Defendant: Watchtower Bible and Tract Society of New York, North Fremont Congregation of Jehovah's Witnesses

Victim(s): Candace Conti

Court Decision: In June 2012, the jury awarded Candace Conti $28 million in compensatory and punitive damages, finding that the defendants were negligent and did not adequately protect her from a known predator within the congregation. However, the punitive damages were later reduced, and the final judgment was significantly lowered upon appeal.

Case facts:

The Jehovah's Witnesses is a religion with about 1.2 million members in 13,400 congregations in the United States.   In the 1990's, Watchtower was in charge of the church's policies.   Congregations are comprised of elders, ministerial servants, and rank-and-file members called “baptized publishers.”   All members in good standing are considered “ministers.”   Elders are the spiritual leaders of their congregations, comparable to clergy in other religions.   Ministerial servants do administrative work such as distributing literature to members, and handling microphones at meetings.   Watchtower admitted that Fremont Congregation elders Gary Abrahamson and Michael Clarke were Watchtower's agents while acting within the course and scope of their church duties.   In addition to Sunday and midweek meetings, Congregation activities include field service, where small groups, usually consisting of two or three people, go door-to-door in neighborhoods to spread the church's spiritual teachings.

Congregations are small and close knit.   The average congregation has 75 to 150 members.   At different times, the Fremont Congregation had from 100 to 140 members, of whom 6 to 13 were elders.   Evelyn Kendrick (Evelyn), who was married to Kendrick during the period when he molested Conti, testified that “we only socialized with people of that congregation.   We were kind of—well, not told outright, but that we should only associate with people of that religion and not of any other religion because they could be a bad influence.”   Congregation members call each other “brother” and “sister.”

Conti and Kendrick were Fremont Congregation members in the 1990's, and for a time Kendrick was a ministerial servant.   Conti testified that Kendrick began molesting her around the time she turned nine years old in late 1994, and continued until 1996 or 1997, when she was age 10 or 11.   Before Kendrick molested Conti, the Congregation elders learned that he had molested his stepdaughter.

In November 1993, elder Clarke received a call from Evelyn or Kendrick asking for a consultation about Kendrick's abuse of Evelyn's daughter.   Clarke and Abrahamson went to their home that week and spoke with Kendrick, Evelyn, and her daughter.   The elders were told that, four months earlier, Kendrick had touched his stepdaughter's breast around the time of her 14th birthday.   The stepdaughter told Evelyn about the molestation minutes after it occurred, but Evelyn testified that she did not immediately report it because she thought it was an isolated incident and she was “trying to deal with it” within the family.   The details of what the elders were told about the incident were disputed at trial.   Among other things, Evelyn disputed the elders' testimony that she told them to keep the incident private, and that Kendrick said he touched her daughter “inadvertently.”   Even so, the elders did not believe the touching was accidental.

The elders told Evelyn and her daughter that they were free to report the incident to the police.   Abrahamson testified that they neither encouraged nor discouraged Evelyn and her daughter from doing so;  “[i]t was up to them.”   Evelyn reported the incident to the police in February 1994.   Kendrick admitted touching his stepdaughter's breast, and was convicted of a misdemeanor.   Elders at the Congregation did not learn of Evelyn's report to the police until a couple of years later.

After meeting with the Kendrick family, Clarke wrote a letter to Watchtower to report “a case of child abuse” by Kendrick.   Abrahamson testified that the Congregation was required to contact Watchtower for instructions in such a situation.  The copy of the letter in evidence is heavily redacted.   In the unredacted portion, the letter stated that the Congregation had phoned Watchtower about the Kendrick matter, the “legal department had given us some direction,” and Watchtower had asked the Congregation to submit its questions in writing.   The letter said the elders planned to tell the Congregation that Kendrick would no longer be acting as a ministerial servant, and asked Watchtower to advise if that was an “incorrect” course of action.   Clarke testified that Watchtower responded to his letter, but he did not provide the substance of the response and no written response is in evidence.   The testimony was simply:  “Q. And Watchtower did respond to the letter and he was removed as a ministerial servant? A. Correct.   And we announced that.”

Allen Shuster, a Watchtower official in New York, testified that Watchtower policy allowed a known child molester to continue to perform field service, but not alone or with a child.   Defense expert Monica Applewhite, whose testimony is discussed further below, said that Watchtower policies were implemented by letters sent “to all bodies of elders in the United States.”   However, Shuster was unable to identify any church-wide writing that documented the limitations on field service by known child molesters.   He said this policy was implemented by letters to elders on a case-by-case basis.

Abrahamson testified that he told the Fremont Congregation elders what he learned at the Kendrick family meeting, and they agreed that Kendrick was no longer fit to serve as a ministerial servant.   They removed Kendrick from the position, and announced his removal to the Congregation without disclosing the reason for it.

Clarke testified that the Fremont Congregation elders were following Watchtower policy in keeping information about the molestation confidential.   That policy was set forth in a July 1, 1989 letter from Watchtower to all elders in the United States, and it was a centerpiece of Conti's case against Watchtower.

The letter addressed the elders' “duties that may involve legal issues or questions.”   Watchtower instructed the elders they “must be careful not to divulge information about personal matters to unauthorized persons․  Elders must give special heed to the counsel:  ‘Do not reveal the confidential talk of another.’  (Proverbs 25:9) ․ Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society. Worldly persons are quick to resort to lawsuits if they feel their ‘rights' have been violated.   Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress.   Thus, elders must especially guard the use of the tongue.”

The letter continued:  “The spirit of the world has sensitized people regarding their legal ‘rights' and the legal means by which they can exact punishment if such ‘rights' are violated.   Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society.   Many of these lawsuits are the result of the misuse of the tongue․ The legal consequences of a breach of confidentiality by the elders can be substantial.   If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended.   Substantial monetary damages could be assessed against the elders or congregation.”

The letter went on to discuss “what to do in specific cases,” such as “[s]earch warrants and [s]ubpoenas,” “[c]rimes and [c]riminal investigations,” “[w]hen [l]awsuits are [t]hreatened,” and “[c]hild [c]ustody.”   On the subject of “[c]hild [a]buse,” the letter stated:  “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.”   The letter concluded with “points to remember,” such as “[b]e extremely careful with written material,” and “[a]ppreciate the [i]mportance of [m]aintaining [c]onfidentiality.”   With respect to confidentiality, the letter stated:  “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.”

Clarke testified that the policy stated in the letter was intended to protect confidential ministerial communications as well as to avoid legal liability.   He thought that “confidentiality is important for a minister.”   He asked, “Why would anybody come to us with their problems if they knew that as soon as they come to us we were going to announce it?   Why would anybody confess to a Catholic priest if they knew that after they confessed it was going to be announced at mass next week.   It is ludicrous. So [the policy was] put in place so that the friends would feel comfortable coming to us and we could keep confidence.”

Clarke testified that the elders told Kendrick he could not “show affection to children, put children on his lap, work with them out in the door-to-door ministry, work with children in the Kingdom Hall. And we made it clear to him that we were going to be watching him.   And we did, all, the whole body of elders.”   Elder Lawrence Lamerdin said the Congregation had 10 to 13 elders at the time and they “made sure that [Kendrick] was watched.”   Abrahamson saw “no need” to inform the Congregation that Kendrick had molested a child because the elders would have warned the parents of any child they saw Kendrick getting close to or isolating.

In an August 1, 1995 policy letter to United States elders on the subject of child abuse, Watchtower stated:  “[S]teps should be taken to protect the child, or other children, from further sexual abuse.   Obviously, parents would be keenly interested in taking adequate precautions in this regard․  Loving elders, too, will want to act in a way that demonstrates their protective care, since the word ‘overseer’ carries the thought of one who watches over, a guardian, a shepherd of the flock․ It would be appropriate to talk very frankly to a former child abuser, strongly cautioning him as to the dangers of hugging or holding children on his lap and that he should never be in the presence of a child without another adult being present.”

There was testimony that Jehovah's Witnesses conduct no activities such as classes or trips that by their nature separate children from their parents, and Clarke testified that parents in the congregations are regarded as “the first line of defense” in preventing child sexual abuse.   Parents were educated about child sexual abuse in Awake!, a publication distributed to all congregation members.   Child abuse was discussed at length in the January 22, 1985 issue, which covered topics such as “Who Would Do a Thing Like That?” and “You Can Protect Your Child.”   The subject was also the focus of the October 8, 1993 issue, which addressed the question “How Can We Protect [Our Children]?”   The discussion under that heading stated:  “Tragically, adult society often unwittingly collaborates with child abusers.   How so?   By refusing to be aware of this danger, by fostering a hush-hush attitude about it, by believing oft-repeated myths.   Ignorance, misinformation, and silence give safe haven to abusers, not their victims.”   Both issues addressed misconceptions about child sexual abuse, including the belief that such abuse is most commonly perpetrated by strangers to the victims, and the 1985 issue gave as an example a girl who was molested by “a man who was running a church group.”

Conti testified that she met Kendrick at the Fremont Congregation's Kingdom Hall, a building for Congregation meetings that seats 220 people.   She said that Kendrick insinuated himself into her family, befriended her father Neal at meetings, and then began coming to their house.   He molested her several times a month for a couple of years.   With one exception, the incidents occurred at Kendrick's home, where he drove Conti after meetings and during field service.   On one occasion, Kendrick put his hand up her shirt while they were riding on a train with her father.

Kendrick began getting physical with her by repeatedly hugging her at Kingdom Hall. She always went to Kingdom Hall with at least one parent, but Kendrick made her sit on his lap during meetings.   She sometimes went to field service without her parents, and Kendrick sometimes drove her to the group meetings that preceded the door-to door field service, where partners for the activity were assigned.   They did field service together many times without either of Conti's parents present.   Conti said that the molestations occurred while they were supposed to be performing field service:  “Our groups would go out, we would get our territories, and we would go out and service.   And we would do door to door. And then there were times when our groups would separate even further.   And we would go to ․ laundry mats ․ and things like that.   And sometimes he would take me ․ to go do some of these things and then we would end up at his house.”   Kendrick drove her to his house, and when he finished molesting her, they would go “[m]aybe to the Kingdom Hall. Maybe to lunch with the rest of the service group.”

Conti's father Neal testified that he did not see Kendrick engage in any of the inappropriate behavior described by Conti.   Neal said he was always with Conti at meetings and during field service, he did not allow Conti to leave meetings with Kendrick, and did not see Kendrick hug Conti or Conti sit on Kendrick's lap.   Conti's mother Kathleen testified that she had mental health problems during the two years before she and Neal separated in July 1996, which prevented her from caring for Conti.   As a result, Conti was often on her own during that time.   Kendrick was always offering to help Conti and take her places, and Kathleen thought he was just being nice.

Clinical social worker Laura Fraser counseled Conti and her parents from August 1996 to April 1998.   Fraser testified that Neal and Kathleen were going through a tumultuous divorce, and Conti had assumed a caretaker role in the family.   Neal and Kathleen were not “psychologically well-developed,” and it was “like three children, in some respects, living together.”   Conti's home life was chaotic and unpredictable.   There were a “multitude of emotional crises ․ particularly related to her mother,” and Neal's work and Congregation activities left him little time for Conti.   She was craving for adult care at the time, and extremely vulnerable to manipulation.   Fraser was not surprised that Conti did not disclose her sexual abuse during the counseling.   Fraser had told Conti that she would be required to report such abuse, and Conti had “no safety” because she “was still rescuing both parents.”

Congregation member Carolyn Martinez testified that she saw Kendrick and Conti together at Kingdom Hall, and that he “was very enamored with her.   He just looked at her inappropriately․  I remember them holding hands.   I remember his arm around her.”   Martinez said that she never saw Conti come to Kingdom Hall or field service without a parent, but more than once she saw Kendrick and Conti together in field service.   Martinez recalled Conti sitting on Kendrick's lap in meetings at her home.

Elders Clarke, Abrahamson, Lamerdin, and three Congregation members testified that at Kingdom Hall they did not see Conti get hugs from Kendrick, sit on his lap, or leave with him as Conti testified.   The Congregation members said they never saw Conti do field service with Kendrick.

An expert testified for Conti about Child Sex Abuse Accommodation Syndrome, which describes behaviors often exhibited by victims, including delayed reporting of their abuse.   Physician notes in evidence state that Conti reported in August 2002 that she was sexually abused from around age nine to 13.   Conti did not recall that doctor visit, but remembered disclosing the molestations to her parents in 2003.   She disclosed the molestations to elders, including Clarke and Lamerdin, in 2009.

A psychologist who was counseling Conti at the time of trial testified that she suffered from depression, anxiety, and most severely from post-traumatic stress disorder (PTSD).  A psychiatrist treating Conti testified that she was afflicted by PTSD due to the sexual abuse and she would require a lifetime of therapy.   A psychiatrist qualified as an expert in child and adolescent psychology testified that Conti reported having been molested hundreds of times, that she had severe, chronic PTSD, and she would require therapy costing $160,000.

Anna Salter, a clinical psychologist and an expert on child sexual abuse testified for Conti that defendants, after learning that Kendrick had molested a child, did not meet the standard of care for organizations that sponsor or promote activities that bring adults and children together.   Salter said that, by 1993, the major religions and secular organizations conducting such activities had “adopted policies of transparency regarding known sex abusers.”   United Methodist Church policies, for example, were to “[u]phold the rights of children, speak out when abuses occur, and advocate for the strengthening and strict enforcement of these rights.”   Salter said that “people knew what the risk was when you had a child molester,” and that the standard of care “was not to keep it secret and let the person continue in the same activities with the same access to children.”   The standard of care required “reporting these cases ․ and making people aware ․ if they had a sex offender in their midst.”

Monica Applewhite, a clinical social worker and an expert on child sexual abuse, testified for defendants that Watchtower's policy against “disclosing private information ․ very closely mirror[ed]” the codes of ethics of the National Association of Social Workers and the American Counseling Association.   Based on her review of the evidence, Applewhite opined that the Congregation never put Kendrick “into a position that required or allowed him to be alone with children, to be in supervision of children, [or] to spend time with children away from their families.”   Because the church's activities did not separate children from their parents, Appelwhite opined that its best means of protecting children was to educate parents about child sexual abuse, and it exceeded the standard of care for such education in the 1990's.   According to Applewhite, the elders met the standard of care in Kendrick's case when they left it up to Evelyn and her daughter whether to tell the police about the abuse he admitted, and “they kept a special watch on him and paid attention to whether or not he had any inappropriate contact with children within the meetings at Kingdom Hall.”

Conti sued Watchtower, the Fremont Congregation, and Kendrick for damages for sexual abuse, alleging willful acts by Kendrick and negligence on the part of defendants.   The negligence consisted of failing to warn members of the Congregation that Kendrick was a child molester, and failing to restrict and supervise his participation in church activities.   Conti executed a covenant not to execute on any judgment against Kendrick, in exchange for his agreement not to participate in the case, or harass Conti or her witnesses.   Conti obtained leave to add a cause of action for “acts of malice” supporting punitive damages against Watchtower, arguing that Watchtower acted despicably and with conscious disregard for the safety of others by maintaining a “secrecy policy” with respect to child sexual abusers despite knowing of their “high recidivism.”   The “secrecy policy” was set forth in the July 1989 letter we have quoted at length.   Awareness of child abuse recidivism was exhibited in church publications such as the January 1, 1997 issue of The Watchtower, which stated that child sex abusers “may well molest other children.   True, not every child molester repeats the sin, but many do.”

The jury found Kendrick, Watchtower, and the Congregation liable, and apportioned fault 60 percent to Kendrick, 27 percent to Watchtower, and 13 percent to the Congregation.   The jury awarded Conti $7,000,000 in compensatory damages, including $130,000 for future counseling and therapy, and $6,870,000 in non-economic damages.   The jury awarded $21,000,001 in punitive damages against Watchtower.   The court conditionally granted Watchtower's motion for a new trial on punitive damages, subject to Conti's acceptance of an $8,610,000 punitive damage award.   Conti accepted the reduced punitive damages, and judgment was entered against Watchtower for $10,464,900, against the Congregation for $893,100, and against Watchtower and the Congregation jointly and severally for $130,000.   Watchtower and the Congregation timely appeal.