can look across all the evidence and draw your conclusions, sensible conclusions and common sense conclusions from the evidence that you've seen. That goes for the care, it goes for staffing pressures, it goes for insulin and analysis. She is in no position -- I don't mean to be rude when I say "she", but Ms Letby is in no position to settle these issues by her opinion.

It's for you. And you may well have formed opinions on these things as you listened to the evidence. That's what matters.

Now, can I say before we go further that it is hard to imagine allegations that could be more upsetting and distressing than those that we are dealing with in this trial. And the evidence has been at times harrowing and heart-rending. Nobody, nobody, can fail to be moved emotionally by what we have been dealing with for the past 8 months. And you know, ladies and gentlemen, that nothing I say is meant to diminish the enormity of loss in this case for the parents in particular. We all know that, everybody does. It is obvious and it is painful and we don't lose sight of that for one moment and we haven't done during this case. So how any of us can fail to be upset or feel overwhelming sympathy for those who have suffered loss is unimaginable and we do, and the emotion and the sympathy that we feel is utterly natural. We are all the same, whatever we're wearing. We all feel the same things about what has happened.

When there has been loss, as there has been in this case, and allegations, as there are in this case, the desire to find blame and to seek retribution is also natural. It triggers it. It's how we work as humans. It's a very, very powerful desire to do that. So we have a process where we look for blame and may be more ready to accept it because of how we feel, because of wanting to have a way to show support to people who have lost people.

When that natural reaction, and it is natural for all of us, is pointed in the direction in which these allegations lie, that is likely to create a very powerful emotional reaction and an almost overwhelming desire to convict before we even get going on the evidence.

You will understand, ladies and gentlemen, we have to be very careful not to convert natural sympathy into a desire to convict or a readiness to accept things that are said about Ms Letby that may or may not be true or accurate. And when you step back and weigh it up in a case like this, that must be a massive danger, mustn't it, because it's so natural? So we have to guard against that urge, that sense of sympathy, and guard against settling for accusations that are not fully supported and coherent on the evidence, because when a case is as upsetting as a case like this, and there is such powerful emotion at work, you may agree we have to be more careful about drawing the conclusions we reach for someone in Ms Letby's position than less careful. We have to be very careful indeed.

Inevitably, the prosecution are critical of the defendant and they would be. That's their case. That's what they're doing. They characterise her before you, characterise her in a way that

serves their case. You will judge all of this by the evidence, ladies and gentlemen. By the evidence.

The prosecution are entitled to characterise the defendant in accordance with their case if that's what they want to do, but ladies and gentlemen, we ask you to be alert to the way that's been done and alert to the dangers of that because there's been a lot of it, hasn't there? "Attacking." The use of this language, sometimes where there is no evidence. Let's face it, in that case there is no evidence at all, actually. One act, we'll come to it. But attacking, sabotaging, saying these things in questions as if somehow that's a done deal and I've said it, that's it, that's proved it.

"Gaslighting." I'll come back to that shortly.

"You're enjoying yourself." Was she? Easy to say that. Combine it with that emotion, fire it at her in front of you, affect you, influence you, turn you against her. If it turns you against her on the evidence, that's your prerogative. If it just affects you emotionally, that's not so fair.

"Your favourite way of killing children", "playing God", "manipulating", "calculating". Lots and language, deliberately chosen we say, for its effect upon you. You can probably see that. Maybe you were perfectly aware of that as it was taking place. That's what was going on, we say, sometimes on the thinnest evidence and, more often than not, those sort of things, we say, on no evidence at all. It's one thing for these things to be said, it's another thing for the evidence to be there to support them.

She's a 25-year-old band 5 nurse, an excellent one, but without being rude or complimentary or anything, that's what she was, looking after dozens, if not hundreds, of other babies over the period on this indictment, day after day. Not just the 17 we've spent 9 months looking at, but dozens, day after day, week after week. And she is, we say, not the person the prosecution are trying to create for the purpose of influencing your views.

Not a genius with an infallible, excellent memory. You saw the real person over the 5 weeks and 3 days that she spent coming in and out of that witness box and she was somebody who was ready to stand up for herself at some points and somebody who could remember pieces of evidence she knows from the years of waiting for this trial. It's not like there's a load else to do in prison, is it? But also somebody who is at times scared, anxious and struggling to hold it all together. And we say the prosecution portrayal of her is back to front. They have to make her into something she isn't to use the evidence in the way they do. And they have to do that to compensate for the fact that

they don't actually have the evidence for what they need to prove. They have to make her into something she isn't for the evidence to work in the way they are trying to.

So you miss an entry. They all miss entries from time to time. They all do. You miss an entry because you're enjoying it, because you're manipulative, and that (inaudible) so that you then looking at that and think, oh right, yeah. Maybe you don't, we say please don't. The idea is you get these feelings, you have this characterisation, you're pointed at weak evidence, gaps in the evidence, and it does its job. Suddenly Lucy Letby doing something that other people do or not doing something that other people don't becomes very significant, time after time.

And there's a lot of comment like that in this case. We go to an entry where something has been misrecorded by Ms Letby, as it is by other nurses, or something wasn't entered, wasn't initialled. Jury bundle 2 is packed with papers like that. Plausible deniability. Sounds good. Just rattled out like it's a done deal. Plausible deniability. Setting up her cover when she refers to observations that you wouldn't question in the case of anybody else. You even heard the prosecution ask you a series of questions, just questions, and then actually say to you there's only one answer to this, Lucy Letby, as if that is the explanation.

You saw that, a whole load of questions and then you're told there's one answer to this, Lucy Letby. Oh right, that's it then, let's not bother with the evidence, let's get stirred up and convict on that basis.

There were times even when leading up to whatever was coming next, the prosecution would say, "And you know what I'm going to say next", and you may well have sat there thinking to yourselves, "Yeah, we do, you're going to say Lucy Letby because you say it every single time".

And on top of that, there is the way she was dealt with in cross-examination by the prosecution, which we'll look at, ladies and gentlemen, that we say that was bad. Bad.

These are terrible accusations and it is easy to be turned against the accused. So many things make it difficult for you to approach this with a presumption of innocence in mind. She's in prison. That's how it is, that's the system, that's not a criticism, that's no part of her defence, it's a fact. But just look at the way these things work upon us all. She's in prison, she's in the dock, surrounded by officers who have been commendable in their conduct with her, we say, and all do. None of this is critical of anyone caring for Ms Letby. Commendable.

These are standard measures in these circumstances, but just think about how that looks. And when I say that, think of the criticisms about her. You've constantly been told, "Put her evidence against the witnesses' evidence". The witnesses don't come with all of this negative atmosphere around them, the effect upon you like that, if you see what I mean. There is actually an inherent disadvantage, isn't there, sitting in there behind all that glass in the position Ms Letby's in before we even get to the evidence? That's evidence of nothing, that's just the way this works. That's where that 25-year-old woman smiling in those photos has been translated to in the last 7 years. Well, we have to get past the emotions, ladies and gentlemen, that are stirred up in that way and look at the evidence. That's what we ask you to do.

At the heart of this case, I'm going to suggest to you, being balanced in your assessment of the case, are, we, say two principal possibilities when it comes to considering what happened between June 2015 and June 2016.

There is the possibility that the deaths and collapses in this case happened as a result of the medical condition of babies being cared for at the Countess of Chester neonatal unit over that period and maybe combined, and we say almost definitely combined, with the condition of the unit over that period, staffing pressures, what we say is the undoubted clinical fragility of a number of these children, and failings in care on that unit. That's one possibility.

Then there is the possibility that a young woman, that young woman, who was a well-trained and apparently dedicated neonatal nurse, decided to kill children or try to kill them for reasons that are beyond comprehension, unidentified and make, we say, no sense on the basis of what we see. And to do so, it seems, out of the blue, the very year, as it happens, that the unit experienced a marked increase in the number of babies it was taking and the level of care required by those babies.

What a coincidence that at the point the unit began to take more babies than it could properly care for, we say, but we say that on the basis of the evidence and the conclusions you can draw, but what a coincidence that this apparently inexplicable behaviour should coincide with the very period that this hospital takes on too many babies with too high care requirements. And that is based, we say, on the evidence.

We know these are fragile babies, many of them were not particularly well. That's why they're on a neonatal unit. The succession of some people who have come here to try and persuade you they're doing brilliantly. The mind boggles. They're not doing brilliantly. That's why they're there. Some were on what's

been described as the margins of survivability, the unit overstretched and understaffed. You have seen the evidence and we will go through this because we ask you to judge what I am saying to you on the basis of the evidence.

They were not properly able to care for some of these babies and there has been, and we'll look at this, sub-optimal care in babies on multiple occasions on this indictment, and there has been, and it's no good trying to brush that aside now because it doesn't fit with the ever-changing prosecution theory of guilt. That's on one hand.

On the other hand, we have a young woman who, on the evidence, was dedicated and highly trained, someone who raised the alarm for children who were unwell on multiple occasions. I'll come back to that as we go through this. It's not really been pointed out, has it? It speaks volumes maybe when you consider what you are meant to be sure of to convict in this case.

She wasn't on the unit at the times of the events we are looking at and it is that alone actually -- well, perhaps I should say it's that in particular which allows a presumption of guilt to flourish. There is other evidence that needs to be looked at. There are things you'll want to look at closely and things that call for an explanation. We know that. We know that. That's why it takes 5 days and not 5 minutes to speak to you about it. We respect the position you're in and we respect the fact of this process and we need to look at the evidence that there is.

But the standout point does have to be this, doesn't it? For all these occasions, for all the talk of coincidence, for all that's said, not once -- not once -- is there any evidence identifying what it is, as in the act or the acts, that are meant to be the harm being done.

That has to be a standout point because if we step back, and we haven't looked at this yet, we haven't looked at this. One of the reasons we haven't looked at this, by the way, is because this is the first opportunity the defence have to address you like this, ladies and gentlemen.

Pausing there, interrupting myself for a moment, you've had a huge speech from the prosecution at the beginning of this case, which sets up the way you look at it. An hour and a half from me identifying issues, but that's fairly minimal compared to what you've been told. We go through the evidence and then a speech, a lengthy speech, from the prosecution -- and it's bounding to lengthy, just as mine is.

But this is the first time we get to hear, really, the defence case set out, so think how long there's been for you to form a

view before we ever actually set out what's said on behalf of Ms Letby.

It's extraordinary, isn't it, going back to the absence of evidence of this? It isn't a case you see where there are one, two or three allegations where someone could get lucky because, let's face it, that's the subtext answer to this: it's all a bit lucky, got lucky.

[Redacted].

Nor does the evidence from [Mother of Babies E & F] actually, when we get to it, and we'll look at it, include a count of any attack or attack in progress. They keep on saying "an attack in progress". Where? Where's the evidence of an attack in progress at that point? If we move on from that. As I was describing to you, it isn't a case with one, two or three allegations where someone must have got lucky and simply got away without being caught, there are 22 counts on this indictment and about 30 events by the time the prosecution have finished in their speech, over 12 months, at all times, and nothing, even though, as Dr Jayaram agreed in his evidence, from quite an early stage, according to him, it was all eyes on Letby. Some time soon after the death of [Baby D], we're told. All eyes on Letby. Right, all eyes on Letby, what did you see? Well, nothing.

Repeatedly spiking insulin bags. How do you do that, nipping back and forth during a busy morning, topping up the TPN with a syringe of insulin in front of everybody? It's easy to say these things to say these things, to change the theories, to keep them going, to throw ideas out to you. Easy to say it. Not once is she identified to say one of the things that underlie what is now alleged.

We are well aware, as you've been directed, of the significance of what's called circumstantial evidence, putting things together when there isn't direct evidence so you can draw conclusions. A bit like, we say, what applies to sub-optimal case in this case: you can draw conclusions on that as circumstantial evidence. But of course you can use circumstance of evidence, but 30 times when it's all eyes on her? That's evidence or the absence of it.

One thing, ladies and gentlemen, that I took the opportunity to say on behalf of Ms Letby, we took the opportunity to say at the start of this case in that brief period when I spoke to you, was the purpose of a trial is to test a theory. That's the purpose of all of this in fact, to test a theory, the purpose of a criminal trial. Not to come here and, as I put it, rubber-stamp allegations as if it's a done deal, and you know that and we know you know that. The whole point is to test and test each and

every piece of the allegations, the evidence, the assumptions, the presumptions, the prejudice.

We are the only people who will explain to you what there is to be said on behalf of Ms Letby. We are the only people who will stand up for her. Nobody else has that role, nobody else is going to do that. The reason you hear from the defence at the end of the case is not, ladies and gentlemen, because this is some kind of afterthought, just tagged on at the end when your minds have been made up. We ask to goodness that isn't the position. You hear from us at the end because what we have to say is so important because we should be dealing with a presumption of innocence, not a presumption of guilt. And you haven't heard it yet, as I say, and I'm grateful now that we have the opportunity and we are grateful for the time we have been given to address you.

But if this is to be fair, how can that possibly be fair if minds have been closed before you even hear what's said on behalf of the defendant? How could it be? We are confident that after the work you have put in and the time out of your lives that you have put in for 8 months, these proceedings mean more to you than that.

The prosecution, ladies and gentlemen, are not in any special position with this. Don't lose sight of that. Just because they bring the case and they made the speeches that they have done doesn't mean they've got it right. That's a wrong presumption. They're the prosecution.

Just because they drum up the blame we are so hardwired to give out when faced with allegations like this, it doesn't make them right. And we've sat here and listened carefully and now it's our turn and, this being a fair trial, it's Ms Letby's opportunity to have her case presented, no matter what the prosecution think or anyone does.

Now, you may agree with the suggestion I'm going to make, which is that there has been a -- it's a suggestion from the defence -- a very hostile reaction from the prosecution, you heard it last week, to the mere fact, the mere fact, that Ms Letby has dared to defend herself and disagree with them. Hold in mind how you've seen her treated and hold in mind the address from the prosecution last week. There's something I would like to explain to you, although I'm confident and hope it needs no explaining, but you will understand, ladies and gentlemen, that anyone accused of serious crime in this country is entitled to a trial by jury and you will assess the evidence in accordance with his Lordship's directions on the law and as you're entrusted to do.

Part of that process involves testing the evidence. And that includes the defence testing prosecution evidence in cross-examination and it seems to us the prosecution in this trial have taken exception to that part of the process. I'll explain why we say that. You've watched this case for 8 months and you have plenty of experience to assess how we, the defence, have gone about our task on behalf of Ms Letby. You have seen how we've done that.

Throughout their address to you, the prosecution have gone out of their way to refer to cross-examination by the defence on serious topics, significant topics, as smoke and mirrors, repeatedly, as a distraction, and even saying the questioning involved in defence cross-examination was gaslighting you, that was said on 21 June, that:

"[Our] questioning was trying to create in your minds the impression there is something seriously wrong with the hospital. It's gaslighting you, isn't it? It's doing to you what Lucy Letby was doing to her colleagues in the Countess of Chester."

Oh really, that's what we've been doing for 8 months? That is unjustified and unfair. That was said before we speak to you, you may think maybe, to get you to think about the defence case before we've even had the opportunity to do so. Well, you've watched the case, you can judge the merits of the questioning from the defence and the prosecution and you can weigh up the answers you got.

The defence have absolute confidence that you are perfectly capable of deciding, for example, which nurses have appropriate experience and which didn't, and you can judge -- and this is what the gaslighting comment related to, not by accident we say -- you can judge who has changed their accounts on discolouration and whether that matters. Because that was one of the topics it was applied to when we were accused of gaslighting you.

The prosecution don't like us criticising the hospital or its care and, if those comments are anything to go by, it seems they don't want you to think about that and they certainly don't like us criticising Ravi Jayaram or David Harkness for their inconsistent accounts of discolouration and their failure even to put them in their notes or inquests for the statements, the inquest statements they made at the time. We'll go back to this because we're going to look at the evidence. What a stunning omission that was for such extraordinary discolouration.

Had we not cross-examined them about this, you wouldn't even know about it. You'd just have what they said in evidence, not what they didn't say in the years before they made their

statements to the police when they had every opportunity to do so. And we say that identifying that in cross-examination isn't gaslighting, it's what you'd expect to happen in a criminal trial. It's the evidence and evidence you now know about and we say it is no fair way to deal with the defence by launching attacks on the defence for what we are entitled to do, least of all with regard to pieces of evidence that you may agree go right to the heart of a central issue in this case. There's a coincidence, isn't it, that it was levelled to us on that issue? Ms Letby was accused of gaslighting throughout and we disagree with that, but what I'm dealing with now is the suggestion that we were doing that. We've had a lot to deal with in this case and whether you agree with what we say at the end or not, ladies and gentlemen, our task has been to investigate what has happened in accordance with the defendant's case and to challenge the prosecution. And that process, you've seen it, is not smoke and mirrors and it's not gaslighting. It's called a fair trial and we think you would expect nothing less.

Can I just pause at this point, ladies and gentlemen, to consider the fact that, of course, what we're dealing with in this case is a unit that's part of the National Health Service, the NHS, and the NHS has provided most of the witnesses in this case and it sets the working environment in which these events took place and I need to mention this because it's important I make it plain that in no way is this case about the NHS in general or doctors and nurses in general. It isn't. We are looking closely and critically at the level and standard of care in the neonatal unit at the Countess of Chester Hospital, amongst various issues, and the doctors and nurses at that unit, or some of them.

And ladies and gentlemen, specifically, we are looking at that unit over a twelve-month period when it did face unusual and increased demands in the care it had to provide. The trial is not about the NHS in general and it's not about doctors and nurses in general.

Although we are critical of care at the Countess of Chester neonatal unit, and we say we are entitled to be if the evidence supports this, and we say it most definitely does, there has been a concerted effort almost along the lines of how dare the defence criticise doctors, nurses and the unit, how very dare we, almost a sense of outrage we should have done such a thing. We all feel strongly about the NHS and we are protective of it and we're all affected by it. We'll either work in it or have family who work in it, or family or friends who are in it because of the care they receive. It's close to all of us. But that doesn't mean we shut our minds to the possibility of things going wrong or mistakes being made or sub-optimal care.

Actually, at the beginning of this case, you may remember, the prosecution acknowledged sub-optimal care where [Baby D] and [Baby H] were concerned, although they've not said about [Baby H] and sub-optimal care since. They did acknowledge that at the beginning.

They say there's been no medical evidence of shortcomings. We say they're wrong: there's been plenty of evidence and we'll look at that.

When we've gone through this indictment, there is evidence of sub-optimal care and I'm going to summarise, in fact, some of it now so you follow one of the areas we'll be looking at and so you can see why we say these things.

[Baby A] and the delay in fluids, 4 hours, a newborn. That's sub-optimal. We'll go through it. Dr Bohin agreed, that's not right. And the line that was placed too close to his heart by Dr Harkness -- "not in the best position" it was described eventually, and it wasn't moved, was it? We'll go back to the evidence of that. Can I say right now we recognise, to assist you, the question isn't just, is there sub-optimal care; the question is, does that account or can that account at least in part for what happened? So I know it's not a question of me standing here and saying, "This is all sub-optimal therefore the defendant's not guilty", you have to look at it in context and say, even if it was can that explain it? That's the important thing with it.

But just so it's clear, given the way we were dealt with last week on this topic, I'm just reassuring you at this point, and maybe you need no reassurance, but there is plenty of sub-optimal care knocking round in this unit on these charges.

That was [Baby A]. [Baby D] and the failure to give her or her mum antibiotics when it was recognised that should have been done.

[Baby E]. We say the failure to intubate or give blood transfusions in time. Some of these are more contentious than others.

[Baby H]. There's a list there and we're going to come to it, but the standout one when we look at this case is the failure to place the second chest drain in the correct position or to secure it properly and the failure to give surfactant when it should have been given.

[Baby J] and poor management of the stomas.

[Redacted].

[Baby N] and the failure to have factor VIII ready. Remember factor VIII? It was what he was deficient in. We heard about this from Professor Kinsey. That's probably a couple of days down the line.

[Baby O] and mistakes with ventilation that caused or appeared to cause a pneumothorax and then getting the doses of adrenaline wrong pretty fundamentally during resuscitation. Some of these are clearer. Some of these are more contentious.

[Baby C]. We say the failure to react to the dark bile aspirates for 24 hours is significant, although, despite most of the nurses agreeing what a red flag that would be, nobody seemed ready, particularly amongst the experts, to accept that -- they challenged there was anything significantly wrong.

[Baby Q] got moved to a tertiary unit after three bilious aspirates because that was the right thing to do on the [Baby Q] count, but you see it all changes. With [Baby C] it doesn't work for the prosecution to say that, so their experts backing them up, and we'll come to the experts, were very keen to point out that 24 hours of dark bile doesn't trigger the same effect. That's why the evidence is for you, ladies and gentlemen.

Much of this is linked, we say, to the fact that there were babies here who were not in the right place for their needs and that is all on top of the medical challenges created by the condition of these babies in the first place.

It is easy, isn't it, to lose sight of how clinically fragile babies like [Baby G] or [Baby I] were and how prone they were to serious problems, irrespective of what is alleged against Ms Letby, and how often they were being cared for, we say, by staff who were not always adequately qualified to give them the support that they needed? And of course, if that happens in one place, that can put pressures on a unit or on staff elsewhere.

Despite that evidence, I'll come to the evidence in due course, but despite the evidence behind what I'm describing, with one exception, the senior consultants in this case have refused to accept that anything was wrong or done wrong to any notable degree in the whole of the 12 months we're dealing with. The exception, ladies and gentlemen, is [Dr C], who recognised in the case of [Baby E] that she failed to attend hospital for the emergency, and she agreed it was an emergency that was developing with his bleeding, as quickly as she should have done. Even then, David Harkness accused me of being disrespectful when I suggested that he was out of his depth, he wasn't out his depth. We will go back to it, but it wasn't really good, was it, because they did nothing about a blood

transfusion for hours when you might have thought it was blindingly obvious it was required.

We say he's not going to admit it, is he? And on the evidence, ladies and gentlemen, you can be sure that some doctors will be slow to reveal mistakes and the reason you can be sure of that is because we have had expert evidence on that very point. This isn't something we are just coming out with on the basis of "doctors are bad".

Dewi Evans on 25 October, being asked about various aspects of hospitals, gave one of the few pieces of evidence from him that we agree you can rely upon. When talking about the lack of information on air embolus, he said this -- I don't know if you remember it or not, you'd be doing well from 25 October, but maybe you have an exceptional memory too. 25 October, Dewi Evans said:

"You have to rely on the fact that medical teams are honest enough to disclose the fact that a child under their care died of air embolus because one tends not to spread news about the mistakes we make."

"One tends not to spread news about the mistakes we make", from the prosecution's lead medical witness, expert evidence on that topic. And by the Royal we, he clarified, we is a Royal we for doctors. This isn't me having a go at all doctors, but this is a piece of evidence to keep in mind here. We all know doctors, we rely upon them, we're related to them, we have friends who are doctors maybe. Trust the doctor. We are not talking about all doctors, we are not talking about all nurses, we're not talking about all hospitals, but we're taking this piece of expert evidence and carrying it with us perhaps when we look at the evidence in this trial on this unit.

I asked him if doctors were slow to acknowledge when they make a mistake and his reply was:

"Yes, absolutely."

Literally, "Yes, absolutely", like it was a good thing. Well, I'm sure he didn't mean to hand that to us. It's one of the many things that came out of one of his relatively lengthy pieces of evidence. And one hopes that that isn't right and that people in these positions are better than that. But that's his evidence:

"One tends not to spread news about the mistakes we make."

And in a way, I'm going to suggest, haven't we seen that in this trial? Resisting criticism, not just of themselves but also, it has to be said sometimes, one another. Not always, I'm sure

there are many who will accept things, but we haven't had many here.

The doctors in this case, none of witnesses in this case in fact, none of them, doctors, nurses, Ms Letby, anybody, is in a category beyond criticism. But because the prosecution have relied upon large chunks of what the senior consultants said in evidence by way of what we say were pretty much pre-prepared statements almost, like speeches they came here to give -- you perhaps saw it, you perhaps got used to this as we went along: Dr Gibbs would come, inevitably we'd get to the speech when the speech came, or Dr Brearey or Dr Jayaram. The prosecution have taken these lengthy parts of evidence and used them.

Please, ladies and gentlemen, we say, don't think that all these senior doctors coming here to give evidence did so without motives of their own. We say this is important and because of the way that it has been presented, as if they can be taken as neutral and a good guide to what's happening, I do need to deal with this.

We say that in fact, however you look at what happened at the Countess of Chester between June 2015 and June 2016, however you look at this, there was a terrible failing in care, wasn't there? Terrible. In addition to the risks of deterioration, or even death, that attaches to many of the babies in this case, we say, this was a unit that took more than it could care for, with higher levels of care requirement than it could provide, and we say in some cases the care fell to sub-optimal levels, to below the right standard.

Now, when I've suggested that in evidence, the senior doctors in particular have dismissed this and in various ways and on various occasions they have described how they suspected or believed that a nurse, Ms Letby, was deliberately harming babies in their care for months and months.

We don't accept that the level of suspicion they're describing was anything like as strong as they came here to say, for the reason I'm coming to now, because if they're right that means for almost a year, certainly some of these doctors, two in particular, did nothing to raise the alarm and said nothing to raise the alarm when absolutely nothing would have stopped them from doing so and when you may think they surely had a duty to do so if the level of suspicion was as high as they say and if they really believed or suspected that a nurse on the unit was deliberately harming babies. But if they're right, that failure to do anything is staggering. And that's why we say, whichever way this is, it's a terrible failing in care.

Now, this is all linked to the defence of the evidence of the senior doctors mounted by the prosecution. You'll understand that in this trial the stakes are very high. We all know the defendant's position, that's obvious, these allegations are the worst there could be. They must also be very high, mustn't they, for a number of senior people associated with that unit? I've gone through it with them, their positions of responsibility. We don't say "doctors bad". That misrepresents a serious point we're dealing with, so I'm putting that right now. But what we do say, as we have said throughout, is for those senior consultants who presided over whatever happened in that unit between June 2015 and June 2016, Ms Letby getting the blame for what happens matters. I talked about this when I identified the issues to you and I've cross-examined them at one time or another on these points.

The prosecution introduced the expression "the Gang of Four" when introducing Ms Letby, and that related to Dr Brearey, Dr Jayaram, Dr Gibbs and [Dr B]. However they have described them, we say don't let anyone pretend that they have just come here in a spirit of cooperative neutrality to do their bit. Of course they have an interest in what happens here. The extent to which each one of them has gone out of his or her way to do their bit to damage Lucy Letby in front of you is obvious if you think back to the evidence of what's been said and the suggestions that have been made.

Dr Gibbs at one point went on a kind of one-man dash for glory to suggest she was responsible for all of the pneumothoraces in [Baby H]'s case. Do you remember that? "They kept on happening at night", look at the dock. Actually, they didn't: David Harkness put in the chest drain for the pneumothorax in the morning. That's how neutral it is.

Now, one by one, those consultants -- senior consultants, in particular -- have lined up in their evidence to do their bit to do down Ms Letby, some blatantly, some more understated. We'll be coming to it. I don't expect you to accept anything I submit to you without looking at the evidence and basing it upon the evidence, and I will identify it for you as we go through the evidence.

Some blatantly, some more understated, but all designed in fact to assist this prosecution and the prosecution have used those pieces of evidence enthusiastically in the presentation of their case at its conclusion.

So one way or another, this unit failed. One way or another it did and you know this and you know that the blame for absolutely everything on this indictment is being heaped on her (indicating).

"One tends not to spread news about the mistakes we make." Yes? This case is a prime opportunity to hide poor performance and bad outcomes, isn't it? Now, the evidence is clear that the unit was unusually busy between 2015 and 2016. Noticeably busier than it had been in previous years and busier with babies who had more complex needs than before. We've heard that from so many witnesses. And at the same time there was no change in the staffing levels to accommodate this.

These are witnesses called by the prosecution as well as Ms Letby describing it. Of course it's going to be difficult to say to somebody, "Right, you tell us exactly how your failure to staff things correctly had an effect on this day in that way" You can work out if that's a reasonable thing. But at the same time you can work out: does it create an environment in which risk increases because people are tired, people are overstretched doctors are running to and from the neonatal unit back to the delivery suite in the middle of procedures? How many times did that happen in this case? Do you recall the final -- tragically the final [Baby I] event? Dr Chang and Dr Gibbs deciding, "Do we/don't we keep ventilating", the two of them being required elsewhere, "Do we take her off the ventilator, don't we, is she fighting it, what do we do", under quite some pressure of time.

Dr Chang said to us, "We talked about the pros and cons", the pros of keeping her on, the cons of taking her off. When I asked her questions I said, "Could you tell us what the cons were". Long silence. She wasn't going to discuss the cons, was she? She said, "I don't think there were any", something like that. So why say it then, "Discussing the pros and cons?" We'll come back to what Dr Gibbs said about that decision when we look at [Baby I].

Doctors not actually making it as far as the patient to review them, like Dr Mayberry with [Baby P], and not making notes, like Dr Mayberry with [Baby O], no note made. That was when Sophie Ellis was on duty. When Lucy Letby is on duty if a doctor doesn't make a note in the clinical notes she's accused of making the whole thing up, "You made it up, show us the note in the clinical records", "There isn't one", "You made it up". Okay, Sophie Ellis, show us the note in the clinical records for Huw Mayberry seeing [Baby O]. She can't because he didn't make one and that's fine, that's just fine.

Well, you may agree, you don't need the BAPM guidelines to establish the fact that if the staffing isn't correct, particularly intensive care staffing, that is a problem. And it isn't right just to airbrush over poor staffing as if it could have no real effect.

And in fact the evidence of Dr Sally Ogden, who was a registrar looking after [Baby C], was helpful in this regard when she gave evidence on 27 October, which feels like ages ago now, but that's when it was. She agreed that around June 2015 and onwards there was a particularly busy time at the Countess of Chester. And she agreed it was not just a matter of the sheer number of babies but the care needs of individual babies and Dr Ogden explained that this could be a combination of staffing levels, acuity on the unit more generally, and how many babies at each level. And she agreed that in reality busyness is a function of the number of babies and their acuity and the number of available staff. That's important because it creates a situation, an environment in which there is a strain across the system and we say, this is a matter for you to consider as you're entitled to, that increases the likelihood of mistakes and also, and this may be important, it increases the likelihood that emerging problems will not be identified properly because monitoring isn't done properly because people are overstretched.

Mel Taylor, on count 1, was looking after [Babies A & B] at the same time when they were both intensive care babies, when [Baby A] hadn't been on fluids for 4 hours, and when a long line had been left in that was not in the best position and was meant to be moved and it wasn't, and she's split between him and [Baby B]. And in fact there is an issue on the readings for [Baby A], which we'll come to tomorrow, have a look at them.

So it's not just the blunt fact of a mistake there and then in the moment, perhaps a danger of failing to identify emerging problems. And as you heard again from many of the nurses in this case and some of the doctors, the babies in this unit, babies like this, can exhibit changes that are quite subtle. That's why you need experienced people monitoring them, particularly with the more vulnerable ones, the more medically fragile, and they can deteriorate and they can deteriorate very suddenly, very quickly.

Not only, of course, did the unit receive -- it seems, would be more busy over 2015 to 2016, but there was an increase in what's called the acuity of the babies. You know, ladies and gentlemen, the Countess of Chester was designed to deal with babies of 27 weeks plus, but over the period we're looking at it got much busier with babies putting higher demands. And if there are higher demands from more babies that puts a strain across the system, doesn't it? We say there are babies even amongst the babies on this indictment who would have been better, far better, at a tertiary unit.

[Redacted].

You know that in some cases there were problems with some of these babies over and above the mere fact that they were premature, and that carries issues with it. I have mentioned [Baby C], [Baby G] who was in and out of the tertiary unit from the start. [Baby I], similar to [Baby G], with similar problems. [Baby H]'s chest drains. [Baby J]'s stoma bag. The whole unit is under a much greater burden.

Dr Gibbs sought to persuade us all that it's no different from any other unit. Well, whatever the nature of the Countess of Chester unit, the evidence is that over this period what it had to deal with changed. That's the point: it changed. And in fact, we know from his evidence that at the period we're looking at, there had been seven consultants. After the unit became a level 1, it received two more. And it had been asking for them for some time. We say that's a good indication of the fact that it needed more.

So once we get to June 2016, ladies and gentlemen, the end of this period, it had been identified there's a change in the hospital, it was taking babies of a lower acuity, and it had more medical staff, so perhaps better able to cope with demands, but that cannot explain or justify the way its staffing was organised over the 12 months of this indictment.

I'm going to move to something different after we've had a break, my Lord, if we may now.

MR JUSTICE GOSS: Certainly, yes. We'll have a ten-minute break then, please, members of the jury, and then Mr Myers will continue.

(11.39 am)

(A short break)

(11.49 am)

MR MYERS: His Lordship has given you directions on the law, ladies and gentlemen, and as you know, and as I've already referred to, they set out the law. Anything we say is subject to his Lordship's directions. But it's probably not controversial to say that the single most important direction in a trial like this is the direction on the burden and the standard of proof. It's certainly a fundamental direction. It's key.

The burden of proving what has happened is on the prosecution. This is fundamental. It's on the prosecution and it never shifts. The defence don't have to prove anything, although we have dealt with matters in detail during the course of the case

and Ms Letby has given evidence, although she doesn't have to, but she has done and at length.

We must be careful not to let a burden switch across so it's as if we're saying, "Go on, you prove you didn't do it", because then we're back with the presumption of guilt and the whole point is we work with the presumption of innocence.

If you do look at the evidence in this case and step back and think, "All right, let's assume there may be an innocent explanation for this, does that stack up, is that possible", when you look at things you may see some things very differently from the way that has been presented to you in many ways up to now and you may find there are explanations where you thought there were not when we don't start with a presumption of guilt.

The first thing is the burden is not on the defence. We know that.

Then the job of proving what happened being on the prosecution, they have to make you sure. That's so important in any case, but perhaps you may think particularly in a case like this, not just because it's so serious and there's so much to look at, but there are so many areas where the evidence we say isn't clear. It may be one thing, it may be another. It may very much be one thing and not the other, but you have to be sure. So being left in a position where you think, "Possibly she did that", or, "Probably she did that", that is not sure, and that's right, isn't it, because a defendant, particularly, you may think, in a case like this, may not be in a position to explain everything that we're looking at now globally. So it is crucial to remember that, ladies and gentlemen, particularly, we say, in this case.

You may ask yourselves, "Yes, but what do they have to prove what do they have to make us sure of", and his Lordship has set this out in paragraph 4 of the directions. I am not going to read it all out because you have got it and his Lordship has been through it with you.

But the key aspect of this is you have to be sure of the ingredients of the offences on this indictment. Okay? Sure of those, sure that there has been deliberate harm, that that has been the cause, of course, of death or the collapse, and sure it was done with the intent to kill. In this case that is the intent the prosecution rest upon.

So these are legal directions and I've only summarised, barely, how his Lordship dealt with it in paragraph 4. But that's the directions on the ingredients in the indictment.

Then for you the question is: well, how do we translate that into what we are doing with the evidence because you have to have the evidence to see if those ingredients are made out. That's where you come in and look closely to see if you are satisfied by the quality of the evidence and that it can make you sure of those ingredients.

One of the reasons we spent so much time on the medical evidence in this case, or at least we certainly did during the prosecution case, is because, let's not lose sight of it, that is the bedrock to this case, the medical evidence, the prosecution medical evidence.

If we're not sure that harm was done, that's it. If it's possible the reason a baby has deteriorated is because they were unwell or because there was a mistake in their care or a combination or because of something we can't identify that could have taken place, unless we're sure it was the harmful act that did it, that's not enough. So it follows that we have to have the medical evidence and the expert opinion to identify what's happened where possible.

Sometimes that can be done with more or less precision, the prosecution may say, and they may well say you can look at the circumstances and draw your own conclusions, and you can of course do that. But you may agree that if we have medical evidence and expert opinion, the more clearly that can identify what it is that is meant to have happened, the more confidence you can have in being sure.

And by the same token, the less confidence you have in it, the less clearly it does that, the more inconsistent, the more it has appeared just to change, to fit in with emerging facts just to keep the allegation going, the less confidence you can have in it and the less sure, surely, you would be. So we ask you to be careful but to keep a close eye on the medical evidence because that is the foundation of this case.

If the medical evidence does not establish harm being done in any given count, if it's possible it wasn't harm that caused it, intentional harm, we're not there, are we? We're just not there, nor should we be, given what we're dealing with, nor should we be.

Twenty-two counts, ladies and gentlemen, and there has to be -- or you have to consider each count separately and you'll bring back separate verdicts and it's a matter for you what they are. Of course, as you have been directed and as the prosecution have relied upon, one count is capable of supporting another if you find underlying matters that give you sufficient certainty that you can apply them across the counts in that way. You've

got directions, in fact, in section 7 of his Lordship's directions as to that, but you still have to consider these separately and look at alternatives before you can be sure of what the prosecution allege however we do this.

Now, Ms Letby denies all of these allegations. She denies doing any of them. And if we're going to deal with the evidence, we respectfully submit, in a principled and just way, we must keep measuring the evidence against the offences on the indictment that are alleged and that means identifying harm being done, so you're sure about it, whatever form that was, and being sure that there was an intent to kill at that time.

I make it plain, Ms Letby denies doing anything like that on any occasion. But what you will be doing is to look at the evidence and see: can we be sure we can identify harm being done, whatever form that was, and can we be sure that's accompanied by an intent to kill? This case is about a consistent intent to kill. So please keep that in mind when, for instance, we have Ms Letby raising the alarm time after time or caring for the same babies day after day before and after these allegations when plainly, we say, there is absolutely no intent to harm them at all.

It's not good enough to have this endlessly changing theory which just turns on when it can be slotted into whatever available evidence there is. You've been told repeatedly by the prosecution, or asked repeatedly by the prosecution, to look at the whole picture and we agree with that, particularly on the question of intent.

Ladies and gentlemen, we will look at the evidence or what evidence there is of harm being done as we go along and we'll look at whether the evidence sits squarely with an intent to kill, so that you can be sure of that. So we'll look at that intention, but I'd like to say a little more about intention at this point because we say that the evidence, taken as a whole as well as in individual cases, is utterly inconsistent with an intention to kill. That's because harm is not being done in the way alleged. It's a good test of that.

There's questions you may want to ask yourselves as you go through this. For example, if this case is about an intent to kill -- I make it plain, you understand, we don't accept any of this, but I'm looking at it from different positions, looking at how you may look at this. If the case is about an intent to kill, why change it? Why take different risks? If something's worked and you got away with it, why change? Use what worked. Why on earth would you go back to what didn't? Yes? On this prosecution theory that keeps happening, which is strange if that's the intent. If an air embolism is so easy and so deadly

and, let's face it, according to the prosecution it seems to be something you can do any time, any place, anyhow, just do that. Why change it? Why take new risks? Why risk scuttling back and forth topping up a TPN bag with insulin on a busy unit with people watching, people present, getting it out of the fridge, getting it in the syringe, however it's meant to be done? We actually don't know, do we? We don't know, we haven't got a clue.

Considering that, why -- it's a terrible thing to say, but I hope you understand the reason I'm saying this: why would there ever be attempted murders with what's alleged here? It would happen every time, wouldn't it, or most times? It's awful talking about it like this, but we have to get to grips with this given what's being said. The reason why we say it doesn't work out is because this is not what was happening because if it was the picture would be very different.

With the insulin, we'll come to the insulin in due course, [Baby F], [Baby L], I question whether there's been a significant error here. The prosecution said in closing:

"By the time [Baby L] was poisoned [this what they said last week] the level of insulin in [Baby L]'s blood was double what it was in [Baby F]'s blood."

So the poisoner had failed to kill [Baby F] and 7 months later, by the time we get to [Baby L], the level of insulin in the blood is twice what it was for [Baby F] and that tells you a lot about intention, doesn't it? It may do, it may not, that's something to look at.

But actually they went on to say [Baby F] survived, so the poisoner, Lucy Letby, upped the dose for [Baby L]. What clearer evidence of intention to kill could you have? And we question whether that isn't actually the wrong way round.

For [Baby F], August 2015, the insulin was 4,657 picomoles to 169 picomoles of C-peptide. 4,657. Eight months later, [Baby L] was 1,099, yes, 1,099, with 264 C-peptide. So actually, a lower ratio in fact, the C-peptide was higher and there's a lot less insulin. It's significantly less potent if that's right. That's the evidence.

The second time round, that must be about a quarter the strength on the insulin if that's what's happened. 4,657 we're told with [Baby F], 1,099 with [Baby L]. That's not doubled, it's a quarter. As evidence that was wrong. It's the opposite.

The point they tried to make is actually the opposite: if there's an intent to kill, whatever's happened, it's not going

to be a quarter the second time round, is it? And if that's right, the prosecution have made an excellent point for the defence. And if that's right, what clearer evidence could you have that whatever is going on here, that's not an intention to kill, whatever has happened? We'll deal with insulin in a little more detail when we come to the cases of [Baby F] and [Baby L]. And we'll look at what happened with those babies or, rather, given the massive doses we're told they received, what didn't, and the circumstances and the bag changes which we say make absolutely no sense in the case of Lucy Letby, how on earth that's meant to have been done unless we work with a presumption of guilt.

Bearing in mind the job of proving a case, ladies and gentlemen, you may want to keep in mind the nature of the allegations that the prosecution have put before you and the way in which aspects of the evidence they rely upon and the way they have tried to get there changes as they've gone along and new things have been introduced and various things have been dropped, which we say is indicative of a case that is dedicated to its theory and trying to prop up the theory at all times.

Various factual allegations emerged as we got into the defence case and Ms Letby was cross-examined and which came thick and fast and seemed to come out of absolutely nowhere given the case we've been dealing with 6 months beforehand. We'd had a few suggestions that charts hadn't been completed properly or initials hadn't been put in the right place, but in the course of 8 weeks we seemed to switch to some sort of wholesale document fraud. We moved away from the medical evidence and became buried in documents. So what happened with a child that's about to go to Stoke-on-Trent or someone else in another nursery, documents plucked out of page 34536, whatever it was, from the exhibits, bowled at Ms Letby as she was giving evidence when it hadn't featured in the case up to then. Suggestions of doctors' names being inserted into the notes when that had never been the case until it came to Ms Letby being cross-examined.

We've seen where in the notes there's reference to Dr Beebe or Hunt, or rather the doctor attending at the time that it would have been Dr Beebe or Dr Hunt and we've seen a reference to Bernadette Butterworth in the notes for [Baby N] and Ms Letby has been accused of inventing these people attending. You've heard that.

If that's right, if that's right, why didn't we just ask those witnesses about it when they came to give evidence? They've been enough times. Whatever criticism is made of us for not cross-examining [Baby N]'s father [Father of Baby N] about a phone call, and I recognise that, witnesses like Lucy Hunt or Bernadette Butterworth, in that case, were available, and if the

allegation is about falsely adding their names or identities, well that should have been dealt with, we say, in the evidence, with them. They should have at least been asked about it.

We spent 6 months on medical evidence and by the end of the case, we suggest, it seems to have turned into a fraud on a scale that could never have been predicted. It's all become about who wrote what on what piece of paper. We say that isn't just by accident. We say it reflects the fact that the prosecution have been looking for things they can reach for to try and shore this up as it goes along. Because why else not deal with these things in evidence before we get to part-way through the defendant giving evidence? When you think about the way she's been criticised for missing off the word "stained" from bile-stained in paragraph 70 in the defence statement, was it, then failing to put wholesale parts of the prosecution case into evidence and then coming up with it when she gave evidence, we're critical of that.

And really, anything and everything has become an allegation as we went along. Just a couple of examples...

Before I do, the reason we have the opening and the indictment and charges identified and the sequence of events with the black tiles identifying events is so we know what we're dealing with and we can then measure the prosecution case against that. By the end of it, just about everything is roped in. I'm not sure if Mr Murphy can help, but I wonder if we can get up the tile from the [Baby H] sequence, 210, 23.50.

Here we are, yes. This is a note by Alison Ventress, made 23.50, 25 September. It relates to [Baby H] and if we just look down this entry, please, Mr Murphy, down towards the bottom of it, we can see here:

"Second chest drain advanced back to 4cm as was almost out. Done prior to chest X-ray."

This is the one she put back in. Do you see that? It's the last two lines, ladies and gentlemen. Alison Ventress gave evidence about this, various people did. We cross-examined experts upon how it shows that the chest drains move around, which is one of the points we have made, and they do, the inside and out.

That was no part of any allegation. Not suggested in the opening. It's not in the opening, it's not in the sequence of events, nothing. Then it came out of nowhere in cross-examination: you did that, did you do that? It suddenly became part of an allegation. You can't win, can you? If anything that happens just suddenly becomes part of an allegation, is roped

into it, that's a never-ending, endlessly flexible, endlessly changing prosecution case.

No suggestion of that until some point when it -- the prosecution chose to do that. No basis for it but it's there, so: Lucy Letby, something's in the notes, guilty. It's that principle again, isn't it, the presumption of guilt? Can we look at tile 199, please, for 24.00? If we look down here, there's an entry on the left-hand side of the intensive care chart where it refers to bloodstained secretions that Lucy Letby's noted. Can you see that? It's very hard to see but it's in there. 24.00 for [Baby H] again. "Bloodstained", we saw. In the course of cross-examination suddenly that became Lucy Letby possibly interfering with [Baby H]'s ETT at around midnight to cause bloodstained secretions. Nothing about that before then, no expert even picked on that. Just going through looking for things, putting them into the allegation, trying to bolster things on your lists, and we're coming to the lists, like, what was it? "Children who had bleeding or other unusual signs in their throats when the medical staff looked down their windpipe in preparation for intubation." So having come out with this in cross-examination, that's now on to the list. We'll look at those lists in a bit, but setting things up to some extent just to pop them on a list. Never dealt with in the evidence nor appeared in the course of cross-examination.

Thank you, Mr Murphy. We can take that down.

The baby AF as an example, ladies and gentlemen. When we're dealing with [Baby N] and there was a long line of questioning by the prosecution of Ms Letby about how she'd been on the phone when she was meant to be feeding baby AF. You may recall this because they referred back to this piece of evidence.

Baby AF is nothing to do with this case. The prosecution showing how Ms Letby had been on the phone at or about the time she was meant to be feeding baby AF. Nothing we'd dealt with in evidence up to that point but there we go, it gets put to her. The prosecution ask her how she managed to text while feeding and that we spent more times on the texts than the incident -- we spent more time on those texts than the incident we were meant to be looking at. Ms Letby said to the prosecution, do you remember:

"You think I pushed it in."

Cross-examination on 7 June: "You think I pushed it in."

To which the prosecution said, "I do".

On what basis? Where on earth has that come from, "I do"? That is how readily allegations are made in this case. That's how little it takes. Absolutely no evidential basis for that. If the prosecution are going to say that, you may have thought we need evidence, we need radiographs, we need a medical opinion, a vomit maybe, something with baby AF. No. An allegation on the hoof.

You may think, "I don't care, that's fine, they can do what they like". Well, if you do, nothing I can say is going to help, is it? But if you're thinking to yourselves, "This is meant to be dealt with in a balanced, fair way based on evidence, we want to see a prosecution case that isn't just constructed out of whatever happens to be passing by and we can make use of", it matters because it shows that's what lies behind the allegations you are dealing with or can do in certain situations. It doesn't take much for them to be put there, does it? No one suggests AF had a vomit or was unwell. Years investigating this. I'm just taking this as an example. There were lots of them. I'm not going to go through all of them because they came thick and fast. But the enormity of that, suggesting she's assaulted another baby because she wanted to make a phone call, not on this indictment, just made in passing, that allegation. That's what we're dealing with. That's all it takes. "You think I pushed it in", "I do". That's good enough then? That's good enough.

One other matter generally, ladies and gentlemen, before we move on, talking about delay. His Lordship will give you a direction on delay in due course. You may want to consider what effect delay has had on the evidence in this case, but without a doubt we say the defence or the person who is at a disadvantage, however we approach this, and the person for whom you will want to make some allowance where appropriate, is Ms Letby. Nobody else is on trial for 22 counts of murder and attempted murder.

On some occasions delay is linked to evidence that has gone missing -- I am going to give you an example of where we get to with this -- missing door swipe data. From our agreed facts, and it's agreed facts 57 and 58, we see the door swipe data is missing for 17 July. You don't need to go there right now, but 17 July to 21 October 2015 and also for some individual dates within the period where we do have door swipe data.

Now, as it happens, and you can decide if this is just coincidence or not, various accusations have been levelled at Ms Letby that correspond with the point at which we don't have door swipe data. I'm going to ask Mr Murphy to put up tile 61 from the first [Baby I] sequence. We might need to go to 61 and 62.

Ladies and gentlemen, just so you can zero in on this, this is the note made by Ms Letby in which there is reference to a review by the doctor at 15.00 for [Baby I], and we had quite a lot of questioning -- it's one of those ones where it's said she invented this, invented the 15.00 review. It starts here, the note is at 13.36 here, but can we go across the page, please. The note carried on at 19.30:

"Reviewed by doctors at 15.00."

And so it goes on. Do you remember this? We have had quite a lot about, "Oh, you have invented this whole thing, you've invented this", because there's no note by the doctor in the clinical notes. I think it will be Dr Hunt. So accused of making it up. We're going to look at this in more detail shortly but one thing to bear in mind is when the prosecution accuse Ms Letby of this it happens to fall within a period where door swipe data is missing, so we are unable to point to the doctor coming on. That's the point. We can't. And as it happens, that gap means they can make an accusation like this, as it happens, because we can't show who came and went at that time.

Similarly, if we consider what happened on 14 October with the third [Baby I] when Matthew Neame attended -- I am going to ask Mr Murphy to put up tile 60 from the [Baby I] sequence number 3. If we can just enlarge that, please, Mr Murphy.

Can you see, ladies and gentlemen, the middle:

"At 05.00 abdomen noted to be more distended, veins more prominent."

And so on. It says:

"Reviewed by Registrar Neame."

About four lines down. Putting the name in to be precise:

"Reviewed by Registrar Neame."

That's at 05.00 and then the prosecution take us to Dr Neame's note at tile 79. We'll see what that says.

This is the note which Dr Neame has completed and put the time as 05.55 and we can see the things he was involved with there. But this is used to suggest that she delayed in calling Dr Neame. Somehow this now proves, so we can be sure, I suppose, that Dr Neame wasn't properly called as soon as he could.

Well, first of all, when you looked at Ms Letby's note, it describes the event at 05.00 and then just goes on to describe

what happened after that. This note has been written at 05.55. We say that is when it is written, that's how they do the notes. That doesn't go to show there is a delay.

But over and above that, the problem for Ms Letby is this falls in the period of the absence of door swipe data and so we cannot show that Dr Neame attended and the prosecution have what could be called a free hit, saying that he didn't attend at the time, we say, the right time, and they have a free hit on saying that he was very late.

Now, what is interesting is these examples, these accusations, have fallen into periods when we don't have door swipe data. Okay? I recall, we haven't had an accusation like this where the door swipe data can settle the issue, so it seems the prosecution have selected this particular part of the allegation from part of the case where evidence is missing that is capable of assisting the defendant. What a coincidence if she only happened to do these wrongs on dates when coincidentally, years later, when door swipe data went missing. Either she got lucky or she has an amazing power to see what was going to happen. Wherever we get to, we ask you to keep those in mind as examples of where not having evidence, where the prejudice lands and, in those cases, the way not having that evidence has been used.

We'll come back to the question of whether a doctor attended at 15.00 with [Baby I] a little bit later. Thank you, Mr Murphy.

Again, on the topic of things that are missing, just by way of illustration, missing post-mortem evidence in the case of [Baby E]. We say the prosecution and their medical experts have taken full advantage of the absence to hold a post-mortem (sic) in those, we all recognise, tragic circumstances, and they really were, but actually, to allow them to present allegations of an injury for which there's no physical evidence. The absence of a post-mortem has been exploited to the full. In closing, last week, the prosecution stated that [Baby E] was "bleeding from the throat", "bleeding from the throat". Well, we will have a look at the evidence of [Baby E] and bleeding, ladies and gentlemen, and again, I've said so many times, I repeat it now, when we're dealing with these we intend no insensitivity to the children or their families by talking about them like this. They all matter enormously to everyone involved so please don't think that when I talk about this or that it is done with any lack of feeling, it isn't. We have to get analytical with this and look at the detail.

[Baby E] bleeding from the throat? The prosecution have put a great store by that. No post-mortem, treated at the time actually as a suspected GI, gastrointestinal, bleed, no one talking about a throat bleed. He's examined by that many

doctors, I don't recall anyone identifying bleeding from the throat. But by doing that, that has enabled the prosecution then to try to create one of their linked themes about children, and this is another list, children who are bleeding from the throat. This is another person on the same list of children who are bleeding or have unusual signs. So [Baby E]'s there. I don't recall, I'll go back and have a look as we go through, any evidence of that. We see none, but he's on the list and that can be done because we have no evidence post-mortem to show where the bleed came from.

But you may think, in fact being reasonable, if there was a bleed from the throat that would have been spotted by Dr Harkness or [Dr C]. That why it's crucial, ladies and gentlemen, to keep in mind the burden and the standard of the proof required in these cases.

Another change of topic, general topic 2. Lists. In jury bundle 2, divider 24, I think you've got a list. Could we go there? Jury bundle 2, divider 24. You should have this, ladies and gentlemen. I'm going to ask Mr Murphy to assist by putting CEH16 on the screen. Let's have a look at this.

This is one for spectacles for me. We've got it on the screen or we have it in paper. This is a list/chart created by the prosecution, by the investigators, to establish that Lucy Letby is always present at the time of relevant events and present far more so than anybody else and we know that's a major part of the prosecution case and that's something for you to consider. It's an important part of the case to them and naturally you can see why, we're not disagreeing with that. It is to be considered.

This isn't a piece of evidence in the sense that it's not something from the hospital, it's a presentational aid designed by the prosecution for the prosecution to say what they want. It doesn't show how things were on the unit, it doesn't show why events happened as they did or how, it doesn't show fault. It shows who was on duty at the times selected by the prosecution and/or their analysts. And it does that in a case that is designed to put the focus, of course, on Ms Letby.

But one thing that is striking about this list, this chart, is that although you received a welter of lists at the conclusion of the case, we'll come to them, the most striking one thing about this one is, having focused on it in the opening and given it to you in your jury bundles, there's been no reference to it at the end. It may not have crossed your minds. We didn't go there, did we? And you may wonder why that is and we think we know why that is. I'm going to suggest to you why we haven't gone back to this list but have instead been gifted with a whole spread of new lists. I'm going to explain or suggest.

Because whatever we make of events on this list, it is obvious now that it isn't complete, is it? It isn't complete this list. It's missing at least two events and maybe three, all of which are capable of being considered what could be called harm events. This is meant to have the list of all harm events based on an assessment of the evidence, particularly by virtue of the experts. There are two or three that are missing and I'm going to tell you which ones they are and then you will realise why this list doesn't really work so well now we get to the end of the case.

Before I do that, before I do that, could I just ask you to note one thing here? If you look down on this list, ladies and gentlemen, at line 21, you'll see [Baby N] for 14 June 2016, night. Can you see that? Just to remind you all, there are three [Baby N] events. The first is at about 01.05 on the morning of 3 June. That's right, that's the 2 June night shift, item 20. The second is at the start of the day shift, 7.15 on 15 June. And then the third is later that day, it doesn't actually appear here, 15 June at 14.50.

Now, what's been put on this chart, prepared pre-trial, is that the [Baby N] event, 14 June, is night. And that's right, isn't it? It's actually the 14th into the 15th. Because you may remember, we'll come back to this, the evidence from Jennifer Jones-Key and [Dr A] and in the notes is of [Baby N] becoming unwell during the night. From about 1 o'clock onwards he begins to have problems and then that went on, he kept having more problems and desaturating, and then Lucy Letby came on duty, Lucy Letby came on duty, guilty. 7.15, she walks there, straightaway [Baby N] desaturates, guilty -- [Baby N] desaturates, immediately guilty, just guilty. She hasn't done anything, she hasn't been seen to have done anything, has barely been there for 2 minutes, guilty. But that's how it goes: unwell all night, desaturation building, wham, 7.15.

But Dewi Evans and Sandie Bohin first identified the deterioration in their reports pre-trial as starting during that night. So this is correct. But of course, Ms Letby wasn't on duty at night and so inevitably two things have happened during the trial.

First of all, and we'll come to this, Dr Evans and Dr Bohin have done their level best to move the time of harm forwards into the day shift when Ms Letby got there, saying things like, well, it's not really -- yeah, we did say in the reports it started 1 o'clock or 5 o'clock, but actually you can draw a line, it's actually when Ms Letby comes on at 7.15.

This is not what was being said when this was being drawn up on the basis of their reports then. So -- although this is what it said, although those reports put it here pre-trial, by the end of the trial the experts have shuffled this into the day shift or tried on and the prosecution have gone the other way and said: ah, no, the answer to this is that Ms Letby did something to [Baby N] before she went off, even though the evidence was he was ready to go home, was handed over in good condition, a little bit unsettled at the start of the shift with Jennifer Jones-Key, and then hours go by before he deteriorates. No, say the prosecution, she did something before she went off. What we don't know. What the evidence is in support of it we don't know. But what we've got on the chart is what happened on Jennifer Jones-Key's shift and that's right. What we've had in the trial is a shift one way by the experts taking it into Ms Letby's shift the following day and a shift the other way by the prosecution saying, well, if isn't what the experts say, she did something before she clocked off. The problem is that if we stick with what this says here, where it's got Lucy Letby on the purple would be blank, wouldn't it? That's the point: it would be a blank because she's not there at that point, so that's been moved.

That's just in passing. I have mentioned there were two or three events which change the nature of this chart. The first one is [Baby C], ladies and gentlemen, on 12 June 2015. We heard about this from the defence. 12 June 2015. Dewi Evans, Sandie Bohin and Andreas Marnerides have considered the radiographs and the evidence and they are satisfied that is a harm event. Right? This is important, isn't it? That's a harm event according to them, 12 June. Air being forced into the abdomen.

It isn't in the sequence of events and it isn't here, which is odd, isn't it, if that's a harm event? It's odd. We've been over that now in the evidence in the trial.

You know now that Lucy Letby was not on duty at that time. Of course you may well think the experts are wrong to say that was a harm event, and if they are, that's going to be important, isn't it, to show how wrong they can be? No one is as bothered about that one because Ms Letby's not on duty. It's like, we'll let that one go, but they're right on all the other ones. No, they're not.

For the purpose of what we're dealing with at the moment, if this is a chart showing harm events and if we put 12 June on it, as we should if we're going off what the experts say, we'll have another line without a cross by Lucy Letby won't we, it won't work. I don't know who would be on it, but she wouldn't be and this case theory beginnings to wobble.

All right, [Baby I], 23 August. Another harm event. Another occasion when the experts have considered deliberate harm was done but when there is no evidence to say Ms Letby was on duty. No one can, she wasn't. Again, we're not suggesting someone has harmed her then. What it does show is how wrong the experts can be with their nasogastric tubes and inflating abdomens again.

But also, if this chart is meant to include harm events, why isn't that on it? Because on the same evidence they rely upon generally elsewhere, it should be, shouldn't it? But it's not. You may agree the reason it's not there is because it can't be associated with Lucy Letby. And it wouldn't really help this table very much if there's another column put in it with a space in it. That wouldn't be very good, would it? So it doesn't feature. So this table isn't looking so good, so you may begin to see why maybe you weren't taken to this at the end of the case and you got something different, which we are going to come to.

We say potentially there's a third harm event that is missing if we go by what the experts say. It relates to [Baby G] on 15 October 2015. It's not an event which features on the indictment. [Baby G], there are three events, but the first two, 7 September and the one on the morning of the 21st, involve projectile vomiting. It's a common theme, it's said, between the two of them, projectile vomiting when Lucy Letby was on duty and caring for her and naturally she is therefore blamed for that and we are told there are attempts to kill [Baby G].

The point is projectile vomit plus Lucy Letby equals harm. It is right, we acknowledge, that on the first of those, 7 September, there then followed a very protracted period of intubation, resuscitation and support required, so that's something to look at. We recognise that, but that isn't the picture on 21 September, which is the second [Baby G] event. Nothing like that followed. It's the projectile vomiting.

When I suggested to Sandie Bohin that the 21 September was just part of a pattern of vomiting with [Baby G], she was dismissive and she said:

"No, I'm sorry [I don't think she was sorry when she said 'I'm sorry' to me], I don't agree with that because [Baby G] had two episodes of projectile vomiting on 21 September and she had projectile vomiting on the 7th and there were no other episodes recorded of projectile vomiting."

You remember I'd been going through various [Baby G] events and she said:

"It doesn't matter about vomiting after the 21st there's no other projectile vomiting."

Because that's what's being used to identify force feeding and harm.

So we took her to a note made by Ashleigh Hudson on 15 October when Lucy Letby was not on duty and that's at exhibit page 7477. I wonder if we've got that. Thank you. Can you see, please, the third one down? 15 October at 19.20:

"Watery stool passed, sample collected. One vomit, projectile, quite large in size. [Baby G] is uncomfortable, unsettled, otherwise very well in herself."

A couple of things there. First of all, there is more projectile vomiting after the event and Dr Bohin was wrong to which she said:

"So if I missed a projectile vomit then I missed it."

Which, as it happens, you may think, is a small thing, but that's her attitude. Ready to say there was no more projectile vomiting, which has the effect of strengthening the allegations against Ms Letby. I point out where there is projectile vomiting with another nurse when Ms Letby wasn't on duty and she simply says: well, if I missed it, I missed it. "Oh right, well who cares", because it just leaves her where she is anyway, doesn't it? We say that's the attitude.

But more importantly, we have another projectile vomit with [Baby G], one when Lucy Letby isn't on duty, and if projectile vomit is the test it should be on that table and you may think that if Lucy Letby had been on duty, it would be, wouldn't it? Just imagine if that was Lucy Letby down there and not Ashleigh Hudson. You've seen enough of this case to assess whether what I'm saying to you, what I'm submitting to you on behalf of the defendant is a fair criticism.

Something you may want to ask yourselves as we move on to the charges in this case is how often things happen with other nurses that would simply be converted into a count on this endlessly changing series of allegations if Lucy Letby had been the nurse present.

In any event, where we get to with that table is at least two events, possibly three, that should be included on it, if we're looking at harm. Certainly two. But the problem is there are then spaces and harm would have happened when Ms Letby wasn't present and that isn't what the prosecution want. So as it happens, the evidence having gone that way, we didn't go back to

that table, did we? We didn't go back to it, but in light of the evidence it no longer looks like that.

We say probably three gaps for sure: [Baby C] on 12 June, [Baby I] on 23 August and the [Baby N] one, night-time, for the night shift of the 14th. That's right, that is when he deteriorated, but it wasn't Lucy Letby who was on duty then.

Lists. The prosecution have provided us with not just one, but 11. They invited you to write them down. You may well have done, you'd need to be able to keep track of them. That's not said critically, you're quite entitled to. If you hear things which you may want to make a record of and refer back to of course you should write it down, it is quite proper to do that.

I don't know if they're in your notes where you can see them but I've got a little bit to say about those lists. So if we put away the chart we were looking at and if you have your notes of the lists present, I wonder if you could just turn to them so then you can follow through what I'm saying about them. If you don't, maybe they stick in your mind anyway, but if you have a note of them it'll be easier to follow what I have to say.

The prosecution provided you with these and at the end they said with a flourish:

"If anyone tries to tell you that there's no similarity between these cases, ladies and gentlemen, you've got a list of some of the similarities now, haven't you?"

Remember that? "If anyone tries to tell you..." I think that might be a reference to me, but I might be mistaken:

"If anyone tries to tell you..."

Well, four points about these lists. Point 1: I hate to break the news to the prosecution, but they're not similar, are they? Just look at them. They're not similar lists. If one person is meant to have committed a series of crimes, how on earth are these meant to show a pattern, a similarity that makes them one person? They're all different. We've got a series of lists. If we had a series of lists of features that were the same for all children, for all 17 babies on this indictment, or maybe, with adjustments for particular circumstances, for 14 or 15 of them, so it was the same thing happening. Similar, yeah? That's right, they would be similar. These aren't similar, these are differences, masses of lists of differences. Lots of different things in different combinations for different babies.

So yeah, they're dead right, it is a list of dissimilarities. But you may think actually when you step back and look at it,

that's right, they are. All that somebody has done, or a group of people, is to scan the cases in this trial for groups of different things that you can get together -- it's like Venn diagrams, isn't it -- and say:

"Well, this lot we can fit there", "But it's not 17 of them", "Doesn't matter stick them in it", "This one we can put here, there's eight there", "But they're not the same as --", "Doesn't matter, put them in it". Lots of different lists.

If you look at them, I don't know if you have the figures there, the way the children appear is entirely different. [Baby I] appears on eight of them but given that we're dealing with seven different events, there's going to be a lot of features to pick from. A lot of these events reflect things that happen elsewhere that Lucy Letby is not being challenged with. She's on eight of them. If this is all similar, you get the point, why aren't they the same then? [Baby J] is on none of them. That's not very similar, is it? That's not similar. That is different. They are a list of different things.

[Redacted].

[Baby A]'s on two, [Baby B]'s on two, most of the babies, three, four, five. [Baby N] on six out of eleven similar features. Eleven similar features, totally different across the babies. If you go to any neonatal unit, you could make lists like this if you wanted.

Babies that were an unusual colour -- and babies, they can be. It's hardly a basis for convicting people of murder. So point 1: not similar.

Point 2. I put this down as mirror images. For each list you have, there's an almost identical mirror image of children that it does not apply to, which is weird if this is meant to be similarities. So we've got list 1, which is children who collapsed, had good air entry into their lungs, yet their saturations dropped. There are nine children on that list which means that there are eight who aren't. So we've got eight to whom that does not apply, a mirror image.

Children with bleeding or unusual signs in their throats and so on. Five were listed, so we have twelve that doesn't apply to. That's not very similar and twelve children where those findings are not apparent.

Children who demonstrated flitting patterns of or unusual discolouration and so on. Eight on that list and nine to whom it doesn't apply. Just looking around them, children whose parents -- who collapsed shortly after being visited by parents.

There were seven there. However it comes about, there's ten that doesn't apply to.

You can do this, you can go through it for each list. There's a mirror image. It's a kind of trick in a way. I don't mean that in a mean way, but what I mean by trick is like an optical illusion, if any of you can think of it, where you have the candlestick or the two faces, which way round is it. I am sure you know what I mean. It was one or the other, it depends how you look at it.

A list of some things which are similar on some issues with some children and a whole load of other things that are the opposite on other issues with other children. So not similar.

Secondly, mirror images, but actually, third, and we say most worryingly as to how these were introduced and perhaps the use you're being encouraged to make of them, is the absence of proof. The absence of proof.

Now, these lists mean nothing unless the prosecution prove for each and every item, so that you are sure, that the only possible explanation for each child is that whatever is being described is linked to the harm alleged. Yes? It's all well and good saying a parent left or there was a funny colour or they had trouble breathing. To say that to you as if that proves something is to assume quite a lot. It's to assume that you're with them on all of this, "Yeah, yeah, all discolourations are suspicious, I'm sure they're all to do with air emboluses". No. No. That's missing what we've spent 8 months doing. They have to make you sure that for each item with each child, if we're looking at it this way, the only explanation is that harm was done with the intent to kill.

So each list actually is missing a vital element. And that is that whatever is described there, you would have to be sure that it was due to an assault, about harm, based upon the evidence, and that you can discount alternative explanations like medical condition or sub-optimal care. You can't just take things and go, "Oh, there we go". It presumes a lot, doesn't it? It presumes a lot on all of us. It presumes the defendant is guilty and look how it all stacks up.

So for example, let's take the discolouration. I think it was the third list you were given, but this can done with any of them -- this has to be done if you're going to do it this way:

"Children who demonstrated flitting patterns of or unusual discolouration, which the medics had not seen before and have not seen since this period."

Right. To even begin to work on that basis, for each child in that list we need to know that the air embolus and discolouration theory is valid and that's the reason why that child was that colour. We need to know the quality of the description in each case. You see, you need to have this. You can't just put down, for instance -- I'll give examples in a moment, but we need to have the quality and the description, that it's reliable, and you'll keep in mind all those inconsistencies, people not putting things in statements, descriptions changing.

And we need to be sure that if there is discolouration, we can discount that being down to a medical condition or the care the child was receiving. We have to be sure of that. Just to say a child exhibited an unusual colour -- so what? This misses what this trial is about.

If you just look at the list you had for children with flitting patterns, [Baby A] is there. Fine. [Baby A]'s there. Well, if that is going to work the way the prosecution say, we need to bear in mind and go through what alternative explanations are there for the collapse. Is this colour and the only reason for this colour what's alleged? Did he have sub-optimal care? Is there anything in his medical condition? And then when it comes to the colour, what's the quality of that evidence? And you'll remember with [Baby A], pretty poor. Nobody at the time makes any record, even though they're in a position to do so.

[Baby D], for example. You'd want to weigh up the fact that there are three collapses in relatively quick succession. There's discolouration on the first one, less discolouration on the second and, it seems, practically none on the third or none. We have to consider, well, is that an air embolus? Is that right? Does it work that way? [Baby M]. Discolouration. One witness says there was discolouration. Lots of people see him, lots of people do not suggest there was discolouration. Guess which witness it is that says he saw discolouration. To borrow from the prosecution, you know what I'm going to say. Yeah? Ravi Jayaram. An expert in spotting discolouration or recording it some time after the event.

Added to the list -- these are just examples -- [Baby H]. Discolouration. Do you recall what the basis for that is, that her dad saw something, colour in her fingers at one point of the incident? That's it. So it's all well and good with these lists -- children with bleeding or unusual signs in their throats when medical staff looked down the windpipes in preparation for intubation. Assuming we can be clear what it is the evidence is, assuming we can discount anything from their medical condition, assuming we can discount sub-optimal care,

and we've seen some of the intubation that took place in this case, then you might be able to use that list.

But the point is, ladies and gentlemen, we say the prosecution have prejudged these issues in giving you these lists. It is very premature. The whole approach is misconceived and unfair because you need to decide in each case whether you can be sure that what is being talked about is linked to harm or not before you can begin to use these lists in this way. There could be any number of explanations for this and the evidence is very variable, the basis for including children under these. We say they create a fundamentally unfair situation and certainly they should not be used to short cut a proper consideration of the evidence.

I said there were four points. The fourth point is this: if it comes to lists, there are some lists that are missing. The list of the harm events when Lucy Letby was not on the unit. Put that one down. It doesn't feature, but that could be there, couldn't it? A list of sub-optimal care. That's quite a long one, yes, to put in? The list of children for whom there is no harmful act identified going to support the allegation made against Lucy Letby. And we say that actually the 17 children on that list, probably the only one which could have all the children on it, but that's utterly consistent with the defence case so it's not entirely surprising that doesn't feature.

We say, ladies and gentlemen, in summary -- we're going to look at these -- these lists are unfair because they encourage you to presume all sorts of findings with the risk of bypassing the process of looking at the evidence and the process of proof altogether, and we ask you to concentrate on the evidence. By all means, as you know you can, look for relevant similarities that are proved on the evidence, but that is done by looking at the evidence and keeping the burden and standard of proof firmly in mind. They are not similar, they're really not. You can see that, hopefully, now.

For every list there is a mirror list that contradicts it or doesn't apply, and if we are talking lists, whatever is in these can only really count if the evidence establishes what the prosecution want it to and if that can only be linked to Ms Letby rather than any other possible explanation or combination of explanations.

So by all means, you'll consider them, as you're entitled to, and you'll make of them what you will, but you have spent 8 months listening to the evidence in this case and we would urge you to be very careful about anything which is meant to be a short cut through it, which doesn't actually ask you to look at

the underlying facts and is called a list of similarities when it plainly isn't.

My Lord, I've got another topic I'm turning to.

MR JUSTICE GOSS: A completely new topic?

MR MYERS: A completely new topic.

MR JUSTICE GOSS: Would you rather break off there then?

MR MYERS: Perhaps so, and we can return at the appropriate time, my Lord.

MR JUSTICE GOSS: Certainly. That would seem appropriate. We'll return at 2 o'clock, members of the jury. Thank you very much.

(In the absence of the jury)

MR JUSTICE GOSS: I think I have the wrong paper copy of the document behind divider 24. Maybe I was given this and not given the one that the jury have. The one I have has "version 2.0" on the bottom and it only has 24 events.

MR JOHNSON: Which divider was it, I'm sorry?

MR JUSTICE GOSS: 24. It's the one Mr Myers has been referring to and the one that was put up on the screen.

MR MYERS: Divider 24, jury bundle 2, I believe.

MR JUSTICE GOSS: I didn't interrupt Mr Myers because I thought it was -- mine differed from the one that was on the screen and I think that's what makes me think I've got the wrong paper copy.

MR JOHNSON: Your Lordship's version was 2.0?

MR JUSTICE GOSS: Yes.

MR JOHNSON: That's what I've got in my bundle as well.

MR JUSTICE GOSS: The one that went up on the screen had 25 events and I only raise it because I was looking to see if the jury were looking puzzled as well, but I didn't want to raise it if I had a rogue copy. I think it may be the wrong one went up on the screen and I think that the difference is that there are two events for -- I think it's either [Baby J] or [Baby K].

MR MYERS: That can be corrected, I'm sure, my Lord.

MR JUSTICE GOSS: Right. Anyway, I'll leave you to sort it out between you.

MR MYERS: Yes.

MR JUSTICE GOSS: I don't want the jury to be puzzled by this.

MR MYERS: We can correct it. It doesn't, so far as I can see, make any difference to the point I'm making.

MR JUSTICE GOSS: No, it doesn't make any difference because your point is a discrete --

MR MYERS: Yes.

MR JUSTICE GOSS: -- or the points are discrete. It doesn't matter whether there's one that's been added to the one that was shown on the screen.

MR MYERS: I can deal with that. If we make the necessary correction, I can deal with it at an appropriate point if I'm allowed to.

MR JUSTICE GOSS: Good. Thank you very much. The other thing, Mr Myers, is I don't know how you are dealing with your progress as to whether it is likely you are going to be ahead of schedule, behind schedule or what, as far as this afternoon is concerned.

MR MYERS: I'm making every effort to make sure I'm certainly in schedule for where I need to be by the end of the week. I'm probably close to where I would like to get to, yes.

MR JUSTICE GOSS: Because I'm anxious that we get as far as you were hoping to get today.

MR MYERS: I'm grateful for that. Yes. There's one or two places where I could conclude. Can I confirm with your Lordship what time we finish today?

MR JUSTICE GOSS: Well, if we resume again at 2.00, we'll have another ten-minute break, but I would think certainly no later than 4.15.

MR MYERS: Yes. I should make reasonable progress to then.

MR JUSTICE GOSS: So do you think you will have completed your general introduction, which is what we're on at the moment?

MR MYERS: Yes. There's one topic which may go over into tomorrow, but that won't prevent me from proceeding in the way I need to after that.

MR JUSTICE GOSS: All right, that's fine.

MR MYERS: There's only one topic I can see where it may be better to deal with it in the morning, but if I can deal with everything today I certainly shall.

MR JUSTICE GOSS: It's up to you. If we've got to the stage where you were up to where you thought you were going to be and we still had another hour left, I would have said I'd be quite keen for you to continue.

MR MYERS: No, I won't be at that point, my Lord.

MR JUSTICE GOSS: All right. Only you and those behind you know where you are in relation to this. Thank you very much.

(12.57 pm)

(The short adjournment)

(2.00 pm)

(In the presence of the jury)

MR MYERS: Ladies and gentlemen, just to assist you with what I'm going to hope to cover in the next couple of hours -- is to take a look, and they can only really be brief looks, but a look at Ms Letby and some of the material relating to her and the person that she is or the person that she was. To have a look at some of the documents in the case, which we've had, not the documents themselves but what we say about them, and then, if there's time, see if we can deal -- and there should be time to start at least -- with having a look at the area of experts, which applies to the case, doesn't it? We'll have a look at that and then if we can cover that, that should take us through today. So that's what lies ahead.

First of all, Lucy Letby. Well, the person she is, and it might be said the person that she was, is at the heart of this case, or one of the issues at the heart of this case. Let's just have a think about that.

Never been in any type of trouble before, which is perhaps not a surprise given the nature of her occupation. But who and what she is and was are important and you'll have to form an opinion of her with all the subtleties that go with forming an opinion of somebody. You will have formed an impression from her evidence, maybe quite a serious character. Some people are frothy extroverts, not everybody is.

If we look at the photo of her noticeboard, which is at page 13 of the photos, D26, page 13. Thank you, Mr Murphy. This is a photo which was taken at the time of that first arrest. If we can just scroll down a bit to see the noticeboard, it was a noticeboard in the kitchen (inaudible) square.

It's a snapshot, isn't it, really, perhaps as good a snapshot as we are going to get in many ways of the person that she is for the purpose of this case, the person that she was. I don't know if we can scroll it down, Mr Murphy, to get the full image. Thank you.

It's hardly going to decide a case like this, an image like this, we know that. But actually, it's not unimportant, is it? When you think about the things that have been said about her by the prosecution and things said to her in cross-examination and the picture to be painted, this is the person that we're actually dealing with at that time. Thank you, Mr Murphy.

Nothing to support the impression created. It doesn't mean she can't be, we know that, you have to weigh it up, but it's helpful because it's something that comes out of the blue, that, doesn't it? It isn't anything that's is created or anything -- that is her, that's her kitchen. She had wanted to be a nurse since being at school, studied nursing at university, even did placements at the Countess of Chester Hospital. You may think that takes some commitment and hard work and did that because she wanted to care for children, for babies, and she has done over the years, hundreds, hundreds.

Important because it shows, or is one view of the type of person she is and important because it puts into perspective the very limited number of cases when we look at her and her life that we're dealing with in this case, undoubtedly important as they are to all the people involved with them.

But they have gone on alongside her care as an exemplary nurse with other children, which we say makes these allegations all the more unlikely. Various medical professionals spoke about what an excellent and caring and committed nurse Ms Letby was. Christopher Booth, I come to him because he's not identified as any particular friend of Ms Letby, I don't mean he's not a friend, but he's just one of the nurses. Straightforward, you may think, an objective assessment of a young woman he gave and he'd been able to observe in a variety of situations for years and he told us on 23 January -- I asked him:

"Question: Weighing up her professional abilities, did you find her to be conscientious and excellent?

"Answer: Yes, very much so, yes.

"Question: By way of example, did you recall at the time of the week of the [Baby H] event she'd done an overtime shift?

"Answer: Yes, that's not unusual for us. She was very conscientious.

"Question: She was someone who was quite willing to work extra or have her shifts changed at the last minute, wasn't she?

"Answer: Yes.

"Question: Did you find her to be a hard worker and always very accommodating?

"Answer: Without a doubt, yes, very much so.

"Question: Did you find that she became upset with events that took place, as did others, when things went wrong?

"Answer: Definitely. I mean, it was a harrowing time and, yes, we all got upset and without doubt Lucy as well yes."

So we need to keep these things in mind. When there's a snapshot given to you of her being upbeat, maybe at the wrong moment after a death, and trying to be bright or make it sound positive in some way and getting it wrong, that's different, isn't it? That can be done. That doesn't make somebody automatically a murderer because they misjudge a situation like that, thought that is how that type of evidence has been used. But people get it wrong sometimes.

But the evidence of her being genuinely upset is apparent. That's not been drawn to your attention yet, but then this is the benefit of having speeches from both sides, isn't it? We've had evidence of her upset:

"Why does it happen to me?" I think Lucy Beebe found her sobbing about...

Christopher Booth: "Without doubt Lucy was upset too."

She was on the unit a lot and she dealt with a lot of the most poorly babies on the unit because of her flexibility, her age -- you can imagine her situation, because she was recently qualified and she was committed to her work. And one of the issues is how much she seemed to want to work with intensive care and that became a point of dispute sometimes. But you may appreciate there are all sorts of specialists in the medical services who may favour working in the more intensive situations, accident and emergency, things like that. That

doesn't make them suspicious for wanting to do that. We say that Ms Letby is bound to be present when serious events unfold, and quite often, because she was young, keen, flexible and newly qualified to do IC work, intensive care, in a unit that was overstretched with a lot of high acuity cases.

And can I remind you, ladies and gentlemen, of the agreed evidence of [Nurse A] on this point? This was read to you and the prosecution have been keen to point out, time after time, the importance of agreed evidence, haven't they? You've heard about that, this is agreed so it's accepted then. This is their witness and she said this in a statement that was read to you:

"I also remember at the time we're talking about we had massive staffing issues where people were coming in and doing extra shifts. It was mainly Lucy that did a lot as she was one of only three band 5 nurses that had done the neonatal course at the time, Bernie Butterworth being the other and Shelley Tomlins. Lucy was young, living in halls in the doctors' residential, saving to buy a house. She was single, able to swap, willing and wanting to do extras, whereas Bernie was married, had a much more established life and didn't need the money, but not that she wasn't flexible too. It was mainly Lucy that did a lot as she was one of only three band 5 nurses."

That's important. That's agreed evidence from a prosecution witness that goes some way to explain, first of all, why she would be present as much as she was.

That's Lucy Letby, a person that she was as we're moving forwards through these events, and we ask you, please, to keep that in mind. We'll have a look at the social media evidence shortly because that's also an image of who and what she was and that's very different from the woman as she presents sitting in the dock now.

Before we move to that, the evidence of Eirian Powell. Do you remember Eirian Powell was the ward manager and she came right at the end of the case and was asked some questions about the end of all of this? Important perhaps not just because she gave an assessment of Lucy Letby but because she talked about the impact of coming off the unit and the accusations being made and the effect of that on Ms Letby, who she described as "an exceptionally good nurse". And you may think, if you cast your mind back to Eirian Powell, she's probably a pretty good judge of character. One of the benefits of the system is you can assess people you look at, you can weigh them up. She seemed, you may think, pretty astute and on it. She regarded Ms Letby as an exceptionally good nurse and she'd known her since she was a student, a long time.

And there's an issue, isn't there, that's developed, as to -- it's almost two issues. One of them is why was she upset and the other one is was she really upset or are you simply being mislead. Is that what's happening? Or was Ms Letby pretending to be upset? Eirian Powell described what happened when Lucy Letby moved to a non-clinical role and she agreed that she was very upset:

"She was a committed nurse who wanted to develop and she was removed from the unit for reasons she couldn't fathom."

We say that first of all was no act. That's not something that was put on. Quite a lot has been made that she put on being upset. We say that in no way is that right. Eirian Powell said she was very upset:

"She had a meeting with the deputy director of nursing Sian Williams in July 2016 and she was distraught."

And Eirian Powell said it was at that meeting, so quite early on, that it was suggested to Lucy Letby she was responsible for what had happened to the children. And this was something the prosecution asked her about in cross-examination. And when asked by the prosecution what it was Lucy Letby had been upset about, Eirian Powell's answer was very clear:

"She thought she caused the deaths of the children that were involved that were in the report that I'd actually compiled."

That was on 27 April this year. She thought she caused the deaths of the children, distraught. From Eirian Powell.

A number of matters come up here, which you'll have to consider, ladies and gentlemen. Certainly we say that is compelling evidence that Lucy Letby was genuinely upset. You'll of course ask yourselves: well, why is that? You'll weigh that up. But she genuinely was upset. It's not an act that's being put on which seems to have been suggested at points.

Ms Powell has no recollection of Ms Letby being told she couldn't mix with whoever she wanted to. That's something Lucy Letby had also said had been part of -- upsetting, the isolation from people on the unit.

But there is no doubt that she was very upset at that time. And you may think the most important factor to come out of this is the effect upon her and, in particular, that this is genuine distress because it's apparent, as the case has proceeded, that the prosecution do not really accept that.

The notes that you've looked at, and we don't need to go back to them, we've put them up, we know what they say, they're striking. We spent some time on those. But perhaps given where we've ended up in the evidence they have a particular relevance in that they demonstrate, don't they, beyond any question of a doubt, the anguish caused to Lucy Letby by what was happening? That's without a doubt.

So suggestions that in some way she sought to create a misleading impression as to being upset or the impact of this cannot be right. You've seen the notes, they are full of distress, self-recrimination, anguish. Nothing we say actually, given how much she writes, nothing with any specificity that comes close to what she is accused of. She may well have questioned herself. She may well have lost confidence in herself or blamed herself. But there's no getting away from the fact that the note, what might be called the prosecution's favourite note, is headed "Not good enough".

Now, "Not good enough". Who did she write that for? She didn't write it for us. She didn't write it for the police. She didn't write it for these proceedings. That's a note to herself, writing about herself, showing plainly how she feels, not for any other audience. So you can put some weight in that and they do show, even though this was -- issue was taken with this at the end, really, but they certainly do show a very distressed woman, someone who is in a terrible state of anguish, and who puts it down to, as it says, "not good enough".

And that is utterly consistent with what Eirian Powell says about how she was when she learned she was being accused of the type of things that bring her here now.

Misleading impression. I keep coming back to this because the way that that has been dismissed by the prosecution is indicative of the way material relating to Ms Letby that could assist her is automatically dismissed. We say it's not an act. She wasn't pretending to need antidepressants for years. She explained to you she went to the doctors and was given them. She wasn't pretending to be practically suicidal when she wrote those notes to herself. It's what they say. There's lot of them. The impact was immense.

The social media material which we looked at and the prosecution produced, they introduced to show a number of things in fact. First of all, to show that she was able to see friends from the unit who she said she couldn't see. You'll weigh that up, how she came to say that, what you make of that. But in fact they went very much further than that in cross-examination as to what they said that proved and I'm going to remind you of that shortly because what precisely are they meant to have shown a

false impression of? What on earth do they show is a false impression? What? She dared to have a social life over the 2 years between coming off the unit and the arrest? Could we put up, actually, the display, please, Mr Murphy? You'll remember this, ladies and gentlemen. If we go to page 2, maybe, the next page, enlarge it a little bit. If we just go back to page 1 if we could, please. The images there, she's on holiday with her dad at the top, with friends further down. Thank you.

Just reminding you, if you look at this, if we look at the lower half, if you could enlarge that, please. These are the images. Certainly a couple of glasses of what looks like some sparkling wine there. You can take that down, please, for the time being, Mr Murphy.

You'll remember the questioning of her was in this way:

"Question: We don't need to go back through the social media stuff to show you out on the razz with your friends, do we?

"Answer: No.

"Question: You were having a good time, weren't you?

"Answer: Yeah, there were times in those years that I did have good times, yes.

"Question: Drinking fizz goes to the races?

"Answer: Yes.

"Question: Yes. You felt like this because you knew that you had killed and grievously injured these children?"

That's what was being said:

"You felt like this because you knew that you had killed and grievously injured these children."

You have seen those photos. They show somebody having a pretty conventional type of life, going on holiday with their mum and dad, a couple of pictures of a couple of drinks, out with friends some of the time. How is that a false impression? And how is that evidence of feeling like that because she knew she'd killed and grievously injured children? And you will appreciate in any event, members of the jury, that what you get on a picture like that will rarely show, or may not show, what is going on on the inside.

Let's go to page 26, please, of that material. These are the last pictures. I just want to hold in mind -- if you enlarge it

a little bit, Mr Murphy, maybe the bottom half. Hold it in mind, as we think how these were meant to be used:

"You felt like this because you knew you'd killed and grievously injured those children."

If you want a better example of the way words are used in this case by the prosecution to say something that does not even begin to dovetail with the children, with the allegations regarding the children, you just have to look at this. This is the way it works.

Social life. Being with her cousin, godson, being with mum and dad, being with friends. That's it. That's it. Nothing. Nothing that is contrary to what she said, to what Eirian Powell described and the distress in those notes.

When you look at that picture and you look who's in the dock and how that all has been, you can see the effect of years of this and, when we come to look at her evidence later on, the way she was dealt with in cross-examination, you can bear that in mind, can't we? I'm going to ask to take this down if we could now, Mr Murphy, and we'll move on.

So pausing there, what do we take from that? We say it is very important to keep in mind the person that she was at the time these allegations are said to have taken place. Keep that in mind.

What about the documents the prosecution rely upon and items connected with those? I'm going to look at various documentary items, ladies and gentlemen, and actually I'm going to start with a few comments about the neonatal reviews that we have looked at. A great deal has been made of these, but in general there are a number of points I would like to make, words of caution really, and you can bear these in mind when you look at them. But it is important to be cautious because there are limits to what they show.

First of all, they only show actions for which notes or records are made. That's the first point. They will only show actions for which they're made and we know in fact there is plenty of activity by other nurses on that unit that won't necessarily be caught by just what is on the neonatal review. So when it's used to try to pin down exactly what someone was doing at a certain time, you can't really do that -- well, not usually. And we have to be careful how we use it with that in mind.

Secondly, save for computer-logged prescriptions, none of the timings, as we now know, are precise, or you certainly can't work on the basis they are. They may be, they may not be, but

you can't just look at what it says on a note or record and say it is definitely precise. It may be, it may not be.

Third, generally, certainly very often, the time is entered retrospectively, after the event, isn't it, for most of these documents? So people are often having to recall as things have gone along what the timing is.

Fourth, it doesn't, the review, measure how long an activity takes. That's quite important because sometimes there's been an exercise of trying to pin down Ms Letby or maybe another nurse to: you were here then at that time doing a particular thing, by looking at the neonatal review. It doesn't do that. We know that most of what we are dealing with in this case covers a period of time. Doing cares might take some minutes, doing a feed might take 10 minutes, 5 minutes, 20 minutes. So the timings normally cover a range.

Fifth, it can't establish really that a particular nurse is in a particular location at a precise time. It can't, can it, when you think about it because these times are often approximate. It's a guide and we rely upon it some of the time as well, just as the prosecution do, but these are general observations with this.

Sixth, it doesn't show what someone is doing when there is no record and we then enter the territory sometimes of speculation and guesswork, don't we? There's two more points -- you might think it is never going to stop with points about the neonatal review, but we have two other points.

Seven. It shows that nurses generally may appear to be doing more than one task with one child at a time because of the way the timings are approximate and filled in retrospectively. These things are important as you add them up because very often Ms Letby is judged by standards that are very different from those applied to other nurses. And the observation's been made, "Look, you're here and you're here. It's a fraud, you're in two places at once. Fraud. You're up to no good, you're covering your tracks, you're cooking the notes" -- cooking the notes, cooking the records, you've heard that being said, creating plausible deniability. No, it's the same as other nurses have done and other nurses sometimes appear to be in two places at once. You've seen it. I'm not going to go through all of them because you have them, ladies and gentlemen.

And eighth and finally, we see that different nurses perform tasks for the same child on a shift. A child may be designated to a particular nurse but other nurses come in and assist, don't they, at various points? So all those occasions that it's treated as in some way sinister that Ms Letby should have

involved herself in some way with a particular child is something that is aimed solely at Ms Letby. We'll find every other nurse doing the same thing across the whole of this case. For them, there is no presumption of guilt. For her, all too often, we say, there has been, and then it is interpreted in the most prejudicial way imaginable when it's no different from what others have been doing.

So that's the neonatal reviews. Next topic with documents, ladies and gentlemen, is messaging, the telephone calls. We say they're normal. They are normal. If you were to go along and take anybody's phone -- maybe not anyone's but some people's phones -- and look at all the messages and what they've been doing, who they've been talking to, what they've laughed at, what they've talked about, what have you, the things they're interested in, it's not going to be that different, it's really not going to be that different, including work conversations.

She was a young professional woman with a life, fairly obsessive about her job, but a lot of social activity and banter. Utterly normal.

If you read these messages outside this case, we suggest there is nothing which would ever make you think of the type of allegations that are being made now, nothing whatsoever. Only if you start with an assumption of guilt do they turn round in that way. Nothing odd about them.

The business about "going commando". I am just taking that because that was something she was criticised for, saying it's a lie that she wouldn't tell you what that meant. She may not know what it means, but I'll tell you what, that cross-examination, going commando, all of that, a young woman being cross-examined in that way, you may think humiliated in here, about something that took place at a time completely unrelated to what we were looking at, having a laugh about it -- she wasn't laughing. All right? In front of you. In front of everybody sitting in here. In front of her mum and dad. We say completely unnecessary.

That's the approach that's been taken to these messages. You saw that. Really undermining. You saw me get to my feet more than once to complain about things that happened, at one point to complain at the way she was being questioned was belittling and maybe overbearing.

That comment about, "Oh yeah, you ran out when your boyfriend [Dr A] came". Did you hear that? Your boyfriend, [Dr A]. That's not even their case, is it? Was [Dr A] brought here and said, "Were you Lucy Letby's boyfriend", or whatever the relationship was? So when reliance is placed upon Ms Letby's answers in cross-examination, we'll come back and look at this, but you may

want to keep in mind the way that questioning went, when things are said about her life and the messages, you may want to wonder, what does it really prove on this and to what extent have they been used to undermine her in cross-examination? We complained then, we complain now.

You heard it. You watched it. You can assess what we say about it by reference to the evidence as you saw it being -- as it took place in front of you.

The messaging, we suggest, is unremarkable. There was a lot of contact between the nurses about all sorts of things and it is so important not to treat that as significant material that really wasn't significant at the time. Many people use their phones all the time and whenever and wherever they can. It has nothing to do with being bored or wanting to commit a murder because you're bored because you're on the phone at work. And literally, that is the way it has been dealt with in this case and you have seen it. Such an allegation, lightly made off the back of that:

"You were bored, so you went along and tried to kill somebody."

That one, by the way, based on the evidence with [Baby C] and what Sophie Ellis says. What Sophie Ellis says. When we come to it, I'll remind you if you don't remember, Sophie Ellis may say Lucy Letby went there, but that isn't what [Nurse B] said and it isn't what Melanie Taylor said in her statement to the police. This all seems ages ago now, but we'll come back to it when we look at [Baby C]. So much about what Sophie Ellis said on that event and you are yet to be reminded of where that was inconsistent with what [Nurse B] said and with what Mel Taylor said before she came to give evidence, but I'll remind you of it when we get there.

So yes, take a global view and look at everything. Do be careful not to apply artificial standards to this evidence or use it in ways that go far beyond what it can properly do for the circumstances.

If Ms Letby is to be criticised for using her phone at work, you will see, when you look through these sequences of events, others are doing it at work. [Nurse A] does it: tiles 224 to 283 on the [Baby G] 1 sequence. We've got examples of [Nurse E] doing it on the 14th and 15 June 2015. [Dr A], June 2016. Jennifer Jones-Key. Normal. What you may expect. We suggest, ladies and gentlemen, Ms Letby's messaging is no different from anyone else's: there is work, there is gossip, there are holidays, there's personal life, there's winning something on the Grand National, there's salsa dancing. At one point it was treated as if that was some terribly implicating fact: oh, you

went salsa dancing. She went salsa dancing regularly. Moving house. Gossip. Normal things, if I could use that word. Nothing that's consistent with the allegations that are made now.

The Facebook searches. A matter for you to weigh up, ladies and gentlemen. Those of you who are familiar with social media will understand how people do look other people up for all sorts of reasons at all times of the day or the night. And it takes a moment, doesn't it, literally, to rattle through a large number of searches? It takes a moment. It may be no more than pressing a handful of keys with no greater significance.

So what do we see on Facebook searches with a balanced and broad assessment? The prosecution have identified particular messages on the sequence of events for a particular purpose, naturally and as they are entitled to, because they're presenting a case and drawing your attention to particular features.

You know, and it wouldn't surprise you to know, there's a good deal more Facebook activity than that. You'll find that summarised in the Facebook agreed facts which are in jury bundle 1, divider 9. I am not going to go there but you'll remember we went through those facts with one of the officers as I recall.

They focus on the period we're looking at in this case, around the times where the prosecution have picked out parents on the indictment. And you will see, you may agree, Ms Letby is a fairly busy user of Facebook generally and you may know from your experience people who are like that. All sorts of people. You see somebody rattle through searches. Think of somebody rattling through the searches, colleagues, friends, social contacts and parents in this case.

The prosecution draw your focus to the parents, naturally, and you may wonder which parents are there. If when we looked at this sequence of events with the Facebook searches the only searches we find, particularly with parents, were of parents in conjunction with this case and with these allegations that would be a pattern, wouldn't it? That would be a pattern consistent with the theory. We're here to test the theory. So we have to ask, what do we find? If we look at the searches, what we find, first of all, is that there are parents in relation to children on this indictment who are missing from those searches. That's the first part of what we say is a critical break in the pattern. That's why we scrutinise this. The prosecution are saying to Ms Letby that for some reason, looking at the parents of babies she has attacked satisfies her in some way and we can test that, can't we, because there are 17 babies in this case and people may be associated with them who we've heard of and we can see how she researched all of them. And in fact there are no searches for the [families of [Babies L & M], [Baby N], [Babies

O, P & R] or [Baby Q]]. And you may ask: well, if the prosecution theory is correct, why should they be absent? Ms Letby's explanation is her interest is far more random than what is alleged in this case.

You'll weigh that up. But it's important to keep in mind what you would expect if the allegation is right. But equally important, ladies and gentlemen, we say, is those searches demonstrate also an interest in parents of babies not on this indictment and about whom no allegations are being made. You may recall that. To search for a parent of another child, something Ms Letby did. Not all different parents, some of those relate to the same parent, but certainly a number of parents of other children she looks for.

So obviously very many more parents or many more than just those of babies on the indictment, and parents other than those on the indictment, and we say that is important because it's important not to take and make more special one piece of evidence and then disregard others which balance it. And she is somebody who, it seems, looks up people very readily on Facebook when the thought crosses her mind.

So if we're having the full picture, there are parents from this indictment. That's right. You'll want to bear that in mind. That's what the prosecution rely upon. Of the parents on this indictment, a number are not searched for. We say that's significant. If what the prosecution allege is happening is really happening, why aren't they? And we also say doing searches for parents of children wholly unconnected, about whom there is no allegation appearing in the searches, which goes to show that she looks for parents on Facebook, whatever the reason, but it's not limited to these allegations. I think she used the expression "a pattern of behaviour". Perhaps it's just easier to say "something she does".

Here's something: between June 2015 and June 2016, 2,318 searches, and only 31 relate to parents on this indictment, and not all of the parents by any means. Now it might be if they only related to parents on this indictment where parents featured, that would be a different matter, but they don't and that's the point: they really don't.

You may also think what is significant are things that she has not searched for, given the allegations and Ms Letby being a keen user of social media. No suggestion she's looking up details on Google, or elsewhere, about air embolus or forcing in air or any fascination with what's alleged against her here. And you'd have to develop some pretty good knowledge, wouldn't you, to be able to do the sort of things that Dewi Evans and Sandie Bohin said were done. In the case of [Baby M], gauging air being

put in into a 0.4-millimetre dead space, to travel down at 5.3 millimetres per hour, to be sufficiently slow to take 15 minutes to enter. This is something you'd have to research pretty carefully you may think. We say it's utterly unrealistic. But what is striking is the absence of that.

There's one matter that was pointed to by the prosecution, one message when [Nurse E] in fact was talking about haemophilia in the case of [Baby N] and Ms Letby said she'd have to google it. Remember, "I'll have to google that", and that was picked out, but actually there is no evidence she did, a suggestion she did, and the person who was actually talking about haemophilia was [Nurse E], not Lucy Letby.

So you may think that's interesting in a case where so much is put on what is found with the searches and things like that and she's meant to be so excited and fascinated by all of this, why is there nothing from the devices that are recovered that shows an interest in that in a case like this? What people search for on Google is a good indicator, you may think, of things that people are interested in or that have passed through their thoughts. Lucy Letby seems to have shown, we say, no interest in what is alleged or what she's said to be excited by. Nothing. We say the prosecution are right, that's fairly extraordinary, but it is consistent with them being wrong.

The diary. I know this is a bit of a gallop through these items, ladies and gentlemen, but they are there for you to look at. The diary. We saw some entries where some of the children's -- by no means of all of them -- some of the children's names featured in 2016. Ms Letby had two diaries: one in 2015 one in 2016, so covering both years on this indictment. If the diary entries are relevant, let's test the theory, purpose of a trial. If they're relevant, if the prosecution are right, why are there no entries in the 2015 diary for anything related to this? Nothing. You could miss that but that's the fact. The absence of -- the evidence or the lack of it.

Why not? Why is there not an entry every time things happen if that is what the entries are meant to link to? And there's nothing like it. In fact, when we come to diaries, there's no reference in them to [Baby A], no reference to [Baby B], no reference to [Baby C] or [Baby D], to [Babies E & F], [Baby G], [Baby I], [Baby H], [Baby J] or [Baby K]. So as far as theories go, that one doesn't really stand up to scrutiny, we suggest. Whatever her reasons for what she records, the point is it doesn't stand up to a scrutiny through the lens of what should be there if the prosecution are correct. Most of them aren't there.

Handover sheets and hospital documents. It's perhaps not difficult to see why Ms Letby would have handover sheets or make notes of them in the first place. That bit is relatively simple because they have that and that's what they do. The questions really are, we suggest, first of all, why did she retain a quantity of notes and pieces of paper? And secondly, depending whatever you make of her explanation, is that supportive of an intent to kill or something which is connected to that? Does that follow from what's alleged in this case? Now, of course those documents are significant or potentially significant. So you will want to look at those, we recognise that, we're not just here disagreeing with anything for the sake of disagreeing with it. We can see it's material you'll want to look at closely.

So far as Ms Letby is concerned, a starting point, as she maintains, is she didn't throw things away and, actually, when you look at this case and look at all the notes she had in handbags or bin bags, or whatever, that's pretty obvious. Some people accumulate paper.

She did and we say from the evidence it's plain she had a habit of retaining all sorts of pieces of paper and some people do that.

When she said "collecting paper", ladies and gentlemen, you understand she meant collecting it as in accumulating it, not like somebody collecting stamps or for any particular purpose. She said this back in May this year, a few weeks ago:

"I move paper round my whole life. I have difficulty throwing anything away and I've got copious amounts of paper, cards, notes, and these are no different. They're just pieces of paper that have been gathered and I've never done anything with them."

The prosecution were saying that she had paperwork with the names of dead children on it and Ms Letby explained there were lots of children: it's the paperwork she accumulated, not the content. That was the crux of that dispute between her and the prosecution and her case is that having done this, she really didn't appreciate how many she had or the detail of them. And you'll have to weigh that up and I don't know, I don't ask or wouldn't, what you think. But it's important to drill down to where we go if you reject what Lucy Letby said and if you think, "Oh, I think she's hung on to them for some other reason, I don't think it's random, whatever the reason I think she's hung on to this lot". She doesn't say that.

Where do we get to if that is your conclusion, if you think, "No, we don't think this is random"? Well, what matters then, ladies and gentlemen, we say, is whatever lies behind this, is

this consistent with the prosecution theory that in some way these are connected with events on that unit that we're dealing with in this case? Do they prove that? The prosecution case is she has them as some type of reminder maybe of what happened. Is that the pattern? Is that what she hangs on to handover sheets for? Let's test that theory. What do we have? Well, the police officer, Colin Johnson, dealt with this. If Ms Letby had handover sheets and only handover sheets relating to babies who are the subject of this indictment, you may think that would be fairly significant. But she doesn't, does she? And this is crucial to keep in mind when you weigh up the evidence on the handover sheets. 257 handover sheets in total and 21 of them relate to babies on this indictment. A pretty small proportion. 236 don't. Most do not. So that's not a pattern, is it? In no way. Whatever's gone on, it's not linked to what's alleged here and it is not linked to the allegations that she faces. Less than 10% relate to that. The rest is utterly consistent with what she says about retaining paperwork and it's not the only paperwork she retained.

As it happens, there are no handover sheets for [Baby A] or [Baby C] or [Baby D]. [Redacted]. But again, if we're looking for consistent theories, why not? I'm not asking anyone to guess or speculate.

First of all we have a huge number of handover sheets, but by no means linked to what the prosecution theory is.

Secondly, we don't have sheets for all the babies on this indictment. And third, and this is something that we haven't looked at yet, but I'm going to ask you -- I'm not going to go through them with you now but ask you to look at this when you consider the handover sheets, if the prosecution theory is correct, the dates, the significant dates, should match the events we're looking at, shouldn't they, because that's the point? That's the point.

If it isn't that, then we're in the area of just making up any theory just to catch the defendant, to make it rope her in somehow. When you go through the notes you will see that very many of them are not linked to the dates of the offences on this indictment and that includes notes relating to the children on this indictment. They maybe dates around it, there may be some with the date of an event on it, but a number are not and you'll see that. It would be quite a process for me to go through them quickly now, but maybe nine or ten of them out of the ones you've got, out of the 21, are not what you might call target dates. That's a curious feature, isn't it, because they should be.

It's important, we submit, to look to see whether what we have is consistent with the allegation and, of course, you are going to look closely at what Ms Letby says in evidence, we know that, weighing up how or why people may say the things they do. But under all of that is the requirement, we submit, to show that these fit in some kind of consistent pattern, otherwise we are just dealing with the problem in this case which is taking what is found and then trying to fit it to a theory. And we submit the handover sheets are pieces of evidence you will want to look at and weigh up carefully. But ultimately, they don't do what they should do if the prosecution are right.

There's absolutely no way that there should be 236 that have nothing to do with allegations at all if they're linked to an interest in collecting material that relates to offences that she has committed because that is not the suggestion and that isn't what happened. But they do fit with somebody who, for whatever reason, hangs on to an awful lot of paper compulsively and the problems that creates for them later on.

A final point on documents, ladies and gentlemen, in a way, is the shredder. And she didn't, did she? That's the point. She didn't. You may think, what do you mean, she didn't? Well, Ms Letby, it seems, could certainly foresee the police may get involved, because do you remember on the note, the main note, the "not good enough" note, it's got "police investigation" written on it, so it's something she realised may be coming, perhaps not surprisingly given what was being said about her.

"Police investigation." Well, if these handover notes were as significant to her as the prosecution would have you believe and on her mind in that way and if she thought there was going to be a police investigation, you may well agree they wouldn't be there, would they? They wouldn't be there. And the fact that they are probably shows they are not on her mind because if they were with somebody in that situation, they'd be gone, and they weren't. And we say that also shows that she did not associate them with any particular wrongdoing.

Experts. The prosecution expert evidence is central to this case, ladies and gentlemen. Central. The medical evidence is central. Because in a unit where the babies are inevitably medically fragile, it is crucial to show beyond reasonable doubt, in whichever case you are looking at, that there is no medical cause where an assault is alleged. The evidence has to make you sure of that.

So three issues arise each time we say when we come to look at the specific counts in this case. Whether we can be sure, first of all, that there is no medical reason for deterioration or death. We need to know that, don't we? If there's a possibility

that there is a medical reason for it, that's that, known or unidentified. We need to be sure that substandard performance is not responsible for what happened. And we need to be sure that the harmful act or acts alleged took place. Of course it follows we could be entirely unsure as to exactly what has happened in a particular given case.

Just because the prosecution say she's guilty does not mean she's guilty. That's why we're here. We may not be sure. The evidence may not make you sure. Well, that's fine. If it makes you unsure, that's not guilty. It's as simple as that. It has to make you sure to convict.

So the medical evidence is crucial because that is the bedrock to establishing, from the prosecution's point of view, with certainty that we are dealing with a harmful act or acts on every case.

So expert evidence. This is something, ladies and gentlemen, that his Lordship will give you legal directions on and anything I say on this topic is absolutely subject to his Lordship's direction. But it shouldn't be controversial if I deal with this in this way.

Experts, ladies and gentlemen, you assess as you assess other witnesses. The reason we have experts is they are there to assist you with areas of evidence that are outside common experience. When it's something that I or you or any of us can look and weigh up, like how do people use their telephones or what do we think about Facebook searches, we don't need expert evidence on that. There may be Facebook experts sitting out there even as I address you now to varying degrees, we can weigh that up. But when it comes down to things like, what is the cause, can we establish the cause of a child's collapse, then we need assistance from experts. That's why we have experts in this case. They don't decide the case, as the prosecution have said, and we agree on this, you look at all the evidence. That's the important thing, we absolutely agree: you have an overarching view that they don't give.

But you take their opinions into account, you don't have to accept them. You don't have to accept them if you think an expert has said something that is in any way, unsound, unsafe or unreliable. They don't have carte blanche to tell you what to think. That's not just me saying that, you'll receive directions on this, as I say, ladies and gentlemen. But there's certain features that are important and the expert evidence has to measure up to and I'll just summarise it.

The witness describing themselves as an expert must be an expert in the field they are talking about. You may want to keep a

close eye on these things when we go back and look at the evidence of some of the expert witnesses in this case. The basic point of expert evidence is the expert is an expert on the topic. No point getting someone who's an expert orthopaedic surgeon and asking them to give evidence on brain surgery, whether they're a doctor or not. I've picked a simple one there that we can probably all agree on but perhaps you get the point and you know where I will be going with this: an expert needs to be an expert on what it is they're talking about.

That's something we suggest that was recognised by Professor Sally Kinsey, who was the professor of haematology, who was brought her by the prosecution on the topic of air embolus. Even though she was a professor of haematology and had been asked by the prosecution to come up with a report on how air embolus and skin discolouration worked, she acknowledged frankly when I cross-examined her -- we'll look at this tomorrow -- that she was doing this because she'd been asked to and that in fact she's not an expert on that particular topic. She was really clear about that in a way neither Dewi Evans or Sandie Bohin were prepared to accept for one moment. We'll look at how much expertise they have on that topic as we go along. But she's all the better as an expert, we submit to you, because she knows the limits of her expert knowledge and was ready to acknowledge them and she's a professor of haematology.

Secondly, ladies and gentlemen, there has to be a proper basis for why an expert gives you the opinion that she or he gives you. There has to be. You can't just say, "I'm an expert therefore".

That basis could be from their experience. We could have somebody as a doctor who treats the type of condition we're talking about all the time and can speak from personal experience about it. You won't find that on the key topics in this case -- and by key topics I'm talking about air embolus in particular. We don't have it.

It can be clinical experience. Their expertise could come from research. But as an expert, they have access to a broad field of solid, reliable scholarship that enables them to form an opinion.

Now, you'll need to keep that in mind, ladies and gentlemen, for example, when we consider Professor Owen Arthurs and how his research into what gas or what may be the causes of gas in great vessels came not from personal clinical experience, not from a series of well-established studies, principally it came from a survey he'd conducted of his own files from Great Ormond Street Hospital, a survey he conducted for this investigation and which was what's called peer-reviewed by nobody.

There's another paper he referred to which actually comes with a good deal more expertise, we'll come to that tomorrow, but that paper didn't help with the key question. It helped on the link between resuscitation and gas in the great vessels and that's a different issue.

You'll want to keep in mind the question of how good research is when, for example, Dr Bohin made claims to you, as she did, about how air embolus works in neonates, basing that upon studies that resolved around pigs and rabbits. Do you remember that? Pigs and rabbits, ladies and gentlemen, we got to. A menagerie. A menagerie of some sort but not a neonate, not a baby. Third and finally, in terms of the requirements of expert evidence, as I'm summarising it here, expert evidence should be objective and independent. It should be in effect neutral, just stating it as it is. An expert isn't here to be an advocate for one side or another. We've got advocates who are doing that, as you can see. That's not what an expert is required for. An expert should give their opinion impartially and not argue a case. They should be independent. So you'll want to ask, did Dewi Evans come here to give evidence independently or was he trying to argue a case? Sandie Bohin. Andreas Marnerides.

We'll look at it. If an expert doesn't give evidence that is independent and impartial that undermines it, doesn't it, because you're not actually getting the bare, neutral expert evidence, you are getting something that is, at the very least, varnished with advocacy and that's not what an expert is for. An expert should not be here to try to prop up, for example, an allegation by the way they use their theories. We'll return to that in due course, ladies and gentlemen.

The key things, in summary, therefore are that an expert should be properly qualified for what they're talking about to give that expert opinion, their opinion should have a sound basis, based on either personal experience or research. And the expert should be independent and objective, in no way biased, in no way an advocate for one side or the other.

If the expert, in your opinion, does not come up to that and has not done that, and can't be relied upon in that way, that is, we say, game over for their opinion on that topic.

My Lord, could I break there, please?

MR JUSTICE GOSS: Certainly. May I mention a matter that I raised with you?

MR MYERS: Yes, of course, my Lord.

MR JUSTICE GOSS: Just to explain to you. When we broke off at lunchtime, I raised with counsel, after you'd left the room, the difference between the chart on the nurses and clinicians who were present that came up on screen and the paper copies that we had, and I didn't want to set a hare running because I wondered if I'd got the wrong chart. I didn't want to interrupt Mr Myers.

I was looking to you to see if any of you were reacting but your faces were impervious, if I may say so, that you weren't quizzing it, but clearly you had the same chart I had, which has 24 events and not 25, which came up on the screen.

The situation is this, as you can see -- don't look for it know -- actually says "version 2" on the bottom. So this was a later version. I think the one that came up on the screen was version 1, so it was amended. That's right, isn't it, Mr Myers?

MR MYERS: As I understand, yes.

MR JUSTICE GOSS: We've worked it out. The point is, though, that there is one fewer event on this, but it wasn't one that was relevant to the point that Mr Myers was making, so the points are the same, so don't worry or entertain questions about why this has 24 and the one on screen had 25. It was obviously -- this is the agreed one that we have with 24 on it. So I hope that -- certainly it put my mind at rest, I hope it puts your minds at rest. Mr Myers may come back to this, I don't know, at some point.

MR MYERS: It has no bearing on the point, it's just a discrepancy between two versions that you have, ladies and gentlemen.

MR JUSTICE GOSS: There was an additional event on there that isn't on those charts now. All right? So there we are. I knew you were paying close attention because I was watching you, but, as I say, you didn't reveal the query, you didn't raise an eyebrow or anything like that. Thank you very much. We'll have a ten-minute break now for the final session this afternoon.

(3.01 pm)

(A short break)

(3.11 pm)

MR MYERS: Let's start with Dewi Evans, ladies and gentlemen. I don't want to come across as unduly sensitive on this topic now because the prosecution made a point, didn't they -- they made a point of criticising me for being unfair to Dr Evans because I missed a reference to vomiting fluid in his fourth report on

[Baby Q] that he wrote before the trial? In the first three he didn't say that, but he did in the fourth, and I missed that, so that was a mistake, I agree. And for that -- for that -- it was said that I was being unfair. I did a bit of arithmetic.

I conducted 175 cross-examinations in this case, ladies and gentlemen. Seventeen of them have been with Dewi Evans. And I have dealt with approximately 80 reports and supplementary reports from him alone, other statements, loads more from other experts, and I've had to ask hundreds -- thousands -- of questions and I made that mistake. I apologise for that. That was unfair on Dewi Evans right at the end.

You'll decide if that's unfair. But you'll keep this in mind as well: there are a number of criticisms of Dewi Evans that we make, but during the course of this trial he has been criticised in his capacity as an expert witness by a judge of the Court of Appeal in scathing terms and the prosecution have not only ignored that but haven't addressed you about it and continue to embrace him as their witness, and he is their lead witness, in support of these allegations.

We say that is appalling. We say -- it's a matter for you -- he underpins the whole of the medical evidence in this case. The prosecution have not distanced themselves from him, he underpins it and we say he most definitely undermines it.

He is not a neonatologist. We say that matters.

Dr Babarao is a neonatologist. He was a prosecution witness who looked -- a witness who looked after [Baby K] from her transfer from the Countess of Chester to Arrowe Park after her birth. He explained what a neonatologist is. It's a sub-specialty of paediatrics -- this is on 28 February he explained this -- something which you have to follow a three-year training programme for and you specialise in the care for the most extreme and complex newborn babies, dealing with babies from about 22 weeks until they leave the neonatal unit.

Dewi Evans is not in that league, no matter how he boasts of his credentials, nor is any prosecution witness in this case, even though they are giving evidence on extremely complex matters relating to neonatal medicine and areas that are very hypothetical. Expertise, not very good, we say. Current knowledge and experience. He's not in current clinical practice, and hasn't been, for about 13 years. You may be able to recognise in a way that he didn't -- and actually Sandie Bohin wouldn't in support of him, we say, when I asked her about it, but wouldn't -- that being in clinical practice is important because it means you are doing it, you know what's going on at the moment, your knowledge is there, your experience is there.

And that General Medical Council guideline we saw talks about the requirement to have "knowledge by current standards of the issue you're dealing with".

Dewi Evans told us about how he has lived through the evolution of medicine for 40 years. Fine. But we're not dealing with medicine from 40 years ago in this case. Medicine changes. That's why there's an evolution and a good deal of his experience is historic. He is, we say, a professional expert. Many experts are. But he is an expert at being an expert. There's nothing wrong with that, I suppose, ladies and gentlemen, but his focus is on that and no longer clinical practice.

This came up when he first gave evidence and I asked him about it on 14 October. And I said to him:

"The last topic I want to deal with this afternoon is this in terms of what your time is spent doing and what you do. Since 2009 being an expert witness has, in fact, been your chief activity, hasn't it."

To which he said:

"Yes, I suppose it actually has."

And we went over his training courses that he's been on as an expert witness. Ironically -- he's been on training courses by the way in 2017, 2019, 2020, 2021. That's fine, experts need to know what they're doing. I said to him:

"I see in March 2018, you've attended a course at the Royal Society of Medicine, which was called ironically 'Expert Witness Skills Master Class: How to Avoid the Pitfalls'."

"How to Avoid the Pitfalls." We say he should have been taking a lot more notes at that class, ladies and gentlemen. I said:

"The pitfalls of giving expert evidence, what does that mean?"

And he said:

"Answer: Well, you know, how to make sure you present yourself properly, really.

"Question: You have expertise in writing reports?

"Answer: I do.

"Question: And expertise in coming to court and giving evidence?

"Answer: I do.

"Question: Would you agree with me if I suggest really that the main thing you are an expert in doing at the moment, Dr Evans, is being an expert?

"Answer: What does that mean?

"Question: As an expert witness?

"Answer: I think that's too flash for me. I would say that I'm here as a children's specialist with a huge experience of looking after small, sick babies and I'm pleased -- and my role here is to assist the court in sorting out some extremely challenging issues, so I do not call -- you know, today I have called myself an independent medical witness. I have not from this called myself an expert anything. I call myself an independent medical witness and that and my opinion is based not on being an expert, my opinion is based on being a doctor. Okay?"

So there you have it from the horse's mouth, so to speak, "not here as an expert". And we say that is evident:

"I'm not here -- my opinion is not based on being an expert, my opinion is based on being a doctor."

Sorry, that is no justification to come along and have a go. He's meant to be an expert. You may think, well, maybe he was just engaging in a bit of loose wordplay there. We say it reveals quite a lot. We don't want to take that out of context or be unfair to Dr Evans. You spent 6 months listening to him. You may think that frank assessment was more revealing than you might have imagined. And don't forget, ladies and gentlemen, his opinions and his reports are the starting point for all of the other experts in this case, they are, and particularly Sandie Bohin. But also and significantly, we say, Andreas Marnerides. They are not the only things he had access to, they're not the only thing Sandie Bohin had, but he has led the way with medical opinion in this investigation.

As for independence, we'll look at how his opinions were reached and developed as we go through the various counts on this indictment. But when Dewi Evans said, as I first asked him, that he has come to assist the court in some extremely challenging issues, as if called upon for the greater good, you may wish to remind yourselves of how he came to be involved in this case for someone who is meant to be independent, not partisan. How did he come to be involved in this? The truth, we say, is very different from the impression first created when he gave evidence. I'm going to look at what he said and then we're

actually going to look at the piece of evidence that shows it happen. When I asked him about this when he was first answering questions about how he came to be involved, he told us he was brought into this case by the NCA, which you may know is the National Crime Agency. On 25 October last year I asked him:

"Question: When you were asked to review the cases and asked for your involvement in this investigation, you told us the NCA were the agency that contacted you. That's the National Crime Agency.

"Answer: Yes.

"Question: Did they provide you with the theory that deliberate harm had been done?

"Answer: No. By the time that I had -- the NCA got me involved in this case, I had prepared nearly 50 reports for other police authorities on issues on top of all my other stuff with the Family Court. So therefore I was someone who was known to them as someone who dealt with -- you know, with suspicious events.

"Question: Okay." "At the time the NCA got me involved in this case." Of course, that's what you'd expect maybe from an independent expert. They're brought in in that way and the clear impression was they came to him as an independent expert.

Now let's look at the piece of evidence that shows this happen. Can we put up D24, Mr Murphy? I showed this to Dr Evans.

From Dewi Evans, 21 May 2017, to the National Injuries Database that's connected to the NCA, by the way. We dealt with this:

"Dear Nick. I've received a lot of documents from [confidential details have been removed] police op but not the autopsy result... I'll liaise with DS directly. Should sort quickly once I get all the files." Then this:

"Incidentally, I've read about the high death rate for babies in Chester and that the police are investigating. Do they have a paediatric/neonatal contact? I was involved in neonatal medicine for 30 years, including leading the intensive care set-up in Swansea. I've also prepared numerous neonatal cases where clinical negligence was alleged. If the Chester Police" --

(3.23 pm)

(Audio feed from court lost)

(3.24 pm)

MR JUSTICE GOSS: I think if Mr Murphy takes down the document and let's just go through a process of elimination.

(Pause)

If you haven't already done so, read to the end of the letter and it'll save time.

Everything is fine now.

MR MYERS: Just as I was getting to the key paragraph, ladies and gentlemen.

(3.24 pm)

(Audio feed from court lost)

(3.26 pm)

MR MYERS: Well, you will have seen, ladies and gentlemen -- I'll say it anyway -- Dr Evans talks about the case that's going on and then says this, and this is the case point:

"If the Chester Police have no one in mind, I'd be interested to help. Sounds like my kind of case. I understand the Royal College has been involved, but from my experience the police are far better at investigating this sort of problem." Well, "I'd be interested to help, sounds like my kind of case".

So ladies and gentlemen, first of all, he contacted them so he could get involved, which I described to him was touting for the job. He didn't like that very much, but we say that is exactly what that is. We say this matters. His credibility right at the beginning of this with the impression he wanted to create of being --

(3.26 pm)

(Audio feed from court lost)

(3.27 pm)

MR MYERS: I suspect foul play! (Pause)

MR JUSTICE GOSS: Let's continue. If it just becomes insufferable, we'll have to have a break.

MR JOHNSON: One solution might be just to switch off the volume on these televisions. Maybe it's too simple.

MR JUSTICE GOSS: Yes, but that wasn't sort of normal feedback or interference. That was just bizarre to my mind.

MR MYERS: We'll see how we get on.

Stop-starting a lot here, ladies and gentlemen, but you'll understand this is actually a pretty fundamental point when we're starting with Dr Evans. His credibility as to how contact was made is affected, isn't it? His credibility generally. We say this is not a careless mistake. He went out of his way to make it sound as if he had been approached as almost a disinterested expert to come along and assist with some difficult cases. That isn't what happened. He asked to get involved, he touted to work on his kind of case.

So first of all, that was a misleading impression that he created. Secondly, from here on, he became the lead expert and has led the way in this investigation and throughout this trial and has set the issues. And we submit, having set them, Dr Bohin has given an opinion by reference to his, generally supporting him, and Dr Marnerides has relied heavily upon Dr Evans' clinical opinions.

That, what you have in front of you, you may agree, is not really consistent with being an independent witness and we say squarely he is a full member of this prosecution team from the very start. That's what this is. This is his. He got involved and he is not neutral, he is not independent, in no way, and his opinions have been formed with that in mind.

When we say he's been more interested in coming up with theories to support the allegations rather than simply reflect the facts, we say this is all consistent with that.

Knowledge of air embolus. Let me remind you about this. This background is significant, ladies and gentlemen, when we come to consider how the idea of air embolus is introduced into expert evidence. According to Dewi Evans, having made contact with the police, this is what happened next via the NCA:

"I drove up from Carmarthen, where I live, on a sunny day in July [that's July 2017] and said, 'I'll come and see you, I'll come and talk to you, I don't know whether I'm of any use to you, all I want you to do -- bring your case, bring me one case file just to give me a sort of idea of what's going on here'.

"Question: During the course of any discussion before you wrote the reports on [Baby A] and [Baby B], was the expression air embolus used at any point?

"Answer: No, no.

"Question: Not at all?

"Answer: The first person who thought about air embolus in this particular case as far as I know was me." He said that on 25 October.

Well, there you have it. That's his evidence, "It was me". That's what he said.

But before you accept that, ladies and gentlemen, we ask you, please, to consider this chronology and keep in mind that Dewi Evans was speaking to the NCA and the police from 21 May 2017, which is the date of that email, but this is chronology.

From some time in 2016 at the latest, Ravi Jayaram was suggesting to colleagues at the Countess of Chester Hospital that what had happened on the unit involved air embolus. He was suggesting that from July 2016 -- and that, if you remember, is based upon that Lee and Tanswell paper that he'd dug out and we'll be coming to have a look at tomorrow when we start looking at the medical evidence.

I asked Ravi Jayaram and Stephen Brearey about contact with the police and from the questions we know the following -- and this comes from Dr Brearey, from 14 March. There were two meetings with the police when senior consultants and management first raised the suspicions they've described: a meeting on 27 April, Dr Brearey wasn't at that one; and then a meeting on 15 May, and he was there with Dr Jayaram and a couple of senior police officers, including the officer who became the senior officer in charge of this investigation. And at that meeting, Dr Jayaram raised concerns of air embolus with the police.

So the police certainly knew all about Ravi Jayaram's air embolus theory before the time that Dewi Evans contacted the NCA 6 days later. So it was in play then and they knew about it by the time he met with them some weeks after that.

Now, that is as far as we get there. But when it comes to assessing this, you know Dr Evans was very keen to get involved and that he'd be provided with information to set him on his way. And unless they met in perfect silence when he went to the police that sunny day in July 2017, you may think all of that is evidence, circumstantial evidence, from which you can pretty safely infer that the subject of air embolus will have come up because it is extraordinary to think that it would not.

You heard a lot about the supposed power of circumstantial evidence, ladies and gentlemen. You may think that constellation of features is pretty powerful and it is unbelievable, we

submit, to you that he would not have known of suspicions of air embolus when there had been a series of meetings with those doctors, when he was keen to get involved, and it all comes together when he meets with the police afterwards. And he began to write his reports in due course, enthusiastically supported by Dr Bohin and also supported by Dr Marnerides.

That is Dewi Evans at the start of this process. But I want to deal next with something that happened during the course of this trial, because for months we had been cross-examining Dewi Evans and Dr Bohin, but Dewi Evans in particular as to his lack of independence and the way in which he was interested in constructing theories that supported an allegation rather than the facts -- and we levelled the same criticism at Dr Bohin too, who we say has done the same thing but with rather more subtlety.

But that's what we were saying about Dewi Evans and that's the concern because of his position with the expert evidence in this case. I would like you to take the agreed facts now, ladies and gentlemen, if you could find those. They're in jury bundle 1, divider 3.

There's material there that that you may want to bear in mind when dealing with Dewi Evans.

I am going to ask you, if you would, please, to turn to page 5, section 4. The agreed facts.

Page 5, section 4. I'm going to look at something we looked at earlier in evidence relating to the expert that, we submit, sets the lead in this case that others have followed. Let's read through this fact, fact 15 -- are you all there, "On 5 December 2022"? So whilst what we are dealing with in this trial was ongoing, whilst we were trying to get to the bottom of what Dr Evans was up to and others appearing as experts for the prosecution or another in particular, we get this:

"On 5 December 2022, Lord Justice Jackson gave a decision in writing on an application for permission to appeal in the Civil Division of the Court of Appeal. The application for permission to appeal related to a care order made in June 2021. The care order had been made in the Family Court. This care order was made in respect of two children who are unconnected with the children in the trial of Lucy Letby, the care order was unrelated to the case of Lucy Letby. The application for permission to appeal the care order was accompanied by a report from Dr Dewi Evans dated 14 April 2022. This report supported the position of the applicants, who were the parents of the children for whom the care order had been made. Lord Justice Jackson refused the application for permission to appeal against

the care order. Included in his reasons for this refusal were the following matters, which he set down in writing:

"'First, this application challenges the findings of fact that led to the making of a care order in June 2021 in respect of L and S following the discovery in February 2020 that newborn S had sustained nine fractures caused on at least two separate occasions.

"'2. The applicants now argue that this court should hear an appeal and direct a retrial on the basis that the judge's findings were wrong, relying on a report from Dr Dewi Evans, a consultant paediatrician with no previous involvement in the proceedings, accompanied by certain research papers as showing that the injuries may have occurred accidentally due to S's exceptionally low vitamin D levels.

"'3. It is of great concern that the parents and the wider family might have been encouraged by this opinion to believe that the judge's findings may be revisited. The report is, I regret to say, worthless and offers no support whatever for this application for permission to appeal or indeed for any other application to re-open the findings.'" And at 19:

"Lord Justice Jackson concluded his reasons as follows:

"'Finally, and of greatest concern, Dr Evans makes no effort to provide a balanced opinion. He either knows what his professional colleagues have concluded and disregards it or he has not taken steps to inform himself of their views. Either approach amounts to a breach of proper professional conduct. No attempt has been made to engage with the full range of medical information or the powerful contradictory indicators. Instead, the report has the hallmarks of an exercise in working out an explanation that exculpates the applicants. It ends with tendentious and partisan expressions of opinion that are outside Dr Evans' professional competence and have no place in a reputable expert report.'" And then over the page, finally:

"'For all these reasons, no court would have accepted a report of this quality, even if it had been produced at the time of the trial.'" A different matter, a different case, it's not what we're dealing with here, but members of the jury, you may agree, for an expert like this to receive that type of criticism from the Court of Appeal is, we say, appalling. It's a decision by an experienced senior judge in the Court of Appeal, one of the most senior judges in the country, and the language used by that judge in your paragraph 19, we say, resonates very uncomfortably with the behaviour of Dr Evans in this case.

I say Dr Evans. Be in no doubt, we say that goes on beyond him. His effect upon the expert evidence in this case is not limited to him and we'll look at that on the evidence as we go along.

The prosecution stand by him and support him, we submit, you've seen that, but those comments paint a disgraceful picture for an expert and yet here he is, relied upon.

Now, had we not been making those criticisms for months on end before that decision, it might be said, oh well, that's the defence seizing on something, although let's face it, it's pretty scathing. But it's what we'd been saying for months.

The reaction of Dewi Evans when this was put to him in evidence, you may or may not recall, but I cross-examined him on what Lord Justice Jackson had said and we got Dewi Evans speaking at length, maybe hoping it would stop the questioning, I don't know, but he tried to say -- and this is on 9 February -- that the Lord Justice of Appeal had got it wrong, that his report was worthless. He tried to say the Lord Justice of Appeal had got it wrong when he said that Dr Evans had made no effort to provide a balanced opinion and we say, having watched Dewi Evans in here for 7 months, you may agree, with respect, that Lord Justice Jackson had Dewi Evans down to a T.

He tried to say that the Lord Justice of Appeal had got it wrong when he said the report was biased or tendentious and he tried to say that Lord Justice Jackson had got it wrong when he said that, "Dewi Evans' report had all the hallmarks of working out an explanation". And we say, my goodness, you have seen a lot in this case, both from Dewi Evans and Sandie Bohin.

And in fact, you may not remember -- again, this is all on the date in January that we dealt with him -- he tried to say he hadn't written a report at all, this was just a letter to a solicitor, it wasn't a report.

I won't go through all of what we went through, where the word report is used in it, he set out his credentials and so on.

The worrying thing is that, this having happened, he wouldn't really accept the criticism at all. And we say this should worry anyone given his position in this case and his involvement and influence upon the findings of other experts and we say it is appalling that he tried to bluff his way through the criticism of a senior judge in this way.

We are critical of the prosecution who continue to rely upon him in this case. And please, we do say, don't think our criticism of Dewi Evans is drawn purely from that decision. Respectfully,

that decision simply coincides with what we had spent months complaining about.

Sandie Bohin. Here to peer-review Dr Evans, we are told. We disagree entirely. We say that in reality she hasn't peer-reviewed in the sense of forming independent opinions. We say that what she has done repeatedly, and we said this to her as well, is to go as far as she feels she can to support Dewi Evans and the prosecution. Now she hasn't agreed with every bizarre utterance that Dr Evans made, perhaps she's too careful for that. But we say she's every bit as much a member of the prosecution team and we say her reports generally followed his lead.

In court, we pointed out, before coming in here to give evidence to you, she had the advantage on most occasions, not every occasion, of watching me question Dewi Evans first and then coming in and, in effect, giving a second opinion on the same topics. So she knew what was coming and she has worked, we say, to follow Dewi Evans where she can and to disagree with the defence, almost just in to support the theory that we say she is here to support in her evidence.

She complained that we -- I am accusing her of rubber-stamping Dr Evans' evidence. We have never said that, it's a good deal more subtle than that, but we do say that she has been doing her best to shore up the allegations as far as she feels she can.

We don't ask you to accept that because I'm saying it now, we ask you to accept that on the evidence you have seen and you have seen this for months. So actually I know, as you're listening to this, you'll have your own views as to whether I'm right or wrong in what I say, but we put our faith in the evidence and ask you to interpret it this way.

Finally, Dr Marnerides, who came once but at some length. That's not said critically, he had to, he dealt with a number of cases. Nothing like the length that Ms Letby gave evidence, nobody in this case has had to do that, nobody, or questioned like that or expected to remember things as she was or expected to jump around topics like she was or thrown documents at her in the course of cross-examination as she was, nobody, but Dr Marnerides -- we'll look at the issues in the cases that he dealt with, but a couple of points.

He's a pathologist, which means, of course, he looks at cause of death from the perspective of morphology and histopathology after death but, first, he's not a clinician. He's not a paediatrician, he's not a neonatologist or a radiologist and he recognised that. But that put some limits on his knowledge of what actually happens on the wards or in the course of medical

practice. And he doesn't necessarily have the same knowledge or give his opinion with the knowledge of a radiologist.

For example, he didn't once refer to air in the body post-mortem as being possibly there as a result of resuscitation. We know it is. That's one of the main things that Dr Arthurs identified. It didn't feature with Dr Marnerides. So I respectfully ask you to be careful as to how much the experts know about one another's disciplines.

Secondly, he will only see conditions -- or his expert experience is in conditions that have resulted in death. That's his expertise. It's not in what happens in life. A lot of what we're looking at in this case turns on that. So he doesn't have that expertise. And third and finally, what he can do is to give us a snapshot, as he said, from the perspective of post-mortem evidence.

So although he gave us various opinions on cause of death, ladies and gentlemen, beyond that snapshot he is reliant on the evidence of others, and that was apparent. If you remember, he very frankly conceded, over and over again, he has relied on what clinicians have said. For example, when it came to [Baby D], he was ready to discount that even though she died with pneumonia, it wouldn't be of pneumonia, and the reason he said that was because he was taking what the clinicians had said about how well she was doing before the time of death.

We dispute that. We point out the fact that, save for one relatively brief period, she never breathed unaided, [Baby D] didn't. For 4 or 5 hours on one of the days, I think. Save for that she had to have assistance throughout. So it's a matter of some dispute we say. His principal contribution was to say that in each case he could find no natural or disease process to account for death. We don't accept that in the cases of [Baby C] or [Baby D] and we explored that with him. Save for the case of [Baby O] and the liver injury, which we will look at, in every other case what he was actually saying as to cause of death was that he couldn't say from the pathology what it was, but on the basis of his knowledge as a pathologist and the clinical reports, the expert reports he had seen, he agreed with them. In other words, from the pathology there was no other explanation.

He made a lot of reference to Dewi Evans and his reliance upon Dewi Evans, and if we seem to come back to Dewi Evans time after time, that is because he is at the heart of the medical evidence. It's too late in the day for anyone to seek to insulate the prosecution from that by suggesting that somehow he's not or there's lots of other people. You'll look at all the expert opinions, but he is the starting point and that goes for Dr Marnerides.

When on 29 March he was talking about the process in assessing [Baby D]'s case, he was asked by the prosecution:

"Question: I think so far as your paragraph 12 is concerned, you've reviewed the medical records which we have at tile 158."

Dr Marnerides said:

"Answer: I haven't reviewed the medical records.

"Question: I think you have reviewed them.

"Answer: I haven't reviewed them he said.

"Question: Sorry?

"Answer: I've extracted the information from the medical records and I state it in my reports because that's the job of the clinicians, to assess the medical records.

"Question: Yes?

"Answer: So I strictly followed my instructions, I did a pathology review. So this [talking about the clinical view on [Baby D]] is extracted from the report by Dr Evans that I received.

"Question: Yes, thank you.

"Answer: So I didn't go through the medical records.

"Question: No, of course not."

Well, the prosecution may have said "of course not", but you myself been surprised to discover how heavily what we get from Dr Marnerides is based upon Dr Evans' rendition of the records and his opinions. And time and again, he said that the pathology couldn't establish cause but given what the clinicians and the radiologists said, his view was that this was air embolus or air down the NGT and so on, given what those other clinicians had said. You know what we say about that, ladies and gentlemen.

My Lord, that takes me to the end of what I was going to deal with today.

MR JUSTICE GOSS: Right, thank you very much.

MR MYERS:: I'm actually at the limit of where I can get to today.

MR JUSTICE GOSS: Right. Five days is a long time and every 20 minutes or so counts. But there we are. Tomorrow morning then, members of the jury, 10.30. Mr Myers will continue his address to you. Please remember, as I'm sure you well do, your responsibilities. I'm not going to repeat them; I've said them so many times now. 10.30 tomorrow morning. Thank you very much.

(In the absence of the jury)

MR JUSTICE GOSS: Apparently, the equipment is now working satisfactorily and I think the clerk of the court is going to see if, with Mr Murphy's assistance, they can identify what the problem was.

MR MYERS: That would be helpful.

MR JUSTICE GOSS: It's unhelpful interrupting. Can I just mention two matters arising out of what you've said quite recently, Mr Myers? This is not by way of criticism, but I just want to give you notice of what I am going to say now in my summing-up in relation to these two matters that you've raised.

The first was to invite, which you're entitled to do, invite the jury to infer that Dr Evans had been told of the suspicion of an air embolus and therefore he was not being truthful about that. Now, first of all, there will have been full disclosure of all documents of instruction that were given to him. There has been an officer in the case who's been available to be asked questions about whether anything was said to Dr Evans about suspicions as to possible causes and should the jury not be -- or would there be any objection of my telling the jury that because that is a known fact? It's just that you've rather put it on the basis that there is this overwhelming circumstantial case for saying that Dr Evans was told that because that's how you put it.

MR MYERS: Yes. My Lord, it shouldn't come as a surprise. Your Lordship may not recall this, but when we were dealing with the evidence at the conclusion of the prosecution case -- both Mr Johnson and I dealt with this -- that the suggestion would be made, it may be this isn't foremost in your Lordship's recollection, which I well understand, but the suggestion would be made that at some point the police had conveyed to him knowledge that we're dealing with a suspicion of air embolus, but that the prosecution were not planning upon calling an officer for that question to be put to an officer on the basis that it will lead nowhere, no answer will be given to say that happened, and we were ready to do that.

But the important point is it's not something, first of all, that I've simply raised now unexpectedly. This is something that

I've explained was a point we wished to make and it's important to say that it's something we wish to make, it was a choice by the prosecution that we did not take issue with that they were not going to call an officer to deal with that on the basis that we'd never get to the bottom of it, in effect, with that questioning. So I'd be very anxious that if any observation is made upon this, respectfully it certainly wasn't done in a way that suggested that I've raised something now that wasn't trailed before. I can understand if your Lordship thought that, it would seem surprising, but I certainly would make all effort not to raise something like that if it had never been identified.

MR JUSTICE GOSS: No, no, I'm not casting any aspersions and you did phrase it very carefully because you said orally he'd been told that and not suggested there was any documentary evidence or anything to indicate that that was the case. But I'll just confirm with Mr Johnson whether there's anything --

MR JOHNSON: Yes, as always I don't recall things quite exactly the same as my learned friend, but the gist of what he says is absolutely right. We did discuss it and I told him that my information was that Dr Evans certainly had not been told that and that there is no documentation that contradicts that.

MR JUSTICE GOSS: All right.

MR JOHNSON: So if an officer was called, what would happen would be that the officer would say, "In my hearing and presence Dr Evans was never given that information".

MR JUSTICE GOSS: Well, I won't delve deep into that and I won't make any comment about it, but I shall just point out what the -- refer to the point that's made and the evidence that there is in relation to it. All right.

The other thing is this, and it relates to Dr Bohin, where you made the comment about she had heard the great majority of your cross-examinations of Dr Evans and you essentially said that she therefore, when she gave her evidence, intentionally was adjusting her evidence to accommodate the evidence that Dr Evans had given.

MR MYERS: That's right, my Lord.

MR JUSTICE GOSS: The only point I'm going to say is that I propose to tell the jury the fact that she had heard the cross-examination of Dr Evans is entirely normal practice. That's what experts do, they hear all the evidence so that they are in a position to know what evidence has been given and there's nothing sinister in that. It's then a matter for the jury

whether they think she tailored her evidence to accommodate the answers that Dr Evans gave in cross-examination. That's entirely a matter for them and I shall say to them, at least once if not more than once, that their assessment of the evidence of the respective experts is entirely for them.

MR MYERS: Of course, my Lord, I understand. I should say, again it may not be at the forefront of consideration, but I actually cross-examined her upon that issue and the fact that she'd been in court and had listened.

MR JUSTICE GOSS: But she denied it.

MR MYERS: She certainly agreed she'd been in court but denied any part in --

MR JUSTICE GOSS: But the only point I'm seeking to make is it's perfectly normal. It's not something untoward and that sort of a fast one was being pulled in this respect. I'm not making a huge issue about it, but I just didn't want you then, when you heard what I was saying, saying, "Well, why is he saying this or not saying that?"

MR MYERS: I'm grateful to your Lordship for giving me prior notice. I understand.

MR JUSTICE GOSS: You'll find you won't even notice it. Well, you will notice it, but I don't think they'll understand the significance of it.

MR JOHNSON: There is another point that arises out of my learned friend's submissions. I don't know whether he or your Lordship wants me to deal with it now.

MR JUSTICE GOSS: Well, you might as well, we've got time.

MR JOHNSON: There are two points. The first is that my learned friend said that Dr Evans is an expert in being an expert. Well, no, he's an expert medical witness. But the more significant point perhaps is this: my learned friend went on to say that: "Dr Evans is not [and I insert the words 'a neonatologist' to give context to what was being said] no matter how he boasts of his credentials, nor is any prosecution witness in this case, even though they're giving evidence on extremely complex matters relating to neonatal medicine and areas that are very hypothetical."

Can I remind my learned friend of, first of all, my examination of Dr Bohin on 25 October at page 68, where she set out her expertise, and then when he cross-examined her on 26 October at

page 10, where amongst other things, these questions and answers were given:

"Question: Dr Bohin, I'm going to ask you some questions on behalf of Ms Letby, some very general questions first, and then we're going to have a look at what you say about the two children you've reviewed. You began your professional career in terms of special -- as a paediatrician, didn't you?

"Answer: No, I was a neonatologist.

"Question: I'm not going to dispute you are a neonatologist..."

And then the questioning continued and then this question:

"Question: And you've been a consultant neonatologist during your professional life, haven't you?

"Answer: Yes."

And my learned friend then cross-examined her on the difference. The point is that the assertion's been made that there isn't a prosecution expert who is a neonatologist and not only did Dr Bohin assert that she was, but my learned friend accepted it.

MR MYERS: A moment, please, my Lord. What I said, I think with some care, and it's something -- I'm aware of Dr Bohin's position with reference to Dr Babarao and what he said and that there was no witness in that league in fact. I did not say that there was no neonatologist in fact. That's my recollection, I'm just looking for the note now:

"Dr Evans is not in that league, no matter how he boasts of his credentials, nor is any prosecution witness in this case, even though they're giving evidence on extremely complex matters relating to neonatal medicine and areas that are very hypothetical."

That was drawing a comparison with Dr Babarao and that's at page 127 into 128, in fact, my Lord. If it's necessary --

MR JUSTICE GOSS: Well, I'll read out what I'm proposing to say to the jury so it'll be on the record, which you can look at when the hearing is over:

"She is a member of the Royal College of Physicians and a fellow of the Royal College of Paediatrics and Child Health. Having qualified as a doctor in the mid-1980s, she trained as a neonatologist, a doctor who looks after small babies, when she was a senior registrar working at the University of Leicester University Hospitals. She worked there from 1996 until the end of 2008 as a consultant neonatologist. That was a large tertiary neonatal unit that covered 10,000 deliveries of babies and had

about 600 admissions a year at that time. It covered all aspects of neonatology.

"In 2009 she moved to Guernsey in the Channel Islands and became a consultant paediatrician with neonates there. Latterly, she also worked at the University of Bristol Regional Intensive Care Unit for between 2 to 4 weeks a year, where she just does neonatal intensive care and high dependency and some transfers. She has written and contributed to research papers with Professor David Field and latterly contributed to chapters in books on neonatal respiratory function and on neonatal transport."

So if there's anything that's wrong there, please correct me before I deliver it.

MR MYERS: Not wrong.

MR JUSTICE GOSS: I'm not going to seek to tit-for-tat about anything that you said, all I'm going to identify for the jury is -- I shall try to deal with all the evidence in an entirely neutral fashion as to what the evidence is in relation to expertise, events that take place, records of events, et cetera, et cetera.

MR MYERS: We understand that, my Lord, thank you.

MR JUSTICE GOSS: There we are. Mr Myers, will someone want to go down?

MR MYERS: Yes, we'd be grateful if we could, my Lord.

MR JUSTICE GOSS: Right. Thank you very much.

(4.03 pm)

(The court adjourned until 10.30 am on Tuesday, 27 June 2023)