

witnesses to testify to his truthfulness and honesty. The Richards case was quite different from the Schoenbohm case. In Richards, an individual had been convicted of a serious drug-related crime. After his conviction, he underwent a religious conversion. He produced a string of witnesses to attest to that conversion. Schoenbohm by contrast was convicted of a much less notorious offense. Following his conviction, he was interviewed by the two highest elected officials in the Virgin Islands, i.e., the Governor and the Delegate to Congress. Each of these officials was well aware of Schoenbohm's crime. Each appointed Schoenbohm to paid positions. Thus, the two highest elected officials in the Virgin Islands entrusted Schoenbohm with positions of high responsibility and authority. That should be sufficient to show that Schoenbohm enjoys the respect of his peers in matters involving truthfulness and honesty.

3. The WTB argues that these jobs were simply "political". In making this argument, the WTB does a grave disservice to the people of the Virgin Islands and their elected officials. It is common knowledge that elected officials generally desire to be re-elected and that one of the best ways not to get re-elected is to become involved in a scandal. Schoenbohm respectfully submits that the Governor and the Delegate would not have entrusted him with important public positions if they would have thought for one moment that he might do something dishonest which would serve to darken their reputations and create a public scandal of any kind.

III. Hearing Testimony:

4. At ¶25 of its proposed conclusions, the WTB makes an argument which is unworthy of government counsel. It is based upon a blatant misrepresentation of the record. Specifically, at ¶6 of its findings of fact, the WTB declares that "Mr. Schoenbohm also declared that his conviction stemmed from his dispute with a long distance telephone service provider, that he was not convicted of stealing any money or accessing the account of any telephone subscriber and that he was convicted solely of knowing certain telephone access codes (Schoenbohm Exhibit 7, p. 2)"

5. However, that is not a full description of Mr. Schoenbohm's declaration; it is out of context. The WTB has left out the next sentence of the declaration, which states that "These telephone numbers were the 'Counterfeit Access Device' which I was convicted of possessing or using." (Schoenbohm Ex. 7, pg. 2) (Emphasis supplied). Having failed to mention that Schoenbohm did, in fact, refer to the actual "use" of the telephone numbers, the WTB goes on to argue that Schoenbohm mischaracterized his conviction as being solely having knowledge of certain access codes, rather than for the fraudulent use of the codes (WTB Proposed Conclusions at ¶25).¹

6. Schoenbohm respectfully submits that it is

¹The last two sentences of Schoenbohm's declaration need to be read together to discern his meaning. Taken together they show that while Schoenbohm admitted to the use of the codes, he did not admit to the use of any mechanical or electronic access device, e.g., a "blue box", nor was he convicted of using any such device.

disingenuous for the WTB to make a proposed finding that Schoenbohm characterized his conviction as being solely for possession of counterfeit codes; fail to make any reference to the next sentence of Schoenbohm's declaration in which he specifically refers to "using" the codes; and then request a conclusion that Schoenbohm "mischaracterized" his conviction by failing to mention that he was convicted of using the codes. Where, as here, the WTB is accusing someone of being less than candid, the WTB should be scrupulous to be candid. It should not, itself, take statements out of context or misrepresent the record.

7. Schoenbohm's testimony was, in fact, actually very forthright. On the ex parte issue, Schoenbohm actually volunteered that he had written letters to elected officials prior to the time he learned of the existence of the ex parte rule and the anti-solicitation provisions of that rule. Schoenbohm did not have to volunteer that information. He did so because he wanted to be fully frank and honest in dealing with the Commission (Schoenbohm Ex. 7).

8. The WTB also accuses Schoenbohm of inconsistent testimony in connection with the loss of his pension rights, saying that the testimony is "incredible", because Schoenbohm was unable to answer detailed questions as to how much he had contributed to the pension fund while he was employed at the police department; whether the government matched his contribution; how long it was necessary to qualify for a pension, etc., etc. To some people, it may seem incredible that Schoenbohm did not have this information

at his fingertips. To others, it will be perfectly understandable. Some men are very concerned with these matters; others are relatively indifferent to such matters.²

9. Finally, the WTB goes so far as to suggest that Schoenbohm lied when he said that he still has an appeal pending in the Third Circuit (WTB Conclusions ¶28(f) at page 15). That is ridiculous. It merely reflects the extent to which the WTB has "stretched" the record in an effort to discredit Schoenbohm. The ALJ may call the Office of the Clerk for the Third Circuit Court of Appeals at Philadelphia, Pennsylvania, at telephone number (215) 597-2995, and the clerk will confirm that Schoenbohm has an appeal pending, sub nom., Schoenbohm v. U.S., Docket No. 95-7241.

IV. Reliability:

10. At ¶28 of its proposed conclusions, the government makes a number of arguments which are specifically identified. In this portion of the reply, Schoenbohm will reply to those arguments using the same numbering system which was used by the WTB.

WTB Conclusions at ¶28

(a) Willfulness. It is true, of course, that Mr. Schoenbohm's actions were willful.

(b) Frequency. This is a specious argument. If somebody went

²While the undersigned counsel does not wish to testify in this proceeding, he will say as an officer of the court that he has only the vaguest notion as to how much money is in his Keough plan and when and under what circumstances he might be able to draw upon those monies. He would have to ask his spouse for that information. She would know the amount of money to the nearest penny and know exactly when and under what circumstances the plan could be drawn down. For his part, counsel is simply not terribly interested in such things.

out and robbed a 7-11, and then waited for two or three months before robbing another 7-11, and then waited six more months to rob a third 7-11, it could be said that he had committed the same crime three times. At trial the offender would need to be charged with three counts: one count for each robbery. Mr. Schoenbohm was convicted of a single count, meaning that the government considered that the activities constituted a single crime.

(c) Currentness. It is true, of course, that Schoenbohm's misconduct can be considered because it occurred during his current license term. Schoenbohm never contended to the contrary. However, the fact remains that the activities which resulted in his conviction occurred eight years ago. That is a long time and it is remote in time.

(d) Seriousness. Here, again, the WTB stretches the record. It argues that "Any suggestion that, in light of the sentence imposed, the District Court did not consider Mr. Schoenbohm's crime to be serious would be incorrect." There is nothing in the record to support this type of speculation. The ALJ may take official notice that District Courts no longer have much discretion in the matter of sentencing. There are sentencing guidelines.

(e) The Nature of the Participation of Managers or Owners.
Not applicable.

(f) Efforts to Remedy. Inasmuch as Mr. Schoenbohm never actually profited financially from his crime (Schoenbohm Ex. 7), and inasmuch as no money was actually taken, it is difficult to understand what steps Schoenbohm could take to remedy his

misconduct. Since he took nothing from the telephone company, there was no money to give back.

(f)³ Overall Record of Compliance. The WTB has a complete record of any and all notices of violation, forfeitures, warning letters, etc., directed against radio amateurs who are under the Commission's jurisdiction. If there had been any NAL's, forfeitures, official violation notices, or other correspondence of any kind, indicating that Schoenbohm had violated any of the Commission's Rules and Regulations at any time, the WTB would certainly have introduced those documents in evidence in this proceeding. They have introduced no such evidence. Therefore, they can scarcely be heard to argue that Schoenbohm does not have an overall record of compliance. If anything, Schoenbohm is obsessed with FCC Rules, and with compliance with those Rules (Tr. 95-96; Schoenbohm Ex. 7, p. 1).

(g) Rehabilitation.

(i) In his proposed findings and conclusions, Schoenbohm conceded that he may have committed an "innocent, technical violation of the anti-solicitation rule resulting from ignorance" (Schoenbohm Conclusions ¶15). That is certainly not the type of significant wrongdoing that would in any way detract from the significant evidence of rehabilitation in this record. As to the WTB's argument that there has been insufficient time since the end of Mr. Schoenbohm's probation for him to demonstrate rehabilitation

³ There is an apparent error in the WTB's proposed conclusions, because (f) has been used twice. To avoid confusion, we will also use (f) twice.

through the avoidance of wrongdoing, that argument is ridiculous. The events that led to Schoenbohm's conviction occurred eight years ago and, except for his two months of house confinement he has had complete freedom to rob banks, hold up grocery stores, exceed the speed limit, and otherwise engage in egregious misconduct. However, except for parking tickets, he has not violated any additional laws, whatsoever.

(ii) The amount of time that has elapsed since the misconduct is eight years. That is long enough to excuse a murder conviction. Alessandro Broadcasting Co., 56 RR 2d 1568 (Rev. Bd. 1984). It should be long enough to show rehabilitation from the crime of using a counterfeit access device to make telephone calls.

(iii) See ¶¶2-3, supra.

(iv) It is not exactly clear what "meaningful measures" Schoenbohm could have possibly taken to prevent future occurrences of misconduct. Presumably, somebody who commits a crime while drunk can give up alcohol; somebody who commits a crime while under the influence of drugs could give up drugs; and somebody who is a child molester might submit to psychiatric treatment. This element simply does not apply.

(v) Here, again, the WTB stretches the record, claiming that "If Mr. Schoenbohm's employers had any first-hand knowledge of his reputation in the community for good character, then the best evidence of this reputation would be their testimony -- but Mr. Schoenbohm did not offer such testimony." The WTB knows full well that Schoenbohm did, in fact, offer in evidence a declaration from

Victor O. Frazer, who has engaged Schoenbohm as a part-time member of his staff. The declaration did not deal specifically with truthfulness, but Frazer was available to testify to support the declaration. The WTB, however, did not call Frazer. Instead, it objected to the declaration, and it was not received in evidence (Tr. 88). Under these circumstances, it is simply not right for the WTB to state that "Schoenbohm did not offer such testimony."

(h) Public Service.

(i) Here again, the WTB misrepresents the record, asserting that Schoenbohm's claim to have received a "planning award" is "unsupported". A copy of a letter, written by FCC Commissioner Joseph R. Fogarty, sending the planning award to Schoenbohm, is in evidence as Schoenbohm Exhibit 1-B. Therefore, Schoenbohm's claim to have received the reward is fully supported.

(ii) The record shows that Schoenbohm's life has been almost completely devoted to communications-related activities; that he worked for many years as a police radio dispatcher, while devoting his spare time to ham radio. The WTB cannot have it both ways. They cannot argue on the one hand that Schoenbohm's crime is serious because it was communications-related, while refusing to recognize mitigating circumstances, flowing from his communications-related work at the police department or elsewhere.

(iii) There is absolutely nothing in the record to support this argument. It presumes that amateurs who live in areas prone to tropical storms have a duty or at least a propensity to be active in providing emergency communications. The fact is that

Schoenbohm has been extraordinarily active in providing emergency communications, a fact proven by the written awards which he has received (Schoenbohm Exs. 1A-1G).

(i) Sufficiency of Penalty Already Imposed. In Richards, cited supra, the Review Board did, in fact, consider the punishment which Richards had already received in determining whether Richards should be further punished by losing his license. Similarly, in Alessandro, cited supra, the Board took into account that Alessandro had paid his debt to society. Therefore, the WTB is simply wrong when it argues that "the punishment resulting from Mr. Schoenbohm's criminal conviction, therefore, cannot be a mitigating factor in determining whether he is qualified". The WTB is also wrong when it says that the record fails to support Schoenbohm's claim that he suffered severe financial loss because of loss of his pension rights. It is true that Schoenbohm may now be accumulating new pension rights (Tr. 67-68), but that has occurred only because he was able to secure new employment with the Virgin Islands government. At the time when Schoenbohm wrote his statement, regarding the loss of his pension rights, he had not yet obtained that employment. See letter of counsel dated August 10, 1995, attached and marked Exhibit A.

Respectfully submitted,

HERBERT L. SCHOENBOHM

October 5, 1995

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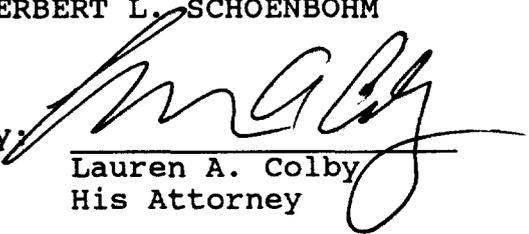

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EXHIBIT A

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Ref: Herbert L. Schoenbohm; WT Docket 95-11

Dear Tom:

As you know, the exhibits introduced in evidence at the hearing in the above proceeding by Herbert L. Schoenbohm included three declarations: Exhibit 1, Exhibit 2 and Exhibit 7. The copies of these exhibits which were brought to the hearing room were unsigned, so I asked Mr. Schoenbohm to sign and date them, which he did, dating all of the exhibits August 8, 1995.

Mr. Schoenbohm has contacted me and expressed concern that the date on Exhibit 1 is misleading, because that exhibit was prepared on or about the date of the initial exhibit exchange, i.e., May 23, 1995, and reflected the facts as they existed at that time. Exhibits 2 and 7 reflect facts which occurred subsequent to that time.

You and I have agreed that no motion to reopen or correct the record is required. That it is understood and agreed that Schoenbohm Exhibit 1 should be considered as relating to the situation as it existed as of May 23, 1995.

Very truly yours,


LAUREN A. COLBY
Attorney

LAC/tdm
Enclosure

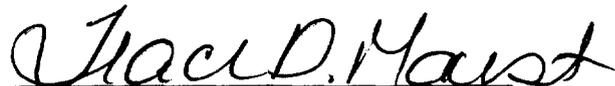
cc: ALJ Edward Luton
Mr. Herbert Schoenbohm

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 5th day of October, 1995:

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