

CONGREGATIO PRO DOCTRINA FIDEI - *FERIA IV*

GREENSBURGEN.

APPELLATIO

REV.DUS MARK GRUBER, O.S.B.

Prot. N. 341/2009

The undersigned, Reverend Fr. Mark Gruber, O.S.B., hereby formally appeals against the decision of this Congregation, dated June 30, 2011, and notified to him through the offices of Archabbot, Douglas R. Nowicki, O.S.B. on January 12, 2012.

Eminentissimi et Excellentissimi Patres!

The object of the present appeal is a Decree rendered in the administrative penal process n. **341/2009**, which concluded that Rev. Fr. Mark Gruber, O.S.B., is guilty of the following delicts:

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

A. De artículo 6 §1, 2º: The possession of pornographic images of minors under the age of fourteen.

1. - First and foremost, it must be stated clearly that when the allegations relative to the delict contemplated in SST art. 6 §1, 2º, *scilicet*: “The possession of pornographic images of minors under the age of fourteen”, purportedly were committed, the action was not a delict and only subsequently became so after the promulgation (cfr. Can. 8 CIC), on May 21, 2010 of the above cited article, as contained in the modifications made in the *Normae de gravioribus delictis* reserved to the Congregation for the Doctrine of the Faith.

2. - Secondly, it must be unequivocally recognized and established that the impugned decree is based on an erroneous assertion that is repeated *ad nauseam*, i.e. the purported illicit activity was conducted on a computer that « belonged to, or was assigned to, or was monitored by » Fr. Mark Gruber. This assertion is false.

The repetitive reference to said computer, as being Fr. Gruber’s is grossly misleading. The computer in question was not even located in Fr. Gruber’s personal office, but rather in the Sociology/Anthropology Seminar Room adjacent to his office. Besides Reverend Gruber’s limited use of the computer in question, one must accept and understand that many students and even other faculty members, numbering twenty-five to thirty different persons per week used the same computer which is at the center of attention/investigation of the case at hand.

In all reality, nobody can deny the significant, juridical interest that derives from the simple fact that the person ultimately responsible for the computer hardware at Saint Vincent College, in his capacity of Chief Information Officer, was Mr. Eddie Dejthai. In all reality, the true role and actions of Dejthai in the present case are still to be discovered and established. These salient aspects can and must be further investigated.

3. - The factual distinction of proprietorship of the controversial computer is important, as it entirely disintegrates the *fumus boni juris* of all allegations against Fr. Mark Gruber. The computer in question, which purportedly contained what misleadingly has been classified to be child pornography, was the exclusive property of St. Vincent College, and was allocated to the Seminar Room in the Sociology/Anthropology Department, which was open to the public. Access to

this computer was open to numerous students and was never under the exclusive control or custody of Reverend Gruber. Instead, it was a well-known fact that this computer was used and open for use by students in the Anthropology Department.

4. - Consequently, the opening premise of existence of child pornography on Reverend Gruber's computer is factually incorrect as he did not own the computer nor did he have exclusive control or custody of this computer. Emphasis must appropriately underline the fact that many anthropology students and other faculty members frequented the seminar room and utilized said computer. Use of this computer was available to anyone since there was no password entry required. This cannot be confused with the simple fact that Fr. Gruber "signed in" without "logging out" for extended periods of time, even months. Moreover, Fr. Gruber is barely computer literate. He gave no importance to the computer; and, as a consequence, he did not grasp the possibilities of its use, or possible abuse. This is emphatically stated in the report given by the Pennsylvania State Police on 1 September 2009.

5. - The impugned Decree also references a so-called "shredder program" designed to eliminate the history of websites and images downloaded.

For the record, this assertion is inexact. The investigation, conducted by Trooper Glenn K. Bard of the Pennsylvania State Police, affirms that this was not a program designed to eliminate websites, but rather a generic software specifically designed to index files: "I then continued to do more testing and was able to determine that the files were being changed similar to I-Tunes that indexes files on the computer" (Title: Incident X43-3359, PSP-spu.00010, 17 June, 2010). The Pennsylvania State Police report concludes that there was no evidence for "shredding" [a misnomer], or an attempt to erase information from the computer.

Therefore, this paragraph of the Decree is blatantly erroneous. This report is found in the Acta.

There is **no factual evidence** indicating in any way that so-called shredder software was malevolently installed on the Sociology/Anthropology Seminar Room Computer.

6. - A key part of the impugned decision is based on the determination that “portions of the film *The Genesis Children* had been downloaded, conserved and viewed on Rev. Gruber’s [sic] computer in July 2009.” (p. 3, para. 10)

However, there is no evidence and no proof that Reverend Gruber actually viewed, downloaded or possessed this film on the Sociology/Anthropology Seminar Room Computer (cfr. *infra*), which was open to use, and was used by numerous students, and other faculty/staff members.

The entire matter has been poorly, or inadequately investigated, and the decree of June 30, 2011, is the tangible result of a one-sided, prejudicial process that can show no conclusive proof of culpability of Fr. Mark Gruber.

7. - However, with regard to the above and the investigated allegations, there is good reason to suspect malfeasance: a ***machinatio sceleris***, premeditated with a specific aim to malign, isolate, and subsequently banish Fr. Gruber from the everyday conventual and academic environs that to date have constituted the very reason for his spiritual and religious life. The impugned decree relies in great part on the documentation of the ***investigatio praevia*** as “conducted” by the Archabbot.

Standing on the evidence presented by the accuser, *scilicet* the legitimate superior of Fr. Mark Gruber – the same authority that also conducted the relative, suspiciously one-sided investigation, at a **cost of too many hundreds of thousands of dollars**, that by the parameters of religious life, can only be defined as scandalous - there is no proof to support the conclusion of a commission of any grave delict by Reverend Gruber. The costs sustained by the Accuser, in the name of Saint Vincent Archabbey, and/or Saint Vincent College, should move this Dicastery to enjoin the Most Reverend Archabbot to present a complete accounting of the sums spent to garner the spurious evidence against Fr. Gruber through the commercial law offices of Ballard Spahr and Reed Smith. The sums “invested” by the “accuser” i.e. Archabbot Nowicki, will undeniably show or bolster the otherwise hidden motive of the same accuser to surreptitiously investigate and act against Fr. Gruber.

8. - In light of the above, it is undeniable that the **second allegation**, concerning “the production of material which gravely injures good morals (CIC Can. 1369)” remains entirely without reason for consideration. On its face, the matter is unsubstantiated, and untenable.

The **forced syllogism** is that since Reverend Gruber was found guilty on the first accusation, then by extension he also must be guilty of the second accusation. Taken separate and looking at the evidence objectively, there is no indication that Reverend Gruber viewed, composed or was even aware of the “threads” or e-mails as mentioned in the Decree. Furthermore, there is no evidence quoted in the Decree which proves Reverend Gruber was in some way directly linked to any of the above alleged actions. Rather, it is simply asserted without rationale or explanation that this is the case. However, generating a conclusory statement without presentation of facts to support such a conclusion violates Canon Law.

Canon 51 duly recites: “*Decretum scripto feratur expressis, saltem summarie, si agatur de decisione, motivis*”; and Canon 1617, in fact, further establishes that decrees *vim non habent, nisi saltem summarie motiva exprimant, vel ad motiva in alio actu expressa remittant*. Hence, it is not enough simply to communicate a conclusion; rather the reasons that led to the conclusion must also be given. As a protection for the right of defense, the law requires that the logic for the decision be evident.

Rebus sic stantibus, substantively, there is no proof to reach moral certainty that the Second Alleged Crime occurred. Thus, the Decree of June 30, 2011 of this Congregation must be reversed.

B. De sigilli sacramentalis violatione.

9. - *Proh dolor*, in first instance the **Acta** of the process were “shown” to the advocates, but a complete copy was never provided for the same to use in their defense activity. While setting this aside for the moment, the record must show that the “cursory” review of the **Acta** that was granted did not reveal arguments pertinent to the specific charge of conspiracy of the direct violation of the Sacramental Seal, or acting as an accomplice in the violation of the Sacramental Seal, nor abuse of the Sacramental Seal.

Thereby, it is legitimate to deduce that all the arguments concerning these charges, including the “defamation of a legitimate superior”, were formulated by the Archabbot and sent directly to the Congregation in his *Votum*. These arguments we have not seen. This begs the observation: *Abbas non privabit eum*

defensione, quae [...] etiam diabolo, si in iudicio adesset, non negaretur.
[The Abbot will not deprive him of defense, which... would not be denied even to the devil, were he to stand trial.][1]

Since the “arguments” are logically supposed to be subsequent to the “allegations”, given the present context, it is legitimate to consider all of the foregoing “arguments” nothing more than fiction. The plain truth of the matter is that Reverend Gruber did not violate, directly or indirectly, the Sacramental Seal.

Notwithstanding, Monsignor Bartchak on 6 December 2010 speaks of a “stratagem borne in the mind of the student”. This conclusion is abundantly and roundly confuted by the evidence in the testimony of [redacted] and Reverend Gruber; which categorically excludes every possibility of abuse of the Sacramental Seal and/or with the aggravating factor of manipulation of conscience.

10. - What begs for clarification is the assertion made in the impugned Decree that: “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.” (Decree, p. 4, par. 12).

It is astounding how the *scriptor* of the Decree, *ad usum delfini*, can qualify [redacted] as a credible or incredible person, without proffering any explanation for this contradictory characterization.

On this note, it must be emphasized that the Pennsylvania State Police concluded [redacted] was telling the truth. In addition, the penitent gave two affidavits, notarized and sworn to under penalty of perjury. Thus, it is difficult to discern the reason for painting the penitent in such a negative, and at times dishonest light. Especially, since all indications are that he indeed was presenting an honest appraisal of the situation. He swore under oath. He even brought the matter to the attention of the *Paenitentiaria Apostolica*. [redacted] is subsequently vested with the presumption of telling the truth. Only if there is some evidence, some tangible reason(s) which demonstrate dishonesty, should that presumption of honesty be challenged.

From an evidentiary standpoint, the arguments presented in the impugned Decree are, at best, flimsy and weak. Nonetheless, the Decree proceeds to make another assumption without supporting proof, i.e. “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.” (pages 4-5, para. 12).

All things being said, the allegation of direct or indirect violation of the Sacramental Seal is baseless, and impossible; as declared by the contents of the sworn affidavit of [redacted]. What is morally certain is that [redacted] wanted the truth to be known. In fact, the truth did become known, and even now no one has attempted to ask [redacted] what was said in the Internal Forum of the Sacrament of Penance.

Yet the hurried and illogical conclusion is that Reverend Gruber is guilty of the fifth alleged crime; notwithstanding the absence of proof. There is no quotation of testimony from the Affiant, or from Reverend Gruber which would substantiate this finding of guilt.

Thus the decried, hypothetical “stratagem” *fundamentum manifeste caret*. What’s more, this obvious conclusion is furthermore bolstered by the fact that Fr. Gruber, with specific regard to the so-called deposition from which certain charges originate, disavows and repudiates the same and the contents therein, inasmuch as he never saw, or signed the final transcript of a meeting held without a priest notary present. (cfr. attachment n. 9)

Far from the truth, contrary to what one reads in the impugned Decree, Fr. Gruber did not admit his “responsibility in regards to four separate email aliases and their usage, if not their creation”; therefore, it is fallacious to conclude he is guilty “Given his admission to the usage of this address and the clearly defamatory content of several emails sent from it”. For the record, Fr. Gruber has never seen the “several emails” he is accused of authoring; and, consequently he denies all association to the same.

This simple, and logical defense applies to every aspect and criminal allegation to be adjudicated in the present procedure.

C. De legitimationis superioris defamazione, ad normam can. 1390.

11. - The sixth and final accusation, which alleges the defamation of a legitimate superior (*CIC*, c. 1390, §2), is entirely without foundation.

Praeprimis, it cannot be ignored that this charge is not contemplated by the norms of the *SST*, nor does it come under the specific jurisdiction of the Congregation for the Doctrine of the Faith. ***Quae cum ita sint***, there is no evidence to support the claim of any defamatory communication composed by Father Mark Gruber, regarding Archabbot Douglas Nowicki.

Revera, it is merely asserted that the legitimate superior was defamed, but this allegation is void of supporting evidence, and entirely lacks any indication of what the alleged communication may have disseminated. Hence, from what the undersigned was allowed to see in the ***Acta***, there is nothing to substantiate the claim.

What's more, there is no proof in the Acts to demonstrate any illegitimate damage to the Archabbot's good name, as caused by third parties. Thus, if the reputation of the Archabbot has truly been damaged, then he has the burden of proof to show how, where, by whom, and to what measure.

As stated above, with specific regard to the so-called deposition from which certain charges originate, Fr. Gruber wholly disavows and repudiates the same and the contents therein, inasmuch as he never saw, nor signed the final transcript of a meeting held without a priest notary present. (cfr. attached document n. 9)

12. - The importance of the matters at hand does not permit the Congregation for the Doctrine of the Faith to simply forsake the truth in order to protect the powerful, *scilicet* the Superior, while sacrificing the subordinate. While the purported misdeeds of the subordinate, Fr. Gruber, remain unproven, who is investigating the delicts and the malfeasance of his legitimate Superior? How can an inferior be accused of defaming his Superior, when his Superior is not investigated for his own delicts? Yet, in recent times, Archabbot Nowicki has been formally and repeatedly denounced to Dicasteries of the Roman Curia for the turpitude that stands to distinguish his religious and priestly career. ***De hoc Sapientiores judicent!***

D. De sic dictis “Pornographic” cinematographicis scænis.

13. - *Ictu oculi*, there is no ascertainable indication as to who downloaded the film, or portions thereof, and entitled: *The Genesis Children*, onto the Sociology/Anthropology Seminar Room Computer. This fact, in itself, exculpates Fr. Gruber. Today, the “Collector’s Edition” of the movie, “The Genesis Children”, can be purchased on-line, at Amazon.com, for the sum of \$32.95. It is described as an art-house film without an age rating.

The impugned Decree, nonetheless, argues that the film in question falls under the description of pornography, as described in the *Catechism of the Catholic Church*. The simple fact that in the United States the film in question is not classified as *illegal child pornography*, is highly significant. What’s more, by cinematographic and censorship standards the film is not even considered to be pornographic.

As stated above, there is no certainty as to who, or when the portions of *The Genesis Children* were purportedly downloaded, just as there is no proof of who, if anyone, viewed the portions of said film. Thus, it is inconsistent to conclude Fr. Mark Gruber is guilty, while simultaneously recognizing the impossibility to ascertain, with moral certainty, who downloaded the film in question. When there is a complete lack of proof, the only legal conclusion can be to exonerate the accused from having committed the delict.

Aside from the fact Fr. Gruber did not download, or watch the movie or extracts of the movie titled: *The Genesis Children*, it must necessarily be recognized that said film cannot be held, for content, to be pornographic anymore than Michelangelo’s “David” could be seriously denounced as obscene. Hence, it is nonsensical, if not blatantly prejudicial or puerile to assert “the libidinous purpose of the images in question”. Everyone in Italy knows that even everyday television commercials show more nudity than the film mentioned in the impugned Decree.

In the present case, the results of an exhaustive police investigation and an independent investigation conducted by the Law Firm Ballard Spahr, LLP (which is not specialized in computer forensics, but rather in commercial law and real estate), failed to establish, with regard to all the allegations formulated, any causal

link, *scilicet: mens rea*, or connection between the Seminar Room Computer and Reverend Gruber.

E. Conclusion

Most Eminent and Excellent Fathers:

14. - The *Acta* show that Rev. Fr. Mark Gruber has not committed a canonical delict, nor has he violated any of the norms of *Sacramentorum sanctitatis tutela*. Hence, based on the evidence, Reverend Gruber should be exonerated of all the allegations, and restored to active ministry, together with his professorial position at St. Vincent College.

These are all allegations made by the accuser, who is legally required to shoulder the burden of proof, but this threshold has not been met, nor can it be. The allegations against Fr. Gruber are simply unfounded: the same are nothing more than the starting point of a malicious attempt to achieve an alternative goal: the silencing of a monk who is not afraid to give voice to the Truth.

Attachments:

- 1) Copy conclusive brief submitted to the Congregation on 31 May 2011.
- 2) Copy of new report prepared by former Trooper Glenn K. Bard, dated 14 December 2011 concerning Pennsylvania State Police case number 2810180.
- 3-4) Copies of two civil affidavits given under civil oath on 22 September 2011, and notarized by the Commonwealth of Pennsylvania.
- 5) Copy of the results of the MMPI most recent *peritus* report of Dr. Victor Barbetti, a licensed psychologist, concerning the psychological state of Reverend Mark Gruber, dated 27 February 2012.
- 6) Copy of a statement from the Office of the District Attorney of Westmoreland County, the domicile of Reverend Gruber.

7) Copy of the sale offer on Amazon.com for the “Collector’s Edition” of the 1970 movie “The Genesis Children”, including an editorial review and “Most Helpful Customer Reviews” which qualify the film to be « A profoundly silly movie ».

8) Copy of an expert opinion by Dr. Paolo Cianconi, Psychiatrist, in Rome, Italy, dated March 7, 2012.

9) Copy of Rev. Fr. Gruber’s statement to disavow and repudiate the statement given in the offices of Reed Smith.

Respectfully submitted, this ninth day of March 2012,

Fr. Mark Gruber, O.S.B.

[\[1\]](#) Guilielmus Durantis (1230-1296), Speculum iudiciale, lib. III, particular I, rub. de inquisitione, §5 ultimo nota, n. 6)