

# Congregation for the Doctrine of the Faith

Prot. N. 341/2009 – **Rev. Mark GRUBER, OSB**

## ***FACTI SPECIES:***

1. Rev. Mark Gruber, OSB, born on 6 June 1956, professed solemn vows in the Archabbey of Saint Vincent in Latrobe, Pennsylvania on 10 July 1979 and ordained to the priesthood on 14 May 1983. In July 2009 Rev. Gruber was accused by Archabott Douglas R. Nowicki, OSB of the possession of child pornography. The accusation stems from images found on Rev. Gruber's computer, the use of which was directly monitored from 15-24 July 2009.
2. On 24 July 2009 Archabbot Nowicki informed local civil authorities of the possible presence of child pornography on the Rev. Gruber's computer. The Pennsylvania State Police confiscated the computer and undertook an initial examination of the hard drive. This initial examination revealed the presence of a *shredder* program, designed to eliminate the history of websites visited and images downloaded. Despite this advanced program designed to conceal the past use of the computer, the police expert was able to retrieve a considerable amount of pornographic material from the hard drive of the computer ascribed to Rev. Gruber. The initial determination was that the images found were not conclusively child pornography and, therefore, no civil proceedings were recommended. Nevertheless, unknown to Rev. Gruber, the Pennsylvania State Police continued their investigation of the images and materials found on the computer in question.
3. Despite this initial determination by the civil authorities and in light of the fact that the civil investigation had not been closed, the Archabbot continued the canonical investigation. On 27 July 2009 Rev. Gruber was removed as a Professor of Anthropology at Saint Vincent College and his faculties to celebrate the Sacraments publicly were removed by his superior. On 7 August 2009 the Ordinary of the Diocese of Greensburg informed Rev. Gruber that his faculties in the Diocese had also been removed. On 7 November 2009 the Congregation for the Doctrine of the Faith received a letter from Archabbot Nowicki and two volumes of images which had been found on Rev. Gruber's computer.
4. On 29 December 2009 the Congregation received a letter from the canonical advocates of Rev. Gruber. Accompanying the letter was the statement of a former student of Saint Vincent College who declared his culpability in regards to the pornographic material found on Rev. Gruber's computer. The former student claimed to have revealed this information to Rev. Gruber in the Sacrament of Confession, hence explaining Rev. Gruber's willingness to accept responsibility for presence of the pornographic images in defense of the inviolability of the Sacramental seal.
5. On 23 February 2010 Archabbot Nowicki presented the Congregation with information provided by a further examination of the computer by the Pennsylvania State Police. This new report identified some of the images and films present on Rev. Gruber's computer as

child pornography, despite the original assessment to the contrary. The Police, at this time, informed the Archabbot that a criminal case against Rev. Gruber was a possibility.

6. On 30 August 2010 the Congregation received a letter from the canonical advocates of Rev. Gruber which indicated that the local prosecutor had no intention of filing a criminal case against Rev. Gruber.

7. On 10 September 2010 Archabbot Nowicki informed the Congregation of a civil lawsuit against the Archabbey and College filed by Rev. Gruber, accusing the Archabbot of libel. Shortly afterwards, another letter from the Archabbot arrived informing the Congregation of a private investigation of the computer in question, which the Archabbot had authorized. Subsequently, on 1 October 2010 the Congregation decided to suspend its investigation, pending the conclusion of the civil lawsuit.

8. On 14 February 2011 the documentation of the *investigatio praevia* conducted by the Archabbot according to the norms of *Sacramentorum sanctitatis tutela* and the *Essential Norms* arrived at the Congregation. This documentation consisted in both the canonical investigation performed by the Archabbot's delegate, Msgr. Mark Bartchak, and a technical investigation of the computer ascribed to Rev. Gruber performed by private experts engaged by the Archabbot.

9. Following a careful examination of this documentation, the Congregation informed Archabbot Nowicki of the specific charges being made against Rev. Gruber. The charges contained in the letter dated 2 April 2011 were then communicated to Rev. Gruber and his advocates who, in turn, provided an articulated defense brief on 31 May 2011, within the peremptory time period of 30 days.

In its letter to Archabbot Douglas R. Nowicki, OSB of 2 April 2011, the Congregation for the Doctrine of the Faith formally accused Rev. Mark Gruber, OSB, professed member of the Archabbey of Saint Vincent in Latrobe, Pennsylvania of the following crimes:

1. The possession of pornographic images of minors under the age of fourteen ( *SST* art. 6 §1, 2°);
2. The production of material which gravely injures good morals (CIC can. 1369);
3. Conspiracy in the direct violation of the Sacramental seal (*SST* art. 4 §1, 5°; CIC can. 1329 §1);
4. Acting as an accomplice in the direct violation of the Sacramental seal (*SST* art. 4 §1, 5°; CIC can. 1329 §2);
5. Abuse of the Sacramental seal, with the aggravating factor of the manipulation of conscience (CIC can. 1399); and,
6. Defamation of a legitimate superior (CIC can. 1390).

In a meeting of the *Congresso* on 30 June 2011 the case was examined and the following decision was taken.

### ***IN IURE ET IN FACTO***

10. The first accusation is the possession of pornographic images of minors under the age of 14 (*SST* art. 6 §1, 2°). The revision of the norms of *Sacramentorum sanctitatis tutela*,

in which the acquisition, possession and distribution of pornographic images of minors under the age of fourteen (14) is included as a grave delict, was promulgated on 24 May 2010, after the period in which these images were found on the computer in question. Nevertheless, the jurisprudence and praxis of the Congregation for the Doctrine of the Faith clearly establishes, at least by 2001, that these three elements, acquisition, possession and distribution of child pornography constitute crimes reserved to the same Congregation. Furthermore, in an audience on 15 October 2004 Blessed Pope John Paul II approved the praxis of the Congregation for the Doctrine of the Faith which considered downloading and possession of child pornography to be a grave delict. Therefore, art. 6 §1, 2° SST promulgated in 2010 is not a novelty in the law but a codification of an already sanctioned praxis of the Congregation and its application to this particular case does not imply a retroactive application of the law.

Both the more extensive examination by the Pennsylvania State Police and the examination which was conducted by the private firm Ballard Spahr LLP<sup>1</sup> revealed that portions of the film *The Genesis Children* had been downloaded, conserved and viewed on Rev. Gruber's computer in July 2009. The film found on the computer, *The Genesis Children*, contains nude images of minors under the age of fourteen – a fact publicly stated by the film's producer – sometimes in a sexual context, but always in a sexualized context. While the norms of SST do not provide a definition of the phrase “pornographic images of minors under the age of fourteen (14)”, it is clear from the teachings of the Church what is to be understood as “pornography.” The *Catechism of the Catholic Church* states:

*Pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of its participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illusion of a fantasy world. It is a grave offense. Civil authorities should prevent the production and distribution of pornographic materials (2354).*

The scenes of nudity, even only partial nudity, of such young men in sexualized and sexual contexts clearly falls into the definition established by CCC n. 2354 of pornography. Furthermore, the film is particularly offensive in that it presents a Catholic priest surrounded by these nude and semi-nude boys on a vacation in the Mediterranean.

While the penitent involved in the case claimed to have been responsible for the pornography found on the computer, during the canonical investigation Msgr. Bartchak directly asked him if he had downloaded or watched the film *The Genesis Children* on the computer in question. The penitent said he had not. Furthermore, when shown images from this film by the civil authorities, the penitent denied ever having seen them before. While it is impossible to achieve moral certitude as to who might have originally downloaded the film (*comparatio*), the key stroke log clearly indicates the film was

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<sup>1</sup> In the summary of the report submitted by the firm Ballard Spahr, the scope of their investigation is described in the following manner: “The purpose of our investigation was to determine whether SVC (Saint Vincent College) acted reasonably when it investigated and suspended Father Gruber and thereafter, when the Pennsylvania State Police (“PSP”) issued the reports of their investigation” (*acta* vol 1, pp 93-94.) The report in question was completed in January 2010 but its release was withheld “at the request of the PSP and the District Attorney of Westmoreland County, pending completion of their investigation” (*ibid*). The report was submitted to the Archabbot on 13 September 2010.

viewed several times and was saved on the computer's hard drive (*detentio*). Finally, the question of the purpose of the images must be clarified: could those images have been downloaded, saved and viewed on the computer for a reason other than a libidinous purpose? Given the presence of literally thousands of pornographic images found on Rev. Gruber's computer, along with other materials which gravely injure good morals (cf. CIC 1369), there can be no doubt of the libidinous purpose of the images in question. Therefore, given the nature of the images, the definition of pornography provided by the *Catechism of the Catholic Church*, and the material evidence of the images on the hard drive of Rev. Gruber's computer, it is clear that he is guilty of the crime of the possession by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology [*detentio imaginum pornographicarum minorum infra aetatem quattuordecim annorum quovis modo et quolibet instrumento a clerico turpe patrata* (cf. CIC c. 1399; art. 6 §1, 2° SST)].

11. The second accusation lodged by the Congregation against Rev. Gruber regards the production of materials which gravely injure good morals (CIC c. 1369). In the course of the private investigation commissioned by the Archabbot, technical experts revealed the presence of different email addresses on the computer ascribed to Rev. Gruber. There were four aliases which, in turn, were connected to juvenile pornographic materials of an exclusively lexical nature. In the interview on 21 October 2010, in the presence of his civil attorney, Rev. Gruber admitted his connection to and responsibility for these four email addresses and the materials attributed to them. The email addresses are each connected to a reality on the internet known as *threads*, in which an author, in this case, Gruber, composes a story which is then available to readers for comment. In this way, a virtual community is created around a specific story. In the case of Gruber, these *threads* have to do with young swimmers. In some of the stories they are described as swimming naked; in others they are showering immediately after leaving the swimming pool. While these materials do not enter under the canonical definition established in SST art. 6, which speaks exclusively of images of minors under the age of fourteen (14) and do not constitute a most grave delict, the creation of the materials in question can most certainly be categorized as injurious to good morals (CIC 1369). Therefore, the admission of Rev. Gruber of his connection to these email addresses, taken together with the materials retrieved by the computer experts connected to the addresses, provides sufficient evidence to find Rev. Gruber guilty of the crime of creating and publishing materials which gravely injure good morals ex CIC c. 1369.

12. The third, fourth and fifth accusations are interrelated and treat the misuse of the Sacrament of Confession. Herein is perhaps the most complex area of this case. It is clear that there existed a penitent-confessor relationship between Rev. Gruber and a former student who, in statements to Rev. Gruber's canonical advocates and in statements made directly to members of the media, claimed responsibility for the presence of pornography on the computer ascribed to Rev. Gruber. It has already been proven that the penitent is not responsible for the entirety of the pornography found on the computer in question; therefore, the declaration of the penitent is incomplete, at best, and false, at worst. Nevertheless, the complexity regarding the role of the Sacrament of Confession in this affair remains not entirely clear. What has been established is that the penitent, apparently on his own, decided to offer himself as a "sacrificial lamb" and to publicly take responsibility for the pornography present on the computer ascribed to Rev. Gruber. The argument is simple: as the penitent himself is young, it is natural that the pornographic material which he downloaded and viewed on the computer in question

would be, then, youth-oriented. This public declaration is repeated in different articles in different publications specialized in the area of higher education, creating a massive archive of material easily available to the public through the internet proclaiming Rev. Gruber's innocence. Moreover, Rev. Gruber is presented as a martyr for the sanctity of the Sacramental seal. This declaration by the penitent protected Rev. Gruber from further canonical investigation regarding the other accusations as the ecclesial investigation could not risk a possible violation of the seal. However, in an interview conducted by Msgr. Bartchak on 6 December 2010 it becomes clear that what is at work is a stratagem, born of the mind of the penitent but which quickly involved Rev. Gruber and Rev. Wenzinger, OSB another solemnly professed member of the Archabbey of Saint Vincent in Latrobe, Pennsylvania.

As stated above, a previous relationship of confessor-penitent existed between Rev. Gruber and his former student. However, the invocation of precautionary restrictions by the Archabbot prevented any contact between Rev. Gruber and students of St. Vincent College. The penitent, therefore, approached Rev. Wenzinger, a friend of Rev. Gruber. The penitent, of his own admission, had as a motive opening a line of communication with Rev. Gruber, not primarily the sacramental absolution imparted by Rev. Wenzinger. The penitent felt that he could "authorize" Rev. Wenzinger to share his confession with Rev. Gruber who, in turn, would offer advice back to the penitent through Rev. Wenzinger. In this scenario, it is not Rev. Gruber who would be guilty of violating the Sacramental seal but Rev. Wenzinger. Rev. Gruber is charged with conspiracy to directly violate the Sacramental seal (SST art. 4 §1, 5°; CIC can. 1329 §1), acting as an accomplice in the direct violation of the Sacramental seal (SST art. 4 §1, 5°; CIC can. 1329 §2) and abuse of the Sacramental seal, with the aggravating factor of the manipulation of conscience (CIC can. 1399). Despite all indications that the scenario is as described above, until such a time as the case of Rev. Wenzinger is resolved, it is impossible to make a definitive declaration of the guilt of Rev. Gruber in the first two counts. On the third count, of abuse of the Sacramental seal with the aggravating factor of the manipulation of conscience, sufficient evidence exists from the direct testimony of the penitent and Rev. Gruber himself to prove the accusation.

13. The sixth and final accusation against Rev. Gruber is the defamation of a legitimate superior (CIC c. 1390 §2). This Congregation has avoided making any pronouncements on the internal conflict present in the Archabbey of Saint Vincent. However, the question of the defamation of a legitimate superior must be addressed. In the interview conducted on 21 October 2010, Rev. Gruber admitted his responsibility in regards to four separate email aliases and their usage, if not their creation. Among these email addresses is one entitled "*juratusjuratus@yahoo.com*" The records of the internet usage of Rev. Gruber's computer clearly indicate the sending of multiple defamatory emails from this address. One of the targets of the emails sent from the above address is Archabbot Douglas Nowicki. Given his admission to the usage of this address and the clearly defamatory content of several emails sent from it, Rev. Gruber is found guilty of the crime described in CIC c. 1390 §2.

14. Taken together, the most grave delict – the possession of child pornography – along with the other crimes – the production of youth oriented pornographic materials, the presence of thousands of pornographic images, violation of conscience, abuse of the Sacramental seal and defamation of the Archabbot – all paint the picture of a cleric with serious behavioral and psychological difficulties. A negative judgment about the cleric's suitability for ministry, especially with minors, is not to be excluded.

15. Having carefully considered the facts in this matter, having given due weight to the defense offered by the accused and having examined the law, the Congregation for the Doctrine of the Faith, having found Rev. Gruber guilty of the most grave delict of possession of child pornography, the crime of the production of materials which gravely injure good morals, the abuse of the Sacramental seal with the aggravating factor of the manipulation of conscience and the defamation of a legitimate superior

## DECREES

that the following permanent penalties be imposed on Rev. Gruber:

1. A life of prayer and penance to be lived outside of the Archabbey of Saint Vincent, in a religious community to be determined by the Archabbot and agreed to by this Congregation;
2. The prohibition against presenting himself as a cleric in public, celebrating the sacraments in public, teaching, and contact with minors under the age of 18; he is permitted to concelebrate the Eucharist in the setting of the religious community in which he is to live;
3. Any and all use of a computer by Rev. Gruber must be monitored by the Superior of the religious community in which he resides.

Recourse can be made against this decree to the Ordinary Session (*Feria IV*) of this Congregation within sixty (60) useful days of notification, in accord with the norms of *SST* art. 27.

This decree is to be notified to all parties concerned.

Given on 30 June 2011.



William Cardinal LEVADA  
*Prefect*



✠ Luis F. LADARIA, S.J.  
Titular Archbishop of Thibica  
*Secretary*