

Before the
Federal Communications Commission
Washington, D.C. 20554

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

WT Docket No. 95-11

RECEIVED
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TO: The Full Commission

**EXCEPTIONS OF HERBERT L. SCHOENBOHM TO THE
SUPPLEMENTAL INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
EDWARD LUTON AND BRIEF IN SUPPORT OF EXCEPTIONS**

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November 20, 1997

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Pursuant to Section 1.276 of the Commission's Rules and Regulations, Herbert L. Schoenbohm ("Schoenbohm"), by his attorney, hereby respectfully excepts to the Supplemental Initial Decision of Administrative Law Judge Edward Luton, released in this proceeding on October 9, 1997, and submits the following Exceptions and Brief in support of Exceptions:

I. CONCISE STATEMENT OF THE CASE

1. This case involves an application for renewal of the amateur license of Herbert L. Schoenbohm (KV4FZ). A hearing was previously held and on February 2, 1996, the residing ALJ denied Schoenbohm's renewal application. Schoenbohm, however, filed exceptions to the Initial Decision. By Memorandum Opinion and Order, released September 27, 1996, and published at 11

FCC Rcd 12537, the General Counsel remanded the proceeding for the taking of evidence on the following issues:

(c)(1) To determine whether Herbert L. Schoenbohm made misrepresentations or lacked candor in his testimony about his felony conviction, loss of pension rights, and ex parte communications.

(c)(2) To determine if Herbert L. Schoenbohm used his amateur radio facilities for communications about how to obtain illicit access codes.

2. Thereafter, a further hearing took place before the ALJ on April 1, 1997. On October 9, 1997, the ALJ issued a Supplemental Initial Decision, again proposing to deny the renewal application.

3. In his Supplemental Initial Decision the ALJ concluded that Mr. Schoenbohm misrepresented facts or was lacking in candor in his statements regarding his criminal conviction and his exploration of the facts and circumstances surrounding an alleged violation of the Commission's ex parte rules. Schoenbohm respectfully submits, however, that to support a finding of misrepresentation and/or lack of candor there must be a showing that the renewal applicant made statements at hearing which are in some respects untrue. As will be demonstrated in these Exceptions, Mr. Schoenbohm did not make any untrue statements. All of the statements made by Schoenbohm in his Exceptions and his oral testimony were true and correct.

II. QUESTIONS PRESENTED

1. Where a renewal applicant was convicted of a criminal offense, and sought at hearing to introduce testimony in mitigation of the severity of that defense, and where such testimony was in all respects true and correct, did the ALJ err in finding that the applicant had been

guilty of lack of candor and misrepresentation?

2. Where the renewal applicant was showed to have frequently engaged in lengthy “over the air” discussions of the Commission’s Rules and Regulations, and was, perhaps, obsessed by his knowledge of those rules and regulations and the need for enforcement of those rules and regulations, and where in a private conversation with another radio amateur the renewal applicant discussed his knowledge of the ex parte rules and discussed what might be permissible communications under those ex parte rules, and where the renewal applicant’s discussion was never intended as an impermissible solicitation under the ex parte rules and the other party to the conversation confirmed that he never considered that the renewal applicant intended an improper ex parte solicitation, did the ALJ err when he concluded that the renewal applicant’s explanation of the conversation was misleading and/or exhibited lack of candor?

III. ARGUMENT

(A) Criminal Conviction.

1. In his testimony at the prior hearing in this proceeding, Schoenbohm responded to a question from his attorney, which inquired, in substance, as to the nature of the counterfeit access devices which were in Schoenbohm’s possession. Counsel for Schoenbohm asked that question because, prior to the hearing, Schoenbohm specifically asked counsel to make it clear that he did not possess or use any mechanical, electro-mechanical, or magnetic access devices; that the only devices he had were telephone numbers in his mind. (Schoenbohm Ex. 8, pg. 1.)

2. Schoenbohm obtained these numbers under the following circumstances: Sometime in 1987, he learned of a service offered by Caribbean Automated Long Lines Service, “CALLS”, which offered discounted prices on long distance telephone calls. He was interested in

saving money on his phone bill, so he contacted a CALLS sales representative by telephone. She furnished him with a six digit number which could be used to access the CALLS system. The procedure was to call a telephone number for the CALLS system. When the number answered, the customer would enter the six digit access number and this would allow him to then dial a long distance number through CALLS. CALLS kept a record of the customer use of the system, so that the customer could be billed. (Schoenbohm Ex. 8, pg. 1.)

3. Later, Schoenbohm decided to obtain CALLS access numbers for his wife and his son. Once again, these numbers were voluntarily furnished to him by CALLS personnel, so that, altogether, he had a total of three of these six digit numbers. (Schoenbohm Ex. 8, pg. 1.)

4. He used the numbers routinely to make long distance calls, assuming that he would be sent a bill by CALLS. However, no bill arrived. Instead, he learned from a friend that CALLS was having financial difficulties and that the owner of CALLS felt that Schoenbohm was somehow responsible for thousands of dollars of losses. As soon as Schoenbohm heard of this he immediately stopped using the CALLS system and made no further use of the CALLS numbers. Nevertheless, Schoenbohm was eventually indicted and convicted on the charges previously described in this FCC proceeding. (Schoenbohm Ex. 8, pg. 1.)

5. Schoenbohm has always thought it important, however, that he was not convicted of possessing or using any electrical or physical device. That is why he asked his attorney to make that clear at the hearing. At the second hearing, Schoenbohm again affirmed that he did not possess or use any "blue box",¹ slugs², counterfeit credit cards, or any other electronic, mechanical, or

¹A "blue box" is an electronic circuit which was sometimes used by hackers in the 1970's and 1980's and connected across a telephone line to deceive the telephone network into allowing

electro-mechanical devices, which either could be used or were used to make long distance telephone calls without paying for them. At the time Schoenbohm did have a Commodore 64 computer, equipped with a modem and dialer. However, he never used it to make any unauthorized telephone calls to anybody. His conviction was based solely upon the use or possession of three six digit numbers which had been given to him by CALLS. (Schoenbohm Ex. 8, pp. 1-2.)

6. A renewal applicant convicted of a crime is permitted to testify to the circumstances of his conviction and to provide evidence mitigating the circumstances. Richard Richards, 1995 WL 170663 (Rev. Bd. 1995). Here, such testimony was particularly important because, while Schoenbohm appealed his conviction to the Third Circuit Court of Appeals on the grounds, inter alia, of insufficiency of evidence, the Court essentially refused to review the trial evidence on the technicality that Schoenbohm's attorney had failed to timely file a required post-trial motion. (See Memorandum Opinion, attached and marked Exhibit "A" at p. 12).

7. Now, it was perfectly true that as Schoenbohm testified the only "counterfeit access devices" that he possessed or used were the telephone numbers given to him by CALLS. The statute under which he was convicted (18 U.S.C. §1029(a)(1)) makes it an offense to produce, use or traffic in one or more counterfeit access devices. While the term "possess" does not appear in Section 1029(a)(1), the subsection under which Schoenbohm was convicted, other subsections of Section 1029(a) not mentioned by the ALJ do, in fact, make it a specific crime to possess counterfeit access devices. See Section 1029(a)(3) and Section 1029(a)(4). In any event, it would appear

calls to be made without charging for them.

²A "slug" is a counterfeit coin sometimes used to deceive a pay telephone into thinking that money has been deposited when it has not.

obvious that if one does not possess a counterfeit access device, one cannot possibly produce, use or traffic in such a device in violation of Section 1029(a)(1). On cross examination, Schoenbohm sought to explain this in the following exchange:

“Q Well, the long and the short of it, Mr. Schoenbohm, is that you were convicted for illegally obtaining code numbers and using them for fraud calls, isn’t that correct?”

A That’s correct.

Q Why did you feel it was necessary to make it clear that you were not convicted of possessing any physical device?

A The statute, 1029(a)(1), which is a counterfeit access statute, goes into great description in the definition section of what these various devices are. And they are a serious crime of which up to ten years imprisonment can be attached, especially in the area of counterfeiting and producing cars,³ producing plastic; producing devices apart from the conduct for which I was convicted. I produced nothing and I manufactured nothing. And I think that was quite clear from what this description was trying to — trying to get to.

Q Well, the term, access device, is not restricted to physical instrument, is it?

A Apparently not.

Q Why is there some confusion? You’re pretty confused.”
(Tr. 57-58.)

8. Actually, it was the questioner, not Schoenbohm, who was confused. To anybody but a lawyer, accustomed to picking nits and drawing exceedingly fine distinctions, Schoenbohm’s statements were crystal clear. He did not possess any physical equipment of any kind used in the commission of the crime for which he was convicted. That was perfectly true and Schoenbohm had

³Error in transcript. Should be “cards”.

a perfect right to say so.

(B) Ex Parte Issue.

9. The ALJ's treatment of the ex parte issue raises troublesome questions in relation to Schoenbohm's Constitutional rights to freedom of speech and his ability to petition the government for redress of grievances. Such questions are always in the background in cases involving ex parte rules which may be one reason why, so far as the undersigned counsel has been able to determine, nobody has actually ever been disqualified for a violation of the ex parte rules.

10. In any event, in evaluating Schoenbohm's explanation of the conversation which resulted in the ex parte issue in this case, the ALJ failed to consider the *totality* of the evidence. The issue arose from a transcript of a tape recording of a conversation between Schoenbohm and a friend, Malcolm Swan, made by a Mr. LeBlanc and received in evidence as Exhibit 3. The transcript is 11 pages in length. For the first two and one-half pages, Schoenbohm rattles on about his ham equipment, the weather, etc. At the end of page 3, he begins a rambling discussion of one of his favorite subjects, the FCC's Rules and his understanding of those rules. He goes on as follows:

"Schoenbohm: . . . and ham radio operation operates not under the public interest and convenience but under the basis, purpose and scope as articulated under Part [Title] 47 C.F.R. Part 97 subsection 97.1 which indicates the basis, purpose and scope. It is not unless someone wants to make the image in their mind, we do not operate in the public interest, necessity and convenience. Uh, we do not, are not required to provide public interest transmissions. We are not required to engage in, uh, public service announcements on our radio, there is no such requirement, there is an option. We are allowed to do it, but we are not required to do it. On the same, on the other, on the other hand is radio stations must, in order to be licensed, must demonstrate that they operate in the public interest necessity and convenience, to grant a broadcast licensee access to spectrum. Ham, on the other hand, amateur licensees are [licensed] pursuant, in addition to the Communications Act of 1934, to a vast array of

international treaties, and the establishment of our qualifications is outlined in the the basis, purpose and scope of Part 97. That is our charter. Under 97.1 which states in pertinent part that we are allowed to operate for the furtherance of the telecommunications, er the communications act, uh let me read them for your. Recognition, uh, on the following principles, the fundamental purpose. 'The fundamental purpose of the amateur radio service is the recognition and the enhancement of the value of the amateur service to the public as a voluntary non-commercial communications service, particularly in respect to providing emergency communications, and continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art and encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communications and technical phases of the art.' I think we could make an argument that the FCC has provided rules that resulted in the degeneration of the particular goal, but nonetheless I'll continue. 'Expansion of the existing reservoir within the amateur service of trained operators, technicians, and electronic experts and the continuation and extension of the amateur's unique ability to enhance international goodwill.' Now nope" Schoenbohm Ex. 3, pp 3-4.

Interestingly, at this point, the man who made the tape speaks up, confirming Schoenbohm's obsession with the rules. LeBlanc says:

"LeBlanc: He reads the rules and the rules and the rules and what not but he has no sense of values whatsoever; no consideration for anybody other than Schoenbohm. The rights of other people don't mean anything to him. [pause] He is going to police the Federal Communications Commission. He's gonna police all the hams in the world, including the ITU, whatever, the original ugly American, ugly American known all over the world as an ugly individual." Schoenbohm Ex. 3, p.4.

11. At the first hearing, Schoenbohm's friend and supporter, John Dellinger, confirmed that Schoenbohm does, in fact, frequently discuss the FCC's Rules and expound on his knowledge thereof (Tr. 95-96). At the first hearing, also, the other party to the taped conversation (Malcolm Swan) testified by written declaration that he did not interpret Schoenbohm's remarks as

an invitation for him to write to anybody on Schoenbohm's behalf and did not write to anyone on Schoenbohm's behalf (Schoenbohm Ex. 6).

12. Schoenbohm has always insisted that the conversation which led to the ex parte issue was just another one of his long, generalized conversations about the rules (Tr. 93). That is not inconsistent with the testimony he gave under cross examination at the second trial, that the discussion was a personalized illustration of permissible and impermissible means of contacting the FCC about a grievance, without violating the rules (Tr. 95-100). When a man marries a wealthy woman, he may have many reasons. So, too, a conversation may have many reasons, as when a teacher, for example, lectures partly to impart knowledge to his students, but also to impress them with his wit and wisdom.

13. The ALJ reasoned that, because Schoenbohm had been instrumental in securing the election of Delegate Frazer to the House of Representatives, Schoenbohm thought that Frazer would be willing to help him. That reasoning is sound. What is unsound is the conclusion that Schoenbohm gave Frazer's name to Swan, so that Swan could contact Frazer on Schoenbohm's behalf. Schoenbohm did not need any intervention by Swan on Schoenbohm's behalf. Schoenbohm was already a friend of Frazer's, as evidenced by the fact that Frazer later gave him a job. A letter to Frazer from Swan, who does not live in Frazer's District, would have been of no value whatsoever to Schoenbohm.

14. We also except to the ALJ's conclusion that Schoenbohm knew or should have known about the ex parte rules and the anti-solicitation provisions of the ex parte rules. Those rules are tucked away in Part 1 of the FCC's Rules, which deals with practice and procedure. For the most part, those rules are available only to lawyers. They are not reproduced in the Radio Amateur's

Handbook, or in any other publication put out by the ARRL⁴ or other radio amateur organizations. There was no way that Schoenbohm could have known of the rules, except by talking to a lawyer.

(C) Pension Rights.

15. The ALJ found in Schoenbohm's favor on the pension rights issue, but said there was still some "doubt". As a precautionary measure, to avoid an argument that an exception has been waived, Schoenbohm respectfully excepts to the ALJ's expression of any "doubt". Schoenbohm told the truth when, in exhibits prepared prior to the first hearing, he testified that the loss of his job with the police department cost him his pension rights. He told the truth at the first hearing, when he testified that he didn't know whether his new job with the Virgin Islands government had restored his rights. Finally, he told the truth at the second hearing when he testified that he looked into the matter and ascertained that he had gotten back his rights.

(D) Other Matters.

16. This is a strange case. It involves a ham operator with an outstanding amateur record who, until he was 52 years old, had never been convicted of any crime, not even a speeding ticket. The conduct which resulted in his conviction occurred ten years ago. Thus, it was remote in time. Moreover, the sentencing Judge did not consider the crime to be serious; she let Schoenbohm off with a \$5000 fine and two months house arrest; no jail time. Since his conviction, Schoenbohm has again had a spotless record. He now holds a responsible position with the Virgin Islands government. Thus, he has been fully rehabilitated. Furthermore, Schoenbohm has never been found to have violated any of the FCC's amateur rules. Thus, Schoenbohm would appear on

⁴American Radio Relay League, the predominant radio amateur association in the United States.

the surface to be fully entitled to renewal of his amateur license. After all, even murderers and marijuana distributors have been found entitled to a renewal under similar circumstances. Richard Richards, 1995 WL 170663 (Rev. Bd. 1995); Alessandro Broadcasting Co., 56 RR 2d 1568 (Rev. Bd. 1984).

17. The second hearing produced no evidence of any lying on the part of Schoenbohm. The ALJ admitted that the most serious issue (whether Schoenbohm used ham radio for communications on how to obtain illicit access codes) simply fizzled. The best the ALJ could do is to say that Schoenbohm testified in such a way as to present his conviction in a "softened, more benign image" of the facts - even though Schoenbohm was entitled to do that, so long as his testimony was truthful. Richard Richards, cited supra. As to the "ex parte" issue, the ALJ apparently concluded, erroneously, that Schoenbohm was not telling the truth when he insisted, as he has consistently done, that his rambling discussion of his case in the context of the ex parte rules was not intended as an ex parte solicitation - notwithstanding the fact that no ex parte communications were ever received by the FCC on behalf of Schoenbohm and that Schoenbohm has a demonstrable history of rattling on and one about his knowledge of the FCC's rules.

18. Given the weakness of the case against Schoenbohm, the reviewing authority may wonder why the WTB is still pursuing this matter - why hundreds of thousands of dollars of government money are being spent to stamp out this amateur ticket. Surely, the reviewer may think there must be something more to this.

19. Actually, there may be more to Schoenbohm's case than meets the eye. A small group of amateurs have apparently decided that Schoenbohm is some sort of neo-Nazi. They have, apparently, communicated with FCC staff members, both orally and in writing, making these

scurrilous claims. These communications were perfectly proper. In the role of prosecutors, WTB attorneys are entitled to communicate with anyone to develop evidence in a case. Schoenbohm, however, has never been given any opportunity to respond to the allegations made against him. Thus, it is entirely possible that some members of the FCC staff may actually believe these false allegations.

20. It is time to bring this matter out in the open. Attached and marked Exhibit "B" is a copy of a letter written by C. Schwartzbard to Thomas Fitz-Gibbon, an attorney for the WTB. The letter is libelous on its face, but Schoenbohm does not have the resources at this time to pursue an action for libel. Schoenbohm can, however, respond to the letter under penalty of the laws of perjury, and he has done so in a declaration attached and marked Exhibit "C". Herbert L. Schoenbohm may be many things - (QST magazine has described him as "controversial") - but he is not a Nazi, an anti-Semite, or a racist. He wants the reviewing authority to know that.

IV. CONCLUSIONS AND REQUEST FOR ORAL ARGUMENT

1. For the reasons set forth above, the Supplemental Initial Decision should be reversed and Schoenbohm's license should be renewed.
2. Oral argument on these exceptions is respectfully requested.

November 20, 1997

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Respectfully submitted,

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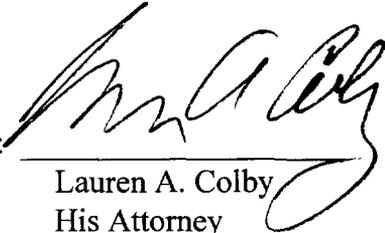
By: 
Lauren A. Colby
His Attorney

EXHIBIT A

traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating \$1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices;

. . . .

shall, if the offense affects interstate or foreign commerce, be punished

Elsewhere, the statute defines the relevant terms:

(1) the term "access device" means any card, plate, code, account number or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term "unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud;

(4) the term "produce" includes design, alter, authenticate, duplicate, or assemble;

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control with intent to transfer or dispose of;

18 U.S.C. § 1029(e). We will affirm the appellant's conviction under 18 U.S.C. § 1029(a)(1) -- use of a counterfeit access device.

I.

Between 1982 and 1989, Caribbean Automated Long Line Services ("CALLS") provided long-distance telephone service to customers in the Virgin Islands. Fraud was a major problem for CALLS -- illicitly-obtained access codes were used to procure telephone service. To combat losses, CALLS began an investigation which identified Herbert L. Schoenbohm as a possible user of illicitly-obtained access codes. The United States Secret Service later joined the investigation of Schoenbohm.

On December 17, 1991, Schoenbohm was charged in a three-count indictment with violation of 18 U.S.C. § 1029(a). Specifically, Count I charged that Schoenbohm used a counterfeit access device in violation of § 1029(a)(1), Count II charged that he obtained long distance telephone services valued at more than \$1,000 with unauthorized access devices in violation of § 1029(a)(2), and Count III charged that he possessed 15 or more counterfeit and unauthorized access devices in violation of § 1029(a)(3).

At trial, the government introduced Exhibits 5A and 5B. Exhibit 5A, entitled "ALL CALLS PLACED TO NUMBERS KNOWN TO BE CALLED BY SUSPECT," was a list of Schoenbohm's relatives and

business associates who had received calls from the Virgin Islands placed with illicitly-obtained access codes. Exhibit 5B, entitled "ALL CALLS BY ACCESS CODES USED TO CALL THE NUMBERS ABOVE," was a list of 606 calls made from the Virgin Islands with the illicit access codes found in Exhibit 5A.

Damaging inferences can be drawn from these exhibits. For example, Exhibit 5A shows that a call was made on May 13, 1987, from the Virgin Islands to one of Schoenbohm's relatives in Burton, Ohio, with illicit access code 149907. Exhibit 5B shows that 167 telephone calls valued at \$263 were made with illicit access code 149907. One therefore might conclude, as the government urged, that Schoenbohm made 167 calls valued at \$263 using illicit access code 149907.

A jury convicted Schoenbohm on all three counts. Schoenbohm filed a motion for acquittal under Fed. R. Crim. P. 29 and a motion for a new trial under Fed. R. Crim. P. 33. Both motions were denied with respect to Count I, but acquittals were granted with respect to Counts II and III. Schoenbohm was sentenced to one month incarceration and one month house confinement.

After trial, Schoenbohm began to investigate the 606 calls that Exhibit 5B suggested he had made. (Pre-trial investigation was impossible because Exhibit 5B was not furnished to Schoenbohm until trial). Schoenbohm called some of the numbers listed in Exhibit 5B and learned that he had never had any communication with those who answered. More importantly,

Schoenbohm learned that the Secret Service also had called some of the numbers listed in Exhibit 5B and had been told that Schoenbohm had never called. The Secret Service thus knew that the inference the United States Attorney had asked the jury to draw from Exhibit 5B was false -- Schoenbohm had not made all 606 calls listed in Exhibit 5B. In addition, the government had failed to disclose this exculpatory evidence, even though Schoenbohm had requested all Brady material.

Schoenbohm made motions for a new trial under Fed. R. Crim. P. 33 and for acquittal under Fed. R. Crim. P. 29, but both were denied because, in the trial court's view, other evidence could sustain the conviction on Count I. Schoenbohm also made a motion for correction of sentence under Fed. R. Crim. P. 35, which was granted. At resentencing, he received two months of incarceration, which was suspended, and two months of house arrest. Schoenbohm then filed motions for dismissal under Fed. R. Crim. P. 16, a new trial under Fed. R. Crim. P. 33, and correction of sentence under Fed. R. Crim. P. 35. All motions were denied and this appeal followed. We have jurisdiction under 28 U.S.C. § 1291.

II.

Schoenbohm contends that the government used false evidence to convict him -- Exhibit 5B listed phone calls Schoenbohm did not make, but a government witness and a prosecutor said that Schoenbohm made all phone calls listed in

Exhibit 5B. Schoenbohm further contends that the government's use of the false evidence was knowing -- before trial, the Secret Service learned that Schoenbohm had not made some of the phone calls listed in Exhibit 5B and a Secret Service agent sat beside the prosecutor at trial. Accordingly, Schoenbohm argues, his conviction must be reversed because the government's knowing use of false evidence could have affected the judgment of the jury.

We conclude that there is no reasonable likelihood that Exhibit 5B could have affected the judgment of the jury on Count I -- use of a counterfeit access device. Exhibit 5B was introduced to prove Count II -- obtaining long distance telephone services valued at more than \$1,000 with unauthorized access devices -- on which the district court already has granted a judgment of acquittal. Exhibit 5B was intended to supply a monetary figure for Schoenbohm's fraud which would have permitted a jury to convict on Count II. Count I, on the other hand, did not require the government to prove that the fraudulently obtained services had a particular value; § 1029(a)(1) was violated if Schoenbohm made a single call using a counterfeit access device.

Evidence other than Exhibit 5B shows that Schoenbohm made at least one long-distance phone call using an illicitly-obtained access code, as charged in Count I. Two witnesses testified that Schoenbohm telephoned them at about the same time that records show calls being placed to their numbers with illicit codes. Five other witnesses to whom calls were placed

with illicit codes testified that Schoenbohm was the only person in the Virgin Islands who ever telephoned them. Schoenbohm possessed an automatic dialing device that could have been used to break into the CALLS telephone line. A Secret Service agent testified that Schoenbohm admitted possessing access codes and asked "to cut a deal" to avoid losing his job with the Virgin Islands Police Department. Another witness testified that he heard Schoenbohm broadcast on a ham radio about how to obtain illicit access codes.

Because of this other evidence, we will not overturn Schoenbohm's conviction. We wish to make clear, however, that we are disturbed both by the government's use of Exhibit 5B and by some of the arguments the government makes in urging affirmance. The government insists that it introduced no false evidence: "Exhibit 5B was a neutral exhibit" which "contained a computerized summary of all the phone calls made with the access codes for which there was proof that Schoenbohm had previously used." Appellee's Brief 18. The government admits only to asking the jury and the judge to draw a misleading inference from the evidence. See id. ("Concededly, the inference which the prosecutor asked the jury to make was incorrect with respect to some of the phone numbers."). The government further claims that its conduct was not knowing: the Secret Service never told the United States Attorney that Schoenbohm had not made some of the phone calls listed in Exhibit 5B and thus the United States Attorney did not knowingly mislead the court. See id. at 19

("[t]his information was unknown to the prosecutor at trial" because "the U.S. Attorney's office was only provided with reports which showed a connection between Schoenbohm and the illegal phone call").

The distinction the government makes between "false evidence" and "incorrect inferences" is not valid. This court has repeatedly emphasized the government's duty to present the truth. For example, the government has an obligation to correct false testimony, even when made inadvertently: "[W]hen it should be obvious to the Government that the witness' answer, although made in good faith, is untrue, the Government's obligation to correct that statement is as compelling as it is in a situation where the Government knows that the witness is intentionally committing perjury." United States v. Harris, 498 F.2d 1164, 1169 (3d Cir.), cert. denied sub nom. Young v. Harris, 419 U.S. 1069 (1974). The government's duty to present the truth is no less compelling in this situation. See, e.g., Hamric v. Bailey, 386 F.2d 390, 394, (4th Cir. 1967) ("[e]vidence may be false either because it is perjured, or, though not itself factually inaccurate, because it creates a false impression of facts which are known not to be true").

While the United States Attorney's ignorance of the Secret Service investigation is, of course, relevant with respect to his personal culpability, it provides no excuse for the government's having presented false evidence to the jury. This court, for Brady purposes, looks to the knowledge of the entire

"prosecutorial team," which includes both investigative and prosecutorial personnel. See United States v. Perdomo, 929 F.2d 967, 970 (3d Cir. 1991). A prosecutor who has an obligation to contact investigators to search for Brady materials likewise has an obligation to contact investigators to ensure the evidence he or she offers is not false. Despite the government's mishandling of Exhibit 5B, however, we must affirm Schoenbohm's conviction on Count I because of the overwhelming evidence that supports it.

III.

Schoenbohm argues that the government's failure to reveal the results of the Secret Service investigation violated his rights under Brady v. Maryland, 373 U.S. 83 (1963). When the government withholds Brady material, "this Court ordinarily grants [the defendant] a new trial," United States v. Starusko, 729 F.2d 256, 265 (3d Cir. 1984), and, Schoenbohm contends, should do so in this case.

We are unpersuaded. "A valid Brady complaint contains three elements: (1) the prosecution must suppress or withhold evidence, (2) which is favorable, and (3) material to the defense." United States v. Perdomo, 929 F.2d 967, 970 (3d Cir. 1991). The results of the Secret Service investigation were material to the defense of Count II -- obtaining telephone service valued at more than \$1,000 with unauthorized access devices -- but not to the defense Count I -- use of a counterfeit