
**TRANSCRIPT OF INTERVIEW BETWEEN PATRICK MONAHAN (PJM) FROM
MELBOURNE and BR TERRY HEINRICH (Br T) IN CAMBODIA. ALSO IN
ATTENDANCE WERE HOWARD HARRISON (HH) OF CARROLL & O'DEA, SYDNEY
AND HELEN O'BRIEN (HOB) (IN OUR OFFICE)**

ON TUESDAY 31 MARCH 2009 at 10 AM

CONCERNING LITIGATION REGARDING MARIST BROTHERS, CANBERRA

INTRODUCTORY NOTE

We had started this interview 10 minutes ago, but then lost our line to Cambodia. We had only just commenced the interview and I have decided to go back to the beginning and start again.

PJM Hello Terry, it's Patrick Monahan and Helen O'Brien again. I hope you can stay with us a bit longer this time. Br Terry, I just record again that I will be recording this interview with your permission and that of Howard.

Br T That's fine.

PJM That's good, but if you wouldn't mind speaking up because you are coming through very faintly on the line. Now what I was doing before we were interrupted, I might just start it all again. When I interviewed you last, Br Terry, which was in July 2008, you gave me some of the basic details concerning your involvement in this matter, which were that you started at Marist Canberra in 1983, you were there for six years from 1983 to 1988 as Headmaster of the school, you took over from Br Joe McMahon, you described the handover process to me as being not particularly detailed and certainly that you were not told anything by Br McMahon at the time of that handover about problems with either Br Kostka or **REDACT**, and you were at the school from 1983 to 1988 throughout that time as Headmaster. You also told me that the Provincial at the relevant time if you remember was Br Alman Dwyer and we have since checked our dates, so just so that you have this for your reference as we are speaking Br Terry, he was the Provincial from May 1983 to June 1989, so that almost completely overlaps the period that you were at the school with the exception of the first few months in 1983. And of course you also told me that Br Alman had died in 2007 and you said at that time you were 62, so I assume you are either 62 or 63 now, and that your state of health was good. Is that all still correct?

Br T Yes, all of that is correct.

PJM And also just to remind you of one other thing, you told me that you were on the Provincial Council at various times over this relevant period, first elected to the Council probably about 1983 for a three year term and then that you were re-elected in 1986 and you were re-elected again at some later point in time. You also told me that Br Chute was teaching at the school in Canberra when you arrived there in 1983 and that your first impression of him at the school was effectively a very positive one, although you were a bit concerned about his work with the film night. You said there that your worry was more about supervision, because the film night was left to Br Kostka and members of the film club who were his team to conduct the whole process. So those were some introductory comments on which I will just refresh your memory, Br Terry. Now the real issue that we want to talk to you about relates to the visit that you had from a family in 1986. At the time we interviewed you last year, we didn't know the name of the family or the name of the student, and we didn't know precisely what they would say. We now have further information in that regard which I would like to just read to you to see if it triggers your memory any further beyond what you are able to remember when I interviewed you last year Would that be in order if I read a few things to you?

Br T Yes, that is fine, thank you.

PJM Thank you Br Terry. Howard, the first thing I am reading from is the letter from Porters Lawyers to us dated 20 January 2009 giving particulars of the nervous shock claims of Mr & Mrs **RED**. Now Terry the names of these parents are **REDACTE** and **REDACTED RED**, so we are talking about **REDA** and **REDACTE** and what they have said is this – *“In 1986, in the first term of the school year on a Monday morning about 2.00 pm, (I know that doesn't make sense, but that is what it says) Mrs **RED** and her husband **RED** met with the school's Headmaster Br Terrence Heinrich and advised him that Br Kostka had sexually assaulted their son **ACK**. Br Terrence told them if they left it with him, it would never happen again.”* So that is the first account of what they have said. I am now going to read Howard from the report of Dr Wendy Roberts, paragraph 3.4 and 3.5 at page 11 and paragraph 3.10 and 3.12 on page 12. So Br Terry, this is now our psychologist interviewing the son, **ACK**, about what happened to him and what he knows about his parents' involvement in it. What he told Dr Wendy Roberts was that it happened on a Friday and his parents went to see you on the Monday. They were told they couldn't see the Principal and to come again in the afternoon to discuss the incident. That was a slap in the face to them because it was a serious incident. Our psychologist went on in paragraph 3.5 to say this – *“I asked what Br Kostka did to him. Mr **RED** referred to touching and hugging and general touching of my shoulder and hugging in school hours. And jumping on a bit – “Then in movies he put his hand on you a bit longer. One day I was sitting down*

*and I don't know if it was before or half way through the movies he put his arm around me and was fondling me on the outside of my pants. I pulled away. We went inside to the movies and started watching the movie and he did it again. I moved away and he followed me and did it again. I moved way, way away. There were three incidents of touching outside my clothes (that night during the movies twice and once outside before). I went home and told my parents. After that he gave me the cold shoulder and there was no closeness etc.” He goes on to say that his parents didn't tell him what they were then going to do. Just jumping ahead Howard to paragraphs 3.10 and 3.12 on page 12 of that report, Br Terry, the report goes on to say this – “Mr **RED** told me that the first incident was outside on the stairs just as you go into the entrance to the movies. It was just outside in the light and in the open pretty much. Mr **RED** told me that he had no other incidents involving Kostka”. And this now relates to his parents, Br Terry – “His parents later told him what the school did, in that they told his parents to return in the afternoon. The Principal reportedly talked to Mr **RED**'s father and completely ignored his mother, who was the most shocked and the most verbal. He told me that the Principal told his parents to go to the Police if they wanted to as it was a serious charge, or leave it with the school and it will be fixed up. He told me that the Principal shook his father's hand and that was it. My parents trusted them. My mother still feels not right. She wasn't acknowledged or spoken to. She came out feeling she'd done something wrong”. So that is the new material Br Terry, that I wanted to read to you by way of introductory prompt, and to see whether that stimulates your recollection any further about that meeting. Does it?*

Br T Thank you for reading all of that. I just have a couple of reactions. The first is that in regard to the incidents on the Friday evening, as a result of reading this material that came through yesterday evening, my understanding of it is different, in that my memory of the interview was that very little was said, but it was a very awkward situation. I have this memory of Mr **RED** being ill at ease and I too was ill at ease with the revelation and I think that it was reduced to touching him on the penis and not much more than that. Now I recognise immediately my level of culpability in not having asked the questions and not done other things, but the fact is that's what I was left with and it was, if you like, a most ambiguous situation, so that when I did question Kostka about this, I was relieved to think that this was accidental, unintended and so on because it was just a simple point of contact or something like that. But I see that the document reads differently, it talks about three occasions and obviously it's a sustained effort and it has given me a very different view of what happened and what I was given at that particular interview. That's the first thing. The second thing is that I obviously don't remember Mrs **RED** being there. Now, I wouldn't contest the fact that we was there, I just simply don't remember that, because my interaction was mainly with the father, but I don't argue that she wasn't there, I just don't

remember. And as to ignoring her, well that's not my style. It may have been an impression that she gained because of the nature of the interview and the gravity of it and so on. It isn't my style to move people in and out quickly and insensitively. And as for not being available in the morning, well there would be a perfectly good reason for that, I guess I might not have even been there or there may have been other things on which made that impossible, but nobody would have known the gravity of the situation at that particular point, so no slight or disregard was intended under the circumstances. So that is my initial reaction, but I regret now that there wasn't a fuller revelation at the time of the interview.

PJM Do you remember any statement by you that they should go to the Police – do you remember anything about that?

Br T I think that I would have acknowledged that it was their right to do whatever they saw fit to do and one of the options would be to take it directly to the Police. Certainly I would have been intent on trying to manage and deal with the thing there on the spot and I regret the fact that it came at a cost of acting self-protectively, because I don't think that was my intention, I think it was a case of first of all trying to do the right thing by Kostka and secondly trying to just defuse the situation if there was a solution to hand.

PJM Yes. If you had said to them that it was one of their rights to take the matter to the Police, I suppose one would assume from that that you must have appreciated that this was a reasonably grave allegation.

Br T Sure, yes. To be honest with you, I was in a state of great surprise and was upset and confused, because it startled me to think that such an accusation could be brought against Kostka. It wasn't what I would have expected. I'm not too sure that I was thinking all that clearly either.

PJM Yes, I can understand that, but Br Terry what I think they will ask you about that is that, if you recognised that the situation was grave enough for the parents to take it directly to the Police, did you not then consider reporting it to the Police yourself?

Br T No, I didn't consider going to the Police.

PJM Yes and why not?

Br T In those days, it wasn't the way we went about dealing with these sorts of things. The simple fact was that we tried to manage them privately, internally, that was the way of it, and I would rarely have ventured into talking to the Police about something as intimate as concerning a Brother.

- PJM Would you have discussed that possibility of referring it to the Police with the Provincial, Br Alman?
- Br T No I have no memory of any such discussions with him.
- PJM And your reason for not doing that would presumably be the same as you have just given, that that wasn't the way you went about things in those days and of course that you were in a very startled and shocked state yourself.
- Br T Yes, that is correct. Put simply, it was a case of reporting it and then deferring to the Provincial.
- PJM So reporting the facts to the Provincial and then deferring to the Provincial?
- Br T Yes that's right.
- PJM Br Terry, so even when you – I'm not talking about immediately after the meeting, but say a few days later when you were weighing it all up in your mind, it still didn't come to your mind as a possibility that you should report it to the Police or suggest that Br Alman reports it to the Police.
- Br T No and I wasn't inclined to suggest that to Br Alman, no.
- PJM Yes. You told us on the last occasion Br Terry that, after you had spoken to Br Kostka and then spoken to the Provincial, you really left it in the Provincial's hands and you never went back to Mr & Mrs **RED** yourself. Is that still your recollection?
- Br T Yes that is still definitively my recollection.
- PJM And you also said that you never followed anything up yourself with the Provincial to see what he had done and how he had dealt with the matter, but that he mentioned to you at some later point that he had instructed Br Kostka to stop the Friday film night – is that still your recollection?
- Br T That's correct, but the link between that decision to stop the film nights and this incident, I'm not altogether sure about that, I think a fair bit of time passed and, other things intervened, and so the decision to terminate the film nights was not altogether clear to me and I'm only guessing that it related to this particular incident.
- PJM You did tell us on the last occasion that you had also relayed to the Provincial some of your administrative concerns about the way the nights were being run (as to supervision and Br Kostka doing it all on his own etc. etc) and you did, or I think I speculated and you noted

my speculation, that that might have been another reason why the Provincial asked Br Kostka to stop those nights?

Br T That continues to be my suspicion, that it had to do with more than just a report of his wrong doing and I also wondered whether from another direction Br Alman received information about the Friday nights that were not particularly satisfactory.

PJM OK. Br Terry, just developing a different aspect of this, now that I've given you that further detail, you still don't remember being given details about the abuse in accordance with what I have read out to you – your recollection is that it was described in a more generic way, just as him having touched his penis?

Br T That's correct, yes.

PJM And you don't remember anything about being told that there were three separate incidents within that one Friday evening.

Br T That's correct.

PJM And is there anything that I have said to you in reading this material that gives you any better recollection of your subsequent discussion with Br Kostka, because if you remember rightly, you told me that you went and saw him pretty much straight away, the same day or the next day to get his explanation. Do you remember anything more about that as a result of what I have told you or not?

Br T No, I'm sorry I don't have anything to add to that at all.

PJM Yes and what about your discussions with Br Alman, does anything I've said to you trigger any better recollection as to your discussions with him?

Br T No, I'm sorry, no.

PJM You told me on the last occasion that you just had effectively the one discussion with him, you couldn't remember if it was by telephone or at some meeting, but you thought it was probably by telephone and that Br Alman was not very communicative, he just listened to what you had to say and you said to me *"I can't remember much about the conversation except to recount what had happened and as a result of the case these sort of conversations were fairly brief. The implication from Br Dwyer was – you should leave it with me, or leave it with me, that was the sense"*. So that was all you could remember about it on the last occasion. Do you remember anything more now that I have given you this further detail?

Br T No, I don't have anything to add to that, I think that sums it up pretty well that it was briefly communicated and briefly acknowledged and I'm pretty sure it was by telephone and at some later date just in passing, there was a question as to how Kostka was going and that's about all I can remember in regard to Br Alman.

PJM Ok, thanks for that Br Terry. If I could move on to a different topic, the other thing that has emerged through the criminal trial and in documents that we have since seen, including some we have seen quite recently, is that Br Kostka himself has told a number of people that at various points he was telling people including he mentioned his Superior about his difficulties and that he wasn't receiving support. In one of his statements he said the way it was dealt with in those days was to send you off to say "*three Hail Marys*" and get yourself right. On another occasion he has speculated to a psychologist engaged by his criminal lawyer that his frequent moves from school to school arose partly from his behaviour. So coming out of the criminal trial and medical reports produced for that purpose are suggestions from Kostka Chute along these lines. Now when I interviewed you on the last occasion, I did ask you whether, before this 1986 incident, you had ever heard anything problematic about Br Kostka and his sexual behaviour, and I asked that in the context of you having been on the Provincial Council from 1983 and from your general involvement in the affairs of the Marists before 1986. Now, in the light of what Br Kostka is now saying, does anything else come to your mind there, or what is your best recollection on that issue?

Br T I don't have any observation to make about his behaviour in regard to sexual matters. My experience is limited to his time in Canberra and this particular incident, so I can't add anything to that at all, I don't necessary agree with the way Kostka has described the response of people. They were different days and there were a lot of assumptions made about life and the capacity to cope and so on. I can't add much.

PJM Br Terry, if you were in the witness box and the hard question was put to you saying "*Look, you were on the Provincial Council for three years before this from 83, you were communicating at the highest levels within the Marist Order, had you in that capacity or any other capacity as a Marist Brother heard anything adverse in a sexual context about Br Kostka before this 1986 incident*", you would say "No"?

Br T Yes I would say "No". The simple fact is that, even at that level, these matters were never tabled to my knowledge. There may have been some collaboration between the Provincial and the Vice Provincial, I don't even know that, but it wasn't the practice to deal with these things in Council.

PJM So the practice was that really these were things that the Provincial of the day dealt with in his own way and very often that was done in a very private manner between the Provincial and the individual concerned?

Br T That's correct yes.

PJM What about the reference that has been made (and I know it's very vague as to dates and times and whatever) by Br Kostka to discussions he had at one point with his Superior, by which of course he must be referring to the Superior of the particular religious community where he was living at the time. Would you have any, it's very difficult I realise, but do you have any comment on that, the "*three Hail Marys*" approach?

Br T My comment is that it is facile and it's not the way I would expect the Brothers to respond to somebody who is addressing something as grave as that particular predicament. So I don't quite know what Kostka is talking about.

PJM Well, we don't know what he said to this individual and what detail was given and the circumstances, we know none of that do we?

Br T No.

PJM Am I understanding you Br Terry to say that if Br Kostka had given significant detail to his Superior about sexually misbehaving with your boys, that you would find it unlikely that he would have simply been told to say "*three Hail Marys*" and get over it?

Br T Most certainly, I am astonished that that was presented as credible.

PJM Yes. I fully understand that this is hugely speculative stuff that I am putting to you and hard for you to comment about. Br Terry, I'm just going to ask my colleague Helen O'Brien whether there are any other topics that she thinks I should you questions about.

PJM Br Terry, I did ask you on the last occasion whether you made any notes or kept any record or wrote any letters about all of this, and you did say to me at the time that you did not. Is that still your recollection?

Br T Yes, that is correct.

PJM So, there are no diaries or old correspondence files or personnel files or anything that are going to contain any communications between you, Br Kostka, the **REDA** or Br Alman in 1986 about this episode?

Br T That's correct.

PJM Howard, do you wish to clarify anything or add anything to what we have said.

HH I don't think so. Terry I thing that all is quite clear.

PJM Br Terry, thank you very much and sorry to put you through this again, I know how difficult it is. Howard tells me you are going to be coming to Australia at some time this year. We would very much like the opportunity to meet with you if you are here, so if that could be arranged, we would appreciate it and Howard will let us know when you are likely to be over. Do you have any idea when it might be?

Br T More than likely September/October time.

PJM OK, well thank you very much. Howard, if there is nothing else, we'll sign off. Now Howard, could I phone you in two minutes about the other issues you were mentioning to me about arrangements for you and possibly us to speak to Br Kostka.

HH Yes.

END CONVERSATION