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Memo To: Archbishop Nienstedt

From: Father Kevin McDonough J.C.D.

Re: Should Father Jon Shelley be accused of a violation of Canon 1395, paragraph 2?

Archbishop, I have recently been asked to review the evidence collected in 2004 concerning Father Jon Shelley. At that time, the Archdiocese received a complaint that a discarded computer formerly belonging to Father Shelley contained pornographic images. More recently, the question has arisen as to whether any of the pornographic images involved models who were minors. I am writing to you to address the question of whether the Archdiocese ought to treat Father Shelley as a priest accused of a sexual crime against minors. Here are some points to consider:

1. Possession of child pornography is a violation of canon 1395, paragraph 2: The Holy See has made it clear that the possession of child pornography is included in the sexual crimes against minors that are reprobated in our Code of Canon Law. Please know, Archbishop, that this was the understanding of the relevant law that was in operation in our Archdiocesan administration at the time of the preliminary investigation mentioned above. If we had reason then or have reason now to believe that Father Shelley possessed such pornography, we would have been and still would be obligated to seek direction from the Holy See and then to pursue the required criminal or pastoral remedies.
2. The pornography discovered in the discarded computer was likely downloaded by Father Shelley: An independent, credible forensic computer examiner reported to the Archdiocesan administration that there was strong reason to believe that no one other than Father Shelley was likely to have downloaded many or most of the images on the computer.
3. There is no reason, nonetheless, to pursue further the question of whether the pornography discovered in the discarded computer was in fact child pornography: The independent forensic computer examiner concluded his part of the preliminary investigation by indicating that no images found in the computer clearly involved minors. He characterized some of the images as "borderline", which I understand to mean that they were youthful in appearance, although clearly having passed puberty. He also indicated that it was certain that no images involved pre-pubescent children. The Archdiocese sub-contracted the work of the computer examiner through a widely respected criminal investigator. Both of these experts were informed that the Archdiocese wanted to cooperate with civil law if any illegal (and not only immoral) images were found. Both investigators concluded that this condition was not met. Furthermore, I

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recently reviewed about one-fourth of the images now contained in separate computer files. Every image I saw in a first round of reviews clearly involved adult models. Subsequently, with Ms. Haselberger's assistance, I saw four additional images which were quite likely of minors. But these images did not cause me to question the investigators' conclusion either. First, the images themselves were not pornographic, but enticements to take a further step to view pornography. Second, they appear to be the sorts of advertisements that "pop up" on the internet. Were Father Shelley to have clicked on such advertisements, he would likely have been caught in a law-enforcement sting. In 1999 or 2000, the FBI announced that it had made internet child pornography its top domestic law enforcement priority. I recall reading that some sixty percent of the child pornography sites on the web were set up by law enforcement agencies to catch criminals. The overwhelming predominance of adult images on Father Shelley's computer, and the absence of any law-enforcement involvement with him, suggests to me that the 2004 conclusions by the preliminary investigators were and remain reliable.

In summary, were I asked to serve as promoter of justice, I would not be able to recommend to an ecclesiastical tribunal that a reasonable question existed about Father Shelley having possessed child pornography.

Archbishop, I do not believe the preliminary investigation gives you any reason further to pursue the question of child sexual abuse with Father Shelley. Please let me know if you require anything further from me in this matter.