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## **TRANSCRIPT OF PROCEEDINGS**

**SUPREME COURT OF THE  
AUSTRALIAN CAPITAL TERRITORY**

**THE HONOURABLE JUSTICE GRAY**

**SCC No 61 of 2008**

**THE QUEEN**

**and**

**JOHN WILLIAM CHUTE**

**CANBERRA**

**10.08 AM, MONDAY, 23 JUNE 2008  
(continued from 5/6/08)**

MR DOIG: If the court pleases I appear to prosecute that matter.

HIS HONOUR: Yes, Mr Doig.

5 MR WALSH: Your Honour, I appear for Mr Chute.

HIS HONOUR: Mr Walsh.

10 MR DOIG: Your Honour, this matter was adjourned to allow for the preparation of a pre-sentence report by ACT Corrective Services.

HIS HONOUR: Yes.

15 MR DOIG: Your Honour, I believe that a signed copy of a report comprising two pages and signed by Les Brown and countersigned by Nicki Gioneros should be on the court file.

20 HIS HONOUR: Yes, I've received a copy of it. There's also another - I think there are two copies, three actually.

MR DOIG: Well your Honour both Mr Walsh and I have copies.

HIS HONOUR: You've got a copy of that report?

25 MR WALSH: Yes, your Honour.

MR DOIG: I tender that report if your Honour pleases.

30 MR WALSH: No objection.

HIS HONOUR: Yes, I'll mark that as Exhibit G.

35 **#EXHIBIT G - TWO PAGE PRE-SENTENCE REPORT SIGNED BY LES BROWN**

40 MR DOIG: Your Honour I don't believe Mr Walsh or I have any questions of the author but Mr Brown is in court should your Honour wish to ask him anything yourself. I do note that the report indicates that because it was conducted by way of telephone interview a document has not been signed and that, of course, is one of the matters your Honour has to have consideration for regarding under the legislation.

45 If, however, your Honour is minded to proceed by way of periodic

detention the signing of such a document can be catered for, I'm sure before your Honour passes final judgment. Does your Honour wish to hear anything from either of us regarding this report and the facts of the legislation?

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HIS HONOUR: No, I don't think so. Mr Walsh?

MR WALSH: What I did just in anticipation if that was an issue I did have an undertaking addressed to the Department of Corrective Services signed and witnessed by myself. I wouldn't understand that it would be in the prescribed form.

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I spoke to Mr - the gentleman from Probation and Parole, Mr Brown and also I've set out the particulars of residence if that was an option your Honour. He can reside here in the ACT and I've give the particulars of the particular person who is a former member of the order to Mr Brown as well your Honour.

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HIS HONOUR: Yes, well I don't think that - well I think that being in place that is sufficient, I think - - -

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MR WALSH: May it please the court.

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HIS HONOUR: - - - for my particular purposes.

MR DOIG: Your Honour, I just want to take the opportunity to say a couple of things regarding periodic detention. If your Honour's minded to consider periodic detention under section 11 of the Crime Sentencing Act 2005, your Honour has to determine to sentence Mr Chute to a term of imprisonment.

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That's the step, you've got to convict him and then sentence him to a term of imprisonment and order that that term of imprisonment be served by way of periodic detention. However, under the legislation your Honour has the ability by reason of the legislation to impose combination sentences under section 29 of the same Act and that would seem to allow for full-time custody and periodic detention.

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Which, of course, was not envisaged in previous iterations of sentencing in the Territory. Your Honour can see that from the examples containing following sections 29(1)(j) of the legislation, example 2 indicates that a full-time period of custody can be followed by periodic detention and it'd be my submission - and I don't wish to reiterate what I said on the last occasions - but that the purposes of sentencing as laid out and as expected in respect of a matter such as this, would not be satisfied in my submission

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by completely - - -

HIS HONOUR: Yes, Mr Doig you've made that submission.

5 MR DOIG: That's why I'm not reiterating but your Honour has the capability under the legislation ...(inaudible)...

HIS HONOUR: Yes.

10 MR DOIG: If your Honour pleases.

HIS HONOUR: John William Chute, you've pleaded guilty to 18 counts of committing an act of indecency on male persons between the ages of 10 years and 16 years and one count of committing an act of indecency on a  
15 male person who, at the time of the offence, was 16 years of age.

The offences occurred over a period commencing in late 1985 and concluding in 1989. At that time you were a teacher at the Marist College Canberra and the offences involved six students at that college. Each was  
20 a student of yours. At the time of your offending, section 92K(2) of the Crimes Act 1900 carried a maximum penalty of 10 years imprisonment in respect of the 18 counts for which you stand charged.

And section 92J(1) of that Act a maximum of 5 years imprisonment  
25 relative to the other count. The first five counts involved a student who was born in 1972 and was in Year 7. You were his religion teacher. That student was aged 13 when, in early 1985 you committed the first of the offences with which you're charged.

30 That offence involved the fondling of the student's penis for 5-10 minutes and it happened in front of the other students who were in the class. The student said that this sort of thing happened almost every time he was in your class. That charge and the charges in counts 2, 3 and 4 are relied upon by the prosecution as a representative of conduct where you either  
35 fondled the student's penis or you got the student to touch yours.

The charges in counts 2, 3 and 4 took place in your office where you had a television set and a video collection that you used to encourage students to come there. All these charges are relied upon the prosecution as  
40 representative charges of conduct that the student said occurred two or three or four times in a single day over the period from early 1986 to the middle of 1987.

45 A further incident occurred in late 1988 after the student had turned 16 and when you had returned from the United States after studying at a

university there. You brought back a BMX bicycle frame for the student and again, on that occasion, in your room in the part of the college where the brothers lived, you fondled the student's penis.

5 As far as the representative charges are concerned, I do not take the  
conduct that is not the subject of the charges as aggravating the individual  
counts in respect of which I am to sentence you. That other conduct does,  
however, provide context and surrounding circumstances to the matters  
10 charged. And it bears upon the question of whether or not I should extend  
leniency so as to reduce what would otherwise be a proper sentence.

I make it clear that the other conduct does not increase what would  
otherwise be a proper sentence. It does mean, however, that I certainly  
cannot regard any of the offending as an isolated or uncharacteristic  
15 incident. Further, I regard the charges, the subject of the indictment, as  
taking place in the wider context of the other conduct that is not the  
subject of the charges before me with its adverse effect upon each of the  
victims.

20 Notwithstanding that that effect might not have been produced to the same  
extent by the offences had they been counted alone. The next group of  
offences on the indictment relate to another student who was also in Year  
7 in 1985 and the first charge relates also to an offence that occurred in the  
first half of 1985 involving the fondling of the student's penis outside of  
25 his clothing and an attempt by you to put your hand inside his clothing.

This offence took place in your office. There was an allegation of  
touching two or three times a week throughout the rest of that student's  
Year 7 and the beginning of Year 8. There is an occasion charge where  
30 the student's hand was taken and he was made to rub your penis to  
erection. You were this student's Religion teacher but there is no  
allegation that these incidents took place in the classroom.

35 Again, it is said that these are representative charges and that there has  
been inappropriate touching of this student over the whole period covered  
by the charges. The charges in respect of counts 8-11 concern a third  
student who was 12 years of age in 1985 in Year 7. This student's parents  
had divorced and he was given attention by you and described you as a  
form of counsellor or even a parent figure.

40 In late 1985 whilst doing Saturday gardening work at the brothers'  
residence for which you paid him you touched him firstly on the outside  
of his trousers and then you placed your hands inside his underpants and  
fondled his penis. Counts 9 and 10 relate to two separate occasions in  
45 1986 where this student was touched by you and it is alleged that this

occurred over this period one to three times a week if not more.

5 Count 11 concerns an occasion where you got the student to touch your penis. These offences took place in a number of places including the pie wagon which you ran during the football season, in your office and in the store room. A fourth student who was born in 1973 was in Year 7 at Marist College in 1986. You were his Co-ordinator.

10 He attended one of the movie nights that you conducted and during the course of that both outside and inside the theatrette you touched his genitals. It appears that this was the only incident that was ever reported to any parents at the time but it was not until last year that the student became aware that his parents had reported the incident to the headmaster at the time.

15 The Victim Impact Statement given by this student shows the profound effect your offending had on him and the anxiety it has caused. The fifth student involved in these charges was in Year 8 in 1986. You were his Religion teacher. The offence charged in the 14th count occurred in your office when you got the student to sit on your lap and commenced to fondle him as well as asking him to fondle you.

20 You had an erection at the time. You told the student, "Tell anyone and you will get expelled". A similar incident occurred in the middle of the year in your office. Later in the year you showed the student a pornographic video, made him stroke your penis and you too stroked his. That was also an occasion when you told the student, he would be expelled if he told anyone about what had occurred.

25 A further incident occurred shortly after the middle of 1987 involving him touching your penis while you stroked his. These incidents demonstrate, as do the other incidents, not only the complete breach of trust involved but the abuse of your position as a teacher and a religious mentor.

30 Further, the Victim Impact Statement tendered on behalf of this student emphatically illustrates the breach of trust, the confusion that you caused to the student about his sexuality and the emotional disturbance that you caused to him as well as the effect that your actions have had on the whole of his life to date.

35 The sixth student involved in respect of these charges was born in 1974 and was in Year 9 at Marist College in 1989. The offence in count 17 of the indictment occurred after you had returned from your study trip to the United States in the first half of 1989. You invited him to come to your office to discuss his personal difficulties and on an occasion whilst he was

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in your office rubbed your hands against the student's penis and moved his hands to rub yours. On another occasion, again in your office, you rubbed his penis.

5 And on the last occasion you touched him outside his clothing then through his underwear and underneath his underwear. These too are representative charges and there are another two or three times when the student says you touched and stimulated him. All of these occasions occurred in your office.

10 The effect of your actions is very clear from the Victim Impact Statement concerning this student. The statement instances the emotional trauma, the questioning of sexuality and the profound effect that these incidents have had on the life of a person who at the time was at a most impressionable age.

15 You are now 76 years of age. You are the youngest of 10 children with a twin sister. Your father died when you were nine. At the age of 11 and a half you went to the Marist Juniorate at Mittagong. This was an exceptionally young age to be taken from your family. I understand that this factor, the lack of family guidance and the alienating circumstances to an adolescent living in a closed community that does not address an individual sexuality can, no doubt lead to the sort of psychosexual disorder that gave rise to these offences.

25 That seems to have been compounded by the sexual abuse that you first experienced when you entered the Marist Brothers Juniorate and which continued during your time there. These aspects to your background, I take, is affecting the choice that you had as to whether to engage in the conduct that is the subject of the charges before me.

30 To an extent they bear upon your moral culpability, your capacity for rehabilitation and the extent to which you are a proper subject for specific deterrence. Nonetheless, they are matters in the background of which can only be characterised as inexcusable and an extended period of sexual misbehaviour.

35 Dr Kinaris(?) who gave evidence before me in his report on 9 April 2008 commented, "I note", talking of you, "his history of having been sexually molested in youth and growing up in a setting which provided virtually no opportunity to acquire a deeper understanding or integration of your sexually. I note also a recurring theme in his history.

40 Specifically that he had asked for help and received none until very late in the piece. These factors sadly contributed substantially to his history of

offending behaviour”. However, there is the countervailing aspect that a person abused in this particular way should appreciate the effect on that person and be reluctant to transfer that experience to others.

5 It is certainly very difficult to quantify the extent to which the possible cause of offending behaviour based, as it may be, in earlier sexual abuse of an offender should be taken into account in assessing the criminality involved. In the present case I do not ignore the choice involved on each of the occasions that you offended.

10 Although Dr Kinaris referred to what you were doing as compulsive sexual behaviour unlike many other compulsions or addictions your conduct involved vulnerable victims and inevitable harm to persons other than the person engaging in the behaviour. It is a factor that a  
15 considerable period of time has elapsed since the commission of the offences and the present.

In the early 1990’s as a consequence of a complaint in relation to your behaviour, you were stood down from teaching. You’ve not had contact  
20 with any student since 1991. In 2002 you participated in the In Compass Program, a specific program then set up for assessment and treatment of religious members suffering from psychosexual disorders.

25 As a consequence of that program, you have engaged with a consultant psychologist, Rebecca Campbell and she still sees you once a month. Her conclusion, in speaking of you is;

30 “He has willingly undertaken extensive therapeutic work over the last five years and has attempted to seek assistance prior to this. He has identified risk factors related to his offending and has in place strategies to minimise these.

35 Brother Chute currently resides in a small Marist community in **REDACTE** and is vigilant in avoiding any contact with possible victims. Brother Chute has voluntarily undertaken a very comprehensive approach to acknowledging and addressing his offending behaviour.

40 With the attitude he expresses towards the offences his current lifestyle and actuarial measures of risk in mind it seems that there is little risk of Brother Chute reoffending”.

45 Similarly, Dr Kinaris in his evidence before me said in respect of the risk of reoffending;

5 “Frankly I think given the high levels of accountability put around him, the fact that he has been through a comprehensive program and the fact that he is getting aged and frail, the fact that, I mean I don’t think that he’s - when I say, “frail” I don’t want to exaggerate that - but and given the fact that he is supervised and does not have access to young people or specifically people under the age of 18, I think - look, nobody can ever say a zero risk for anybody, but frankly I would say that he is at the very low range of risk of reoffending”.

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Despite this, I must have some regard to the view expressed by Jenny Howell, a consulting psychologist to the effect that whilst you have accepted the unacceptability of your behaviour, you have demonstrated to her little insight into its selfishness by your conduct in seeking to feel loved by abusing the rights of children in your care.

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She concluded her report by saying;

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“There is, in my opinion, a need for Mr Chute to further develop and better articulate specific strategies in relation to his offending. This would seem to me as crucial for Mr Chute to ensure that the risk he poses in the community is reduced”.

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Whilst I appreciate that Mr Chute suffers from impaired cognitive function and that this has an effect on his ability to recall parts and entire events associated with offending, it is my opinion that this partial inability should not prevent Mr Chute from undertaking further treatment in relation to the development of strategies that ensure a reduction of risk.

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In my opinion, it should be noted that simply because Mr Chute says he cannot remember some of the details surrounding his offending behaviour does not point to or indicate a measure of rehabilitation. I consider that this report qualifies, to an extent, the other reports that you rely upon.

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You are to be given credit for the efforts that you have made and are continuing to make. But in any event out of all these reports, comes a clear and continuing need to maintain ongoing strategies with respect to any time that you are to be in the community at large. I accept that your remorse is genuine and the sense of shame that you now feel for your behaviour particularly in respect of yourself, your family and your order.

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You are entitled to have a lesser penalty imposed as a result of your plea of guilty and I propose in determining the appropriate sentence to allow a discount of 25% on what otherwise would’ve been imposed to give effect to the fact of your guilty pleas and expressions of remorse. A number of

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testimonials in your character have been placed before me.

5 It is sad to see how the regard in which many held you in respect of your organisational skills, rapport with students, positive attitude and apparent commitment to your vocation has been irremediably tarnished by this offending. Such testimonials are not irrelevant to my approach but must be weighed against the gross breach of trust that you've perpetrated.

10 That trust which was reposed in you as a teacher of young children and as their custodian in place of their parents as well as that trust reposed in you as a representative of your religious order. Your age and your health are factors that I must have regard to. As I've noted earlier, you're 76 years of age.

15 You suffer from osteoarthritis, hypolipodemia, non-insulin dependent diabetes, ischemic heart disease and nervous leg syndrome. Any sentence of imprisonment that I might impose will be very hard upon you. Your medical condition, the protective custody that I expect that you will need to undergo if imprisoned and your age will all operate to make  
20 significantly longer in your circumstances the loss of liberty to that which might ordinarily have been the case.

I also bear in mind that any sentence that I impose represents a substantial proportion of the life left to you. It was put on your behalf that  
25 individually as a matter of objective criminality the physical activity comprising the offences can be characterised as being other than the worst case. That may be so as far as the physical acts are concerned but the circumstances of the breach of trust reposed in you, the vulnerability of the victims, the degradation that some suffered by the presence of others  
30 when offences were committed as well as the way victims were taken advantage of, are all factors which mean that the only appropriate penalty as far as each of the offences are concerned is one of imprisonment.

35 This is a case where, in circumstances of offending that occurred a considerable time ago and where issues involving rehabilitation have been addressed the consideration of deterrence and actual punishment for the offences might be said to have a lesser role to play in a just and appropriate sentence that I should impose.

40 However, issues of accountability, denunciation of your conduct and recognition of the harm done to the victims mean that in my view part of that sentence must be served by way of full-time custody. The only amelioration that I can grant you is to have part, but not the whole of that time of actual custody, served in the community by way of periodic  
45 detention.

Brother Chute I propose to now sentence you. I want you to remain seated please I don't think that anything is served by having you stand.

5 MR WALSH: Yes, your Honour.

HIS HONOUR: I convict you in relation to each of the offences on the counts on the indictment. In respect of the charge comprised in count one of the indictment, I sentence to 8 months' imprisonment. In respect of the  
10 charge comprised in charge 2 of the indictment I sentence you to 8 months' imprisonment.

Each of those sentences are to be concurrent with each other. In respect of count 3 I sentence you to 8 months' imprisonment and in respect of count  
15 4 I sentence you to 8 months' imprisonment. Those counts are to be concurrent with each other but partly concurrent and consecutive upon the sentences imposed on counts 1 and 2 after 6 months has been served on counts 1 and 2.

20 On count 5, I impose 4 months' imprisonment to be served consecutively upon the sentence imposed upon 8 months' imprisonment to be served concurrently but consecutive upon the sentence imposed on count 5.

In respect of count 8 and in respect of count 9, I impose 8 months' imprisonment to be served concurrently with each other but consecutive upon counts 6 and 7. In respect of count 10 and count 11 I sentence you to 8 months' imprisonment on each count to be concurrent with each other and to be concurrent and consecutive with counts 8 and 9 after two months of imprisonment in respect of counts 8 and 9 have been served.  
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30 In respect of count 12, I sentence you to 6 months' imprisonment to be consecutive to the sentences on counts 10 and 11. On count 13 and count 14, I sentence you to 12 months' imprisonment to be concurrent with each other but consecutive upon count 12. In respect of counts 15 and 16, I  
35 also sentence you to 12 months' imprisonment each to be concurrent with each other but to be partly concurrent and consecutive upon counts 13 and 14 after 6 months has been served on those counts.

40 On count 17 and 18, I impose 8 months' imprisonment to be concurrent with each other but consecutive on counts 15 and 16. That is a total sentence of 6 years imprisonment. I order that you be imprisoned by way of full-time detention for a period of 2 years. I order that a further period of 12 months be served by way of periodic detention. I state that Friday be the day of the week for the first detention period to start in 2010.  
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I make a suspended sentence order for the balance of the 3 years of the 6 years' imprisonment on condition that you be under the supervision of the Chief Executive or the Chief Executive's nominee for the duration of that order.

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MR WALSH: May it please the court.

HIS HONOUR: Yes.

**ADJOURNED**

**[10.39 pm]**

**EXHIBIT LIST**

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