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INQUIRY INTO THE CONVICTIONS OF KATHLEEN MEGAN FOLBIGG

WEDNESDAY, 1 MAY 2019 at 10.00am

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PRESENT:

Legal representatives

15

Gail Furness SC, Senior Counsel assisting the Inquiry

Ann Bonnor, counsel assisting the Inquiry

Sian McGee, counsel assisting the Inquiry

Jeremy Morris SC, Senior Counsel for Ms Folbigg

Robert Cavanagh, counsel for Ms Folbigg

Isabel Reed, counsel for Ms Folbigg

20

Christopher Maxwell QC, Queen's Counsel for New South Wales ODPP

Margaret Cunneen SC, Senior Counsel for Craig Folbigg

Witnesses

25

Kathleen Megan Folbigg

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35

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LTS:DAT

SPECIAL INQUIRY

THE HONOURABLE REGINALD BLANCH AM QC

5 WEDNESDAY 1 MAY 2019

INQUIRY INTO THE CONVICTIONS OF KATHLEEN MEGAN FOLBIGG

PART HEARD

10

JUDICIAL OFFICER: Yes, Mr Morris.

15 MORRIS SC: Thank you, your Honour. Might I have exhibit AZ brought up on the screen, tab 1, please?

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<KATHLEEN MEGAN FOLBIGG, CONTINUING(10.00AM)

<EXAMINATION BY MR MORRIS SC

- 5 Q. Ms Folbigg, I'd just like you to go to the third page of this document. Actually, go to the entry for the fifth. You're familiar with this document, aren't you?
A. Yes.
- 10 Q. You'll see that there are a number of times that are set out on each of the pages in this document. Some of the times are printed on the page and some of them are placed there in your handwriting?
A. Yes.
- 15 Q. If we look at this document and go through it, we will see a number of entries as to volume. So, if we look at the fifth, for instance, "50 ml", that's 50 millimetres(as said) of milk--
A. 50 mls. 50 mls.
- 20 Q. --given to the child? Is that correct?
A. Yes.
- Q. Then, underneath that is "Water" at 12 o'clock, you see that?
A. Yes.
- 25 Q. And "ENF", what's that mean?
A. Enfalac formula.
- Q. Enfalac, that was the formula that you were using?
30 A. That's the formula that she was on, yeah.
- Q. Then, a little bit below that, to the left of that column, at 1am it's got "Restless" and on the right-hand side, "Changed nappy, et cetera"?
A. Yeah.
- 35 Q. If we go through the next few pages to the sixth and seventh, eighth and ninth, we can see there that there are entries made in your handwriting with various observations next to particular times. Is that correct?
A. Yes.
- 40 Q. Is it the case that those entries were made after you had attended to Caleb in some way?
A. Correct, yes.
- 45 Q. Whether it be giving him something to eat, or changing a nappy, or making an observation about his state of health?
A. Yes.
- 50 Q. After you attended to him in some way, you then set about making an entry in the document?

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A. Yes.

5 Q. If we look at this, and if we go through to the 15th or somewhere like that, we've got an entry underneath the number 15, "Dad looking after Caleb. Have everything ready". And, if you see there to the right of that, there's "8.30 appointment, hospital EEG"?

A. Yes.

10 Q. Does that mean that you had a hospital appointment at that time?

A. Yes.

Q. And there are various entries with respect to whether he was awake or asleep, whether he was bathed or not?

15 A. Yes, correct.

Q. This is a document, is it, that you prepared either at the time or shortly after Caleb was born?

A. Yes.

20 Q. To that extent, you went through this diary and filled out a good number of pages with a similar series of times?

A. Yes.

25 Q. If we go to the entry for the 20th and 21st, this is after Caleb's death?

A. Yes.

Q. And we look at the next eight or ten pages, out to 27 February, all these times were inserted by you?

30 A. Yes.

Q. Except that, unfortunately, Caleb died and you never got to fill them out?

A. That's right.

35 Q. It's the case, isn't it, that you, if you look at 1 March, put in an entry "Four weeks, 1 month", which was four weeks after Caleb's death - sorry, after his birth?

A. After his birth, yes.

40 MORRIS SC: Now, your Honour, there were two other pages which were provided to my friend as to subsequent entries which were peripherally relevant. I don't know whether they've been put up on the screen. They have?

45 Q. This one of 24 May, "16 weeks, four months", that's something that you would have put in at about the time that you put the other entries - other numbers in?

A. Yes. Yes, I was making sure that appointments were to be met.

Q. And you make reference there to "Make appointment Dr Heda" - is that "Heda" or--

50 A. Yeah, I believe it's Heda, yeah.

5 Q. --"Booster for Caleb". And if we can go to the next one, please, 19 July, "Booster for Caleb" again. Is it the fact that, when you set about putting these entries in, you were marking off in the diary events that were to happen into the future that you'd have to attend to in due course?

A. Yes, absolutely. Yes.

10 Q. To that extent you, sometime shortly after Caleb's birth, set to organise yourself to make sure that you had a good account of the attendances that you would make upon him and record it in this diary?

A. Yes.

15 Q. And also to record important medical consultations which you knew would have to take place into the future for his health and benefit?

A. Yes.

20 Q. As I understand it, you took Caleb to a number of doctors during his short life, is that right?

A. He had a paediatrician, yes.

20 Q. A paediatrician?

A. Yes.

25 Q. Who was that?

A. Dr Springthorpe.

30 Q. Did you attend with Craig at that appointment, or was that something you did?

A. Something I did.

30 Q. You followed Dr Springthorpe's advice?

A. Yes.

35 Q. Indeed, just while we're onto medical attendances and consultations, with Patrick, before his incident on 18 October, you had taken him to a number of doctors' attendances including GPs and paediatricians. Is that correct?

A. Yes.

40 Q. After that incident, you attended - I mean, he was a very sick little boy after that, wasn't he?

A. Yes, he was.

45 Q. And you had no hesitation, did you, in taking him to hospital when he needed it? Did you?

A. No.

Q. Or taking him to various medical attendances?

A. No.

50 Q. As and when were necessary?

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A. Yes.

Q. Some of those attendances at the hospital were with Craig in your presence?

5 A. Yes, they were.

Q. And there were others, were there, where you attended by yourself?

A. Yes.

10 Q. With respect to other general practitioner appointments and so forth, you would take Patrick to those appointments by yourself?

A. Yes.

Q. And, on occasions, with Craig as well?

15 A. Yes.

Q. Of course, when Sarah was born, there were other assessments and so forth that took place with respect to her?

20 A. That's right, yes.

Q. And you arranged many of those, didn't you?

A. I didn't arrange them but, yes, I would go to them and take them to her(as said), yeah.

25 Q. I see. When you say you didn't arrange them, are you saying that your GP would arrange them?

A. Yes.

Q. And the same with Laura?

30 A. Yes.

Q. And that you ensured as best you were able, I take it, that these children got whatever medical attention they needed from time to time, is that correct?

35 A. Yes, of course.

Q. And you followed advice from people, from time to time?

A. Absolutely.

40 Q. Now, you were asked some questions over the last couple of days about your diaries. I'd like to pull one up, which is 12 July 1990 in exhibit AZ. And 12 July 1990, it seems that Craig has lost his job and he's got another job already, but you were seriously thinking about going back to work?

A. Yes.

45 Q. And it was because money was tight, is that correct?

A. Yes.

50 Q. In the three months that followed that, can I suggest - and we can go to your diaries if you want to, but there were discussions that took place between you and Craig about whether you should stay where you were then living or

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otherwise consider moving towns, basically. Do you have any recollection of that now?

A. Sorry, I have no memory or recollection, no.

5 Q. If we go to 23 July 1990, and if you just read the entries for 21, 22 and 23 to yourself, that are on the screen? Let me know when you're finished reading that.

A. Yes, okay.

10 Q. If we look at that entry of 23 July, one of the issues you were grappling with at that point was a potential move up to Hawks Nest?

A. Yes.

15 Q. At about point 5 on the page, one of the concerns you had was that Patrick, who you're writing about, would end up growing up to be a Hawks Nest boy instead of a Mayfield boy. "He'd have ideal conditions during" - I can't read that word?

A. "During"--

20 Q. During?

A. I'm not sure, summer maybe.

Q. Summer, okay, and that was what you were thinking at the time?

A. Yes.

25

Q. I'd like to now take you to the entry for 20 September 1990. Sorry, it might be 20 August, I'm sorry. I just want you to read that to yourself. Let me know when you're finished.

A. Yes, I'm finished.

30

Q. Can we take it that that was an entry that was made on or about 20 August 1990?

A. Yes.

35

Q. In that you were looking at making family decisions about where you'd live?

A. Correct.

Q. And that one of the considerations would be the impact on Pat's future if you moved away?

40

A. Yes.

Q. And that one of the considerations you had at that time, that you were thinking about at that time, was that Melbourne has top schools and an educational system--

45

A. Mm-hmm.

Q. --down there.

A. Yes.

50

Q. And that you should think about that?

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A. Yes, of course.

5 Q. The reason that I ask this is that you were asked some questions yesterday about a later diary entry taken some years after the event in which you were lamenting that you were glad that you had made no plans for the future education of your children, and that being the case would you agree that these entries that I've just shown you indicate that at the time you were writing these entries you were actually making plans for - you were taking into account Pat's future, Patrick's future, in making your family decisions and discussing those with Craig.

10

A. Yes, at the time of writing that, yes.

Q. You were asked some questions about the giving of what they call an ERISP interview down at the police station.

15

A. Yes.

Q. You were asked by the police to undergo an ERISP interview and you were told it was voluntary?

20

A. Yes.

Q. And you agreed to go down and give that interview didn't you?

A. Yes I did.

Q. Voluntarily?

25

A. Yes.

Q. There was some cross-examination, and your Honour I'll give you the references, about your approach to Sarah.

30

A. Yes.

Q. And your emotional bonding with Sarah, and your connection with Sarah.

MORRIS SC: Your Honour, transcript p 662 and 663, 770 and 764 line 26. I give those to your Honour not to drag them up onto the screen but for your Honour's convenience.

35

Q. It was suggested to you in broad terms at each of those places that one of the entries in your diary in which you compared Sarah with Laura was heartless, and a heartless form of expression. It was also suggested to you that you were asked to comment on whether you had no bond with Sarah, or that otherwise you had been disparaging to Sarah. Did you love Sarah?

40

A. Absolutely, yes.

Q. Did you feel grief at her death?

45

A. Of course, still feel it now, yes.

Q. While we're at it, did you love Caleb and feel grief at his death?

A. Yes, of course.

50

Q. And Patrick?

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A. And Patrick, yes.

Q. And Laura?

A. And Laura as well.

5

MORRIS SC: Your Honour, I'd like the witness to be shown exhibit E and it's exhibit AM from the trial.

Q. This is your handwriting, isn't it?

10

A. Yes it is.

Q. It is a letter from you to Craig is it?

A. Yes.

15

Q. It's undated?

A. Yes.

Q. From what we can see. I'd like to suggest to you that this was written after the death of Sarah.

20

A. Yes it was.

Q. Do you have any recollection of this letter?

A. I had forgotten about writing this letter, I will admit that, yes.

25

Q. Can you just read the first line for us? Read it out loud actually.

A. "I have so many feelings and thoughts running around in my head. I can't discuss them with you."

Q. Just stop there. It was a feature, wasn't it, that you would write to Craig sometimes?

30

A. Yes, yes it was.

Q. You'd write letters to him rather than talk to him?

A. Yes.

35

Q. When you were writing letters would you think about the subject matter of the letter before writing to him?

A. I will say sometimes and then other times I was - had a bit of paper in front of me and then will just start writing a letter.

40

Q. Go on with this letter.

A.

"The more I think of what our lives will be like, just you and me, the more I'm scared. I don't think that I could handle it. I clearly remember how close I got to leaving you before Sarah was born. I thought that having her would solve the problems. I was wrong. That was a mistake. She was by no means a mistake. I love her more than anything and wouldn't have had my life go in any other direction and am proud and grateful for the happiness and joy that she did bring into my life. But she is gone, and I"--

50

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--sorry, it's just unclear from this screen.

Q. I'll hand you a copy of it.

5 A. Yes, no, it's all right, I have a copy so it's fine, thank you.

10 "And I am now faced with all the feelings and thoughts that I had before but worse. Having her solve the problem of fulfilling your life and making you happy with life again, but now because of cruel fate all that's happened is turn your life into misery once more. How much misery and tragic deals of life can a couple supposed to bear? I suppose this last one has broken me, I don't know about you. You said this morning that you've made my life sad. That's not true. There always will be many memories of happiness. Unfortunately

15 they seem to be followed closely by ones of sadness. The bottom line is I don't want this life anymore. I want to have a major change. Changing the car won't solve it. I can't live here, I hate it, it makes me miserable, and there's more I just can't seem to find the words to explain.

20

I think it's a case of this avenue of my life has expired. I can't find any other way to extend or repair or change it. The only two options I have left, I try life on my own or die. My survival instinct is too high for option 2."

25

Q. I'll just stop you there. This was a letter, was it, that was written shortly after, or was it shortly after or long after Sarah's death?

A. No, it was quite soon after Sarah's death.

30 Q. It was written in the context of the grief you were feeling?

A. Yes.

Q. It's tough to say, but you'd had your third child die, and you were struggling with where you were in the relationship, is that correct?

35 A. Yes.

MORRIS SC: Your Honour, I see no need to read the balance of the letter. We can move on and the letter speaks for itself.

40 Q. I'd now like to take you back to exhibit AZ and to the entry for 11 June 1997. Just to remind you -

MORRIS SC: For your Honour's convenience it doesn't need to come up on the screen.

45

Q. This relates to some cross-examination at page 739 through to 740 in relation to that cross-examination by my learned friend Ms Cunneen, about the use of the expression "lock me up and throw away the key".

A. Yes.

50

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Q. You told his Honour that your reference to being locked up and throw away the key was due to mental illness concerns that you had?

A. Yes.

5 Q. Could you just read for his Honour, just let's go through this entry at the top, "Sad news for Craig, his dad and family, his grandma Gam died tonight."

A. Yes.

Q. So it was in the context of a death in the family, right?

10 A. Yes.

Q. Then you go on to say that Craig says that she wasn't very special, but you were sure that he felt some sadness of some kind, and he said that he'd been thinking about her lately for some reason.

15 A. Yes.

Q. Just read on from there.

20 A. "I think he has slight ability to foresee what's happened or going to happen. Wonder if he'll predict our coming birth in the same way. Interesting." Do you wish me to keep going?

Q. We don't need to go onto the next bit because that's a part of the document in which you shift from that thought to your dietary concerns, right?

25 A. Yes.

Q. Of course this was sometime around your birthday, wasn't it, this death?

A. Yes.

30 Q. If we go to the next page in the - sorry, it's on that same page. You then say, "I know it's selfish thought but why is it that something always seems to happen so that my birthday pales into insignificance."

A. Yes.

Q. I'd like you to read on from there please.

35 A.

40 "Pass into non-existence and becomes less important. I am 30 this year, another milestone age, and again I feel depressed and lonely and unacknowledged. I think it's because mum and dad now no longer acknowledge me on my birthdays and it hurts. On my birthdays I had no family of my own that I really care about when I was born into this world, except for Craig, and this year it's now been marred by Gam's death."

Q. On to the next page?

45 A.

50 "It will be interesting to see who remembers me and who doesn't, none of Craig's family will accept dad and Mary and they may still get upset over Gam's funeral to remember - to be too upset or too upset, Mel might remember, work will probably let it slide, if it wasn't for my baby coming soon I would sit and wonder gain what I was put

5 on this earth for and what contribution I have made to anyone's life,
the only person I think I've made a difference to is Craig and times
like this I can't do anything for him so I fail there as well. 30 years,
first five I don't really remember, rest I don't choose to remember,
10 last ten and 11 I have been filled with trauma and tragedy,
happiness, mixed emotions of all designs, maybe from now on I will
be able to settle a little, but no immediate future brings turmoil,
happiness, sad memories, happy ones, depression and great pride,
and it goes on, life sucks. You can never figure it out, is anyone
meant to."

Q. And it's in that - and then the passage following that, is the section about
being locked up and throw away the key?

A. Yes.

15

Q. And then if we go down below that you say, "My problem is" and if you
could just read that for us please?

A. "My problem is I'm feeling like" I can't read my own writing, "My problem is
I'm feeling like an obscurity of non-existence and it happens with every
20 birthday, damn, why have them."

20

Q. And is it fair to say that on this day when you made this entry, you were
sitting there pondering your position on Earth, what it's all about and that
maelstrom of emotions and difficulties you've had over all the years?

A. Yes, absolutely.

25

MORRIS SC: Now your Honour this next document, it's exhibit 1 from the trial
and it's relevant to the cross-examination which took place yesterday at
T644 line 45 and T773 line 35, we don't need the transcript, I'm just giving you
30 his Honour's reference. If we could go to that document please your Honour.

30

Q. Now this is another letter and it's in your handwriting is it?

A. Yes it is.

35

Q. And it's a letter which is undated I want to suggest, but I want to suggest it
was written at about the time - that it was written at a time when Laura was
alive and you were struggling in your relationship with Craig and I would just
like you to read it out for his Honour?

A.

40

"Craig, yes one of those letters, but we can't seem to communicate
with each other in any other way. We have problems, once they
only pop up every now and then, now they are re-occurring
nightmare, I don't know how to say what's in my heart and mind
without hurting you, but I've decided I have to speak out anyway
45 and one of them is that you won't, you clam up, ponder, overanalyse
and then finally will speak, but by then it's too late. You were
correct, I do seem to leave as soon as you are around. This will hurt
and all I can say is sorry, but over the years you have become an
oppressive and depressing person, I only see sparks and tiny ones
50 at that" - sorry.

50

Q. It's all right, take your time.

A.

5 "Of the man that attracted me all those years ago, you now always
seem to have a problem with and how your life is or with me and
decisions I make or with Laura, and even looking after her without
me around is such a chore for you. I am now not prepared to
10 handle or pamper you, pamper or put up with it anymore, you're
right, last couple of months I decided that more Laura than you will
fit into my life and what I want it to be and what I wish to do. Laura
is only 18 months old, she goes where I want to go and not the
other way round. If it's inconvenient to have her with me then yes I'll
15 arrange for her to be cared for by someone else, by someone I trust
with care for her and watch over her until you return."

Q. I'm sorry, "until you return" or "until I return"?

A. "Until I return", sorry.

20 "If that's you then so be it, you are her father and some
responsibility for her care is yours not just financially. When she
reaches an age where she can offer me a reasonable argument or
alternative to coming with me, then hey she'll be at the stage where
she's capable of making her own decisions as long as that decision
25 makes peace and sense, but even then my life and day to day
operation of it will not be compromised too much. You have not
ever offered a single argument to change my mind about anything, I
find lately that you have a problem, a major one with me, not
depending on you so much anymore. Sure financially I do but now I
30 see why you really unsure about me returning to work, I take that
last dependency string away. Sorry but I've decided life's mine and
is more than depending on someone to get me by.

I've been thinking it a lot lately, months, we're not happy, all right I'm
35 not happy and yes it's not happy with you and our lack of
relationship. I've tried, you've no idea how hard, you don't see it. I
have been kidding myself that Laura makes the difference, she
does, she's what's holding me here and to you, but life could be
different, she wouldn't suffer as long as both parents love and
cherish her, even if they are apart. Here is what I have thought of
40 doing, once working I was going to see if a separation, amicable
and friendly if possible, could be managed. It would mean me and
Laura moving out but she would have no less than she does now
and really life wouldn't be all that different for her, as long as you
and I can still get on as friends.

45 Access to your daughter would never be an issue, you could see
her every day, pretty much as you do now. Once older you could
probably even have her for a weekend or more at a time. I like to
50 think that we'd still be family unit and do things with her as one, but
how much longer can you and I go on like this. I still love you but it

5 has changed a lot, I don't think it's as my husband or lover anymore, more like my oldest and dearest friend in the world. It's deep but it's not the right kind I'm sorry. I have thought back to when I truly felt like this, I was probably when I made the decision to have Laura, it worked for a while and it disguised and hid them for quite a while. It was the wrong decision back then but now I have her there's no question it was right.

10 I'm sorry, can you go on with me in this present state, can you continue life as this. Is it right for Laura to believe in such a fantasy of life between you and me? I feel and believe if we do this now before she's too much older, she'll adjust and learn that it's okay, her life is just as rich and full as any others but just a minor detail, her parents don't live together anymore. Sorry. Kathy. Write or
15 talk."

Q. Now in that letter, in your diary you talked about leaving Laura with Craig and separating, correct?

20 A. Yes.

Q. And here in this letter you're talking about separating from Craig and taking Laura with you?

A. Yes.

25 Q. I mean it's a sad situation but the relationship was struggling for whatever reason?

A. Yes.

30 Q. But is it fair to say that your views about this, well it was a traumatic time in your life, to make this decision?

A. Yes, of course.

Q. And your views about how to do it changed from time to time?

35 A. Yes.

Q. And you were never exactly clear as to the best way of dealing with it?

A. No, I was confused quite a lot.

40 Q. And you were struggling with the - I'm sorry I'm told there's another page to that letter - I'm sorry before we conclude, if you could just read that last bit please?

45 A. "PS, Craig what you make of your life and the sort of person you end up becoming is your choice, no-one else and your responsibility. I will not tolerate you saying or believing that my choices for me affect your work or social outlook on life. You are responsible for you and your daughter, as I am for me and Laura, also food for thought."

Q. But it's the case that you were struggling with strain in the marriage and you were trying to find a solution?

50 A. Yes.

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Q. And you'd change from time to time?

A. Yes, as I said I was always confused and not sure how to handle things.

5 Q. And you were, is it one of the things that you were concerned about is what was best for Laura, whether Laura would be best off with Craig or Laura would be best off with you?

A. Yes.

10 Q. The other thing is that you were asked questions about, was you had a view that your view had an impact, that your mood, withdraw that, you told his Honour over the last couple of days that you had a view that your mood would impact upon others, including your children?

A. Yes.

15

Q. Where did that come from?

A. From a basis of my own upbringing.

Q. Tell his Honour about it, what happened?

20 A. Your Honour my own upbringing was if I, even as a child, if my mood affected my mother there was a response to that, there was a consequence to that, so I therefore grew up believing that I had to always keep any negative or emotions or moods in check because I didn't wish them to inflict on other people and I never wanted to burden other people and I had learnt that if I did
25 so there was always a consequence of some sort to that.

Q. Just by way of background, you left school before completing your HSC?

A. Yes I did.

30 Q. Did you leave in year - I think it was probably fifth form, sixth form in those days but using modern parlance was it--

A. Halfway through year 11.

35 Q. The other thing is that certain propositions were put to you that the purpose of your diaries which we've been through over the last couple of days, was for you to vent your frustrations?

A. Yes.

Q. Was that the only purpose for your diaries?

40 A. The purpose of my diaries was for me, was to, since I didn't share my emotions or my feelings with people, the diaries became where I shared them and where I put them.

45 Q. And it's the case isn't it that there are other things than just emotions, there are life events and all sorts of other things in--

A. Yes.

Q. --your diaries?

A. Yes.

50

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Q. And if we go through them and read them, we can work out where you've recorded a life event, like Gam's--

A. Yes.

5 Q. --death?

A. Yes.

Q. But then your emotional response to that?

A. Yes.

10

MORRIS SC: Thank you, your Honour.

JUDICIAL OFFICER: Yes.

15 <EXAMINATION BY MS FURNESS SC

Q. Ms Folbigg, just taking up that last question that you were asked in relation to when you left school, you remember having a one or more sessions with Dr Diamond?

20 A. Yes.

Q. He's a psychiatrist isn't he?

A. Yes.

25 Q. And he assessed you at the request of your lawyers?

A. Yes.

Q. He has written a report about his assessment. Have you seen that?

A. Yes, I have.

30

Q. And is that accurate insofar as it describes what you told him?

A. Yes.

35 Q. He records that you attended a public high school from year 7 until six months short of completing your HSC in year 12?

A. Okay, yes.

Q. You accept that?

A. Yes.

40

Q. And that it was in the context of a breakdown of the relationship with your mother?

A. Yes.

45 Q. It wasn't in relation to your educational achievements?

A. No. No.

Q. Now, Ms Folbigg, you've given a deal of evidence over the last couple of days about what you say you meant by various diary entries, that's right?

50 A. Yes.

Q. Is the evidence you have given, evidence as to your recollection today as to what you meant, or is it your recollection based on what you meant at the time you wrote them?

5 A. A recollection of what I thought I meant at the time as I was writing them.

Q. Now, there have been serious and significant events that have occurred since you wrote in the diaries. That's right, isn't it?

10 A. Yes.

Q. Particularly in relation to the 96 to 98 diaries, which you were taken to in great detail yesterday?

A. Yes.

15 Q. The first most significant event was, of course, that Laura died?

A. Yes.

Q. And that was the death of your fourth child?

20 A. Yes.

Q. And the second significant event was that you were charged, tried and then convicted of killing each of your children and harming Patrick?

A. Yes.

25 Q. Then you have been in gaol for some 15 years as a result of that?

A. Yes.

Q. And you understand that part of the case against you was in relation to an interpretation of your diaries?

30 A. Yes.

Q. In more recent times you have, through those who have assisted you, sought to have a judicial inquiry into your guilt?

35 A. Yes.

Q. And that's why we're all here today, isn't it, Ms Folbigg?

A. Yes. Yes, it is.

Q. Now, you've had 15 years to think about the diaries, haven't you?

40 A. 15 years to think about - yes, correct, yes, I've had 15 years.

Q. How long have you had a copy of the diaries to read?

45 A. Approximately - I'm not going to say exactly how long, but I'm probably only saying a month, two at the most.

Q. So, you didn't have access to them while you were in gaol, while the various appeals were going on?

A. No, I didn't.

50 Q. Do you say that you had access to them in relation to these proceedings?

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A. Yes.

Q. They were provided to you by whom?

A. My, my team, my legal - yes.

5

Q. And you think that was one or two months ago?

A. As far as I'm remembering, yes.

10

Q. You were provided with all of the diary entries that have been before his Honour?

A. I - what is in front of me at the moment that has been tendered, yes.

Q. So, the entries that you've been taken to over the last couple of days have been available to you for a month or two to read?

15

A. Yes.

Q. And you have no doubt read them carefully?

A. Yes.

20

Q. It'd be fair to say you've probably poured over them, is that right, Ms Folbigg?

A. Yes.

25

Q. And in pouring over the diary entries, you have done so bearing in mind all of the events that have occurred since you wrote them, is that right?

A. No, as I was reading the diaries, I was reading what is in front of me, not really taking into account anything else.

30

Q. Can I suggest, Ms Folbigg, it would be almost impossible for you to read and give evidence about those diaries today without being affected by those significant events that you agreed before had occurred. Is that right?

A. Okay, yes, I'll agree.

35

Q. It's inevitable that there's some element of reconstruction, given the passage of time and the significant events that have occurred. Is that right?

A. No, I don't believe that I've reconstructed anything. I believe I've read the diaries, tried to put my mind back to what it was I was feeling and the emotion behind what I'm reading and, and I'm attempting to explain what it is that I put in those pages.

40

Q. I'm not suggesting that you haven't tried to do that, Ms Folbigg, I'm suggesting that it's almost impossible for you to have actually achieved that, given the significant events that have intervened. You accept that?

45

A. I'm not sure I do. I - I'm - you've asked me have I - have I read the diaries, I'm saying yes. I am saying I read the diaries as a separate thing. Okay, I may be in prison for the fact that these diaries were used. Did that have an influence in any way? Only in the respect that I'm now trying to answer what everyone has been wanting to know and trying to help your Honour in this Inquiry.

50

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Q. And you're trying to help his Honour, as you say, in the Inquiry because the purpose of the Inquiry is to consider the evidence that was against you in 2003, isn't it?

A. Yes.

5

Q. And the evidence you are giving now is in the context of his Honour having to form a view as to your guilt based in part upon what was said in the diaries. That's right?

A. It, it was a major part of how my guilt was decided, so, yes.

10

Q. I'm suggesting to you that the evidence that you've given over the last couple of days as to what you say you meant at the time you wrote those diaries, has been clearly affected by the significant events that have taken place since you wrote those diaries. That's right, isn't it?

15

A. I wouldn't say - no, I'm not going to agree, because we're reading the emotions behind what's in my diaries, I, I have admitted, even whilst testifying, that there are times when I'm not even remembering certain things that I've written in those diaries.

20

Q. And you're not remembering them as you sit here now?

A. Well, even this letter that's just been presented, I said to my own team, I, I actually had forgotten that I'd even written that letter, so--

25

Q. So, what you're doing when you're giving evidence about that letter now is, as you sit here, what you can remember today that you were feeling and meant when you wrote that letter to Craig? That's right, isn't it?

A. No, it's what - it, it helped me, as a trigger, recall what I was feeling and remembering at the time when I wrote the letter.

30

Q. It's human nature, isn't it, to sit here now and give evidence taking into account all the events that have happened since you wrote them?

A. My mind doesn't work that way.

35

Q. Are you suggesting then that you have been entirely unaffected by the circumstances in which you are here today, and the events that have occurred since 2003, in giving evidence as to what you meant in the late 90s?

A. No, I won't say I've been entirely unaffected by it. You couldn't possibly be unaffected by something like this. What I am saying is, these diaries that - and the extracts that have been constantly - and I'm - this is also - the extracts that we used in my trial are the extracts and the diary entries that everybody is always constantly talking about. I have been reminded of those for all the time that I've been in prison. But, as I said, I didn't actually get to read them myself again until it was presented to me to do so.

40

45

And when presented with something that can trigger a memory, as such, then, yes, I'm sitting there in the moment thinking to myself, "Okay, why have I written this? Maybe I can help explain why I've written this". 'Cause the problem that I felt that landed me in the position that I'm in is assumptions being made and things being taken out of context and nobody understanding what it was I was trying to say when I was writing these diaries.

50

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Q. What you have done over the last couple of days is to give an account as to what you meant when you made those various diary entries?

A. Yes.

5

Q. And I'm suggesting that the account you have given has been so coloured by the events that have occurred since they were written that your evidence must be considered in that light. What do you say to that?

A. No, I'm not going to agree with that.

10

Q. You don't agree?

A. No.

Q. So, the evidence that you've given in relation to Laura, for example, in the later diaries, was given on the basis that when you wrote those diary entries Laura was alive. That's right?

15

A. Yes.

Q. And the fact that she subsequently died after most of those entries were written didn't affect the way in which you interpreted what you had said in the diaries, is that right?

20

A. No.

Q. Well, you tell me?

25

A. I'm, I'm not sure I'm understanding what it is you're trying to, you know - I'd also lost Caleb, Patrick and Laura--

Q. Sarah?

30

A. --or Caleb, Patrick and Sarah, and had written diaries in reference to Sarah as well, and - yeah, I - I'm not quite understanding what it is you're, you're trying to--

Q. Well, the diary entries that you were taken to yesterday primarily concerned the period of time before Laura died. That's right?

35

A. Yes, okay.

Q. And you know, and we all know, that Laura died?

A. Yes.

Q. I'm suggesting to you the evidence you've given in relation to those diary entries and what they meant has been affected by the fact that we all now know that Laura died. Do you accept that?

40

A. Are you trying - I'm sorry, I'm still not understanding--

Q. I'm not trying to do anything, Ms Folbigg, I'm asking you a question.

45

A. I know, but I'm, I'm not sure what the question is you're asking me. Are you asking me that Laura's dying changed how I wrote or are you saying that Laura's dying affected how I'm perceiving things?

Q. I'm suggesting to you that you have taken into account the fact that Laura

50

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died in how you have given evidence interpreting what your diary was saying before she died. Do you understand that?

5 A. Okay, no. If - when I was giving evidence in, in reference when Laura is alive, that's the evidence of which I'm giving. I'm giving evidence as to my thoughts and feelings and what I thought it meant when I was writing things as to when Laura was alive. The same as if, after she died then I'm then looking at the entries and going, "Okay, yes, the effect is, Laura's died". I'm then looking at these entries and going, "Now I need to help understand and explain why I was writing this sort of thing after she's died." I, I, - I have - I separated the two, there was no--

15 Q. So, you're saying to his Honour that you were able to and did, when giving evidence over the last couple of days about your diary entries, completely put out of your mind all the significant events that have happened since you wrote them. Is that right?

A. Basically, yes.

20 Q. Now, you've given some evidence yesterday about what you meant by various words?

A. Yes.

25 Q. I'm sure you'll be pleased, and no doubt everyone else will be, when I say I'm not going to take you back to those entries, Ms Folbigg. However, you gave evidence that you meant "similar things by different words". Do you recall that?

A. Yes.

30 Q. So, for example, words like "frustrated", "angry", "terrible", "cruel", all meant more or less the same things?

A. Yes.

35 Q. Now, you understand again that his Honour's task is to look afresh at the evidence, which includes your diary entries. You understand that?

A. Yes.

Q. And part of that task is to look at what the entries mean?

A. Yes.

40 Q. You accept that the ordinary plain meaning of those words which you have put together can objectively be seen as different? Do you understand what I mean?

A. Yes.

45 Q. You accept that?

A. Yes, but I - I'm also - was trying to explain that, at the time of writing my diaries, in the use of those words, that's not how my mind worked.

50 Q. I understand that and I'm not revisiting the evidence you've given as to what you meant--

A. Yeah.

Q. --by each of those entries. I'm asking whether you accept, and I think you do, that objectively looking at those various words they, by their ordinary meaning, have in fact different meanings. Do you accept that?

5 A. Yes.

Q. Now, can I take you to the chronology in relation to the diaries? I'm hoping, Ms Folbigg, you'll be able to help the Inquiry understand the chronology of events. Some of this you may know, and some of this you may not know. Are you aware that your then husband, Mr Folbigg, gave to the police your 1989 diary and your 1996/97 diaries on 19 May 1999? Do you know that?

10 A. Yes.

Q. I take it then you also know that he read at least one of those diaries, probably the later one, earlier that month. You know that as well?

15

A. I have assumed he read them, yes.

Q. He told you that he had given the police those diaries, didn't he?

20

A. Yes.

Q. And he told you that he had given the police those diaries around about or soon after the time he gave them, is that right?

A. I can't clearly recall. I remember him telling me that he'd given them to me(as said), but not details.

25

Q. Not the details of when?

A. Not the details, no.

Q. You were interviewed by the police on 23 July that year?

30

A. Yes.

Q. Before the interview you knew that Craig had given the police at least one of those diaries?

35

A. Yes.

Q. Which means that you were told somewhere between 19 May and 23 July?

A. Yes.

Q. The interview with the police took place pretty much the entire day of 23 July didn't it?

40

A. Yes.

Q. As my learned friend has said to you, you agreed to participate in that interview?

45

A. Yes.

Q. After the interview, two search warrants were executed weren't they?

A. Yes.

50 Q. The first one was executed on your apartment where you were living after

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you'd separated from your husband?

A. Yes.

5 Q. On that occasion the police seized the 1997/1998 diary, that's right?
A. Yes.

Q. On that occasion I think you also gave them a 1999 diary, is that right?
A. I don't remember.

10 Q. I'm sorry?
A. I'm not recalling, I don't remember.

Q. There was a second search warrant on that evening too, was there not, in
the former matrimonial home?
15 A. Yes.

Q. I think, and I withdraw what I said before, I think it was at the search
warrant of the former matrimonial home that your 1997/98 diary was--
20 A. Yes.

Q. --found, is that right?
A. Yes.

Q. That was found in a wardrobe?
25 A. Yes.

Q. It was on that occasion that you gave them the 1999 diary?
A. As I said, I'm not remembering actually giving them the diary but they did
end up with one.
30

Q. That's the broad chronology of how the police came to have in their
possession those diaries?
A. Yes.

35 Q. You understand that subsequently in 2001 or 2 your former husband found
some other diaries which he gave the police?
A. Yes.

Q. You understand that?
40 A. Yes.

Q. You gave evidence on Monday that you remember disposing of one diary?
A. Yes.

45 Q. That's still the case?
A. Yes.

Q. Only one?
A. Yes, that's the only memory I have of getting rid of one.
50

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Q. You know that you told the police that you had gotten rid of more than one, don't you?

A. It's in the transcript that I said that, yes.

5 Q. So where does the truth lie?

A. That I'm only remembering actually just getting rid of one, and that was the one on Mother's Day.

Q. Can you help us with why you told the police something different?

10 A. No, I don't know.

Q. I beg your pardon?

A. I don't know.

15 Q. I think it was put to you on Monday that your recollection would probably be better then than now and I think you didn't accept that, is that right?

A. Yes.

Q. It's a fairly obvious common sense issue, isn't it Ms Folbigg, that you tend to remember better closer to the time of the event than you do years later?

20

A. Okay, yes.

Q. Given that, it's more likely isn't it that what you told the police back in 1999 about events around that time is more likely to be accurate?

25

A. Okay, concede, yes.

Q. On Monday Mr Maxwell took you through the years of the diaries that were found, and have been before this Inquiry, and it was clear that there were some years missing?

30

A. Yes.

Q. Your evidence is that you've been writing in diaries for decades?

A. Correct.

35 Q. You'd expect there to be a diary, at least part of a diary, for most years, is that right?

A. Yes.

Q. So there were various diaries that have gone?

40

A. Yes.

Q. Can you help us with the diaries that you say you got rid of, from what years they were?

45

A. No, I can't help you with that at all. I, I'm not recalling. As I said, I remember giving the one, getting rid of the one, and that was the Mother's Day, one of the very last ones I wrote, but I'm not recalling so I don't - actually can't help you with what happened to the others.

Q. When you say it was the one you wrote, are you saying that a diary, the one diary you have said here that you got rid of, was a current diary, is that

50

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what you're saying?

A. It was one that I'd had at - yes, one I was writing in at the time, yes.

Q. So that makes it a May 1999 diary?

5 A. Yes.

Q. It could have extended back to 1998?

A. I don't remember. It could have, yes.

10 Q. Let's come to then, what happened to that diary, or the three or more diaries that you told the police about.

Q. Perhaps if we can have on the screen that part of your ERISP that begins at question 459. I take it you've had access to this document for some months as well, or one to two months, is that right?

15

A. It was in the same package, yes.

Q. Question 459 is on the left-hand page, and you've been taken to this before, but if you wish to read it again to yourself, please do so. Have you read that?

20

A. Yes.

Q. You've told the police that it was Mother's Day this year, and I think that was 9 May that year wasn't it? You accept that?

25

A. Yes.

Q. That you decided not to write in them anymore and you've been asked a lot of questions about whether you wrote in them subsequently, and I'm not proposing to revisit any of that evidence. Then you say, this is the second last sentence and line, "I just got rid of them all." Do you see that?

30

A. Yes.

Q. By "them all" I think you'd indicated earlier to the police there was about three of them, so let's stick with three for the moment, and you say "they were thrown away in a bin, probably dumped by now as far as I know" and that it was Andrew Street, and you say "It's this Mother's Day just gone". Is your evidence today that you threw away or got rid of those diaries on Mother's Day, 9 May 1999, is that how we're to read that?

35

A. Reading that, yes. But as I said, I'm still sitting here now only remembering just throwing one.

40

Q. But you understand--

A. Yes.

45 Q. --you told the police--

A. Yes.

Q. --it was more than one?

A. Yeah, I understand that I've told them, yeah.

50

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Q. You've said that the one that you got rid of was one that was in May 1999 and presumably went back before then. Are you able to help us with, assuming you got rid of more than one, what years they might have covered?

A. No, can't help with that.

5

Q. If we can just go to question 862. That's at the end of the page. You were asked there, "Did you destroy or throw the diaries away after Craig had told you that he had given the police a diary?" - just stopping there. Did you?

A. No. Other than the ones that have been referenced in this ERISP, no.

10

Q. What are you talking about when you're talking about the others that have been referenced in the ERISP?

A. Well, you know, reading the ERISP, just that you know we're now talking about that I may of just gotten rid of three, you're saying three, I'm saying I only remember one. But my evidence was also that I'd also changed my mind and then just decided to start writing in diaries again, and I'm saying no, there was no attempt of me getting rid of those.

15

Q. Coming back to this question, Craig told you that he had given the police one of your diaries.

20

A. Yes.

Q. Your information that you provided the police was that you had thrown away one or more diaries before Craig told you that he'd given a diary to the police, is that right?

25

A. Yes.

Q. It's more likely, isn't it, that you threw it away after you heard that Craig had given a diary to the police, isn't it?

30

A. No.

Q. Well--

A. See I'm not - at that time when Craig told me he'd given them a diary, I didn't like that he had, but I hadn't placed too much importance on the fact that he did, because I wasn't thinking there was anything in them that I had to be highly concerned about.

35

Q. Well they were private.

A. Yes, other than that. As I said, I didn't like the fact that he did because they're private, but once it's done what am I supposed to do about that? I couldn't do anything about that.

40

Q. You couldn't do anything about that diary, but you could do something about other diaries couldn't you?

45

A. That was never my intention. To me the diaries were not that important as in information wise, and they didn't concern me in any way, that okay he's handed this diary over, you know. There, there was no conscious thought from me to go, "Right, that's it, I've got to get rid of everything".

50

Q. But you did get rid of everything, didn't you?

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A. Well obviously I didn't 'cause there were other diaries that were handed in and found.

Q. So you didn't successfully get rid of everything?

5 A. I'm not going to agree to that. There was no intent of me to get rid of anything.

Q. The police had a listening device at your house, didn't they?

10 A. Yes.

Q. Perhaps if I can have up tab 18. You've been taken to this before. You see it's dated 24 July?

A. Yes.

15 Q. That is the day after your interview with police?

A. Yes.

Q. The interview with police finished five or six in the evening?

20 A. I have no memory, but yes.

Q. You went home after that?

A. Yes.

Q. This is at 7.53 the next morning, do you see that?

25 A. Yes.

Q. What appears on this is commentary by the police, you understand that?

A. Yes.

30 Q. So the police are saying you entered the bedroom and appeared to open a cupboard or drawer causing a loud noise, and you accept that they could have heard that on the device don't you?

A. Yes.

35 Q. Then you're recorded saying, "I should have fucking done that, what I was going to do, stuck it underneath that." Do you see that?

A. Yes.

Q. You've given evidence that you don't remember what that's about?

40 A. No.

Q. You were asked questions obviously about the diary in your ERISP interview.

A. Yes.

45 Q. This seems to be suggesting that by the police they thought that you were talking about the diary the police found during the search warrant. Do you see that?

A. Yeah, that's of the police I think, yeah.

50 Q. That belief is one that's not unreasonable, given where they found the diary

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at the search warrant on the night before?

MORRIS SC: I object. It's not for this witness to comment on a statement by the police to that effect, with respect.

5

FURNESS SC: My question, your Honour, was whether Ms Folbigg agreed that it wasn't an unreasonable belief that - and I was going to continue but didn't.

10 MORRIS SC: I press the objection. That part of the question of itself is not a proper question with respect.

JUDICIAL OFFICER: You said you were going on with something else?

15 FURNESS SC: Yes. Perhaps if I can indicate the question and your Honour can--

JUDICIAL OFFICER: Yes.

20 FURNESS SC: The question is that it's not an unreasonable belief that could be formed that that comment that's recorded there was about the diary the police found during the search warrant the night before.

MORRIS SC: I press the objection.

25

JUDICIAL OFFICER: I'll allow the objection. I don't think that this witness should be asked that.

FURNESS SC: Thank you.

30

Q. Now having thought about this matter in the last couple of days since you were asked questions about it, do you now have any recollection as to what it was about?

A. No not at all.

35

Q. Do you say that it could not be about the diary?

A. I'm saying I have, I can't comment either way because I'm not having a recollection of anything.

40

Q. So you don't remember either way?

A. No.

Q. Could've been about the diary, could've been about something else?

A. Could've been totally about something else.

45

Q. Can I just go to tab 16, this is a transcript of the same listening device but you see this is 23 July at 21:40?

A. Yes.

50

Q. So that's the night after the interview or the night of the interview?

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A. I don't know.

5 Q. Well if the interview with the police was on 23 July, this is the same day but the evening of the interview and it's after the search warrant was executed, that's right?

A. Yes.

10 Q. And the conversation that's recorded there you don't doubt I take it that that is a faithful recording of what was recorded on the listening device, on the basis that you didn't doubt the previous one that was shown to you?

15 MORRIS SC: I object to this your Honour, there's a High Court case, Butera, which demonstrates that the - it's the tape itself that's the evidence, not the transcript and you'll see from this document that there's a whole, what appears to be areas which either cannot be transcribed or are unknown and your Honour I take the objection, and it's relevant to that question your Honour.

20 JUDICIAL OFFICER: It might be so Mr Morris, depending on what the witness says, I mean the witness might or might not accept that the words were said.

MORRIS SC: Your Honour, this is an event which occurred 30 years ago.

25 JUDICIAL OFFICER: The witness has remembered lots of other events that occurred 30 years ago with what has said to be remarkable clarity. I allow the question.

FURNESS SC

30 Q. You accept, don't you Ms Folbigg, that if the police have recorded this and transcribed it, that this is what you and Craig said on that date at that time?

A. Basically yes.

35 Q. Now it's recorded as Craig saying, "I came home to get the diary and take it back to work and I couldn't find it", see that?

A. Yes.

40 Q. Then you saying "...", so clearly something preceded these words, "I couldn't find it and they found it and I've gone, I didn't have it so ...", now that's clearly in relation to a diary isn't it?

A. Yes.

Q. And it's in relation to the diary that was seized that night, is that right?

A. Yes.

45 Q. And I think that was the 97/98 diary wasn't it?

A. I'm unsure - yes.

Q. And from what you have said there, you were aware were you that that diary was in existence prior to the warrant?

50 A. No, no there's, as I - I'm looking at that there's quite a bit of my part of the

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conversation that seems to be missing, whether I was aware of a diary or not is not clear there.

Q. Well you tell his Honour what you say that extract means?

5 A. I'm reading this, your Honour, and it's Craig that came to get the diary and take it somewhere and I'm merely saying that I couldn't find it and that the police had found it, and then I'm - that's all I can say to it, as I'm reading it.

10 Q. So do you accept that the words that are recorded there indicate that you knew of the existence of the diary beforehand, that is before the police found it at the search warrant?

A. Yes because Craig had already told me that he'd handed a diary in, I am assuming that there may have been others around the house.

15 Q. So you understand that this isn't the diary that Craig told you about, because he'd given it to the police clearly?

A. Yes, yeah.

20 Q. So you're assuming that there were other diaries around the house that were able to be found, is that right?

A. Yes.

25 Q. And did you tell that to the police or did you tell the police that there weren't any more?

A. I don't recall.

Q. Sorry?

A. I don't recall sorry.

30 Q. Well we'll have a look at what you told police, if we can then have the ERISP back up. Now I think you had a conversation with the police at the house when they executed the warrant and the police have given evidence about that?

A. Yes.

35

Q. Are you familiar with that?

A. Not familiar, no.

40 Q. After this occasion, that is what's recorded on this listening device transcript, did you locate any other diaries?

A. I don't remember.

45 Q. You don't remember. Can I come to some evidence that you gave yesterday, now when answering a question put by his Honour, and this is at transcript 752 you were asked whether or not you believed there was some supernatural power, now this is 752 of the evidence that was given yesterday, if we can just have that on the screen, and you say, you were asked the question there at about line 28, "Now you're saying that you believe there was some supernatural power that took the other three children away from you, and
50 you were concerned that the same supernatural power would take Laura

away" and you answered "yes." Now is that a belief that you had when you wrote that entry in the diary?

5 A. Yes. I took your Honour questioning me about that as trying to understand what it is I'm trying to - the message I'm trying to get out and across, which was my belief of a higher power, be that God, Mother Nature, fate, destiny, karma, all of those things, metaphysical combined, and when your Honour said the word "supernatural", I believed it's along the basis of the thinking that I had at the time yes.

10 Q. Is that the view that you hold today, that some supernatural power took your first three children away?

A. Yes.

Q. You hold that view today?

15 A. Yes, I had no answers as to why my - I have survived my children and outlived my children, I was constantly trying to search for that answer.

Q. But you can understand that there is a difference between not having any answers and coming upon as an answer, a supernatural power?

20 A. As, as your Honour was trying to, I thought your Honour was trying to understand the meaning of what I was trying to get across, the word supernatural I'm certainly not saying some ghost or entity or whatever came down and took my children, I'm saying that it follows along as a basis of trying to put together all the mystical and spiritual beliefs I had at the time and I still have now.

25

Q. So you still hold the view that some supernatural power took all of your children, or just the first three?

A. No, all of them.

30

Q. So took Laura as well?

A. Yes.

35 Q. And you also gave evidence of your beliefs that the children who had died, communicated with Laura, who was then alive and warned her as to how she should behave, do you remember giving evidence to that effect yesterday?

A. Yes.

40 Q. And is it the case that today, you believe that that occurred?

A. Yes, still believe that yes.

Q. Do you believe that they warned their sister to be good or else you might "crack it" or some other expression that you used?

45 A. I believed and believe that - how do I explain this, being brought up on the faith and the Christian based belief that I had as I was growing up as a child, I've always believed in once you've died, your spirit rests or goes to another place, or is at peace. I've always believed that when it came to my children, it turned out to be a necessary belief for me, that they could speak to each other or that they were peaceful, they were happy. And when I was pregnant with
50 Laura, I believed that it was possible that the spirits of my children could have

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spoken to my child and they had discussions about things.

Q. So in relation to those two matters, the belief that you had then, as reflected in your diaries, is the same as the belief you have now, that's right?

5 A. Yes, it hasn't changed.

Q. Is there any other aspect of the diaries that you have a view now that is different from the view that you expressed back in the late 90s?

10 A. I don't think so, I'm not foreseeing, my core beliefs are my core beliefs.

Q. I'm not talking about your core beliefs, I'm talking about whether or not you have a view now that's different from what was expressed in your diaries back in the 1990s?

15 A. No.

Q. You don't?

A. No.

FURNESS SC: Is that a convenient time, your Honour?

20

JUDICIAL OFFICER: Yes, certainly. We'll adjourn for 20 minutes.

SHORT ADJOURNMENT

25 JUDICIAL OFFICER: Yes, Ms Furness.

FURNESS SC: Thank you.

30 Q. Ms Folbigg, I asked you questions earlier in relation to the diaries that were located by the police and others and diaries that were not found, and I think you indicated that you had kept diaries off and on for decades?

A. Yes.

Q. That's right?

35 A. Yes.

Q. Has there been any pattern, particularly over the 90s, the period of the 90s and late 80s, that you have followed in terms of retaining or getting rid of diaries?

40 A. No, no pattern at all.

Q. So on what basis have you made decisions over that period of time to either retain or get rid of a diary?

45 A. On the basis that once I'd finished with a book it became irrelevant and I moved on to another one.

Q. There must have been other reasons, however, because we had those entries in relation to Caleb that my learned friend took you to this morning.

50 A. Yes.

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Q. So there were reasons other than having finished a diary clearly?

A. Yes, yes, okay, yes.

Q. What other reasons?

5 A. If it was important to me to keep as in that particular journal with Caleb, it was one of the few things I had that was in relation to him, so yes, it was kept.

Q. The 96/97 diary, that was kept beyond its life?

10 A. The 96 and 97 one I have no recollection of what I've actually done with that, whether it's just misplaced or moved it about the house or did whatever I've done with it so -

Q. What about the 97/98 diary?

15 A. And the same with that one.

Q. I think you gave the police a 1999 diary, didn't you?

A. I'm not remembering giving it but yes, if they say I did then yes.

Q. Because you started one in 1999 didn't you?

20 A. Yes.

Q. I think a 1992 diary was found at some stage too, wasn't it?

A. Yes.

25 Q. So you kept that for a reason that you can now tell us?

A. Not that I recall a specific reason, no.

Q. After the trial, and as part of the sentencing process, you spoke with Dr Westmore?

30 A. Yes.

Q. Did you talk to Dr Westmore about the diaries?

A. Not in depth, no.

35 Q. At all?

A. Not that I'm remembering, no.

Q. You don't recall whether he took you through or asked you about any of the diary entries?

40 A. No.

Q. Dr Guiffrida was also a doctor you spoke with in the context of your sentence, do you remember that?

45 A. Yes.

Q. Did he go through any of the diaries with you?

50 A. No. As I understood it, his wishing to speak to me was through the prison, that's where he was and where I spoke to him, and it was explained to me that he was merely speaking to me so that he could do a report in regards of my sentencing.

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Q. Dr Diamond, who you met with more recently--

A. Yes.

5 Q. Did he take you through any of the diaries?

A. No, he didn't.

Q. Did you talk to him about what any of the diaries meant?

A. No.

10

Q. He didn't tell you what he thought about any of the diary entries?

A. No, he, he informed me that he wasn't actually interested in the diaries as such and therefore wouldn't be asking me questions about them.

15 Q. Coming back to Dr Westmore, he saw you I think on behalf of the Crown, is that right?

A. I believe so, yes.

Q. You don't recall him talking you through the diary entries?

20

A. No.

MAXWELL QC: Westmore was engaged by the defence I think.

FURNESS SC: Was he?

25

MAXWELL QC: Is that not right?

FURNESS SC: I don't know. I'm happy to accept that if that's the case.

30 Q. So yes, I apologise, I take that back. He was by the defence. Have you read his report recently?

A. Dr Westmore's?

Q. Yes.

35

A. No.

Q. If he said in his report that he talked to you about the diary, you'd accept that to be true I take it?

A. Yes.

40

FURNESS SC: I'll subsequently be tendering this, your Honour.

Q. But on page 2 of his report dated 16 June 2003 he records in his report, "I then indicated to her", that's you, "that the diary entries do suggest that at times she wasn't really coping with the children." Then you responded, "I've always admitted that at times I wasn't coping." And then he made a suggestion about the diary entry. So does that help you recall talking to him about the diary entries?

45

A. Not really, no.

50

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Q. Has there been any other health professional that you have spoken to about your diary entries since 2003?

A. No.

5 Q. Have you spoken to anyone else, other than your lawyers I mean?

A. No.

Q. No?

A. Other than dear closest friends, yes.

10

FURNESS SC: I have nothing further.

JUDICIAL OFFICER: I think that completes the evidence of the witness. Are there any other matters that need to be attended to in terms of tendering?

15

FURNESS SC: There are, your Honour, but not necessarily in the presence of the witness. It can be done in the presence of the witness, but I anticipate my friend has an application to make in relation to Dr Diamond's report, in your Honour's hands as to whether you--

20

JUDICIAL OFFICER: What do you say Mr Morris, do you need the witness to be here?

MORRIS SC: I don't think, well--

25

JUDICIAL OFFICER: Do you want the witness to be here?

MORRIS SC: Well the fact of the matter is your Honour, in the past she's been able to be here via telephone link through the prison, so I suppose really as a matter of formality she's entitled to be here, and I've got no reason to exclude her.

30

JUDICIAL OFFICER: Okay, well we will leave the witness here and proceed.

35

<THE WITNESS WITHDREW

MORRIS SC: Your Honour, you will be aware that a report was provided by Dr Michael Diamond to those instructing my learned friend and you'll recall your Honour that it was raised some weeks back, at which point I had not had a chance to read it, but in the circumstances I seek to - I would ask that this Inquiry accept the report of Michael Diamond dated 16 April 2019.

40

JUDICIAL OFFICER: What's your attitude about it?

FURNESS SC: Your Honour, Dr Diamond's report considers the reports of Dr Skinner, which was relevant to the sentencing, as well as Dr Westmore and Dr Guiffrida, and comes to views that are either similar to or in some respects, dissimilar to, and also considers the report of a Dr Betts, and your Honour might recall that either associated with or attached to Professor Cordner's report, which was associated with a petition, was a report of Dr Betts. That

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5 report wasn't tendered when all the other reports were tendered because of the scope and purpose at the time, your Honour will recall that it was not known then whether Ms Folbigg would give evidence and therefore the diaries were not part of the scope. Her report wasn't tendered and your Honour I don't propose to tender that report. The author didn't meet with Ms Folbigg and matters have gone considerably past that, particularly in relation to Dr Diamond.

10 In my submission I have no objection to Dr Diamond's report being admitted, save for his reference to Dr Betts, if that could be excluded from it, I'm not sure that it's entirely complimentary of the doctor and her report won't be in evidence.

15 JUDICIAL OFFICER: Yes well I understand. Mr Morris, I think some of the cross-examination has gone into areas that probably raise some issues that need to be addressed by psychiatric reports. But I do agree with Counsel assisting that if the report goes in, (a) it should not include anything to do with the Betts' report and secondly that the reports that were tendered on the sentencing, all reports should go in as well.

20 MORRIS SC: Yes your Honour, I think in terms of the tender of the other reports, that was part of the material which Dr Diamond assessed and we accept that and your Honour with respect to Betts your Honour will hear no argument to the contrary, on the basis of that.

25 JUDICIAL OFFICER: Yes thank you, well I think that--

MAXWELL QC: Your Honour.

30 JUDICIAL OFFICER: Yes Mr Maxwell.

35 MAXWELL QC: I have a right to be - we haven't seen the or been provided with the Dr Diamond report, so it's a bit hard for us to make any intelligent submission about it at all as to - I have certainly an interest in this. It may be that I wouldn't be raising any objection, if I've got a right to raise an objection about it once I've had a chance to look at it, but certainly I would've objected to the Betts report and that's not being pressed, so it's just that we haven't been provided with it, that's all.

40 JUDICIAL OFFICER: Yes. Ms Cunneen what do you--

45 CUNNEEN SC: Your Honour I am acutely aware that there is only a scope for examination about the diaries, but in so far as there may be something about the diaries in the psychiatric reports, I would be assisted by being aware of what is in those reports, but as I understand the evidence, Dr Diamond doesn't discuss them.

JUDICIAL OFFICER: No he doesn't discuss, he doesn't discuss the diary entries.

50

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CUNNEEN SC: In any event, your Honour, if it is possible for us to be served with the psychiatric report or any of them, I would be obliged to your Honour.

5 MAXWELL QC: Your Honour it may be that when we see it or I see it I'll be able to send a - without the Inquiry being, I can just send an email saying I have no objection or if I did, then it could be argued.

10 JUDICIAL OFFICER: I think what I'll do is I'll admit them all on the basis of reserving your right to object to it if you see a ground to. Having read all of the reports, quite frankly I can't see that there's any basis for an objection to them. So we'll do it on that basis.

15 EXHIBIT #BA REPORT OF DR MICHAEL DIAMOND DATED 16/04/19 TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #BB REPORT OF DR BRUCE WESTMORE DATED 16/06/03 TENDERED, ADMITTED WITHOUT OBJECTION

20 EXHIBIT #BC REPORT OF DR YVONNE SKINNER DATED 22/01/03 TENDERED, ADMITTED WITHOUT OBJECTION

EXHIBIT #BD REPORT OF DR MICHAEL GUIFFRIDA DATED 27/08/03 TENDERED, ADMITTED WITHOUT OBJECTION

25 FURNESS SC: There are a number of other matters to be tendered your Honour, if now is a convenient time, I'm not sure if my friend has any other applications to make.

30 JUDICIAL OFFICER: Before we pass by that. I'm just wondering, one of the changes that Dr Diamond introduces is that he comes to a diagnosis of complex post-traumatic stress disorder and post-traumatic stress disorder was ruled out in the reports that were tendered before Barr J on the question of sentence, and it may be thought necessary to, I think Dr Westmore is deceased, Dr Guiffrida I'm not sure as to whether they should - or he should be
35 provided with this updated report, it's an issue that might need to be looked at and what's going through my mind I have to say is that the section of the legislation dealing with Inquiries, talks about questions of guilt or sentence and I'm not quite clear in my mind at the moment, whether something would arise as to that, as a result of the Diamond report.

40 That's something everyone might think about once you've seen all the reports, and as I said it raises the question as to, because the Diamond report has been given to the Inquiry on the very last day for putting in any reports, so it raises the question about whether Dr Guiffrida for example should be given the
45 chance of saying what he thinks about it or whether somebody else should be asked to look at it.

50 On the other hand, because I hadn't looked at any of the sentencing material before the Diamond report came up, it seems to me that one view of it is that if you got to this point of looking at the sentence, all the facts that Dr Diamond

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relied upon to come to his conclusion, were facts that were known at the time of sentencing, so one argument would be that even though he's come up with a tag to be put on it, it would have no effect, but it might be argued that it does. So I mean they're the sort of parameters of the thinking about it all.

5

FURNESS SC: It's the case, your Honour, that Dr Diamond had access to far more recent material, to the extent it's material is one issue, but he certainly had access to Ms Folbigg's prescribing history, well past the trial and various other more recent documents. Again, whether it matters is another--

10

JUDICIAL OFFICER: Yes, well I don't know that it's - it just raises other issues for consideration and people might like to think about that as to where it--

MAXWELL QC: Certainly would your Honour.

15

JUDICIAL OFFICER: --goes. But in the meantime we've got the - the reports have been tendered, subject only to any objections that might be raised. Yes.

20

FURNESS SC: Thank you. In addition, I tender an article that was referred to by Professor Hilton when he gave evidence, concerning the detection of pyrogenic toxins of Staphylococcus aureus in Sudden Infant Death Syndrome. So I tender that article, it's a 1999 article.

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EXHIBIT #BE ARTICLE REFERRED TO BY PROFESSOR HILTON
TENDERED, ADMITTED WITHOUT OBJECTION

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EXHIBIT #BF BUNDLE OF LITERATURE REFERRED TO IN HEARING OF
EVIDENCE RELEVANT TO GENETICS, CARDIOLOGY AND NEUROLOGY
TENDERED, ADMITTED WITHOUT OBJECTION

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FURNESS SC: The statement of Craig Folbigg, dated 19 April, and the annexed death certificate. Your Honour will recall that I referred to that in evidence but we didn't yet have the statement.

EXHIBIT #BG STATEMENT OF CRAIG FOLBIGG DATED 19 APRIL AND
ANNEXED DEATH CERTIFICATE TENDERED, ADMITTED WITHOUT
OBJECTION

40

FURNESS SC: Your Honour will also recall that Ms Folbigg was undergoing some cardiac testing during the course of a week of hearing, and I tender the raw test results of the further cardiac testing, dated 18 September.

45

EXHIBIT #BH TEST RESULTS OF ACCUSED'S CARDIAC TESTING DATED
18 SEPTEMBER TENDERED, ADMITTED WITHOUT OBJECTION

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FURNESS SC: Professor Skinner was provided with those results and provided a supplementary expert report dated 24 April 2019, which I tender.

EXHIBIT #BJ REPORT OF PROFESSOR SKINNER DATED 24/04/19
TENDERED, ADMITTED WITHOUT OBJECTION

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FURNESS SC: Professor Skinner provided a subsequent letter clarifying one particular potential diagnosis, that's CPVT, which there was a deal of evidence about.

5

EXHIBIT #BK LETTER FROM PROFESSOR SKINNER DATED 30/04/19 TENDERED, ADMITTED WITHOUT OBJECTION

10 FURNESS SC: I tender the report of Dr Raju, who was the electrophysiologist who carried out the tests on 18 April, and his report is dated 18 April.

EXHIBIT #BL REPORT OF DR RAJU DATED 18/04/19 TENDERED, ADMITTED WITHOUT OBJECTION

15 FURNESS SC: Now, your Honour may recall that rather late in the day those assisting your Honour received a large bundle of material that had been held by Legal Aid but, after many weeks of tracking it down, it was ultimately held by Ms Folbigg's solicitors, and the summons was ultimately issued and that large amount of material was located and provided to assist your Honour's
20 Inquiry. Among that material was a letter from Dr Drucker, and your Honour will recall that Dr Drucker's name came up in relation to genetics and other matters, and this is a report of his dated 18 February 2003 to Legal Aid, so clearly obtained on behalf of the defence. I seek to tender that report. I don't
25 know that there's any issue with it?

MORRIS SC: There's no issue about that, your Honour.

FURNESS SC: So, it's dated 18 February 2003.

30 EXHIBIT #BM REPORT OF DR DRUCKER DATED 18/02/03 TENDERED, ADMITTED WITHOUT OBJECTION

35 FURNESS SC: Finally, there were the two diary entries that my friend took the witness to in relation to Caleb this morning, dated 24 May and 19 July 1989. I tender those.

EXHIBIT #BN DIARY ENTRIES DATED 24/05/89 AND 19/07/89 TENDERED, ADMITTED WITHOUT OBJECTION

40 FURNESS SC: That completes the tender, your Honour. There is the direction that your Honour made on a previous occasion concerning submissions, and that was that Counsel assisting's submissions be served on Friday, 17 May 2019 and submissions from others with leave by Friday,
45 31 May 2019. And I'm not suggesting that that be brought forward by two and half days, your Honour, unless of course my friend wishes their submissions to be brought forward by two and a half days, to which I would not object.

JUDICIAL OFFICER: Two and a half weeks would be nicer.

50 MORRIS SC: I make no submission, your Honour. I'd appreciate as much

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time as we've got. There's quite a deal of material.

JUDICIAL OFFICER: Yes, okay. We'll leave it at that. So far as Ms--

5 MORRIS SC: I'm sorry, your Honour, there's another issue. That, I take it that the tender is now closed of material?

JUDICIAL OFFICER: Yes.

10 MORRIS SC: If there's anything that we wish to approach my learned friend - if there's anything from the documents that have been served upon us by the Crown Solicitor's office that we feel ought to at least be considered whether they should be tendered or not, given the state of the evidence, could we at least have liberty to do so by, say, Wednesday? That's not to suggest that it
15 necessarily will be, but just that we may wish to advance some documents from the material that's been considered to at least be considered whether they ought to be tendered or not.

20 JUDICIAL OFFICER: Are you talking about documents and documentary exhibits?

MORRIS SC: They were documents that - they may be - I suspect that if there's anything it will be coming from the four volumes of material from the CSO files that were served upon us back in November or December, if
25 anything.

JUDICIAL OFFICER: That's a long time to have had them and not be in a position to know.

30 MORRIS SC: Well, your Honour, the fact is that we were not aware what was going in and what wasn't up until now, and I just wish to reserve that position, your Honour.

35 JUDICIAL OFFICER: Okay. Well, I don't want you to be disadvantaged in any way.

MORRIS SC: We can do it by Monday, if it's--

40 JUDICIAL OFFICER: Yes, well, look, if we could leave it at that, by Monday--

MORRIS SC: Yes.

JUDICIAL OFFICER: --and we can review it at that stage.

45 MORRIS SC: Yes.

JUDICIAL OFFICER: What must not happen is where - to have another report from another expert coming in from left field that--

50 MORRIS SC: No, your Honour.

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JUDICIAL OFFICER: Yes.

MORRIS SC: This is material that's been provided to us--

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JUDICIAL OFFICER: Yes.

MORRIS SC: --through the ambit of this Inquiry, your Honour.

10

JUDICIAL OFFICER: Yes, and I think we can say, can't we, that we've now examined every biological, every physical, every aspect of things that could be--

MORRIS SC: Such that we've been able to, your Honour, yes.

15

JUDICIAL OFFICER: Yes. All right, thank you. Then, we'll adjourn and we'll hear from you, if there is anything, on Monday.

MORRIS SC: Thank you, your Honour.

20

JUDICIAL OFFICER: Thank you. I should thank all Counsel for their assistance throughout the Inquiry.

SHORT ADJOURNMENT

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JUDICIAL OFFICER: I'm sorry about this but it does occur to me that, in fairness to Mr Morris, he should have the submissions by the DPP and Ms Cunneen before the deadline for him to put in his submissions and the area that Ms Cunneen and Mr Maxwell were involved in is limited. Would it be unreasonable, from your point of view, if you were given two weeks to put in submissions?

30

MAXWELL QC: From now, you mean, your Honour?

35

JUDICIAL OFFICER: Yes.

MAXWELL QC: So, I'd like the opportunity to see Counsel assisting's submissions before I - because I want to take those into account in terms of the submissions I make.

40

FURNESS SC: I agree, your Honour.

JUDICIAL OFFICER: So, when are--

45

MAXWELL QC: But I'm happy to try and expedite my position.

JUDICIAL OFFICER: What's your date for--

50

FURNESS SC: 17 May, your Honour, and not earlier than 17 May.

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JUDICIAL OFFICER: Not earlier than the 17th. So, 24 May - if you could have your submissions in by 24 May, it would at least give Mr Morris the opportunity to see what your submissions are before he is due to have his submissions in.

5 MAXWELL QC: Yes, that'll be done.

JUDICIAL OFFICER: Yes, thank you.

FURNESS SC: Yes, thank you.

10

JUDICIAL OFFICER: And that seems to me to be a fairer way of organising it.

MORRIS SC: Thank you, your Honour. I'm indebted to you.

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ADJOURNED