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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

APR 14 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In The Matter of the )  
Application of )  
HERBERT L. SCHOENBOHM )  
Kingshill, Virgin Islands )  
For Amateur Station )  
and Operator Licenses )

WT Docket No. 95-11

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge Edward Luton

OPPOSITION TO MOTION TO DISMISS OR ALTERNATIVELY  
TO HOLD ACTION IN ABEYANCE

The Chief, Wireless Telecommunications Bureau (Bureau), by her attorney, respectfully submits the following opposition to Herbert L. Schoenbohm's motion to dismiss the hearing designation order or, in the alternative, to hold action in abeyance:

1. This proceeding is based on Schoenbohm's conviction in the U.S. District Court for the District of the Virgin Islands (District Court) for violating 18 U.S.C. § 1029(a(1) (fraudulent use of counterfeit access device).<sup>1</sup> Government v. Schoenbohm, No. Crim: 1991/0108 (D.V.I. Dec. 30, 1992).<sup>2</sup> The Hearing

<sup>1</sup> Section 1029 provides, in pertinent part, that whoever "knowingly and with intent to defraud uses one or more counterfeit access devices . . . shall, if the offense affects interstate or foreign commerce, be punished as provided . . ." It defines an "access device" as "any plate, card, code, account number, or other means of access that can be used . . . to obtain money, goods, services or any other thing of value . . ."

<sup>2</sup> On appeal, the U.S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction. United States v. Schoenbohm, No. 93-7516 (Third Circuit July 22, 1994). On November 2, 1994, the U.S. Court of Appeals for the Third Circuit denied Mr. Schoenbohm's petition for a rehearing. United States v. Schoenbohm, No. 93-7516 (Third Circuit November 2, 1994).

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Designation Order found, on the basis of that conviction, that Schoenbohm apparently lacks the requisite qualifications for a renewal of his amateur service license.

2. Schoenbohm's first argument for dismissing this proceeding is that the conviction on which this proceeding is based has been vacated and has not been reinstated. The order of December 30, 1992, provided by Schoenbohm (copy attached) does vacate the Judgment and Commitment entered on August 21, 1992, but a new Judgment and Commitment was entered on December 30, 1992 (copies attached).

3. Next, Schoenbohm, even though he lost his direct appeal, argues that his conviction was unconstitutional. This apparently is intended as an argument for holding this proceeding in abeyance until the disposition of all collateral matters concerning Schoenbohm's conviction. The start of this proceeding was delayed to await the result of Schoenbohm's appeal. Holding this proceeding in abeyance until the disposition of collateral matters could result in an extended additional delay. No additional delay is warranted.

4. Schoenbohm next claims that his conviction is invalid because 18 U.S.C. § 1029 (a) (1) was misquoted in Government v. Schoenbohm, supra. The validity of Schoenbohm's conviction has been upheld by the United States Court of Appeals for the Third

Circuit and cannot, under the doctrine of res judicata, be challenged in this proceeding.

5. Schoenbohm also argues that the Bureau is seeking "the imposition of punishment retroactively" because his conviction is based on conduct that occurred before the Commission decided to extend the routine consideration of felony convictions to nonbroadcast cases.<sup>3</sup> The Bureau does not seek to punish Schoenbohm. Because a Commission license is a privilege and not a right, the denial of Schoenbohm's renewal application would not be punishment. See Robert P. Milbert, 71 FCC2d 1290,1294 (1979). The public interest demands that amateur licenses be granted only to qualified applicants. The Commission may consider any relevant information that is properly before it and has the power to deny to applications from unqualified applicants.

6. Finally, Schoenbohm contends -- without specifying what he believes is the correct standard -- that the public interest, convenience and necessity standard used in the Designation Order<sup>4</sup> is not applicable to amateur service applicants. In fact, the public, interest, convenience and necessity standard applies to all applicants. See Section 309 (a) of the Commission's Rules,

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<sup>3</sup> Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 3253 (1990).

<sup>4</sup> The Hearing Designation Order designates "To determine whether, in light of the foregoing issue, granting Schoenbohm's application would serve the public, interest, convenience and necessity" as issue (b).

47 U.S.C. § 309 (a).<sup>5</sup>

7. None of Schoenbohm's arguments warrant dismissing this proceeding or holding it in abeyance. Accordingly, the Bureau requests that the Presiding Administrative Law Judge deny the applicant's motion to dismiss this proceeding or, in the alternative, to hold action in abeyance.

Respectfully Submitted,

Regina M. Keeney  
Chief, Wireless Telecommunications Bureau

By:



Thomas D. Fitz-Gibbon  
Attorney

Attachments

Dated: April 14, 1995

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<sup>5</sup> Section 309(a) states, in pertinent part: "... The Commission shall determine, in the case of each application filed with it to which Section 308 applies, whether the public interest, convenience and necessity will be served by the granting of such application ... "

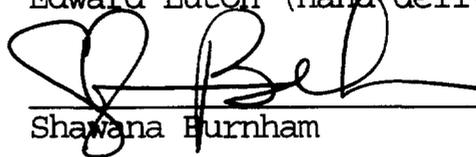
Certificate of Service

I, Shawana Burnham, certify that, on April 14, 1995, a copy of the foregoing opposition to motion to dismiss or, alternatively, to hold action in abeyance, filed on behalf of the Chief, Wireless Telecommunications Bureau, were sent by First Class Mail to:

Mr. Herbert L. Schoenbohm  
P. O. Box 4419  
Kingshill, Virgin Islands 00851

and

Administrative Law Judge  
Edward Luton (Hand delivered)



Shawana Burnham

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF SAINT CROIX

GOVERNMENT OF THE VIRGIN ISLANDS )  
PLAINTIFF

V

CRIM: 1991/0108

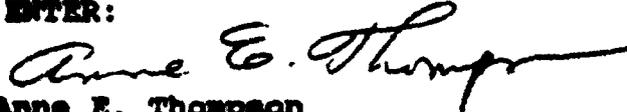
HERBERT L. SCHOENBOHM,  
DEFENDANT

ORDER

It is hereby ordered this 20th day of November 1992 that the Judgment and Commitment entered on August 21, 1992 in the United States of America vs Herbert L. Schoenbohm is hereby vacated and a new judgment will be entered.

Dated this 30<sup>th</sup> day of December 1992.

ENTER:



Anne E. Thompson  
United States District Judge  
Sitting by Designation

Attest:

Orinn Arnold, Clerk

By:

Deputy Clerk

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# United States District Court

District of VIRGIN ISLANDS  
DISTRICT OF SAINT CROIX

UNITED STATES OF AMERICA

v.

## JUDGMENT IN A CRIMINAL CASE (For Offenses Committed On or After November 1, 1987)

Case Number: 91/108

HERBERT L. SCHOENBOEM  
(Name of Defendant)

Julio A. Brady, Esquire  
Defendant's Attorney

### THE DEFENDANT:

- pleaded guilty to count(s) \_\_\_\_\_
- was found guilty on count(s) One, Two & Three after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1029(a)(1)	FRAUDULENT USE OF COUNTERFEIT ACCESS DEVICE	12/31/87	1

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 DISTRICT OF SAINT CROIX

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984..

- The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).
- Count(s) Two & Three (is)(are) dismissed on the motion of the United States defendant.
- It is ordered that the defendant shall pay a special assessment of \$ 50.00, for count(s) \_\_\_\_\_, which shall be due  immediately  as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 484-36-4340

Defendant's Date of Birth: 11-10-39

Defendant's Mailing Address:  
No. 15c Consitution Hill  
Christiansted, St. Croix, V.I. 00820

Defendant's Residence Address:  
\_\_\_\_\_  
\_\_\_\_\_

August 21, 1992

Date of Imposition of Sentence

Anne E. Thompson  
Signature of Judicial Officer

ANNE E. THOMPSON, U.S.D.J.

Name & Title of Judicial Officer

Sept 2, 1992  
August 1992

Date

25

Defendant: HERBERT L. SCHOENBOEM  
Case Number: 91/108

Judgment—Page 2 of 5

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of one (1) month ; one (1) month of house confinement to commence upon his release from prison.

The court makes the following recommendations to the Bureau of Prisons:

- The defendant is remanded to the custody of the United States marshal.
- The defendant shall surrender to the United States marshal for this district,

- at \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. on \_\_\_\_\_
- as notified by the United States marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

- before 2 p.m. on \_\_\_\_\_
- as notified by the United States marshal.
- as notified by the probation office.

Ten (10) days after he is notified of the facility in which his sentence is to be served, defendant to surrender to U.S. Marshal.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, with a certified copy of this judgment.

United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: HERBERT L. SCHOEBOEM  
Case Number: 91/108

Judgment—Page 3 of 5

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years.

While on probation, the defendant shall not commit another Federal, state, or local crime, shall not illegally possess a controlled substance, and shall not possess a firearm or destructive device. The defendant also shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution. The defendant shall comply with the following additional conditions:

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: HERBERT L. SCHOEBOEM  
Case Number: 91/108

Judgment—Page 4 of 5**FINE**

The defendant shall pay a fine of \$ 5,000.00. The fine includes any costs of incarceration and/or supervision.

This amount is the total of the fines imposed on individual counts, as follows:

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- The interest requirement is waived.
- The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

- in full immediately.
- in full not later than \_\_\_\_\_.
- in equal monthly installments over a period of \_\_\_\_\_ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.
- in installments according to the following schedule of payments:

The fine shall be paid during the three year period of his probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: HERBERT L. SCHOEBOEM  
Case Number: 91/108

Judgment - Page 5 of 5

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

**Guideline Range Determined by the Court:**

Total Offense Level: 8

Criminal History Category: I

Imprisonment Range: 2 to 8 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 1,000.00 to \$ 10,000.00

Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$ 0

Full restitution is not ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

upon motion of the government, as a result of defendant's substantial assistance.

for the following reason(s):

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF SAINT CROIX

GOVERNMENT OF THE VIRGIN ISLANDS, )  
PLAINTIFF )  
V )  
HERBERT L. SCHOENBOHM -- )  
DEFENDANT )

Crim: 1991/0108

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JUDGMENT AND COMMITMENT

On the 20th day of November 1992, United States Attorney for the Government of the Virgin Islands, and the defendant appeared in person and with counsel, Edward H. Jacobs, Esquire.

The defendant Was charged with :

- Count I - Fraudulent Use of Counterfeit Access Device
- Count II - Fraudulent Use of Unauthorized Access Devices
- Count III - Possession of Counterfeit or Unauthorized Access Devices

At arraignment, the defendant pleaded Not Guilty. A jury trial was demanded by the defendant on April 21, 1992, the trial commenced and concluded on April 24, 1992. The jury returned a verdict as follows:

- Count I - Guilty
- Count II - Guilty
- Count III - Guilty

After Oral argument by counsel, held on August 20, 1992, the court dismissed Count II and COUNT III, and denied the motion to dismiss Count I.

This matter having been referred to the Probation Office for a pre-sentence investigation and report, which has been filed with the court, the Defendant was given an opportunity to make a statement in his own behalf, and there being no legal cause why sentence should not be pronounced and no sufficient cause to the contrary being shown or appearing to the court,

It is ADJUDGED that the defendant be and is hereby committed to the director of the Bureau of Corrections for imprisonment for a term of two (2) months on Count I. Execution of this sentence is suspended and defendant is placed on house arrest for 2 months with two (2) years probation. Defendant is

Government of the Virgin Islands  
vs Herbert L. Schoenbohm  
Crim. 1991/0108  
Page 2

also required to pay a fine of Five Thousand (\$5,000.00), during the probation period. Sentence of defendant is to begin on January 11, 1993.

It is further ordered that defendant's bond is discharged and canceled, and all sureties are hereby released.

It is Ordered that the clerk deliver a copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that such copy serve as the commitment of the defendant.

Dated this 30<sup>th</sup> day of December 1992,

ENTER:

*Anne E. Thompson*  
Anne E. Thompson  
United States District Judge  
Sitting by Designation

ATTEST:

ORINN ARNOLD, CLERK

By: *George Lewis*  
Deputy Clerk