

Some Specific Procedures

Documentation

Simply put, an objective of the local interference committee is to provide total documentation of a case of interference. This documentation may include tape recordings of the interference (if appropriate), direction-finding bearings, times, frequencies, dates, and other pertinent data. Technical notes on direction-finding methods employed should be taken. A written record of monitoring activity should be maintained concurrently with audio taping. These notes should be dated, retained, and not changed. **Warning: Videotaping of subjects in connection with an investigation is not authorized, as mentioned earlier.**

Direction-Finding

“DFing” to identify the specific site of the offending transmitter is a requirement of most investigations. Direction-finding technique is something very difficult to describe. Every person or group has their own technique that works for them. Once you find a technique that works for you, perfection of that technique requires lots of practice. In short, you must get to know your equipment. We can only recommend that you fashion your equipment after other successful direction-finders and then use it as often as possible. DF your friends, people holding normal QSOs, and such. Don’t be afraid to try something new or to develop a new idea. The *ARRL Handbook* contains a comprehensive chapter on direction-finding.

Communications

When more than one station is DFing a source of interference, there must be a method of communication between the DFing stations. For interference occurring on two meters, the following table lists different forms of communication in the order of decreasing security:

- 1) Telephone.
- 2) Non two-meter simplex.
- 3) Non two-meter repeater.
- 4) Two-meter simplex.
- 5) Two-meter repeater.
- 6) The channel being interfered with.

The persons doing the DFing should use two-meter frequencies for communications only if no other band is available. The jammed channel is to be used only as the very last resort, and if it is used, communications should be kept to a minimum. This table may be adjusted accordingly for interference on other bands.

Confrontation

Normally, the only acceptable form of confrontation is to write the subject a letter. This avoids the possibility of physical violence, at least the type of physical violence that might occur during a personal confrontation. The letter, to be sent only by the OOC, should deal strictly with the facts, stating dates, times, content of the interfering transmission, and other pertinent data. It should leave no mistake that the interference is known to be caused by the subject, but it should not be accusatory in tone or content. All cases are different and unique. A person locating a source of interference must, in all cases, use good judgment.

The FCC

Suppose you have located the offender, informed him by

letter of the problem, and the problem persists. Your next recourse is to seek the assistance of the OOC in developing an objective, detailed and as airtight a case against the offender as possible. The OOC may contact the ARRL Headquarters staff for advice. Once the ARRL staff and General Counsel determine that a case should go forward to the Commission, the staff will work with the OOC in constructing the package of evidence and other pertinent documents.

Referrals to FCC are functions reserved exclusively for Headquarters staff, in consultation with League counsel.

Follow-Up

Now that you have DFed the source of interference, informed the subject that an investigation is ongoing, accurately identified the case, and the OOC has turned the information over to ARRL HQ, what do you do next?

Even if the FCC launches an immediate investigation of the case, results will be slow in coming. In the meantime, you should not wait around for the FCC to solve the problem. You should continue to document the case, and all communications with the subject should cease. Repeated occurrences of the interference will go a long way toward proving maliciousness and intent. Intent is very hard to establish, but one way of doing so is to document repeated interference of a malicious nature by one individual. This documentation should, in turn, be handed over to the OOC.

4.9 Repeater-to-Repeater Problems

Problems involving repeater coordination and repeater-to-repeater interference are beyond the scope of the Amateur

**AMATEUR AUXILIARY
OFFICIAL OBSERVER COORDINATOR**

**ADVISORY NOTICE OF
RADIO STATION CONDITIONS**

FREQUENCY	CALL SIGN
EMISSION	DATE OBSERVED
	TIME OBSERVED
LOCATION OF STATION	OTHER STATION BEING CALLED SWOREE

**NO REPLY
IS NECESSARY**

Please refer to Federal Communications Commission Regulation(s) _____
As detailed below, continued violations of FCC rules have been noted during monitoring. You should take corrective action promptly.

Official Observer Coordinator Address	Date Filed
	OOC Signature

This monitoring activity is conducted in accordance with Public Law 97-259 as a function of the Amateur Auxiliary of the FCC's Field Operations Bureau. The Amateur Auxiliary is sponsored by the American Radio Relay League (administrative headquarters 225 Main Street, Newington, CT 06111 USA). Thank you for your courtesy and cooperation in helping to improve the Amateur Radio Service.

F50-214 (893) ORIGINAL Printed in U.S.A.

Fig 4-6 — Advisory Notice issued by OOC under authorization by ARRL Headquarters.

Auxiliary. The policy of the ARRL was set at Minute 53 of the January 1988 meeting of the Board of Directors:

“(T)he League shall offer repeater owners, trustees and repeater coordinators/spectrum managers its good services in arranging binding arbitration through the American Arbitration Association or similar forum.”

4.10 Functions and Referral Procedure

Here is a word-and-graphic breakdown of the functions of each tier of the Amateur Auxiliary and the necessary safeguard hurdles that must be negotiated prior to referral to the next highest rung on the ladder.

Official Observer:

1. Identifies technical and operating discrepancies.
2. Sends OO advisory notices.
3. May function as a member of a Local Interference Committee (with no special standing).
4. Reports to the OO Coordinator.
5. Refers problem cases to the OO Coordinator.
6. Collects evidence under the supervision of the OO Coordinator.

Local Interference Committee:

1. Identifies technical and operating discrepancies, especially on VHF/UHF (eg, repeaters).
2. Utilizes mediation/resolution efforts.
3. Reports to the OO Coordinator.
4. Does field work and evidence collection as directed.

OO Coordinator:

1. Reports to the Section Manager.
2. Receives reports from the OOs and Local Interference Committees.
3. Forwards record/reports (FSD-23) to Headquarters.
4. Appoints OOs (when so delegated by the SM).
5. Makes referrals to ARRL HQ.
6. Assists Local Interference Committees in evidence gathering.
7. Assists OOs in evidence gathering.
8. Contacts ARRL HQ for advice or assistance in technical or administrative matters.
9. Initiates FSD-214, Advisory Notice of Radio Station Conditions, when authorized by ARRL HQ.
10. May write to the subject of the investigation as appropriate.

Section Manager:

1. Oversees the activities of the OO Coordinator.
2. Appoints OO Coordinator and OOs (may be delegated to Coordinator) upon notification by Headquarters of certification.
3. Authorizes (in writing) Local Interference Committees.

Division Director:

1. Is notified by ARRL HQ when staff is conducting review of evidence in case referral to FCC. Note that this is an informational notification, not a request for decisional input.

Headquarters:

1. Provides all support materials (forms, newsletters, postage, etc) for conducting the Amateur Auxiliary.
2. Upon recommendation for appointment of an OO by the Section Manager (or delegated OO Coordinator), provides training materials and certifies to the SM successful completion of training.

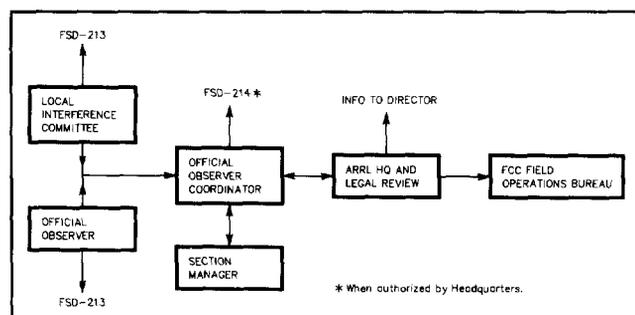


Fig 4-7 — Organizational Chart.

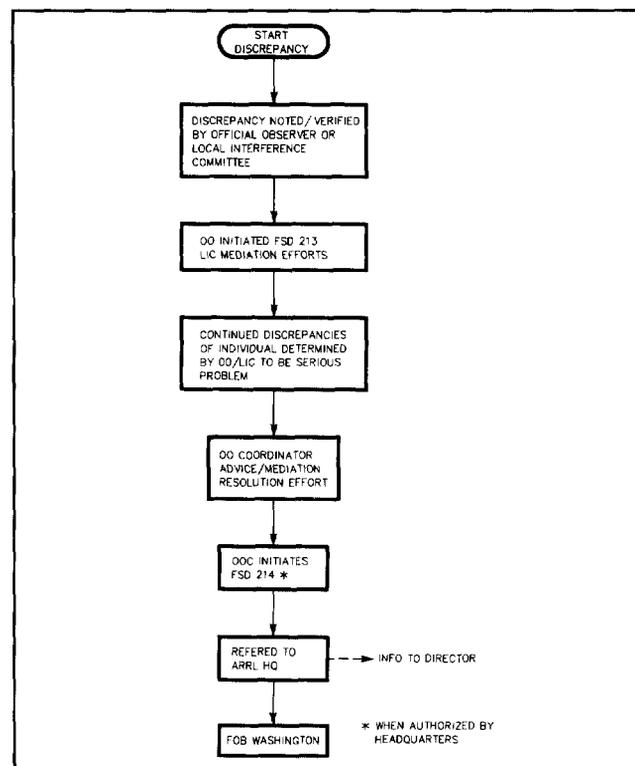


Fig 4-8 — Flow Chart.

3. Maintains a data base of records in accordance with provisions of this Guide.
4. Conducts mandatory review of evidence and case documentation in consultation with General Counsel prior to submission to FCC. Authorizes OOC to send FSD-214 Advisory Notice.
5. Refers difficult cases to the Field Operations Bureau in Washington where appropriate.
6. Advises the ARRL President of difficult cases being referred to the FCC Field Operations Bureau, Washington.

7. Conducts critical review of the program in concert with the Field Operations Bureau, Washington, and implements appropriate enhancement in accordance with Board policy.

ARRL President:

1. Is advised by Headquarters of hard core cases brought to the attention of the FCC Field Operations Bureau in Washington.

Perhaps the biggest difference between the FCC/ARRL agreement (in Appendix "A") and the old one is that every presentation of evidence to FCC with the expectation of enforcement will follow only one route. Evidence will always be submitted from the OOC to Headquarters, through counsel, to FCC. No longer will the Amateur Auxiliary present such cases to the local Engineer-in-Charge—even if the EIC requested the investigation be initiated. Certainly, an EIC may suggest a particular investigation, and it would be expected that such a suggestion would receive the priority it clearly deserves. However, once offending interference to Amateurs is determined to be from an Amateur, it becomes an Amateur Auxiliary matter and evidence must be processed through the defined route. If the interference is other than Amateur-to-Amateur, it is not a matter for the Amateur Auxiliary and falls entirely outside the scope of the program and of this Manual.

4.11 Reimbursement and Insurance Coverage

Funds to reimburse certain OO administrative expenses are budgeted for in each ARRL Section as authorized by the Section Manager. FSD-183 should be submitted to reimburse for postage and other miscellaneous expenses incurred. Appropriate cash slips and receipts should be submitted along with FSD-183 to the Section Manager for approval. To save on bookkeeping, reimbursements of less than \$5 or \$10 should be saved up until they exceed that amount. Any questions on reimbursement should be directed to the Section Manager.

The League carries liability insurance covering certain of its programs. The League has requested coverage for members acting within the Amateur Auxiliary in the liability policy in effect as of the date of this manual. The insurance broker used by the League has claimed that this policy provides liability coverage (with certain exclusions), up to the policy limits, for

ARRL ADMINISTRATIVE EXPENSE FORM	
The following administrative expenses were incurred by the undersigned between the periods of _____ and _____, 19__.	
Postage	_____
Envelopes	_____
Paper	_____
Other (what?)	_____
Total	_____
SM Initial _____	Signed _____
Approved _____	Title _____
Charge to _____	Address _____
FSD-183 (685)	Printed in U.S.A.

Fig 4-9 — Expense Reimbursement form.

League members in the Amateur Auxiliary program acting within the limits of the program. This claim by the broker has not been confirmed by the insurance company. Liability insurance purchased by the League should **not** be relied upon by participants in the program to provide them with a lawyer or to pay a claim against them. The policy does not cover a large number of types of claims that might be made; it has a \$5,000 deductible on both liability and defense costs (which deductible is not covered by the League); and it does not become effective unless and until any other liability insurance coverage that a participant may have is exhausted. The current agreement with the FCC (Appendix A) acknowledges that Amateur Auxiliary members are not considered government employees and that they are not entitled to receive legal representation from the FCC or the Federal government.

Participants should review their own liability insurance coverage, which, for example, may be contained in homeowner's insurance policies. In addition, it is critical that participants limit their activities to the specific tasks set forth in this manual. Insurance coverage is **not** available under the League policy for actions taken outside the scope of the Amateur Auxiliary program. Specific questions should be addressed to the participant's personal lawyer and insurance advisor.

CHAPTER 5: EVIDENCE GATHERING

[Note: A condensed version of the material in this chapter is contained in Appendix B and serves as a convenient checklist for OOs and OOCs when developing documentation in a serious case.]

The friendly advisory nature of the Amateur Auxiliary cannot be stressed enough. It's for that reason that reference is made to it several times in this guide. It has been the very backbone of the OO program which has made it so successful for some fifty years. Avoidance of both threat and the cloak of enforcement will continue to be the strength of our volunteer monitoring efforts in the future. Confrontation will not lead to purification of the airwaves. But, as we progress up the ladder of resolution within the Amateur Auxiliary, it must ultimately be faced that the possibility of enforcement by the FCC may be necessary in a small percentage of cases. That being the case, it is prudent for all in the Amateur Auxiliary to be familiar with the nature of gathering evidence, even if it may never be necessary to exercise this knowledge, and also to be cognizant of the need to maintain strictest confidence in conducting volunteer monitoring activities.

In performing the duties of an Official Observer, it is necessary to conduct monitoring activities and to assemble information in such a way that it is (1) useful evidence in cases of repeated or intentional rule violations, in which the information gleaned from volunteer monitoring may be used later in license suspension or revocation hearings, and (2) available should the observer have to protect him- or herself against a defamation (libel or slander) action. Although both of these situations will be rare, it is difficult to predict, in any given situation, what the outcome of an OO report will be. It is necessary, therefore, to prepare each OO report as though the monitor will be called on to testify as to the OO's actions which gave rise to the enforcement proceedings.

Prior to the enactment of the Communications Amendments Act of 1982, amateurs were unable to provide voluntary monitoring services to the government, or to disclose to third parties what was heard on the air. Now, those limitations have been removed, and the evidence gathered by volunteers can be relied on by the FCC and used directly in enforcement proceedings. It is no longer necessary for FCC staff to duplicate the monitoring and DFing done by volunteers.

How, then, may a volunteer monitor ensure that the evidence is useful, and at the same time protect him - or herself against a lawsuit based on an accusation that the monitor made defamatory remarks about another amateur?

First of all, it is necessary to restrict all monitoring activities to fit squarely within the statutory authority granted to the FCC by the Communications Amendments Act of 1982. These are as follows:

- (I) The detection of improper Amateur Radio transmissions;
- (II) The conveyance to Commission personnel of information which is essential to the enforcement of the Communications Act or regulations prescribed by the FCC, relating to the Amateur Radio Service; and
- (III) The issuance of advisory notices to persons who apparently have violated any provision of the Act or regulations prescribed by the FCC relating to the Amateur Radio Service.

5.1 Competence

Any activities of a volunteer monitoring station not aimed specifically at one of these purposes exceeds the statutory authority of the monitor and may result in having evidence gathered under such circumstances ruled inadmissible as having been provided by an "incompetent" witness. That is to say, the volunteer monitor is able to testify only to those things which he or she personally witnessed in connection with detecting improper amateur transmissions, conveying information essential to enforcement or in preparing and issuing advisory notices to amateurs.

Thus, the first two rules to consider are one's own competence to testify as to what was heard, keeping in mind one's proper role and the limitations of the statutory authority, and the requirement that one may not testify to a matter unless it can be shown that the monitor has personal knowledge of the facts to which he or she will testify.

5.2 Relevance

Once it is clear that a monitor is the proper person to testify to a particular matter, it is necessary to decide whether what is heard is relevant. This is a broad analysis, based on the matter to be proven. Generally speaking, evidence is "relevant," if it makes a fact to be proven more probable or less probable than it would be without the evidence. In doing on-the-air monitoring, and making notes as to what is heard at a particular time, on a particular date and frequency, if a rule violation is suspected, one must ask himself or herself whether a particular statement heard tends to verify or disprove that a rule violation is taking place. For example, if one is monitoring an amateur frequency and hears music transmitted, obviously this is relevant to a determination that there is a violation of Section 97.115 of the Rules, which prohibits transmission of music by an amateur station. It is not relevant, however, that the monitor may know how many persons in the local club have that same taste in music. That fact is highly speculative and does not tend to prove that music has been transmitted, or where or when it was done, or by whom.

Thus, when making monitoring notes, only the relevant facts will be useful to the FCC enforcement personnel. It is important to yourself, as well, to confine reporting to "just the facts" which are relevant to the monitoring situation at hand and the rule violation suspected. No one could ever successfully accuse a monitor of libel or slander if all that is reported is what the monitor heard and the circumstances under which it was heard.

There are specific rules of evidence dealing with the relevancy issue. For example, generally, one cannot introduce evidence of a person's character or a particular character trait in order to prove that such person acted in conformity with that trait. Thus, a monitor could not testify that he believed it was WX0AAA who was heard on 20 meters transmitting obscene or indecent language because it is generally known that WX0AAA is an immoral person. While there are limited exceptions to this rule, they are generally not applicable in FCC rule enforcement matters.

Evidence of a person's habit, or routine practice, on the other hand, is generally admissible. Suppose you are monitoring and hear a station transmitting for long periods of time without identifying. You have noted the date, time, frequency, beam heading, and other relevant characteristics of the signal. You also note that the voice which is transmitting without identifying has the particular trait of stuttering only when using one particular word. You know WX0XXX, who has that same trait. While one cannot conclude from this that it was WX0XXX who made the unidentified transmission, it would be proper to testify that the voice monitored on the air had the habitual unique stuttering sound. It would also be proper to answer, if asked, that you know of an amateur who habitually makes that sound, and who that is. Do not, however, draw the inference that WX0XXX was responsible for the unidentified transmission.

5.3 Opinion and Inference

Probably the most important evidentiary rule to remember when monitoring, which follows from the relevancy issue above, is that one's opinions and inferences are generally not admissible. It should be remembered that what one is trying to do when making notes about a monitoring session is to recreate a factual occurrence. It is for the FCC to determine whether the evidence, taken together, shows that a rule has been violated and that the accused person did it. This ultimate task is not for the witness to perform. It is often difficult, however, for any witness to speak without stating an opinion or, in expressing him - or herself in language which is not a conclusion. Just keep in mind that the witness is required to have firsthand knowledge of every statement made, and that statements made should all be directly related to individual perceptions.

Take, for example, a monitoring situation in which you are working with other monitors using directional antennas to pinpoint the source of a station making unidentified transmissions. You may reasonably testify as to (and should keep detailed notes of) the procedures used and discuss what conclusions may normally be drawn from such procedures, to the extent that you are familiar with them. You may further testify that, in this case, the transmissions were determined to have come from a certain area, but you may not conclude from that information alone that a particular station made the transmissions, even if you are personally certain in your own mind that it was that station.

The general prohibition of lay witnesses making statements which are opinions or inferences points up the gray line between admissible and inadmissible evidence, but a monitor must always stay on the side of purely factual reporting. In the DFing example above, it is certainly an inference or opinion that an unidentified signal came from a certain area, but that is an inference based on pure perception and scientific fact. As such, it is admissible. It logically flows from the perceptions of the monitoring station. It is a jump in logic, however, to conclude from a three-fixed-station triangulation DFing exercise, without more, that it was a particular station which made the transmission. It is this type of opinion or inference which does not logically flow from one's perceptions, and which is not therefore permitted.

5.4 Hearsay

Even if one is reporting only what is seen and heard, there are limitations. One of the most difficult rules of evidence is the

so-called "hearsay" rule. Simply stated, you cannot normally testify as to what someone else said in order to prove the truth of the matter asserted. If, for example, after monitoring a case of unidentified transmissions heard on 146.52 MHz on November 23, 1984, you later hear WX0XXX, a fellow observer, state that he knows it was WY0YYY who made the transmissions, you cannot testify as to WX0XXX's statement. It is the essence of hearsay. In this connection, the monitor's proper role does not include noting hearsay anyway. Only personal perceptions are admissible!

While there are a large number of exceptions to the hearsay rule, they do not concern us here. Suffice it to say that when your monitoring is done, confine your reporting to what was heard through your receiver and the details of what was heard.

5.5 Notes and Records

One's recollection normally dims with time. It is for this reason that detailed written notes are critical to the volunteer monitor. They should be well organized and clear, in narrative form. If they are to be transcribed, that should be done immediately after the monitoring is completed. The transcribed notes should be signed and dated by the monitor to establish authenticity. These notes are your best insurance against accusations of inaccuracy. In this respect the volunteer monitor is akin to the doctor who must update his or her hospital records on a patient prior to discharge, to make sure that the record is not subject to doubt. The notes can be used at a hearing to refresh your recollection about a particular event. The more detailed your factual account of your actions and what was heard, the easier it will be to establish a pattern of behavior sufficient to permit the FCC to determine the identity of an offender.

A volunteer monitor's notes and recollection of factual events are his or her contribution in the unusual event that an enforcement proceeding must go to hearing. As mentioned elsewhere in this guide, the volunteer monitor is subject to cross-examination on the subjects to which he or she testifies. It is the duty of the person who conducts the cross-examination, often an attorney, to attempt to show that either the monitor or the evidence gathered is not credible for some reason. Following the above rules will go a long way toward ensuring that your evidence is useful.

5.6 Maintaining Confidentiality

The monitor's own actions, however, may be cross-examined in an effort to show that the monitor may be biased, or may have prejudiced others against an individual amateur. Suppose, for example, a monitor has records which make it appear that a particular station made unidentified transmissions. Suppose further that after information has been conveyed to the FCC, the monitor mentions at the local radio club that he has the "scoop" on WX0XXX and discusses the monitoring results in detail. The revelation of the monitor's disclosure at a hearing, on cross-examination, makes it appear as though the monitor "had it in" for WX0XXX, and makes the evidence provided by the monitor less credible. Suppose further that WX0XXX is later not found to be the cause of the rule violation after all. WX0XXX then sues the monitor for slander, for what was said at the radio club meeting. This points up the need for absolute confidentiality in dealing with information gathered while monitoring.

This is not to say that a monitor cannot work with other monitors, or that information cannot be traded between moni-

tors. The Communications Amendments Act of 1982 assured the ability of volunteer monitors to work together in monitoring tasks. Keep in mind, however, that it is necessary to protect the evidence and oneself by not disclosing the results of your monitoring indiscriminately. Again, as stated above, in this connection it is critical that a monitor not make unwarranted conclusions or inferences about whether a particular station was the source of a rule violation or not. To ensure against accusations of bias, or of prejudicing the investigation, it should be the general rule to disclose monitoring information only in OO Reports or to other monitors, and even then, only on a "need-to-know" basis.

Finally, as alluded to above in the discussion of relevance, when doing monitoring and a rule violation is suspected, the OO must make sure that he is familiar enough with the rule to determine when it is actually being violated. This sounds basic, but in all such cases, the initial analysis should include a determination of what elements must be present in order to constitute a violation of the rule. The OO's notes should be sufficient to establish all elements of the rule violation, if indeed one exists.

It is thus necessary to be familiar enough with the rule and its background (the League's FCC Rule Book is key to this analysis) to know when the OO's monitoring has sufficiently established that a particular rule has been violated, and that all the evidence is in the notes, and the context in which the transmissions were made is fairly and accurately reflected.

5.7 Preparation and Handling of Tapes

One of the primary functions of the OOC, and ultimately the ARRL Headquarters staff, in a difficult enforcement-type case is the "separation of the wheat from the chaff" in terms of the evidentiary material, primarily audio tapes, obtained by OOs and LICs, and the assembly of that material in a useful format for conveyance to the FCC FOB office in Washington by ARRL HQ. The training guide addresses the jurisdictional limitations on OO and OOC activities and some basic references to the process by which an OOC might determine what information is relevant to a rule violation and what information should be ignored.

The OO and OO Coordinator are, in a difficult case, limited by the Communications Amendments Act of 1982 to two primary functions: (1) the detection of improper amateur radio transmissions; and (2) the conveyance to Commission personnel of information which is essential to the enforcement of the Communications Act or regulations prescribed by the FCC relating to the Amateur Radio Service. It is assumed at this point that the OOC has exhausted the third avenue of his jurisdictional authority, which is the issuance of advisory notices [FSD-214 form] to persons who apparently have violated any provision of the Act, or regulations prescribed by the FCC relating to the Amateur Radio Service, following authorization from Headquarters.

The creation of audio tape intercepts, and the reduction of relevant portions of those tapes to written form is an important element of the preparation of the evidence for transmission to the FCC. The tapes are the hard evidence. The only other evidence usable by FCC in such cases is the testimony of the OO or OOC, or the use of his or her written notes, measurements, and reports of investigations. The tapes, which are often extensive, must be protected against any allegation that they have, after their creation, been tampered with. As well, the

OOC and HQ staff can best assist the FCC in its use of the tapes by preparing written intercepts of those portions of the transmission that constitute, or support the allegation of, the rule violation. The written transcript of the tape is important because it directs the Commission's analysis of transmissions to that which the OOC has determined is directly relevant to a determination that a rule or section of the Communications Act has been violated.

Uniform Procedure

The first consideration in making the tapes is that the same procedure must be used in each case, as a matter of routine. This ensures the admissibility of the records, and can assist in assuring the admissibility of a tape even in a case where there has been an inadvertent error in the handling of the tape. A tape in the possession of another person, when used to establish the identity of the station making the transmissions, will more likely be deemed admissible evidence if it is a "regularly kept record." The recording should be of as high audio quality as possible, so that the words uttered by the person being monitored are as clear as possible. Words capable of several interpretations are not useful. This is not always easy, in view of the vagaries of radio propagation and interference, but the goal is to obtain clear, transcribable tapes.

Labelling Tapes

The tapes should be labelled (by the OO, or whoever is making them) at the time they are created with the date, time (of commencement and termination of the tape recording), name of monitor, frequency or frequencies (labelled by time on the tape that any frequency change was made), and call signs used. A listing of the receiving equipment and conditions, including antenna, beam heading, taping equipment, and the condition of same, and any propagation conditions which may be noteworthy, are important as well.

Method to be Documented

Most importantly, the OO should indicate in notes how it was that a particular station was determined to be the source of the transmissions (as opposed, for example, to someone else misappropriating the call sign of the licensee of that station). In many cases, perhaps the only indication of the true identity of the violator is the beam heading of the source of the transmissions. If the identity of the violator, or any other element of the interception, was based on prior monitoring experience, a tip from an informant, or an accidental interception, those facts should be noted. If a copy of the tape is made for the OO's use, or for his retention after the original is to be conveyed to the OOC, that fact should be noted on the information sheet regarding the original tape.

Sealing Tapes

The original tape, after it has been recorded upon, and after any copies have been made, should be placed in the labelled box and sealed with tape, or sealed in an envelope, by the person recording the tape. It should be kept sealed by the OO or whoever has made the tape, and the time, date, and identity of the person making the tape and doing the sealing should be indicated on the outside of the envelope. The fact that the person who made the tape has sealed it should be indicated on the front of the envelope. Separate notes should be taken thereafter by the creator of the tape as to what he or she did with

it, by way of conveying the tape to the OOC, including detailed description of the form of the tape, the type of envelope or other sealed package in which it was placed, and the means by which it was conveyed. Date, time and place notes should be kept.

Mailing Tapes

The tape should, ideally, not be mailed. If it is, it arguably breaks what courts call the "chain of custody" of the tape. Copies of the tape, made after it is prepared and before it is sealed, can be used for discussion purposes between the OO, the OOC, and the ARRL HQ staff. With respect to a piece of evidence that, if tampered with, could be changed, (such as audio tapes) the use of that evidence depends on whether it can be affirmatively claimed by the person presenting the tape at a trial or hearing that it has not been altered. Much testimony about the preparation of audio tapes, and the handling of those tapes, is routine in both criminal and administrative proceedings. In general, if the offered evidence is of such a nature as not to be readily identifiable, or if it was susceptible to alteration by tampering or contamination, exercise of the discretion of the trier of fact may require a foundation of testimony as to the handling of the evidence after its acquisition. This includes testimony as to the chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

So, if it is at all possible, the original tape should be delivered from the OO who prepared it to the OOC at the time it is to be used, with the above-referenced seal, notations and preparation intact. If it is mailed to the OOC, upon receipt by the OOC, notes should be taken by the OOC as to the date, time, place, means of delivery, and a detailed description of the package on receipt should be made. A log should be kept with respect to each handling and use of each tape, including reference to any and all persons handling it, and the place or places it was kept for safekeeping, and the basis for believing that the tape was at all times safe and not subject to tampering while in the hands of the OOC. The same procedure discussed above should be employed by the OOC in the conveyance of original tapes to ARRL HQ. Copies of all tape logs, and note sheets should accompany the tape wherever it goes, including to the FCC. Each OO and OOC handling the tape, however, should keep his or her original notes with respect to each tape.

5.8 Preparation of Transcripts

The OOC will, in some cases, receive tapes from several OOs with respect to a single chronic rule violator. Once these tapes are assembled, the OOC should generally assume responsibility for preparation of written intercepts from transcripts. This is an important function, as discussed above, in that it allows the FCC to eliminate from its immediate consideration that which is irrelevant to the establishment of the rule or statutory violation. The preparation of a useful transcript requires, in each case, analysis of what must be shown in order to constitute a rule violation.

Taking what is probably the most complicated example first, suppose that the OOC has tapes indicating that WX0XXX has transmitted obscene, indecent or profane language, in violation of both 18 U.S.C. Section 1464 and Section 97.113(d) of the Amateur Radio Service Rules. This is a content violation, which requires proof: 1) that there was a transmission via

amateur radio of words that are obscene, indecent or profane; 2) the identification of the station transmitting the communications; and 3) of the precise time of day of the transmission in local time. No one expects the OOC to be a judge or lawyer, but in order to provide a useful tape and transcript, the OOC must make an analysis initially of what the items of proof are going to be. It is not enough, for example, to merely list where on the tape certain words, alleged to be obscene, indecent or profane, are located. The legal definition of obscenity, for example, (which is, even for the Supreme Court, a difficult concept) requires that the context of the transmissions, and the context of the words used are such as to allow the interpretation that the words and their meaning are obscene. So, in preparing a written intercept of a tape which contains arguably indecent or obscene transmissions, a transcript of the transmissions before and after the use of the words is necessary, so as to show the context of the communications leading up to the use of the obscene or indecent words, and perhaps to give the FCC staff the idea of the intention of the station making the transmissions. A similar challenge is posed by the Commission's business communications rule, Section 97.113, where the OOC must establish not only the specific words used, but the context of the words used, to establish that the pecuniary interest of the amateur is being furthered by the communications. For example, merely to list on a tape transcript that WX0XXX stated on the air that "There sure are some bargains to be found at Joe's Ham Electronics Store" is meaningless unless the context is shown. In such a case, the following is an example of placing the transmission in context:

This tape transcript was prepared by WX0UUU from Tape #2, dated April 1, 1991. The following transmission is excerpted from the tape begun at 0200 UTC, and ending at 0300 UTC on April 1, 1991. The following transmissions occurred at 0220 UTC. The stations used the following call signs on 3.907 MHz: WX0XXX, WY0YYY. For a description of the means by which this tape was prepared, and the means by which the tape has been protected from tampering since it was recorded, see the notes accompanying tape #2 and the label thereon.

0220 UTC.

WX0XXX: This is WX0XXX. What are you doing this weekend, Bill?

WY0YYY: WX0XXX from WY0YYY. Hello, Bob. I am in the market for a new HF transceiver, but I am not sure whether to get it by mail order or from a local ham store. I may do some shopping this weekend.

WX0XXX: Oh, don't buy it from a mail order house. There sure are some bargains to be found at Joe's Ham Electronics Store. You should try there first. Anyone will tell you that.

WY0YYY: Thanks for the tip. Have you been there recently?

WX0XXX: Yes, as a matter of fact, I bought a controlling interest in it a month ago.

0221 UTC end of transcript

It is useful to indicate the assumed identity of the station making the transmissions, as that station is identified on the air. This can be done without making the allegation that the station signing a particular call sign is in fact the station assigned that call sign by the FCC. The intercept should, of course, indicate where on the tape those transmissions can be found. Remember that the tape is the evidence. Your written intercepts are not. The written intercepts are not admissible evidence because they are not the "Best Evidence" of the fact that certain transmissions were made. The law requires that the best evidence available must be used, which is in this case, the original tapes. For the same reason, copies of tapes are arguably not the best evidence, though they are better, if that is all that is available, than the oral testimony of the OO or OOC as to what was heard.

The use of audio tapes as evidence generally has been the subject of a lot of case law. Objections as to completeness have been raised with respect to them. Does the tape, for example, contain all of a given Amateur Radio transmission, or does it only contain a part, that part which the OO wants the FCC to see, and not that which indicates the context of the transmission? Does that portion of a transmission not taped tend to exonerate the amateur accused of the rule violation? For these reasons, it is important to determine when making a tape intercept transcript whether the tape itself will be useful when the FCC gets it. This requires, in general, that the OOC listen to the entirety of the tape, noting, of course, on the tape log that he or she has done so, before making a written transcript of the transmissions alleged to constitute the rule or statutory violation. If possible, try to view yourself not as an OOC, but as a judge of evidence presented to you. What on a tape is likely to indicate that a particular person violated a rule? What indicates who that person is? What is there on the tape that indicates that the identity of the person making the transmission is not the person whose call sign is used? To the extent that an OO is interested in resolving a chronic rule violation matter, he or she is likely to want to characterize the evidence in a way that most favors his interpretation of the facts. An impartial presentation of the factual matters of a case to the FCC is critical to the integrity of the case. It prevents an accused person from arguing that the OO or the OOC is biased against him, or was predisposed to find something about the accused due to personal considerations.

A recording will generally be admitted in evidence if a witness testifies that the recording as played is an accurate reproduction of the relevant sounds previously audited by the witness. It is for this reason that the tape is the "Best Evidence" of a rule violation, as it contains incidental sounds which may help to establish that a rule violation has occurred, and perhaps to identify the violator. The transcript should attempt to include these context indicators, but where the OOC inserts notes into a transcript which are not words heard on the tape, these should be clearly identified in parentheses indicating what was heard. Suppose, for example, that a tape of an alleged malicious interference incident includes, over a normal transmission, the sounds of someone inserting a carrier signal over an ongoing QSO. The written transcript should indicate that with a parenthetical: "(sound of carrier at same frequency as prior transmission of WX0XXX over transmission of WY1YYY at 2340Z; ends at 2350Z)." It is of course necessary to include the text of the ongoing QSO which was disrupted.

5.9 Identification of the Alleged Violator

The most difficult problem encountered by the OO in preparing materials which may ultimately be conveyed by Headquarters staff to the Commission is the reporting of sufficient information about the alleged violator to allow the Commission to draw the conclusion, and be able to establish using the evidence provided, that it was indeed WX0XXX who violated the rules. As mentioned earlier in this guide, it is extremely important that the OO, and the OOC, not themselves conclude that it was in fact a particular individual, or group of individuals, that perpetrated a rule or statutory violation. The characterization, or evaluation of the evidence is not the role of the OOC, and to do so exposes the OOC to allegations of damage for false accusations of individuals. In the transcript, for example, no summaries of the words used, or of the context, should be provided by the person making the transcript. To do so is not helpful to the FCC and in fact prejudices the proceedings. Assumptions and conclusions are not useful as evidence. Suits have been filed over such matters. As a result, conclusions are not to be drawn in the context of preparing a case for submission to the FCC. Neither should recommendations be made by the OOC as to particular sanctions for individuals identified in the evidentiary materials.

Offering Evidence

There are various ways to offer evidence that will lead to the identification of a person who appears to have violated a statute or rule.

One is for that person to offer his or her call sign on the air. This is evidence that the person transmitting the communications violating the rule is in fact the licensee, but it is by no means conclusive, or sufficient. Anyone can use anyone else's call sign (itself a rule violation) and it is a simple matter, especially in digital communications, to program one's software to transmit the call sign of another person, or on voice or CW simply to "pirate" someone else's call. It is the nature of the medium that such opportunities for unscrupulous persons exist. Keep in mind that, while the "beyond a reasonable doubt" standard is not applied in administrative proceedings as the test of the evidence, a strong evidentiary standard is applied in identifying a person who violated a rule. The FCC must establish by a preponderance of the evidence that the accused person violated the rule.

Tones and Sounds

The tapes often identify the intonations or unique sounds in the voice of the operator. Those tapes can be used to determine the likelihood that the source of a particular transmission was, or was not, the licensee of the station. It would, as was discussed earlier in this manual, be reasonable to state that the OOC noted a particular characteristic of the voice of the operator monitored, and that the licensee of that station was known to have that same voice characteristic. Again, this is evidence of the identity of the station, but it is not conclusive or sufficient by itself. What the OOC is attempting to establish is that, given the totality of the evidence, it is reasonably certain that the station monitored was operated during the period of the violation by a particular person. This is what is known as "circumstantial evidence" and is, cumulatively, often sufficient without the FCC catching the violator with the mike in his hand. "DFing to the door" is not really required in administrative proceedings, and in the context of HF communications, it

would seldom be possible to conduct such an investigation privately.

Direction Finding

Another evidentiary basis for determining identity of the source of transmissions is the use of direction-finding equipment. It is important to describe, in written narrative form, listing dates, times, participants, and procedures, including information concerning the calibration of radio receivers and test instruments, the process by which amateurs determined the location of the transmissions which violated a rule or statute. Again, direction finding is more applicable to VHF and UHF monitoring than to HF monitoring, but using different OO stations on a coordinated basis, the use of beam headings which indicate a particular area as the source of the transmissions can bolster an identification otherwise made, by taping of call signs.

OO Notice Response

Of course, by the time it is concluded that evidence should be prepared for transmission to ARRL HQ, the OO/OOC will have already exhausted more cooperative remedies, including the sending of OO notices and OOC Advisory Notices. (FSD-214 notices may only be issued following authorization by Headquarters). If a station licensee preliminarily identified as the violator has been sent an advisory notice, and that operator refers to the notice on the air, he or she has gone a long way toward identifying himself or herself as the source of the transmissions constituting a rule violation. This method of identification can in certain circumstances be conclusive. If, for example, WXØXXX, having previously been sent an advisory notice of a rule violation at his station address, appears at the same time, on the same frequency, with the same voice intonations as the station previously identified as WXØXXX, and makes reference on the air to the receipt of the notice, that is almost conclusive evidence that the rule violator was in fact WXØXXX. It at least makes it less likely that the operator has been misidentified. These are events which constitute circumstantial evidence, but the totality of the circumstances can lead to the conclusion (a conclusion to be drawn only by FCC, remember) that the licensee is the one making the transmissions.

The most difficult identification cases are those involving false or deceptive signals, transmission of music, unidentified transmissions, and malicious interference (which most often involves unidentified transmissions as well) where no call signs are used. In such cases, OO notices sent to suspected individuals can often lead to identification, as references to the receipt of such notices can be used as circumstantial evidence that the recipient of the notice is the violator.

5.10 Packaging the Evidence for FCC

The basic thread running throughout each enforcement case is that it is going to be the FCC's responsibility to "go forward" with the evidence against an accused violator, and to establish by a preponderance of the evidence that the accused in fact violated a rule or statute. This requires more than just the say-so of one person. If you have ever been in a car accident where you were the only person in the car, and the other driver is the only other person in the car, you can see that it will be difficult to establish who was at fault, unless the automobile positions, skid marks, etc. tell the story. For the same reason,

unless the tapes tell the whole story, an OO testifying alone will probably not be sufficient. Multiple tapes, made by multiple OOs, in difficult cases, should be encouraged.

Once the original tapes have been reviewed for relevancy and it has been determined that the tapes in fact, taken together establish that a particular rule or statute has been violated, (i.e. that all of the elements of the rule violation are present) and that the tapes, and the rest of the evidence in the possession of the OOC taken together strongly indicate the identity of a particular individual or group of individuals as the source of the rule violation, the case should be prepared for submission to the Commission, through the ARRL Headquarters staff, if it appears that the rule violations are likely to continue.

The materials to be submitted are, ideally, the following

- 1) Cover memorandum listing evidentiary materials being delivered, and a brief recitation of the nature of the case. This memorandum should describe the materials being delivered, the sources of the evidence, and a description of the chain of custody of the materials. The narrative should describe who brought the case to the attention of the OOC, the means by which it was determined that a rule or statutory violation had occurred, which specific rules or statutes have been allegedly violated by rule section and title; and the means by which a particular station was determined to have been the likely, or possible, source of the transmissions. It should never be concluded that a particular person or station was the source of the transmissions. The history of all prior dealings with the alleged source of the transmissions should be described in detail, to the extent that those dealings relate to this rule violation, and to the extent that the prior dealings assist in identifying the source of this rule violation. Remember that a history of past rule violations by a particular person does not necessarily mean that the person suspected of this rule violation is the same person. Similar circumstances, however, should be reported to the Commission. Try to avoid repeating in this narrative what another person said. Stick to your own observations.

- 2) Written transcripts of all relevant tape intercepts, prepared as discussed above.

- 3) Original tapes, with tape logs, sealed in the manner discussed above, and all descriptive materials concerning those tapes, indicating the source of the tapes, the means by which they were recorded, equipment used, and the like.

- 4) Copies of any past correspondence between the OOs and the alleged source of the transmissions.

When reporting the above, make sure not to assert that the person identified is actually the one who is violating the rule. Note the circumstances that led to the determination, without making the determination yourself. For example:

On December 31, 1992, at 0001Z, a station signing the call sign WXØXXX was heard on 28.205 MHz making transmissions which appeared to violate Section 97.113 of the Commission's Rules, by specifically advertising a dental office on the air.

Written intercepts of the transmissions of the monitored station are attached, as is an original audio cassette tape of the transmissions. Using the direction-finding

equipment discussed in the attached memorandum, and the procedures described therein, it was determined by the three stations participating in the direction-finding effort that the transmissions emanated from an area in the northwest section of the town of Brand, Iowa. OO notices have been sent to the station which appeared to be the source of the transmissions, and similar transmissions in the past, described more fully below. These notices, which had been mailed to the station address for WX0XXX, were responded to both on the air and in writing by one John Brown, the licensee of WX0XXX. Copies of that correspondence are attached. The correspondence indicates that the licensee of that station, John Q. Brown, of 1200 Canal Street, Brand, Iowa believes that he is "entitled to advertise dental services via amateur radio" and that he "intends to continue such transmissions". Based on the foregoing facts, the source of the transmissions was tentatively identified, and due to the context, and the specific nature of the transmissions, it was concluded that a violation of Section 97.113(a) of the rules has repeatedly occurred, and is likely to continue.

The above hypothetical example is highly abbreviated, of course, and is not meant to represent a full summary description of the case that would have to be prepared for submission to the Commission. The tenor of the report, however, is factual, rather than conclusory, and represents the type of presentation that an OOC should attempt to prepare. League Headquarters staff will be of assistance in preparing the case for presentation. Do not hesitate to seek assistance in this aspect of the evidence preparation.

The completed materials for submission to the Commission must be sent initially to the League's Headquarters for staff review. That way, a pre-screening of the case will reveal any gaps in the presentation, or in the sufficiency of the evidence, and assure that the Auxiliary will present to the FCC a complete, useful package that can be used as direct evidence. Important note: The actual referral to the FCC FOB is a function reserved exclusively for ARRL Headquarters staff.

5.11 Elements of the Violation

It has been mentioned above that the elements of a particular rule violation differ, depending on the violation. For example, a chronic problem of a licensee operating out of the subbands that he or she is licensed to use is a rather simple matter, save for the issue of identification. To establish a violation of Section 97.301, for example, it would have to be established that a station signing WX0XXX was monitored (repeatedly, if that is the case) on a frequency not authorized for novice licensees; that WX0XXX appears to only possess a Novice license; that the station using that call sign made certain statements that led to the identification of the operator as WX0XXX. A tape intercept could be prepared as follows: 0210 UTC, 14.225 MHz, September 13, 1991:

WX0XXX: Roger, Bill, you have a fine rig there. My rig is a homebrew transmitter running about 600 watts. Over.

WY5YYY: Sounds very good. I would like a picture of your rig. Where can I send my QSL?

WX0XXX: Well, my address isn't in the callbook, as I just got my Novice license, but it's 811 Westbard Avenue, Brand, Iowa 22087.

0211 UTC.

This in concise form contains all of the elements of persuasive evidence that WX0XXX operated on the 14 MHz band, a band unavailable to him or her under Section 97.301, including a rather persuasive identification transmission. Seldom is the matter of identification that easy to establish, but even the use of first names can indicate identity.

Using as another example a more complex rule violation, malicious interference, more planning on the part of the OOC is required in illustrating the elements of the violation. The elements of malicious interference as a violation of Section 303(m) of the Communications Act of 1934, as amended, and Section 97.101(d) of the Commission's Rules, again requires an analysis of the context. As noted in the ARRL's FCC Rule Book, operation on HF bands without any interference is an utterly unrealistic expectation. Amateur-to-amateur interference is not, in and of itself, specifically prohibited. Only intentional, or malicious interference, is prohibited. Thus, two amateurs operating on the same frequency by happenstance is not relevant to this offense. For that reason, as a litmus test, FCC has in the past required, in order to show malicious interference, that a station interfered with must change frequency, and have the interfering station move as well, in order to establish the element of malice, or in this instance, intent to continue to cause interference. While this is not the only context that can be used to evidence that intent, the tape and transcript must contain such a showing. The words of the interfering station can also be used to illustrate the intent element: 0300 UTC, 18.115 MHz, July 4, 1991:

WY0YYY: This is the Woods Hollow Traffic Net, conducting traffic on this frequency, a clear frequency would be appreciated.

WX0XXX: HEEEEEEEEELLLLLLLLLLOOOOOOOO, this is WX0XXX testing my new amplifier.

WY0YYY: WX0XXX, you are interfering with an ongoing traffic net, please QSY.

WX0XXX: I don't care, you guys are on here 24 hours a day, and WZ0ZZZ and I have a schedule here right now. It's our turn. WZ0ZZZ, this is WX0XXX, are you on frequency?

WY0YYY: Well, it so happens that our net will be over in fifteen minutes, but we have ongoing traffic here, so please QSY for a few minutes, then you can have the frequency. This is WY0YYY.

WX0XXX: No, I'm going to be testing my amplifier for the next 15 minutes, while I wait for WZ0ZZZ. This is WX0XXX. HEEEEEEEEELLLLLLLLLLOOOOOOOOOOOOOOOOOOOOOOO. Testing, testing, testing.

(sound of carrier over voice of WYØYYY for two minutes, 0302-0304 UTC).

0304 UTC.

The foregoing illustrates the intent element with some certainty. It does not, however, illustrate that the net was actually interfered with, and is thus deficient for that reason. More than that intercept is required, such as transmissions from net members indicating that they cannot hear the net control station, or that the net must discontinue operations, or move to another frequency, etc. Neither does this intercept prove the identity of the station transmitting, though it would appear that the identity of the station is in fact WXØXXX, as the station appears not to be transmitting covertly, but rather under some claim of entitlement to the frequency. The context would tend to indicate that the station is in fact WXØXXX. These illustrations are merely to demonstrate the difficulty in one intercept of establishing the elements of a particular rule violation. Often, five or even ten segments of a tape should be transcribed, each containing transmissions which, taken together, tend to show each and every element of the violation, and the identity of the violator.

5.12 Some Caveats

The gathering and presentation of the evidence in an Amateur Radio HF enforcement matter is of increasing importance. The role of the OOC in the process is critical to the presentation of useful evidence to the Commission.

There are some elements of the enforcement process to be avoided, however. It must be understood that certain investigative techniques are not authorized by the Communications Act for the Amateur Auxiliary, as well as some things that should, given the nature of the process, be avoided completely. One is the use of videotaping as a means of identifying the source of illegal transmissions. First, videotaping is by definition a short-range investigative technique which involves issues of trespassing, invasion of privacy, and possibly other criminal violations. Leave that type of investigation to law enforcement personnel. All detection of improper transmissions should be done using either direction-finding or on-air monitoring techniques. Confrontation, or the possibility of confrontation, should be avoided. In at least one case, an OO was attempting to gather evidence while in an automobile parked in front of a subject's residence in a private subdivision. The result was a criminal trespass charge being levied against the OO. No videotaping, and no close-in investigation should be attempted.

Any conclusions, oral or written, about a pending investigation, including accusations that a particular person has in fact violated a rule, should be avoided at all costs. This has been discussed above. Only factual reporting of matters heard should be done.

Never, during a pending investigation, after the submission of evidence to the Commission, should an OO, or OOC, either communicate with the subject of the investigation, or with anyone else concerning the investigation. An enforcement proceeding which involved hundreds of hours of work was jeopardized once because of letters between the volunteer monitor and defenders of the subject of the investigation. Confrontations with an accused, regardless of who initiates such, should be avoided as well. It is a simple matter to refuse to speak to someone, and if the accused person, or an advocate of that person, should persist, local police should be contacted. Any threats made by an accused, or any actions taken against a member of the amateur auxiliary should be reported in writing to local police, with a copy to the FCC, if it is apparent that the matter is related to the activities of the auxiliary member. OOs should not publicly discuss pending investigations, nor should anyone else involved in the matter.

The OOC should review the *Training Manual* materials on the subject of relevancy. In every instance in which a tape intercept purports to show a rule violation, the OOC should view that material in light of the elements of the rule violation, to see if that intercept makes it more likely that a rule violation has been committed. Analyze the tapes only in light of those things that must be shown to exist before it can be determined that a rule violation has been committed. Most amateur rule violations are relatively objective, though the difficult ones are those which are based on the content of the communications. When addressing those, make sure that the evidence is clear and convincing before packaging the material for the Commission.

5.13 Conclusion

Relatively few cases are serious enough to require submission to the Commission for enforcement purposes. Repeated violations, and those which are predicted to be repeated, should prompt the OOC and OOs to plan to develop a series of tapes. The primary role of the OOC, however, is normally fulfilled short of evidence gathering. However, those few cases which require action by the Commission will be facilitated greatly, and enforcement action will be initiated more expeditiously, if the guidelines listed above are followed.

CHAPTER 6: THE PSYCHOLOGY OF ACHIEVING VOLUNTARY COMPLIANCE

6.1 Introduction

The backbone of the Amateur Auxiliary is the Official Observer (OO). Vital to an effective Official Observer program is acceptance by the amateur community of volunteer monitoring efforts. The manner in which each individual OO conducts these OO activities is important to that overall acceptance. Therefore, it is imperative that you portray your OO activities as being of help and assistance to those with whom you come in contact. This helping role has been a tradition in the OO program since its founding over 50 years ago.

6.2 Advice not Enforcement

The OO must avoid any hint of enforcement. In fact, Public Law 97-259, under which the Amateur Auxiliary is authorized, specifically excludes amateurs from enforcement activities. To be viable and effective, the Amateur Auxiliary must avoid the appearance of enforcement. Before amateurs can be receptive to your help, you must have a clear understanding of your role as one who offers technical and operational advice. You are not one who engages in any form of enforcement. You can go a long way to fostering the kind of rapport necessary to bring about behavioral change (a) if you understand your proper role; and (b) if your entire demeanor and manner of conducting OO business is beyond reproach, totally objective, and delivered in the spirit of assistance. Remember: You are not an enforcer; you are an advisor-helper.

6.3 Projecting the Friendly Spirit on FSD-213

Your principal avenue of communication with the amateurs you monitor is the OO Advisory Notice, FSD-213. This is the card on which you advise amateurs of violations of the rules and of signal discrepancies of a technical nature. How you fill out this advisory notice will make or break the program. Your objective is to bring about compliance with the regulations by friendly persuasion. The printed portion of the card (FSD-213) is intended to appeal to the spirit of cooperation in a friendly manner. For the OO notice to be successfully received and bring about the desired response, the OO must project a caring attitude about the person receiving it. This can be done with a handwritten message in the remarks section to detail the infraction in an objective, friendly manner. And also most importantly, to add a personal note to "soften the blow" of the OO advisory. Words like: "I hope this report will be of help to you. 73" can go a long way to bring about good results. Please follow this procedure in making OO reports. Obviously, a sentence like that could have been printed on the form, but handwriting the message personalizes it and projects the caring concept (as long as it is legible). Make sure that all comments made on advisory reports are either objective factual comments regarding the infraction, or friendly ones as above. Under no circumstances should an OO ever make preaching comments like: "You should know better!". . ."Follow the rules, you

turkey". . and the like. Those kind of comments are not in keeping with meeting the objectives of the program.

6.4 Reactions and How to Deal with Them

If you take your OO job too seriously, you may find yourself in an occasional emotional turmoil because of some of the reactions you get in response to your advisory notices. Here are some typical reactions with some discussion of each.

(1) "It wasn't me, I wasn't on, someone must be bootlegging my call." Of the few negative comments likely to be received, this is fairly typical, and it *may* mean that you are not using enough care in identification. While it is unlikely that the call was being "bootlegged," you have no way of knowing whether or not the amateur involved really was on the air then. Since the notice is a friendly advisory, it doesn't matter, it will have done its job anyway. Please note also that the OO report indicates "your call heard." This is to avoid placing blame, and stress objective reporting of what is heard.

(2) "I paid a thousand dollars for this equipment; it's the best made and you must be wrong." This is a head-in-the-sand attitude. The amount paid for the equipment is not necessarily a criterion of its technical excellence, and any equipment can be maladjusted or mal-operated. A one-time malfunction is also a very real possibility.

(3) "I don't belong to ARRL and want nothing to do with any of its programs. Who appointed you guardian of the amateur bands?" Fortunately, reactions such as this are rare, but when received the temptation to reply in kind should be resisted. There are amateurs who, having disapproved of something the League is doing or has done, illogically oppose *anything* the League does. It's an "even if it's good, I don't like it" attitude. Don't get embroiled into a "holier than thou" dialogue.

There is something to the old adage "you can lead a horse to water, but you can't make him drink." Some people can be shown that what they are doing is wrong and causing others a problem. They shrug and go on doing it. The point to remember is that you can't force them to comply. They have to make that decision for themselves. If they persist, in the end, given enough rope, they will usually "hang" themselves. Get satisfaction from those who respond positively to your work!

If you receive more than your share of such defensive comments (or worse yet abusive ones), be sure that you are not to blame. Understand that the natural tendency is for the advisory recipient to be defensive. You must do everything possible to let the recipient know that you are (1) simply reporting a condition relating to radio signals; and that (2) you are not attacking the individual personally. If you are sure that you are following this advice, then you ought not to be troubled by the occasional negative response you may receive.

If you are getting a continual stream of adverse reactions, you may want to begin to analyze the reactions you are getting,

to learn what might be triggering the reactions and how to better deal with certain situations. Advice from your OO Coordinator or Section Manager in this regard would be helpful.

6.5 You, the OO

Not everyone is suited for this kind of activity. You must search within yourself to see if you have the qualities that it takes. Your duties involve service to your fellow amateurs. While others are busy working the rare DX station, the OO may

be off monitoring Novice second harmonics. You have to love to help your fellow amateurs. And the accolades that come your way will be either few or nonexistent. Your reward will come from knowing you are helping. Your efforts will go largely unheralded. If your motivational interest is based on wearing the policeman's badge of authority, then save yourself and the hobby the embarrassment of your participation. But if the OO program is right for you, and you are willing to qualify. GO FOR IT.

APPENDIX A

AMENDED AGREEMENT BETWEEN THE FIELD OPERATIONS BUREAU OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE AMERICAN RADIO RELAY LEAGUE, INC., REGARDING THE USE OF AMATEUR VOLUNTEERS

1. *The Field Operations Bureau (FOB) of the Federal Communications Commission (FCC) and the American Radio Relay League, Incorporated (ARRL), hereby agree to the following amended provisions for cooperation in a joint effort to improve Commission rules compliance in the Amateur Radio Service, as provided for by Section 4(f)(4)(C) of the Communications Act of 1934, as amended, 47 U.S.C. 154(f)(4)(C). This amended agreement supersedes the agreement executed between FOB and ARRL and dated March 28, 1984, under which the Amateur Auxiliary previously operated.*

2. *The objectives of this program are to foster among radio amateurs a wider knowledge of and better compliance with laws, rules and regulations governing the Amateur Radio Service, to extend the tradition of self-regulation and self-administration of the Service by amateurs, to promote rule compliance in the Amateur Radio Service, to enhance the opportunity for individual amateurs to contribute to the public welfare as outlined in the basis and purpose of the Amateur Radio Service, and to enable FOB to more efficiently and effectively use its manpower and resources in enforcing the Communications Act and Commission Rules.*

3. *FOB has entered into this agreement with ARRL in order to provide FOB with the voluntary, uncompensated services of the League's field organization pursuant to the authority contained in Section 104 of the Communications Amendments Act of 1982, Public Law 97-259, 96 Stat. 1087. The League's rules for the operation of the functions of field appointees and volunteers may change from time to time, and ARRL agrees to inform FOB promptly of any changes which may have a bearing on the provision of volunteer services to FOB under this agreement.*

4. *The foundation of the program created by this agreement is the ARRL's Official Observers, and they will be known as the ARRL Amateur Auxiliary to the Field Operations Bureau. The ARRL field organization, operating pursuant to ARRL guidelines and procedures, is the focal point of its Amateur Auxiliary program. That program involves the obtaining, coordinating, and conveyance of information from organized amateurs to the FOB, principally through ARRL's Washington office. Coordination of information gathering prior to submission to FOB may be through Local Auxiliary/FOB contacts. The Chief, Enforcement Division, FOB, is responsible for the overview and direction of the Amateur Auxiliary program from the FCC's standpoint, in conjunction with ARRL officers and staff. ARRL and FOB will jointly review policies, practices and procedures, and will work together toward solutions to problems and consistency in enforcement matters and efforts to promote and improve self-regulation and voluntary compliance.*

5. *ARRL agrees to provide voluntary and uncompensated services to FCC as follows:*

a. *to recruit and train amateur radio operators to monitor Amateur Radio Service frequencies, as volunteers and without compensation;*

b. *to coordinate the efforts of those volunteers in detecting improper Amateur Radio transmissions made by licensed radio amateurs and in conveying to Commission personnel the resulting information that is essential to the enforcement of the provisions of the Communications Act and the regulations prescribed by the Commission relating to the Amateur Radio Service;*

c. *to cause those volunteers to issue advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of the Communications Act or the regulations prescribed by the Commission relating to the Amateur Radio Service, and ensuring that such advisory notices are not misconstrued as official Commission sanctions or enforcement actions which can only be issued by the Commission.*

6. FOB agrees to the following:

a. to review and consider the information submitted to FOB by ARRL and to initiate any actions as may, in the Commission's opinion, be appropriate and consistent with the Commission's enforcement policies;

b. to advise ARRL, upon request and in as timely a manner as possible, of the actions taken, or reasons why actions were not taken, in those infrequent instances where ARRL submits information and enforcement recommendations to FOB on individual violation cases that have not responded to advisory notices and where the violations have continued;

c. to attempt to withhold from public release or disclosure, on the basis of the submission of a express written request for confidentiality in each specific instance and Freedom of Information Act (FOIA) Exemption 7(D), 5 U. S. C. §552(b)(7)(D), the identity of and/or any identifying data regarding individuals associated with the Amateur Auxiliary that have furnished information and enforcement recommendations to FOB. ARRL is aware that if any Commission enforcement matter proceeds to an administrative hearing or court trial status, the determination of whether such withheld information should be disclosed or continued to be withheld may rest with the administrative law judge or the judge of the court involved, and not FOB. ARRL further understands that there is no FOIA exemption for withholding the content, substance or details of such a complaint after the conclusion of an FOB investigation of the matter, and so long as the release of that information cannot interfere with an ongoing investigation. ARRL further understands and acknowledges that members of the Amateur Auxiliary are not considered government employees in any manner. Therefore, neither individual members of the volunteer Amateur Auxiliary nor the ARRL are entitled to receive legal representation from FOB, FCC or the federal government. Accordingly, they must not anticipate or expect legal representation or otherwise to be held harmless in any matter that may arise as a result of Auxiliary activities. With the above understanding, however, FOB will seek in any enforcement proceeding, consistent with existing rules and policies, to avoid any unnecessary exposure of those who provide information to the Commission through the Amateur Auxiliary program.

d. to assist ARRL in the training of volunteers, in publicizing the objectives and the accomplishments of the program, and in identifying and implementing improvements to the program, based on accumulated experience.

7. The primary point of contact between ARRL and FCC shall be the ARRL Washington office under the direction of the ARRL President and the Office of the Chief, Enforcement Division, FOB. It is understood that certain FOB field offices have favorable working relationships with Official Observers and Official Observer Coordinators. However, submission of materials to FOB where enforcement is requested shall in each case be through the ARRL Washington Office.

8. All prospective members of the Amateur Auxiliary will be required to undergo a training and certification procedure administered by ARRL, and successful completion of such training and certification will be required for enrollment.

9. The above cooperative program is hereby agreed to by the signatories hereto and shall become effective as of the date shown below. This agreement may be amended by the mutual consent and agreement of both parties and will remain in effect until terminated. FOB and ARRL will periodically review this agreement and coordinate such revisions as may be necessary. This agreement may be terminated by either party hereto upon written notice to the other party.

FOR FCC:


Lauren J. Belvin, Chief
Enforcement Division
Field Operations Bureau

Date:

February 24, 1994

FOR ARRL:


George C. Wilson, III
Its President

Date: February 25, 1994

APPENDIX B

Evidence Gathering: Fifteen Point Checklist

OOs and OOCs may wish to use this handy checklist to ensure that all of the key components are included in the package of evidence to be supplied to ARRL Headquarters. For a comprehensive look at how the package should be constructed, see Chapter 5.

Point 1: Case Activity

OO and OOC activity has been and will be confined in this case to the following:

- (I) The detection of improper Amateur Radio transmissions;
- (II) The conveyance to Commission personnel of information which is essential to the enforcement of the Communications Act or regulations prescribed by the FCC, relating to the Amateur Radio Service; and
- (III) The issuance of advisory notices to persons who apparently have violated any provision of the Act or regulations prescribed by the FCC relating to the Amateur Radio Service.

Point 2: Competence

- The case is documented with *only* those events *personally* witnessed by the monitor.

Point 3: Relevance

- The case evidence is "relevant" — it makes the facts to be proven more probable or less probable than they would be without the evidence.
- The documentation consists of "just the facts."

Point 4: Opinion and Inference

- No *opinions and/or inferences* are contained in the case documentation.

Point 5: Hearsay

- The documentation and reporting is confined to what was heard through the monitor's receiver and the details of what was heard. There is no *hearsay* in the documentation.

Point 6: Notes and Records

- The written notes of the case are detailed, well organized and clear, and are in narrative form.
- The notes and records are signed and dated to establish authenticity.

Point 7: Maintaining Confidentiality

- To ensure against accusations of bias, or of prejudicing the investigation, monitoring information has been and will be disclosed only in OO Reports and/or to other monitors, and then, only on a "need-to-know" basis.

Preparation and Handling of Tapes

Audio tapes must be protected against any allegation that they have, after their creation, been tampered with. The written transcript of the tape is important because it directs the Commission's analysis of transmissions to that which the OOC has determined is directly relevant to a determination that a rule has been violated.

Point 8: Uniform Procedure

- The same procedure was used in creating audio tapes and written intercepts in each case, as a matter of routine.
- The tapes are clear, and transcribable.
- The OOC has assumed the responsibility for preparation of written intercepts from transcripts.

Point 9: Labeling Tapes

- The tapes were labeled at the time they were created with the:
 - Date
 - Time (of commencement and termination of the tape recording)
 - Name of monitor
 - Frequency or frequencies (labeled by time on the tape that any frequency change was made)
 - Call signs used
 - Means by which the monitor determined the alleged rule violation
 - List of receiving equipment and conditions (including antenna, beam heading, taping equipment, and the condition of same, and any propagation conditions which may be noteworthy).

Point 10: Sealing Tapes

- The original tape(s) was placed in the labeled box and sealed with tape, or sealed in an envelope, by the person recording the tape.

Note: The tape should be kept sealed by the OO or whoever has made the tape. The time, date, and identity of the person making the tape and doing the sealing should be indicated on the outside of the envelope. The fact that the person who made the tape has sealed it should be indicated on the front of the envelope.

Separate notes should be taken thereafter by the creator of the tape as to what he or she did with it, by way of conveying the tape to the OOC, including detailed description of the form of the tape, the type of envelope or other sealed package in which it was placed, and the means by which it was conveyed. Date, time and place notes should be kept.

Point 11: Mailing Tapes

- The tapes, ideally, should not be mailed.
- Copies of the tape, made after it was prepared and before it was sealed, have been prepared for discussion purposes among the OO, the OOC, and the ARRL HQ staff.
- The original tape is delivered by the OO who prepared it to the OOC at the time it is to be used, with the above-referenced seal, notations and preparation intact.
- A log has been made with respect to each handling and use of the tape, including reference to any and all persons handling it, and the place or places it was kept for safe-keeping.

Point 12: Identification of the Alleged Violator

- The OO and/or OOC, through the documentation, do **NOT** conclude that it was in fact a particular individual, or group of individuals, that perpetrated a rule or statutory violation. In the transcript, no summaries of the words used, or of the context, should be provided by the person making the transcript.
- No recommendations as to particular sanctions for individuals identified in the evidentiary materials are provided in the documentation.
- The case documentation contains a description of how the subject station was determined to be the source of the transmissions.

Point 13: Direction Finding

- The documentation describes the direction-finding techniques employed, in written narrative form, listing dates, times, participants, and procedures, including information concerning the calibration of radio receivers and test instruments, and the process by which amateurs determined the location of the transmissions which apparently violated a rule or statute.

Point 14: OO Advisory Notice Response

- The documentation includes a record of OO and OOC advisory notices sent, and copies of any responses received from the subject.

Point 15: Packaging the Evidence for FCC

- The materials to be submitted include:
 - Cover memorandum listing evidentiary materials being delivered, and a brief recitation of the nature of the case.
 - Written transcripts of all relevant tape intercepts.
 - Original tapes, with tape logs, and all descriptive materials concerning those tapes, indicating the source of the tapes, the means by which they were recorded, equipment used, and the like.
 - Copies of any past correspondence between the OOs and the alleged source of the transmissions.