

Summary of WT Appeal Brief in Conti Case

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Chaserious



Summary of WT Appeal Brief in Conti Case

posted **a day ago** (4/4/2013) Post **490** of **497**
Since **2/18/2010**

After having the opportunity on a long train ride today to read the entire Watchtower appeal [brief](#) from the Conti case, I decided to put up a summary for those who are interested. My apologies for the length, but the brief is 77 pages! Many thanks to everyone at the newly announced AAWA for making this available!

As a matter of background, I'm a law student from the U.S. who will be sitting for the bar this summer. I spent a few months working for an appeals court judge (not in California), which sometimes involved reading briefs like this one, or portions of a brief, and writing a summary memo for the judge about the key issues and a recommendation on how the case should turn out. Even though I didn't know any of the judges and clerks to read the briefs until the briefing was complete, as a spectator in this case, I was too curious to wait.

There are essentially six grounds on which the WT is appealing the trial court's decision. They are technically appealing only what the judge did, not the jury. Although parts of the appeal may seem like an appeal of what the jury did, in reality it is an appeal of the judge letting such decision be placed in the jury's hands, or the judge's [instructions](#) to the jury, or the judge not modifying portions of the jury's verdict the way they would have liked. I have included a summary of each of the points below.

A) [The Duty Applied to the Watchtower](#) - The WT is appealing the finding by the trial judge that the WT had a duty to protect Candace or to warn her parents. "Duty" is an element of every tort case, and if one doesn't exist there can be no recovery to the plaintiff. Whether a duty exists is decided by the trial judge, and not the jury. The judge told the jury what legal duties [apply](#) when he gave jury instructions, which the WT objected to at the time.

So, the basis of the WT's argument is that normally, people don't have any responsibility to warn other people of danger, if they did not directly create the danger and the danger is at the hands of someone else. Of course, warning someone is the nice thing to do and people might feel better about themselves, but there is no legal liability for not warning. For example, if you have a relative who has been convicted for child abuse and the relative is [dating](#) a woman with small children, you would have no legal duty to warn her about your relative, even if you had the opportunity to do so, and even though most self-respecting people would probably warn her (this example is my editorial, not part of the brief). Some of you may also remember the [David Cash](#) case, (the famous "bad samaritan") for a sad reminder about how legally you don't usually have to help anyone.

An exception to the usual rule that there is no duty to prevent others from causing harm is when something called a "special relationship" exists. Rick Simons argued, and the trial judge agreed, that a special relationship did exist between both the congregation and the WT Society and Candace Conti. It is very important that the appeals court agree as well that a special relationship existed in order for Candace to [win](#) this appeal. There are a lot of cases in the brief cited about when special

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relationships do and do not exist. The WT cites some cases to the effect that the Catholic Church does not have a special relationship with its parishioners. This will probably be the most important parts of the entire appeal for Candace's legal team to reply to. I am looking forward to seeing their arguments. I imagine that one argument could be that the WT organization is different from the Catholic Church, and another might be that maybe it is time to recognize such a special relationship since times have changed since those last cases were decided involving the Catholic Church (10-15 years ago)

Perhaps one positive is that California has often been a liberal state in defining what creates a duty. One of the most famous cases is *Tarasoff v. Regents of the University of California*. That was a case from the 1970's where the CA Supreme Court caused CA to be the first state to recognize a special relationship, and therefore a duty, on psychologists to warn if one of their patients is going to harm someone. That case imposed liability on a psychologist whose patient killed someone. It was controversial at the time and unpopular in the psychiatric community, but eventually some other states followed suit.

I think that this will be the most important of all the grounds for appeal. It took up the most space in the brief, and understandably so. It's probably the WT's strongest argument out of the six, and it's also the one that they would prefer to win on. If they were able to win on this ground, the court probably would not even decide any of the other issues. Also, it is the only ground where they could completely end the case. If they win on any of the other grounds for appeal, the remedy would most likely be either a new trial or reduction in damages. If they were able to win on this ground, they could get out completely (although it could still be appealed to the CA Supreme Court).

B) Exclusion of Parties from Jury Verdict Form – The jury was only given the option to allocate responsibility among Kendrick, the Fremont Congregation, and the WT Society. The ultimate finding was 60% against Kendrick, 27% against the WT, and 13% against the congregation. The WT is arguing that other parties (the parents and various law enforcement/government parties) should have been included—not that a percentage had to be assigned to them, but allowing the jury the option. I am not going to discuss this in detail since I think it is a long shot for success. There is a fairly well-established history of law enforcement not being liable to the general public for not warning them or not arresting or convicting somebody they should have. The case they cite is a completely different set of circumstances. And I will just say that I don't think the court wants to set a precedent for assigning blame to unsuspecting parents when their children are molested. The WT did use this section to sneak in a reference to Kathleen Conti being a drug and alcohol abuser.

C) Government Entanglement With Religion - This part claims that the lower court violated WT's First Amendment rights by not allowing their biblical understanding of confidentiality to be a justification for keeping Kendrick's abuse secret. They claim that confidentiality is a religious belief that they feel is based on scripture. Another weak argument, in my view. This could potentially allow for an appeal to the U.S. Supreme Court, but I doubt it will be seriously considered. If this were true, the clergy reporting requirement that is now in effect in CA, that they admit they are now subject to, would be unconstitutional since it would violate their "biblical" view on confidentiality.

D) Required Sex Offender Label – They argue that by warning, they would have violated Kendrick's rights by labeling him as a sex offender even though he had not yet been convicted. The argument is that even law enforcement can't put someone on a sex offender registry until they are actually convicted. I don't think this requires a lot of discussion either. Dangerousness is not usually measured by convictions – for example, the *Tarasoff* psychiatrist had a duty to warn, and his patient had not been convicted of anything at that point. Also, they did not have to



label him as a "sex offender." Kendrick had confessed what he did, so if there was a duty to warn, they could have done it without falsely stating that he had been convicted in a court of law.

E) Punitive Damages not Supported - The last two grounds for appeal relate to punitive damages. If the WT's appeal were to be successful on one of these grounds, they would still owe their 27% of the general damages of \$7,000,000, which would reduce their liability to about \$1.9 million. Just to give a brief background on punitive damages, this type of award goes above and beyond what the jury believes would be enough to compensate a victim for what happened to the victim. The punitive damages are intended, as the name indicates, to punish the offender. So for example, if everyone agreed that a broken leg was worth \$100,000 in compensation, if someone broke your leg by running a red light in a car accident, you would be entitled to the \$100,000. However if you suffered the same exact broken leg as a result of someone smashing it with a metal pipe for no reason, you would arguably be entitled to the \$100,000, plus punitive damages, from the attacker. There has to be something called "malice" for punitive damages to be awarded. The jury did find malice, and the WT is arguing that there was not enough evidence that there was in fact malice. This is a little more subjective, and I suspect that there will be a lot of variation among judges as to what they think is evidence of malice. However, unlike all of the above grounds for appeal, when it comes to punitive damages, the appeals court has to give the jury a lot of deference. So even if they don't think there was a lot of evidence of malice and the judges themselves would not have awarded punitive damages, they have to allow the punitive award to stand unless there is almost zero evidence of malice. The rule is kind of that to eliminate the punitive damages, the jury had to make a "big mistake," not just any mistake. The punitive damages award in this case was based primarily on the 1989 BOE letter and WT headquarters policy/directives. That is why the congregation was not hit with a punitive damages award – only the WT.

F) Excessive Punitive Damages - This last argument is that even if the punitive award should have been permitted, it is excessive. As those who have been following the case know, the original punitive award was already reduced by the trial judge, and Candace Conti accepted the reduced award as an alternative to a new trial, so they are talking about the modified \$8.6 million punitive award. This argument has a federal constitutional element as well, and could in theory be appealed all the way to the U.S. Supreme Court.

One quote that I found interesting in this section is that "Watchtower asserts that the compensatory award, comprised mainly of general damages, itself is so astronomically high that it likely already contained a punitive element."

I would translate this to be saying something like "\$7 million in compensatory damages is just so much more than Candace Conti deserves for what she went through that the only reason the jury gave her such a high award is because of dislike for the defendant." My own take – while \$7 million is higher than average for sexual abuse cases, it takes a lot of guts to use the "astronomical" language in a child molestation case. It's not like we're talking about \$7 million for a slip n' fall in the 7-11.

Aside from the six primary arguments, the factual statements of Watchtower policy seem fairly accurate (although perhaps not balanced, but that is to be expected) for the most part. One potential inaccuracy I noticed was that the brief stated that "[t]hat letter [a 1997 letter to BOE] also confirmed Watchtower's long-standing policy that a known child molester does not qualify to be appointed to a position of responsibility in any congregation."

I believe there have been letters to the contrary, e.g. that molesters could potentially qualify again. Maybe someone can provide a reference.

Chaserious



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posted [a day ago](#) (4/4/2013)

frankiespeakin



Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



Yeah!

California

Post **9580** of **9605**
Since **9/9/2003**

Violia



Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



I do not know why but this is not showing up in IE. I had to use Chrome to see these posts.

Post **3251** of **3251**
Since **4/11/2009**

cofty



Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



Thank you Chaserious that was really helpful.
Looking forward to hearing Rick Simons' response.

Post **7729** of **7735**
Since **12/19/2009**

Chaserious



Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



I do not know why but this is not showing up in IE. I had to use Chrome to see these posts.

Sorry if this was my fault in any way. I am posting on a Mac. I never use IE to post here!

Post **491** of **497**
Since **2/18/2010**

frankiespeakin



Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)

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posted a day ago (4/4/2013)



Sorry about all the post I switched to crome and the topic came up, I was wondering why it wouldn't post, but I see it did. I' m reading it now.

California

Post 9587 of 9605
Since 9/9/2003

jgnat



Re: Summary of WT Appeal Brief in Conti Case

posted a day ago (4/4/2013)



Thank you for doing that summary for us all, Chaserious.

Exercising my fallacy spotter, I'd say the lawyers have used *confirmation bias* and *suppressed evidence*. It will be up to Simons to fill in the gaps, eh?

<http://www.informationisbeautiful.net/visualizations/rhetological-fallacies/>

Alberta

Post 20458 of 20482
Since 7/4/2002

Slidin Fast



Re: Summary of WT Appeal Brief in Conti Case

posted a day ago (4/4/2013)



Thanks for your work Caserious, I think you have summarised the issues very well.

As a layman, I think that the 1989 letter establishes a relationship certainly between the actions of the elders and the WT. It seems to create a hard nosed cynical framework in which the molester was able to carry out his crimes. I hope that the court find a way of taking the just route rather than the picky legalistic one.

Post 433 of 437
Since 5/26/2010

Chaserious



Re: Summary of WT Appeal Brief in Conti Case

posted a day ago (4/4/2013)



Interesting pickup, Jgnat. I think they certainly want to portray themselves as just a regular church in this case, and suppress any evidence to the contrary - like that when you are a member of this group, your entire social circle is made up of those on the inside, along with a naive belief encouraged by leadership that everyone is good - making it much more likely that fellow congregants will be in close contact with one another than in other groups.

Post 492 of 497
Since 2/18/2010

wha happened?



Re: Summary of WT Appeal Brief in Conti Case

posted a day ago (4/4/2013)



what's the 1989 letter?

California

Chaserious



Summary of WT Appeal Brief in Conti Case

posted **a day ago** (4/4/2013)

Post **10702** of **10706**
Since **10/2/2004**

frankiespeakin



Re: Summary of WT Appeal Brief in Conti Case

posted **a day ago** (4/4/2013)



I think this letter shows malice.

One can read the 1989 BOE letter here:

<http://www.silentlambs.org/education/89boe.cfm>

Partial Quote

California

Post **9588** of **9605**
Since **9/9/2003**

TO ALL BODIES OF ELDERS July 1, 1989 Page 3

B. Child Abuse

Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger. - See "If the Worst Should Happen," AYI.Qk..e.1- January 22, 1985, page 8.

C. Search Warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other governmental officials will

make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elder(s) involved does not cooperate. In any such situation, the Society's Legal Department should be called immediately.

At any time an elder is confronted with a search warrant (whether given advance notice or not) , the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then call the Society's Legal Department. If for some reason the Legal Department cannot be contacted, the elders involved should make every effort to obtain the assistance of a local attorney for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance or for the appearance of an individual at a trial or deposition to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or an attorney. If an elder receives a subpoena, he should contact the Society's Legal Department immediately. Never turn over records, notes, documents, or reveal any confidential matter sought by subpoena without receiving direction from the Legal Department.

D. Crimes and Criminal Investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g., theft, assault, etc.). Generally, a secular investigation into a matter that is a concern to the congregation should not delay conducting a judicial hearing. To avoid entanglement with the secular authorities who may be investigating the same



matter, the strictest confidentiality (even of the fact that there is a committee) must be maintained.

TO ALL BODIES OF ELDERS July I, 1989 Page 4

If the alleged wrongdoer confesses to the sin (crime), no one else should be present besides the members of the committee. When evidence supports the accusation but genuine repentance is not displayed resulting in a decision to disfellowship, this should be handled in the normal course regarding advice of appeal rights and announcements to the congregation. In cases of serious criminal wrongdoing (e.g., murder, rape, etc.), or where the criminal conduct is widely known in the community, the body of elders should contact the Society before proceeding with the judicial committee process.

E~ When Servants and Publishers Move

A considerable number of publishers, including elders and ministerial servants move from one congregation to another. Sometimes the circumstances surrounding their departure are

unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his reappointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favorably recommended, fully explaining the reasons why. Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation. The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. If serious accusations of wrongdoing have been made against an

individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits. They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing; this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information unnecessarily about the private lives of individuals.

F. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit, the Society's Legal Department should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

TO ALL BODIES OF ELDERS July 1, 1989 Page 5



G. Child Custody

Elders may learn that a publisher is facing a dispute over child custody in a divorce proceeding. If the parental rights of such is challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Department. In a rare emergency, a telephone call may be necessary. The Legal Department will assess the facts and determine the degree of its involvement, if any. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child custody dispute.

When you write to the Society's Legal Department about a specific case, please provide the following information:

1. The names of the parents and their attorneys.
2. The number of children involved and their ages.
3. A brief description of the facts, including the presence of apostates.

4. An assessment of the Christian parent's spiritual condition--Is he or she new in the truth? Active? Inactive? Balanced?

5. The status of the legal proceedings--Has the matter gone to trial? Has the trial date been set? If so, when?

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out

favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Department.

TO ALL BODIES OF ELDERS July 1, 1989 Page 6

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file. A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note ks77, pages 68-9.) Nothing should be put in writing to any disfellowshipped person to advise him of his status or the 'reasons for it without specific direction from the Society. The rules and procedures of Jehovah's Witnesses do not require

Chaserious

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such written disclosures. Anything in writing submitted to a judicial committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed orally of the action taken and of the right to appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him orally of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wives, or with other members of the congregation. Be extremely careful not to inadvertently disclose private information when others are present, such as when speaking on the telephone with others listening in or nearby. (Note ~, page 65.) At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

Elders bear a heavy responsibility in ministering to the needs of the Christian congregation, and observing confidentiality as they do so. (I Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock. -- 1 Peter 5:1-3.

Your brothers,

WTBS

P.S. Due to the importance of the information that is presented herein it is suggested that the body of elders jointly read and consider this letter as soon as possible after its receipt in the congregation. Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.

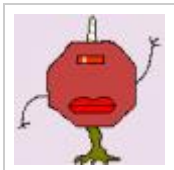
breakfast of champions

**Re: Summary of WT Appeal Brief in Conti Case**posted **a day ago** (4/4/2013) 

Thanks for the summary and explanation. . . Interesting. . .

Post **3085** of **3099**
Since **5/30/2011**

Splash

**Re: Summary of WT Appeal Brief in Conti Case**posted **a day ago** (4/4/2013) 

Outstanding recap Chas, thank you.

It makes me wonder when the teaching of the congregation being a safe spiritual paradise was put into print.

"You can trust us because we have such a paradise". Yeah, right.

Chaserious

Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)

Splash

Post 595 of 597
Since 7/16/2012

Balaamsass

Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



👍 Thanks Chaserious!

Post 1890 of 1894
Since 10/30/2011

DATA-DOG

Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



" You are not **legally required** to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. "

So if you live in a State that requires mandatory reporting of child abuse you can report at your leisure!?!?!? If you are the one sole channel of salvation on Earth then you better damn well live up to your moral abligation to protect children regardless of what laws exist. These people are disgusting.

Post 1772 of 1777
Since 6/21/2012

Ding

Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



The WT brief alleges that "neither Watchtower personnel nor the elders and ministerial servants of North Fremont Congregation have unique positions of access to children, or positions of trust with children, because families stay together during all religious programs."

What about the fact that as part of the religion children as well as adults go out in field service, one of whom the elders knew to be a pedophile? This gave him an opportunity not present in a religion where one person merely attends the same meeting as everyone else.

Post 4263 of 4265
Since 8/27/2010

The Quiet One

Re: Summary of WT Appeal Brief in Conti Case

posted [a day ago](#) (4/4/2013)



(CHASERIOUS SAID 'I believe there have been letters to the contrary, e.g. that molesters could potentially qualify again. Maybe someone can provide a reference.') --Page 38 of the ShepherdtheFlockBook: "If it comes to light or an appointed brother confesses that he has committed a disfellowshipping offense years in the past: The body of elders may determine he can continue to serve if the following is true: The immorality or other serious wrongdoing occurred more than a few years ago, and he is genuinely repentant, recognizing that he should have come forward immediately when he sinned. (Perhaps he has even confessed to his sin, seeking help with his guilty conscience.) He has been serving faithfully for many years, has evidence of God's blessing, and has the respect of the congregation. If the sin occurred before he was appointed as an elder or a ministerial servant, the elder will need to take into consideration the fact that he should have mentioned this possible impediment to his being qualified when elders interviewed him just prior to announcing his appointment. Moreover, nature of the

Post 666 of 698
Since 6/3/2011

3 DMIS

Posting Guidelines

To ensure all users feel safe and keen to participate, please avoid:

1. Insulting, threatening or provoking language
2. Inciting hatred on the basis of race, religion, gender, nationality or sexuality or other personal characteristic.
3. Swearing, using hate-speech or making obscene or vulgar comments.
4. Breaking the law
This includes libel, condoning illegal activity and contempt of court (comments which might affect the outcome of an approaching court case). You may post a small amount of third party material, but please help us to avoid breaching copyright by naming its author and publication. We are unable to investigate all third party material, so where possible, please provide a link instead.
5. Spamming
Please don't add the same comment to more than one forum.
6. Advertising
You can mention relevant, non-commercial websites as long as they support your comment.
7. Impersonating or falsely claiming to represent a person or organisation.
Please don't mislead other users by abusing our registration procedure.
8. Posting in a language other than English.
9. Invading people's privacy
Please don't post private addresses or phone numbers, including your own. You may post email addresses so long as you make it clear who they belong to.
10. Posting an off-topic comment.
11. Publicly disputing or arguing about moderator decisions
If you disagree with any action taken then please raise it via email or PM.

Forums may be moderated to make sure they stay friendly and welcoming, legal and relevant. We reserve the right to edit or delete posts at own discretion and without notice, which we consider to be unacceptable. If you repeatedly break these guidelines, you may be prevented from posting.

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