

Congregation for the Doctrine of the Faith

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

FACTI SPECIES:

1. Rev. Mark Gruber, OSB, born on 16 June 1956, professed solemn vows in the Archabbey of Saint Vincent in Latrobe, Pennsylvania on 10 July 1979 and was ordained to the priesthood on 14 May 1983. In July 2009 Rev. Gruber was accused by Archabbot 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, a 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 of Confession, with the aggravating factor of the manipulation of conscience (CIC can. 1399); and,
6. Defamation of a legitimate superior (CIC can. 1390).

10. In a meeting of the *Congresso* on 30 June 2011 the case was examined and Rev. Mark Gruber, OSB was found guilty of the most grave crime of possession of pornographic images of minors under the age of fourteen (*SST* art. . 6 §1, 2), the crime of production of material which gravely injures good morals (CIC can. 1369), the crime of the abuse of the Sacramental of Confession, with the aggravating factor of manipulation of conscience (CIC can. 1399), and, defamation of a legitimate superior (CIC can. 1390). The penalty to be imposed on Rev. Mark Gruber, OSB was decreed as follows: 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; Rev. Gruber is permitted to concelebrate the Eucharist in the setting of the religious community in which he is to live; and, 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.

The decree issued on 30 June 2011 stated that the parties could present recourse to the *Feria IV* within sixty (60) useful days from the date of notification, in accord with the norm of SST. art 27. The decree was communicated to the Archabbot by letter dated 29 November 2011.

11. In his letter of 12 February 2012, Archabbot Nowicki made recourse against the decree of the *Congresso* on the grounds that the penalty to be imposed is impractical. In this letter the Archabbot claims that there is no Benedictine community in the United States capable of providing the level of supervision of Rev. Mark Gruber, OSB which the decree of the *Congresso* demands. The Archabbot restates his *votum* that Rev. Gruber should be dismissed from the clerical state and dispensed from his monastic vows.

12. On 9 March 2012 the recourse of Rev. Mark Gruber, OSB was presented to the CDF *brevis manu*. The document requesting recourse is signed by Rev. Gruber himself and includes multiple appendices, including the opinions of two psychologists; information regarding the film, “*The Genesis Children*”; an *affidavit* given by the penitent; and, a document dated 7 March 2012 in which Rev. Gruber calls into question the admissibility of the transcript of his pre-trial interview of 21 October 2010.

13. On 27 June 2012 the *Ordinary Session* of the Congregation for the Doctrine of the Faith (*Feria IV*) addressed the recourses made against the decree of 30 June 2011. The question placed before the the *Ordinary Session* was whether the decree of 30 June 2011 with which the penalty of a life of prayer and penance was imposed upon Rev. Mark Gruber, OSB should be modified or revoked.

14. In response to Rev. Gruber’s claim that the pre-trial interview of 21 October 2010 is inadmissible, the *Ordinary Session* accepted the interview as an extra-judicial confession, according to the norm of CIC can. 1537.

IN IURE ET IN FACTO

Caput accusationis: possession of pornographic images of minors under the age of fourteen (14)

15. The decree of 30 June 2011 amply addresses the accusation of the possession of pornographic images of minors under the age of 14 (*SST* art. 6 §1, 2°). It notes that 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 included under the grave delict of sexual abuse of minors. 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.

16. Both the more extensive examination by the Pennsylvania State Police and the examination which was conducted by the private firm Ballard Spahr LLP¹ 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 of pornography established by CCC n. 2354. 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.

17. In his recourse, Rev. Mark Gruber, OSB argues that the crime of possession of pornographic images of minors under the age of fourteen was only promulgated on 21 May 2010, while the images found on his computer date to 2009. As the law is not specifically stated to be retroactive, it cannot be applied to the images in question. Furthermore, Rev. Gruber asserts that the computer was not properly “his” but rather, was located in a seminar room next to his office and, therefore, the computer was easily and often accessed by others. Regarding the pornographic nature of the film, “*The Genesis Children*”, Rev. Gruber argues that the film is not considered to be pornography by the American film industry or its rating system.

18. The Fathers of the *Feria IV* accept the argumentation of the original decree regarding this accusation. On the issue of ownership of the computer, the CDF never claimed that the computer was exclusively used by Rev. Gruber. Rather, the conclusion for Rev. Gruber's guilt of the crime of possession of pornographic images of children under the age of fourteen (14) is based on the scientific examination of the key stroke log of the computer in question, which clearly indicates the film was viewed several times and was saved on the computer's hard drive (*detentio*).

¹ 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.

19. The decision of the decree of 30 June 2011 regarding the guilt of Rev. Mark Gruber, OSB for the more grave crime of the possession of pornographic images of minors under the age of fourteen (14) (SST art. 6 §1, 2°) should be confirmed.

Caput accusationis: The production of material which gravely injures good morals (CIC can. 1369)

20. The second accusation lodged by the Congregation against Rev. Gruber regards the production of materials which gravely injure good morals (CIC c. 1369). The decree of 30 June 2011 describes how technical experts were able to connect certain *threads* to personal email aliases used by Rev. Gruber. Some of these *threads* tell the stories of young boys swimming naked; in others, young boys are described as they shower together, after leaving the swimming pool. 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.

21. In his recourse, Rev. Gruber proffers the argument that the conclusion of guilt on this second count is predicated exclusively on the decision of guilt on the first count. He also claims that the impugned decree lacks the necessary motivations for this conclusion, according to the norm of CIC cann. 51 and 1617.

22. The argumentation of the decree of 30 June 2011 makes it very clear that this accusation has nothing to do with the accusation of possession of pornographic images of minors under the age of fourteen (14). Rather, the accusation of the production of material which gravely injure good morals is based exclusively on the inappropriate stories of young male swimmers published to various internet sites from the email aliases of Rev. Gruber. The argumentation of Rev. Gruber's recourse is without merit.

23. The decision of the decree of 30 June 2011 regarding the guilt of Rev. Mark Gruber, OSB for the crime of production of material which gravely injure good morals (CIC can. 1369) should be confirmed.

Caput accusationis: Abuse of the Sacrament of Confession, with the aggravating factor of the manipulation of conscience (CIC can. 1399)

24. The decree of 30 June 2012 treats the three accusations regarding delicts against the Sacrament of Confession together. Of the three accusations, Rev. Mark Gruber, OSB was found guilty only on the count of the abuse of the Sacrament of Confession, with the aggravating factor of the manipulation of conscience (CIC can. 1399), based on the evidence of his own testimony given on 21 October 2010.

25. In his recourse, Rev. Gruber argues that the conclusion of the *Congresso* does not adequately take into consideration the testimony offered by the penitent, who claims that the information passed by Rev. Mark Wenzinger, OSB to Rev. Gruber was not under the Sacramental seal.

26. The decree of 30 June 2011 explains in great detail the complexity of the misuse of the Sacrament of Confession in this case. In its discussion, however, despite agreeing with the original decree that the Rev. Gruber is guilty in regards to this count, the *Ordinary Session* decided that the crime committed by Rev. Gruber is better described as

an abuse of the Sacrament of Confession, with the aggravating factor of the manipulation of conscience. In this formulation, it is clear that the crime is not against the seal *in se*, but against the Sacrament, as a whole.

27. The decision of the decree of 30 June 2011 regarding the guilt of Rev. Mark Gruber, OSB for the crime in question is to be confirmed.

Caput accusationis: Defamation of a legitimate superior (CIC can. 1390)

28. The decree of 30 June 2011 presented the final accusation, that of defamation of a legitimate superior (CIC can. 1390), without entering into detail regarding the internal conflict present in the Archabbey of Saint Vincent. Rev. Mark Gruber, OSB was found guilty on this count based on the evidence presented in connection with one of the email aliases used by him to send defamatory emails regarding the Archabbot.

29. In his recourse, Rev. Gruber argues that this delict is not included in the norms of SST and, therefore, is not exclusively the competence of the CDF. Furthermore, Rev. Gruber sustains that the CDF has failed to prove that the *bona fama* of the Archabbot has been impugned; even if it were proven, according to the accused, there is insufficient evidence to prove his responsibility in this matter. In conclusion, Rev. Gruber claims that the CDF has forsaken the search for truth in this claim in order to protect the superior.

30. The *Ordinary Session* finds that the evidence presented in the decree of 30 June 2011 is sufficient to conclude for the guilt of Rev. Mark Gruber, OSB on this count.

31. The decision of the decree of 30 June 2011 regarding the guilt of Rev. Mark Gruber, OSB for the crime of the defamation of a legitimate superior (CIC can. 1390) should be confirmed.

Quoad poenam

32. The recourse of Archabbot Nowicki regards strictly the question of the penalty to be imposed on Rev. Mark Gruber, OSB. The Archabbot, given the task of identifying an appropriate religious house in which Rev. Gruber could live out the life of prayer and penance imposed upon him in the decree of 30 June 2011, reports that there is no house in the United States of America that can provide the level of supervision foreseen in the decision of the *Congresso*. The Archabbot recommends that the penalty be modified to impose the dismissal from the clerical state and the dispensation of his religious vows upon the Rev. Gruber.

33. The Fathers of the *Ordinary Session* consider that the penalty imposed on the Rev. Mark Gruber, OSB by the decree of 30 June 2011 is appropriate. However, given the recourse of the Archabbot, the penalty is to be modified, so that the Congregation for the Doctrine of the Faith will take the responsibility for selecting the religious house in which Rev. Gruber will serve his life of prayer and penance. The *Ordinary Session* also decided to modify the penal precept accompanying the decree of 30 June 2011, to add the requirement of spiritual direction to the penalty imposed on Rev. Mark Gruber, OSB, as well as requiring that the superior of the house monitor and give permission for Rev. Gruber to leave the place of residence.

Pars Dispositiva

34. Having carefully considered the facts in this matter, having given due weight to the arguments offered by the accused in his recourse and having examined the law, the *Ordinary Session (Feria IV)* of the Congregation for the Doctrine of the Faith, finding Rev. Gruber guilty of the more grave delict of possession of child pornography, the crime of the production of materials which gravely injure good morals, the abuse of the Sacrament of Confession with the aggravating factor of the manipulation of conscience and the defamation of a legitimate superior and, furthermore,

DECREES

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

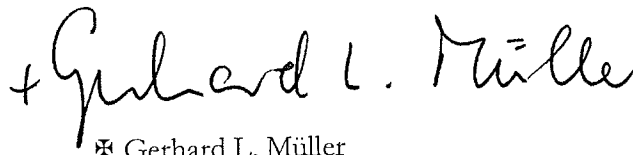
1. A life of prayer and penance to be lived outside of the Archabbey of Saint Vincent, in a religious community to be determined by the Congregation for the Doctrine of the Faith;
 2. The prohibition against presenting himself as a cleric in public, celebrating the sacraments in public, teaching, and contact with minors under the age of 18; Rev. Gruber 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;
 4. Rev. Gruber is required to participate in spiritual direction with a priest to be chosen by the superior of the religious house in which he will reside;
- and,
5. Rev. Gruber is required to obtain the permission of the superior of the religious house in which he will reside, whenever he wants to leave the place of residence.

In accord with the norm of CIC can. 1319, a penal precept is hereby decreed by which further penalties can be imposed upon Rev. Mark Gruber, OSB, not excluding dismissal from the clerical state, should he not comply in full with the penalties imposed upon him by this decree.

This decree is to be notified to all parties concerned.

The decision of the *Ordinary Session* was approved by the Supreme Pontiff, Benedict XVI, in audience on 30 June 2012. This decree, therefore, does not admit of further recourse.

Given on 2 July 2012.



✠ Gerhard L. Müller
Prefect



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