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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of )  
 )  
HERBERT L. SCHOENBOHM ) WT Docket No. 95-11  
Kingshill, Virgin Islands )  
 )  
For Amateur Station and )  
Operator Licenses )  
 )  
TO: The Full Commission )

**PETITION FOR RECONSIDERATION**

Pursuant to Section 405 of the Communications Act (47 U.S.C. Section 405), Herbert L. Schoenbohm ("Schoenbohm"), by his attorney, hereby respectfully requests the full Commission to reconsider and set aside its Decision, released in this proceeding on July 8, 1998, and to grant the application of Herbert Schoenbohm for renewal of his amateur radio license. In support thereof, it is alleged:

1. At the outset, Schoenbohm reiterates his complaint that he was not treated in parity with other similarly situated applicants. Oddly, the Decision does not mention such cases as Richard Richards, 10 FCC Rcd 3950 (Rev. Bd., 1995), in which the Commission renewed the license of a convicted marijuana distributor; or Alessandro Broadcasting Co., 99 FCC 2d 1 (Rev. Bd. 1984), in which the Commission granted a license to a convicted murderer<sup>1</sup>. Yet, Schoenbohm's crime, use

<sup>1</sup> See also Swan Broadcasting, Limited, 6 FCC Rcd 17 (Rev. Bd., 1991), excusing a conviction for manslaughter.

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of a counterfeit access device (a telephone number), pales into insignificance when compared to the crimes involved in Alessandro and Richards, especially where, as here, the uncontroverted record evidence shows that nobody lost one dime as a result of the actions which formed the basis for Schoenbohm's conviction.

2. Schoenbohm also reiterates his complaint that the Commission's treatment of the ex parte issue violates his First Amendment rights to freedom of speech and to petition his government for redress of grievances. The conversation which formed the basis of that issue was a private conversation between Schoenbohm and a friend; it was not a broadcast conversation (the amateur rules prohibit broadcasting), and there is absolutely no evidence that either Schoenbohm or his friend knew that anybody else was eavesdropping. True, in the course of the conversation, Schoenbohm gave his friend the name of Schoenbohm's representative in Congress, Delegate Victor Frazer. It would be wrong to suppose, however, that Schoenbohm intended to get the Delegate to contact the FCC on his behalf. Any such conclusion ignores the fact that Schoenbohm already had the support of the Delegate, as evidenced by the fact that the Delegate later hired Schoenbohm to work in his office.

3. Even more importantly, the record shows that no member of Congress ever attempted to improperly intervene with the FCC on Schoenbohm's behalf. Therefore, Schoenbohm is being punished solely for abstract speech, in the context of a private conversation. This, we respectfully submit, violates Schoenbohm's First Amendment rights.

4. There is, however, another matter which Schoenbohm wishes to bring to the Commission's attention. There is a small group of amateurs who are critical of Schoenbohm, in part because of Schoenbohm's vigorous efforts to enforce the amateur radio rules. Since this case was

first designated for hearing, Schoenbohm has heard recurrent rumors, circulating on the amateur bands, that some of these amateurs made telephone calls to the Administrative Law Judge, Edward Luton, who presided over the case.

5. One of Schoenbohm's most vocal detractors is a gentleman by the name of Charles Swartzbard. On January 17, 1998, Schoenbohm made a tape recording of a conversation between Mr. Swartzbard and another amateur, Wes Chupp. A transcript of the recording is attached and marked Exhibit A. The tape, itself, will also be copied and made available to the Commission and the WTB, so that the accuracy of the transcript may be verified.

6. In the conversation, Mr. Swartzbard argues that telephone calls to the Judge, as opposed to written communications, need not be disclosed to the other parties to the proceeding and do not violate the ex parte rules. This, of course, is incorrect. More importantly, however, Mr. Swartzbard's remarks seem to indicate that telephone calls were, in fact, made to the Judge by Schoenbohm's detractors. He says, ". . .so the thing is this you are saying that the ex-parte works two ways that the ex-parte rule should have applied to those people who wrote or called Judge Luton and my reply is that you're wrong. The people who called Judge Luton were not on trial. They did not have to go to the hearings." (Emphasis supplied.)

7. Schoenbohm and his counsel do not question Judge Luton's honesty and integrity. Nevertheless, if telephone calls were made to the Judge, they should be disclosed, so that the Commission and the parties may evaluate whether they tainted the proceedings.

8. Therefore, Schoenbohm respectfully requests the Commission to make inquiry of Judge Luton and his secretary, Ms. Diggs, to determine whether such calls were received; and, if so, to determine and report the content, number and timing of any such calls. Schoenbohm recognizes,

of course, that Judge Luton is retired. Schoenbohm believes, however, that the Commission has an address and phone number for him, and Schoenbohm further believes that Judge Luton will desire to cooperate in any matter where information from him would serve the ends of justice.

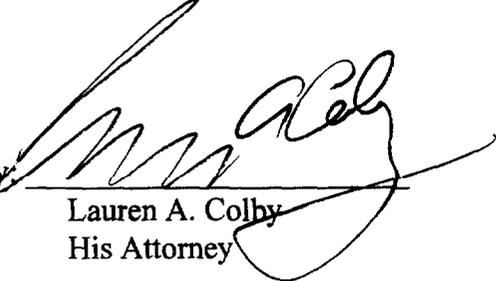
Respectfully submitted,

August 5, 1998

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By:

  
Lauren A. Colby  
His Attorney

Transcript of recording made on 1/17/98 of amateur radio communication between Charles "Doc" Swartzbard, AF2Y and Wesley "Wes" Chupp, W200Q on 14,313 Mhz.

After a brief interference:

Charles Swartzbard:

..and I held true to that, so the thing is this you are saying that the ex-parte works two ways that the ex-parte rule should have applied to those people who wrote or called Judge Luton and my reply is that you're wrong. The people who called Judge Luton were not on trial. They did not have to go to the hearings. It only applies to the person who is before the judge. It does not apply to anyone else Wes and you know that.

Wes Chupp:

Anyone who makes any statement to the judge ...exparte...is bound and required to make his comments available to both sides of the issue. I think if you check into that even though you are an educated man you'll find out your wrong. It must be done.

Charles Swartzbard:

You're right you're right, I'll tell you why you're right. I'm not contradicting you, I'm saying that the letter and the photograph that I sent to ah to ah Ridler and Fitzgibbons was given over to Laurence Colby who represents Herbie Schoenbohm and in no way did I think that it would not be given over. In fact in my letter I should have put down please disseminate this information to Mr. Colby. Yes, Mr. Colby had every right to get it. So ah what did I do wrong in expressing my own personal opinion. I never once tried to hide it from Colby. Colby (interference)

Unidentified Person:

You're a jerk Doc.

Charles Swartzbard:

Ah in his rebuttal in his exceptions. So that's how I know that Colby got the letter and I'm not ashamed of it.

Over. But I will tell you that...your're telling me that any person who called the judge or wrote the judge or wrote to the prosecution is in violation of ex-parte? Is that what you're saying?

Chap: ...say that anyone that wrote or spoke to the judge in regard to the case is silly---would be guilty of ex-prate--ah the ex-prate violation unless they notify both sides of the issue.

Swartzbard:

Not necessarily, not necessarily. First of all any telephone call is private, number #1, but anything that is written should have been turned over to Lauren Colby

Chupp: Communicate, whether it is sign language, semaphore, Morse, continental Morse, speech, e mail or radioteletype or any form of communication in regard to an issue under advisement being done only to one side is a violation of ex-parte. I don't care how you do it whether it through sick people, it's still a violation.

Swartzbard:

How could it be a violation when (unidentified station interrupts: "Your absolutely right Wes.") anyone who is writing to the judge or calling the judge is not on trial. I think you should better go back and look at your law books. I'm not a lawyer (interference)

Chupp: I think you'd better take a -----(interference caused by Swartzbard talking at the same time)

Swartzbard: He's not involved in that type of litigation. What you're trying to do ah Wes you're telling me and other people who do not like Herbie and want to see him taken of the radio that we have no right expressing ourselves and I tell you that's wrong. Remember its Herby whose ticket is on the line. Its not mine, its not yours. If you want to go ahead and you want to raise money for Herby that's your right as long as the FCC feels that its not a violation then go ahead and do it. But you jump at anybody who tries to negate what you do in favor of Herby and that's not fair.

Chupp: No no no no no Doc you're trying to twist it around now. You're quite a wordsman but its not going to work. I'm telling you that if I said anything whatsoever to the judge, to his staff, to anybody connected to the hearing about Herb, or anyone else involved in the hearing I would have to notify the other side or I would be guilty of ex-parte. As far as what I do personally on my own, that's my business, I am the one that must account for it and it is not anything under ex-parte rules, so you're trying to twist it around Doc. It is not working, I am not stupid, I wasn't born yesterday, and if you can't support your thesis, ah one your own, your not going to get away twisting words around. We're talking about a case under advisement We're talking about making any statements to the court or the administrative law judge or members of his staff in the FCC. Any information no matter how you do it, You'd be guilty of ex-parte if you do not notify the other side.

Unidentified station: Doc

Swartzbard: Wes W200Q this is AF2Y (interference) waste of time

Unidentified Station: AF2Y

2<sup>nd</sup> Unidentified Station: Get the hell out of here shipjumper and go sell your pornographic pictures to kids.

1<sup>st</sup> Unidentified Station: Shut up you stupid idiot.

Chupp: You don't know what ex-parte is. You can quote what it say, but you don't know what it is then you do not know how it is applied. You are trying to whitewash anything and everything as you're trying to down Herb. If you make any statements to anyone in a way to try to influence the circumstances you must you must notify both sides of the issue or you are guilty of ex-parte.

Swartzbard: No I disagree with you, no I am saying that the letter that I wrote or any letters that were written To the FCC, if those letters, if any information not imparted to the FCC was not given over to Lauren Colby than I would say----- (

Other Station: La Belle has got another brainwashed idiot.  
HK3IGH

Schwartzbard: ---any right to get hold of any information that would incriminate Herby, that's true. Ah And do you really feel, do you really feel that any letters about Herby, negative letters about Herby, impacted the FCC or impacted Judge Luton? Don't be ridiculous. Herby, Herby's case stands on its own merits. The judge was not interested, in fact, Lauren Colby wrote, no I'm sorry the FCC wrote in response to Lauren Colby's exceptions that the letter that I wrote to them and the picture that I sent indicating the fact that Herby was the head of a ah fascist organization had no significance whatsoever in the case. Period. So let's let the issue ride, I think we are at odds because I think your confusing the term ex-parte with discovery. It applies and only applies to the person that's on trial. It is he, you check it out, it only means that Herby is not allowed to ask for help. Especially but to broadcast it on amateur radio. And if you think I'm wrong... (Remainder of sentence covered up by interference.)

**EXHIBIT A**

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, this 5<sup>th</sup> day of August, 1998, to the offices of the following:

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