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FCC Mail Room

William F. Crowell

September 21, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street S.W.
Washington, D.C. 20554

Re: Application of William F. Crowell to renew Amateur Service license W6WBJ
WT Docket No. 08-20; FCC file no. 0002928684

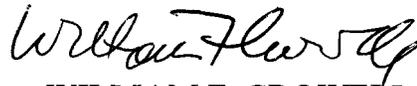
Dear Secretary Dortch:

I am the applicant-licensee in the above-entitled case.

Enclosed you will please find the original and six (6) copies of my Response to ALJ Sippel's Order to Show Cause re: Abuse of Process therein.

Please file and docket this document, and direct it to ALJ Sippel in the manner that you deem appropriate. Thank you for your cooperation.

Yours very truly,


WILLIAM F. CROWELL

WFC:wfc
encls.

cc: P. Michele Ellison, Chief, Enforcement Bureau, Federal Communications
Commission, 445 12th Street, SW, Washington, D.C. 20554

Federal Communications Commission, Enforcement Bureau, Investigations and
Hearings Division, ATTN: Judy Lancaster, 445 12th Street, S.W., Room 4-C330
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) WT Docket No. 08-20
)
WILLIAM F. CROWELL) FCC File No. 0002928684
)
Application to Renew License for Amateur)
Radio Service Station W6WBJ)

To: Marlene H. Dortch, Secretary
Federal Communications Commission

Attn: Richard L. Sippel
Administrative Law Judge

**APPLICANT'S RESPONSE TO ORDER TO SHOW CAUSE
[FCC 10M-04, released July 29, 2010]**

Submitted by:
William F. Crowell, Licensee
Amateur Radio Station W6WBJ

William F. Crowell
Amateur Radio Station W6WBJ
1110 Pleasant Valley Rd.
Diamond Springs, Calif. 95619
(530) 295-0350

September 21, 2010

SUMMARY

By his Order No. 10M-07, released September 15, 2010, the ALJ ordered Applicant to file by September 23, 2010 a separate Response showing cause why abuse of process charges should not be added to the within case and, in the event said Response is longer than 25 pages, containing a descriptive Table of Contents thereof. Applicant hereby does so.

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Statement of the Case

I have been a licensee in the Commission's amateur service for roughly 50 years. I never had any problem with the Commission until, after 15 years of admitted failure to enforce the amateur rules, one Riley Hollingsworth became chief of amateur enforcement for the Enforcement Bureau. Hollingsworth deliberately misinterpreted Part 97 in order to try to show "instant action" on amateur enforcement, and to make his job easier. One way in which he did so was to "interpret" §97.101(b), which requires amateurs to share their frequencies and prohibits any amateur from claiming an exclusive frequency assignment, totally out of existence. He thereupon converted the Bureau's enforcement regime into a giant popularity contest, under which any amateur licensee who didn't happen to like another amateur's participation in a roundtable QSO would complain to Hollingsworth, and Hollingsworth would order the station against whom the complaint was filed to permanently leave the frequency by falsely claiming the station was intentionally interfering with the QSO, rather than requiring the complaining station to share the frequency, as it was required to do under §97.101(b). (Of course, Sec. 304 of the act requires, as a condition for receiving a license, each applicant for a Commission license to waive any claim of right, whether by previous use or otherwise, to use any frequency other than that conveyed by the license grant.) Hollingsworth also disparaged and defamed such amateurs without any cause whatsoever by placing his ill-founded allegations on the internet for other amateurs to see, before the station charged even had a chance to defend himself.

In 2000, Hollingsworth sent Applicant a warning notice alleging that he was violating §97.1, the "Basis and Purpose" (i.e., preamble) section of Part 97, merely because he desired to participate in a roundtable QSO. The problem with that theory was that §97.1 prohibits nothing. Hollingsworth thereby ignored §97.101(b)'s requirement that the complaining station, who was essentially requesting a prohibited exclusive frequency assignment, *must share the frequency* with Applicant. Hollingsworth well knew that §§ 97.101(b) and (d) were the pertinent regulations, but he deliberately failed to charge a §97.101(d) violation in said warning notice because he knew he couldn't prove it. Said warning notice, as well as §1.17 of the Commission's Rules of Practice and Procedure¹, demanded that Applicant reply thereto "fully and candidly", and that he

¹ 47 C.F.R., Chapter I, Part 1, Subpart A, §1.17.

include *all material information* in his response, and Applicant did so. Then Hollingsworth decided that Applicant had been *too candid*, and had included *too much material information*, in denying the Bureau's allegations. At that point Hollingsworth concocted a vendetta against Applicant, purely in order to retaliate against him for pointing out Hollingsworth's incompetence, ineptitude and lack of knowledge of the amateur radio law. Hollingsworth sent emails to various amateurs stating that Applicant was a "dickhead" and that other hams were not to talk to him², presumably on pain of enforcement action if they did so, and stating that he never read anything Applicant said in his own defense because he had set his email server to "auto-delete" everything received from Applicant³. He then tried to concoct a scheme whereby other stations would deliberately try to set Applicant up for an "intentional interference" or "one-way transmission" violation by refusing to talk to him (again, under an implied threat of enforcement action if they *did* talk to him) and then claiming that his identifying transmissions [which are *required* by §97.119(a)] constituted "jamming"⁴. He informed Applicant that his response was "irrelevant and frivolous", which of course was not true because Hollingsworth had failed to allege any violation of §97.101(d) and it was perfectly relevant and proper for Applicant to point it out. In short, Hollingsworth tried to constructively rescind Applicant's license grant without benefit of due process.

Applicant criticized Hollingsworth and the Enforcement Bureau on the internet (as he had the perfect right to do under the First Amendment to the U.S. Constitution) for their ignorance, ineptitude and deliberate misinterpretation of Part 97. For example, Applicant suggested that Hollingsworth's tenure as "SCARE" (Special Counsel for Amateur Radio Enforcement) resembled nothing so much as a 10-year period of onanism. Two typical such pictures may be viewed here:

http://www.directcon.net/retroguybilly/riley_works_hard.gif

<http://www.directcon.net/retroguybilly/danger.jpg>

Applicant also suggested that Hollingsworth's enforcement efforts resembled those of

² Applicant's Responses to Enforcement Bureau's Requests for Production of Documents, Exhibit B-3.

³ Applicant's Responses to Enforcement Bureau's Requests for Production of Documents, Exhibit B-2.

⁴ Applicant's Supplemental Responses to Enforcement Bureau's Requests for Production of Documents, Exhibit B-1.

Colonel Klink in the television series "Hogan's Heroes" (i.e., an inept, incompetent would-be dictator). A few typical such pictures may be viewed here:

http://www.directcon.net/retroguybilly/Klink_Hollingsworth.jpg

<http://www.directcon.net/retroguybilly/ICan'tBelieveIt'sNotHitler.jpg>

<http://www.directcon.net/retroguybilly/jerk.jpg>

<http://www.directcon.net/retroguybilly/future.jpg>

http://www.directcon.net/retroguybilly/stupidity_cant_regulate.gif

Applicant further satirized Hollingsworth by suggesting that if "Col. Klink-Hollingsworth" tried to utilize direction finding near Applicant's location, he might wander onto the neighboring property of the "redneck slopeheads" and be repeatedly and painfully anally raped, as happened to the protagonist in the movie "Deliverance". (Of course, Applicant would *never* condone such an anal rape because it would no doubt be *really traumatic* to Hollingsworth were he to lose his anal virginity in such a fashion.) Two typical such pictures may be viewed here:

http://www.directcon.net/retroguybilly/purdy_mouth.jpg

http://www.directcon.net/retroguybilly/riley_buttfucked.gif

Applicant had a perfect free-speech right to post such pictures on the internet because they constitute pure political speech, which is entitled to the highest form of protection under the First Amendment.

The Enforcement Bureau retaliated against Applicant for thus exercising his free-speech rights by designating his renewal application for a hearing. (Incidentally, Applicant intends to continue to exercise his free-speech rights by posting critical and sarcastic materials and parodies about Riley Hollingsworth, Bureau Counsel, Scot Stone and the ALJ on the internet whenever he feels like doing so.)

Applicant sent his pleadings and motions to the Commission's Secretary by overnight mail and has documentary proof that they were delivered to the Commission in a timely fashion,

yet the papers were sent to an outlying facility for irradiation against anthrax spores before the Secretary would file them. Therefore they were not filed when received, as required by Commission Rule of Practice and Procedure 1.7⁵ and Applicant's motions were denied due to alleged untimely filing. Yet when Applicant raised the issue, the ALJ and the Bureau began falsely claiming that Applicant had made a "verbal assault" against the Commission Secretary by merely pointing out that the Commission Secretary had not filed his papers when received. Then, in order to cover itself, the Bureau began claiming that the Commission Secretary *had* filed the papers, dated retroactively to the date actually received, after receiving them back from the irradiation facility. However, that argument was irrelevant because even if the Secretary did so, it was too late to remedy the denial of Applicant's motions on said basis.

In an informal telephone conference on May 20, 2010, Applicant informed the ALJ that he had documentary proof from the U.S. Postal Service that the Commission Secretary was *not* filing his papers when received, and requested permission to brief the issue and to present his documentary evidence thereon; however, the ALJ denied Applicant's said request. But even though the ALJ denied Applicant the right to brief the Rule 1.7 issue, he proceeded to rule in FCC 10M-04 that the Secretary *had* filed Applicant's papers in a timely fashion, and that there was "no evidence to the contrary". Applicant claims the ALJ's denial of leave to Applicant to brief said issue denied him due process of law.

The question naturally arises concerning why the ALJ is doing this. Is it out of undue deference to the Public Safety and Homeland Security Bureau ("PSHSB"), and if so, why does the ALJ apparently believe that the PSHSB can trump citizens' constitutional due process rights?

Questions of Law Presented

A. When, in response to a request from the Commission for additional information under Sec. 308(b) of the Act, and when Commission Rule 1.17 makes it a punishable offense not to make truthful and accurate statements to the Commission, or to omit any material information in response thereto, may the ALJ second-guess the Applicant's attempt to comply with said statute and regulation by calling his response an "abuse of process" if the ALJ believes it contains inappropriate material?

⁵ 47 C.F.R., Chapter I, Part 1, Subpart A, §1.7.

B. When both Sec. 304 of the Act and Part 97, §97.101(b) provide that amateur operators must cooperate in sharing their assigned frequencies; prohibit the assignment of any amateur frequency for the exclusive use of any station, and require a waiver by each licensee, as a condition of obtaining a license, of any claim to use any frequency other than that conveyed by the license grant, whether based on prior use or otherwise, does it constitute an "abuse of process" for Applicant to point out that, in order to make its job easier and to show "instant action" on amateur enforcement, the Enforcement Bureau pretends §97.101(b) doesn't exist and relies instead solely on §97.101(d), the "intentional interference" regulation, to drive off the frequency anyone whom it does not happen to like, based upon the Bureau's subjective feelings toward the licensee and content of his speech?

C. Are recordings made by amateur operators admissible in evidence at a renewal hearing over an objection that they are unreliable hearsay?

D. Is there presently any enforceable regulation against indecency in the amateur service?

E. Does Part 97 prohibit amateurs from playing recordings on the air?

Argument

A. No Statements That Applicant Makes In Any Filing Herein Can Possibly Be The Subject of Contempt Because Such Statements Are Compelled Under Sec. 308(b) of the Act and Sec. 1.17 of the Commission's Rules.

Section 1.17 of the Commission's Rules of Practice and Procedure⁶ provides as follows:

§ 1.17 Truthful and accurate statements to the Commission.

(a) In any investigatory or adjudicatory matter within the Commission's jurisdiction (including, but not limited to, any informal adjudication or informal investigation but excluding any declaratory ruling proceeding) and in any proceeding to amend the FM or Television Table of Allotments (with respect to expressions of interest) or any tariff proceeding, no person subject to this rule shall;

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is

⁶ 47 C.F.R., Chapter I, Part 1, Subpart A, §1.17.

necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

(b) For purpose of paragraph (a) of this section, "persons subject to this rule" shall mean the following:

(1) Any applicant for any Commission authorization;

(2) Any holder of any Commission authorization, whether by application or by blanket authorization or other rule;

(3) Any person performing without Commission authorization an activity that requires Commission authorization;

(4) Any person that has received a citation or a letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation, including an informal investigation;

(5) In a proceeding to amend the FM or Television Table of Allotments, any person filing an expression of interest; and

(6) To the extent not already covered in this paragraph (b), any cable operator or common carrier.

Thus, on the one hand, Applicant is *required* by §1.17 of the Commission's Rules to be truthful and completely honest with the Commission, and not to omit any material information; while, on the other hand, the ALJ threatens him with contempt if he is *too honest* or included *too much* material information.

Any statements by Applicant to which the ALJ may have taken offense, whether made in previous filings or in this Response, merely represented Applicant's good-faith attempt to comply with Rule 1.17 by being completely candid and honest with the Commission and the ALJ and not to omit any material information. Indeed, under Rule 1.17 Applicant could be found guilty of violating the Communications Act if he failed to provide the information contained herein. The ALJ can do nothing to Applicant to retaliate against him for making the statements contained in any filing herein because they are compelled by Rule 1.17. It would be fundamentally unfair and a denial of due process to require Applicant to navigate at his peril the waters between the Scylla

of Rule 1.17 and the Charybdis of a contempt citation⁷, let alone punishing him for contempt if the ALJ does not happen to approve of his good-faith attempts to navigate those deadly waters.

B. In the Future, Applicant Agrees to Assert His Arguments, Which He Feels Entirely Dispose of the Case, By Way of A Motion For Summary Decision and Not By Requesting The ALJ To Exercise His Case Management Powers.

The ALJ complains that Applicant requested the ALJ to address the deficiencies of the Bureau's case by the use of his case management powers, and states that Applicant should instead have done so by way of a motion for summary decision. The ALJ's point is well taken. Applicant hereby agrees that, in the future, he will refrain from making such requests in the context of a request for case management and will instead do so by way of a motion for summary decision. Applicant meant no disrespect to the ALJ by making his earlier request.

C. Since The Recordings Relied Upon By The Bureau Show Applicant Doing Nothing to Violate Part 97, the Only Possible Conclusion is that the Bureau Issued the Hearing Designation Order In Order to Retaliate Against Applicant Due to the Content of His On-The-Air Speech.

The recordings which the Bureau claims show Applicant jamming, playing music, etc. show nothing of the kind. In all of said recordings, Applicant is operating his station legally and in full compliance with Part 97. His transmissions are short, and all other participants in the roundtable QSO were free to say anything they wanted. No one was prevented from communicating anything they wanted to say. Clearly, it can be only the *substance* of Applicant's on-the-air statements that bothers the Bureau.

It should be noted that the recordings *presently* relied upon by the Bureau are *not* the ones it originally claimed showed Applicant jamming. Originally the Bureau falsely claimed that the "Alice's Restaurant" recording showed me jamming and playing music, but they dropped that claim, obviously because they found that the complaining amateur (Art Bell, W6OBB) concocted it. (Yet, the ALJ contends in 10M-04 that amateur radio operators don't lie! Clearly the ALJ has

⁷ Homer, The Odyssey. Not even the ancient Greek king punished Odysseus for venturing too close to Scylla, while losing 6 men in the process, because *even he* had enough common sense, 3,000 years ago, not to second-guess Odysseus's attempt to sail the Strait of Messina. It is hoped that the ALJ will not be even more retrograde in his decisions herein than was the Greek king who ruled so long ago.

not had much contact with amateur operators. The ALJ should defer to Applicant's opinion on the subject, as well as the Premus and Boston cases, which held that amateurs *do* lie, because Applicant has 50 years of experience in dealing with lying amateur radio operators. It is patently ludicrous for the ALJ to attempt to second-guess Applicant on this issue because the ALJ obviously has no real-world, on-the-air experience with radio amateurs.)

Since none of the evidence specified by the Bureau discloses any Part 97 violation by Applicant, the *only* remaining possible reason for the Bureau to be illegally harassing me with this case is because they are retaliating against my exercise of my free-speech rights in criticizing the administration of the Enforcement Bureau. As a U.S. citizen, I am entitled to criticize my government, and the Commission is not entitled to use its licensing system as a censorship regime. And I am *never* going to stop criticizing the Commission and the Enforcement Bureau until they stop being an outlaw, renegade agency.⁸

D. Since The Commission Is Clearly An Outlaw, Rengade Agency Which Its Licensees Find Completely Impossible to Respect, and Since It Therefore Deserves No Respect, Licensee Respect for the Commission Cannot Possibly Form A Basis For Licensees to Comply with the Commission's Rules.

Both the general public and its licensees know the Commission is an outlaw agency, and for the ALJ to be in denial about it merely shows how far removed he is from everyday reality. For these reasons, the ALJ's claim that Applicant's arguments in this regard are spurious is itself

⁸ Every objective observer recognizes that the Bureau and the Commission continually lie to the public and their licensees, contending that they are above the law and need not comply with court decisions and the Constitution. For example, only one day after the District of Columbia Circuit Court of Appeals ruled, in Comcast Corp. v. FCC (No. 08-1291, decided April 6, 2010) that the Commission has no ancillary jurisdiction to regulate the internet, the Chairman of the Commission held a press conference to announce, essentially, that the Commission was going to ignore the Comcast ruling and attempt to regulate the internet anyway. The Commission has lied to its amateur licensees for years by telling them that they have only the same limited free-speech rights as broadcasters, even though amateurs are prohibited from broadcasting. Although the courts forced the Bureau to grant a safe harbor to broadcasters for so-called "indecent" materials, the Commission continued to insist that amateurs enjoy no such safe harbor, even though amateurs have vastly *greater* free-speech rights than do broadcasters. And Applicant has already cited the case of Reston v. FCC, 492 F. Supp. 697, 699-700 (D.D.C. 1980), in which Commission counsel lied to the U.S. District Court judge in order to qualify for an F.O.I.A. exemption by advising the judge that ham radio operators broadcast when, in fact, they are *prohibited* from doing so under Part 97, §97.113(b). These are just a few examples of the continual, continuing FCC prevarication and misconduct that absolutely dismays its licensees.

fatuous, solipsistic and unsupported by any evidence whatsoever.

The ALJ also makes a rather obvious logical error in claiming that a Commission licensee will likely violate the Commission's Rules unless the licensee respects the Commission. That is a completely phony argument. *No* informed person with any intelligence can respect the Commission because it is an outlaw, renegade agency which lies to the courts and its licensees and refuses to comply with court decisions and the Constitution. About the Commission, it is supremely true to state that "the more you know about them, the more you hate them". Licensees of the Commission uniformly find that familiarity with the Commission, its disrespectful, condescending, lying, supercilious employees, and their illegal policies, invariably breeds contempt for the agency. Again, it is time for the ALJ to simply be a *mensch* and admit that he is working for a phony, outlaw, renegade agency and stop trying to blame Applicant because he is stuck in such a terrible job. That was the ALJ's choice, and the ALJ's fault. Applicant had nothing to do with the ALJ's poor choice of employment. Although the ALJ could, perhaps, have found honest work in the private sector (it is questionable), he instead takes his frustration with his job out on Applicant. I resent that; it is immoral, unfair and illegal, and I intend to fight it all the way into the court system.

E. Therefore The Only Realistic, Logical and Remaining Basis for the Commission to Expect Licensee Compliance With Its Rules Is That Its Licensees Promise To Do So In Writing As A Condition Of Obtaining Their Licenses, and Most Licensees Will Keep Their Word

No Commission licensee with any substantial amount of intelligence or self-respect would follow the Commission's Rules out of respect for the Commission for the simple reason that it is an outlaw, renegade agency that *deserves* no respect. But *common sense* tells us there is another reason why I follow the Commission's rules: because I agreed to do so when I obtained my amateur license, and I am a man of my word. The ALJ needs to familiarize himself with the Supreme Court's holding in FCC v. Fox Television, etc., et al, wherein Justice Scalia, writing for the majority, held that the Commission and its licensees need not submit empirical evidence to support an obvious, common-sense proposition⁹. Therefore, under the FCC v. Fox decision, it is

⁹ 556 U.S. ____ (2009) (at page 15 of the slip decision).

only logical, and requires no empirical proof, to find that: (1) since nobody with any intelligence respects the Commission, respect for the Commission *cannot possibly* provide a basis for following its Rules, nor does the Commission *deserve* to have its Rules followed out of respect because it has not *earned* that respect; but (2) that licensees instead follow its Rules because, unlike the Commission and its employees, most licensees are honest, truthful and keep the agreement which they signed when they obtained their licenses to follow the Commission's Rules. Thus, it is a logical non-starter to suggest that disrespect for the Commission makes a licensee more likely to violate its Rules. Since virtually *all* of its licensees disrespect the Commission, the logical upshot of such a rationale would be that virtually *no* licensee would follow its Rules. That is an absolutely absurd suggestion; it is demonstrably untrue in the real world; and it is an argument that permits the Commission to profit from its own wrong. For the ALJ to suggest otherwise is merely another example of his apparent detachment from reality.

F. There Is No Probable Cause or Factual Predicate for the Commission to Inquire Into Applicant's Character.

Contrary to the ALJ's phony claims in Order 10M-04, Applicant never previously suggested that the ALJ had not the moral qualifications to judge his character, but now he *does* so allege. Applicant is shocked that the ALJ would in Order 10M-04 deliberately and immorally mischaracterize his previous argument in order to cite him for contempt. Applicant previously argued merely that there exists *no probable cause* to inquire into his character herein, and that such an illegal and unauthorized inquiry violates the Fourth Amendment to the Constitution. In that regard, Applicant was merely trying to demonstrate that said argument was substantive and not merely technical. Applicant never previously claimed that the ALJ would not have the authority to judge his character, *were "character" properly in issue herein*. Instead, Applicant merely argued that, since "character" is not properly in issue, for very substantial reasons he does not desire the ALJ to judge his character.

It should be obvious why Applicant does not want the ALJ to decide the issue of his character when he is not required to have the ALJ do so (i.e., because the ALJ is essentially unqualified to judge Applicant's character and there exists no factual or legal predicate therefor), and that his argument is not merely technical but also substantive in nature. But with the

issuance of Order 10M-04, all that has changed. Now the reason Applicant objects to the ALJ judging his character is that the ALJ has clearly demonstrated his own lack of morals herein, as well as being rather confused on a practical basis about what constitutes good character, having ruled that both a convicted child molester (David L. Titus, E.B. Docket No. 07-13) and a convicted network hacker (Kevin David Mitnick, WT Docket No. 01-344) have good character, but that Applicant has demonstrated bad character merely by exercising his free-speech rights.

Then the ALJ goes on to further gratuitously defame and disparage Applicant by calling him "hallucinatory", etc. Besides furnishing further proof of the ALJ's essential immorality, I should think the ALJ would realize that such name-calling is beneath the very dignity which the ALJ insists that Applicant respect. But of course that is not how an outlaw agency or an immoral judge operates. No, an outlaw agency and an immoral judge seem to feel that they have the right to publicly disparage, defame and insult the Commission's licensees and other members of the public, and when those thus attacked object to such treatment or try to defend themselves, the immoral judge finds them in contempt.

The ALJ has thus constructed a perniciously-tilted playing field herein, where the Bureau and the ALJ are free to disparage, defame and deprecate him, but when Applicant tries to defend himself from said false charges the ALJ accuses him of contempt. Such rulings will *never* survive scrutiny by the District of Columbia Circuit Court of Appeals pursuant to 47 U.S.C. §402(b)!

G. Applicant Never Argued That He Should Be Included In The Class of Convicted Felons Like Mitnick and Titus. Obviously He Was Arguing That He Should *Not* Be Included In That Class, And The ALJ Knew It.

The ALJ again deliberately and immorally distorts Applicant's argument by claiming he is complaining because he is *not* being included in a group of convicted felons such as Schoenbohm, Mitnick and Titus. The ALJ well knows that Applicant was claiming just the opposite: he was *objecting* to being placed in a group of convicted felons when I have never been charged with or convicted of any crime, whether felony or misdemeanor. Again, the ALJ deliberately and immorally distorts my argument in order to take a cheap shot, and make it appear that he actually knows what he is talking about when he does not, by defaming and disparaging me, thereby immorally and illegally attempting to "bootstrap" a character issue; to unfairly and immorally de-

fame and disparage me merely because I have exercised my free-speech rights in criticizing the Commission; and to immorally create a distorted, unfair and adverse record on appeal.

H. It Does Not Constitute Abuse Of Process for Applicant to Point Out That Riley Hollingsworth Traveled Around The Country on Meaningless Junkets At Taxpayer Expense.

The ALJ claims that, by stating Riley Hollingsworth traveled around the country on taxpayer-funded junkets in order to gratuitously attack and insult radio amateurs, and accuse of them of Part 97 violations before they had their day in court, Applicant was being "disrespectful and needlessly burdensome" and that there is no factual proof thereof. This is entirely untrue and incorrect, and again shows the ALJ's immorality in deliberately distorting the facts, and by ignoring both the record and Applicant's arguments. Applicant respectfully suggests that the ALJ re-examine Applicant's pleadings herein¹⁰, which clearly prove that Hollingsworth did just that.

I. Bureau Counsel and The ALJ Gravely Misinterpret The Commission's Character Rule. It Applies Only To Broadcasters, While Amateurs are Prohibited From Broadcasting. And It Requires the Conviction of a Felony or Fraudulent Dealings With A Government Agency. Applicant has done Nothing Of the Kind, and A Character Rule Violation Cannot Be Created By Agency Bootstrap.

Of course the Commission cannot use its character rule to engage in a witch hunt, and when the ALJ suggests otherwise it merely confirms that he is woefully misinformed. This is clearly stated in its 1990 Character Statement, which the ALJ *supposedly* relies upon. The Bureau has offered no proof that Applicant ever jammed, played music or said anything "indecent", and the Commission cannot concoct a "character rule" violation exclusively by pulling on its own bootstraps. I merely defended myself against Hollingsworth's false and wrongheaded allegations. I am entitled to do that. I am not required to remain silent when a Bureau official falsely accuses me of Part 97 violations, and defending myself does not involve disrespect to the

¹⁰ See, for example, Applicant's Supplemental Responses to Enforcement Bureau's Requests for Production of Documents, Exhibits B-13, B-15, B-17. Many other examples of Hollingsworth's political, entirely self-serving, taxpayer-funded junkets appear on the internet. For example, on at least 3 occasions he soaked the taxpayers for round-trip plane fare to California, as well as the attendant hotel bills and meals, in order to spout his poppycock to the Pacificon "hamvention." Other examples are legion.

Commission when it was the Commission itself which initially raised the false, legally-punishable charges. The recordings relied upon by the Bureau provide absolutely no basis for the claim of Part 97 violations, and no character rule violation can possibly result from a falsely-accused licensee defending himself. This would amount to trial by ordeal, which is illegal in this country.¹¹

The ALJ grossly misinterprets the Commission's Policy Statements regarding character. The Policy statements do not permit a character issue to be lodged unless there is clear evidence that the Applicant was convicted of a felony, dealt fraudulently with a government agency or engaged in repeated violations of the Commission's Rules. But even though the ALJ has not heard the recordings which the Bureau intends to offer at the hearing herein, which do not show Applicant violating Part 97, he does not hesitate to conclude that Applicant is guilty of such repeated violations. Repeated violations of the Commission's rules cannot possibly form the basis for abuse of process charges herein because Applicant simply hasn't violated Part 97 in the first instance.

J. The "Licensing Censorship Regime" Cases Relied Upon By Applicant Are Indeed Relevant and Dispositive Herein.

The ALJ states, without any discussion, analysis or citation of legal authority whatsoever, that Applicant's claims of censorship¹² are without legal merit and that the Supreme Court's decision in City of Lakewood v. Plain Dealer is inapposite. This is obviously incorrect. Apparently the ALJ has not read, does not care about or illegally refuses to follow the District of Columbia Circuit Court of Appeals' recent decision in Fox Television, et al v. FCC¹³, in which the Court of Appeals strongly reiterated the continued vitality of the Lakewood rationale. Such a refusal to be bound by pertinent court decisions and the statutory law is, unfortunately, completely typical of the immorality and outlaw nature of the Commission, the Enforcement Bureau and the ALJ.

¹¹ Trial by ordeal had been eliminated in Britain by approximately 1350, and was thus not an element of the English Common Law which was adopted by our Constitution.

¹² Based on the case of City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 771 (1988).

¹³ No. 06-1760-ag, decided July 13, 2010; id. at p. 27.

K. The ALJ Can't Judge Whether Applicant Has Been "Too Candid" When That Candor Involves Criticism of Commission Employees.

The ALJ steps up his rather obvious vendetta against Applicant by falsely accusing him of fraudulent behavior, misrepresentation and lack of candor. There is absolutely no evidence in the record to substantiate such allegations, and it merely represents another example of the ALJ's improper, supercilious, condescending and immoral attitude wherein the ALJ freely insults and defames not only Applicant, but other parties and witnesses who appear before him, all of whom are law-abiding taxpayers whose taxes are helping to pay the ALJ's salary. On closer examination, however, the alleged fraud or misrepresentation stems from the ALJ's feeling that Applicant lodged false complaints against FCC personnel, and/or because he insulted Commission staff or the ALJ. Such criticism is protected by the First Amendment and Applicant was required to include such materials in his responses and pleadings under Sec. 308(b) of the Act and Sec. 1.17 of the Commission's Rules.

L. Since Applicant Alleges That Sec. 307(c) Of The Act Is Unconstitutionally Facially Overbroad, The Burden of Proof Rests on the Bureau and It Was Not Contumacious For Applicant To Point It Out.

The ALJ claims, citing §§4(i) and 309(e) of the Act [sic; the ALJ failed to mention Rule of Practice and Procedure §1.254¹⁴] that the burden of proof herein falls upon Applicant, but alleges that Applicant contends otherwise, and attempts to ridicule and derogate Applicant's legal knowledge on said basis. Normally the burden of proof would be on Applicant, but not where, as herein, the Applicant is raising Constitutional issues. Moreover, the ALJ's contentions represent an immoral, bad-faith, malicious distortion of Applicant's previous arguments herein. Applicant *never* previously contended that the Bureau has the initial burden of proof herein, but instead merely that Applicant *can* support his burden of proof, and that once he does so the burden falls upon the Bureau, and it cannot conceivably support *its* burden.

The ALJ simply ignores the fact that Applicant is claiming the Commission's standardless licensing regime constitutes a prior restraint on both his on-the-air statements and his private activities in the nature of censorship. Indeed, the ALJ immorally claims neither he nor the

¹⁴ 47 C.F.R., Chapter I, Part 1, Subpart B, §1.254.

outlaw agency is bound by the Constitution.

M. The ALJ Does Have The Authority To Decide Constitutional Issues At The Initial Hearing.

First, the federal courts have uniformly held (contrary to the ALJ's contentions) that the Commission *does indeed* have the authority and responsibility to decide the constitutionality of its own regulations.¹⁵

Second, claims of facial overbreadth have been allowed against statutes and regulations which, as do §307(c)(1) of the Communications Act and the license renewal regulations promulgated thereunder, delegate standardless discretionary power to administrators, resulting in unreviewable prior restraints on first amendment rights.¹⁶

The U.S. Supreme Court has held that three procedural safeguards are essential for a licensing scheme to pass constitutional scrutiny: first, the licensor must decide whether to issue the license within a specified and reasonable time; second, prompt judicial review must be available in the event the license is erroneously denied; and third, the *censor* must bear the burden of going to court and must bear the burden of proof in court.¹⁷ Thus, in addition to retaliating against Applicant due to his improper animus, the ALJ is fundamentally wrong and misinformed about the burden of proof issue herein.

"The danger inherent in prior restraints is largely procedural, in that they bypass the judicial process and locate in a government official the delicate responsibility of passing on the permissibility of speech."¹⁸ The ALJ's rather obvious failure to understand, or unwillingness to apply, federal court decisions herein is inexcusable.

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15 Meredith Corp. v. FCC, 809 F.2d 863, 872; (D.C. Circuit, 1987), holding that the Commission is required to respond to the licensee's constitutional arguments and remanding the case to the Commission to consider the constitutionality of the licensee's arguments that the Fairness Doctrine was unconstitutional both on its face and as applied; WAIT Radio v. FCC, 418 F.2d 1153, 1156 (D.C. Circuit, 1969), remanding the Commission's denial of the licensee's waiver request to the Commission to reconsider the First Amendment issue raised therein.

16 This doctrine was first enunciated by the Supreme Court in Thornhill v. Alabama, 310 U.S. 88 (1940) and has been consistently followed by the Supreme Court ever since. See, for example, Broderick v. Oklahoma, 413 U.S. 601, 612-613 (1973) and FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 223 (1990).

17 Freedman v. Maryland, 380 U.S. 51, 58-60 (1965).

18 Bernstein v. U.S. Department of State, 974 F. Supp. 1288 (N.D. Cal., 1997), at p. 1304.

N. The ALJ Has Seriously Misinterpreted The Holdings In Boston and Premus. These Cases Establish That Recordings Submitted By Amateurs Are Not Admissible In Evidence Because They Are Unreliable Hearsay.

The ALJ complains that I stated his knowledge of amateur radio law is deficient, and then he goes on to thoroughly and deliberately misinterpret the holdings in the Premus and Boston decisions. In addition, the ALJ simply ignores Title 31 U.S.C. §1342, which prohibits donations of labor to the federal government (which recordings not made by Commission personnel would be) and the legislative history of §154(f)(4) of the Communications Act, which Applicant has extensively briefed but which brief the ALJ apparently has not read, just as the ALJ immorally denied me the right to brief the "timely-filing" issue and as Riley Hollingsworth refused to read anything I said in my own defense. Therefore, either the ALJ's knowledge of amateur radio law is highly deficient, or the ALJ is deliberately distorting the law. And yet the ALJ accuses me of insulting him by challenging his knowledge of the law! It is simply time for the ALJ to be a *mensch* by learning the amateur radio law.

The ALJ entirely mischaracterizes the Commission's holding in the Premus¹⁹ decision, which showed that ham radio operators clearly prevaricate, in order to make another phony, legally-unsupported attack on Applicant. The ALJ conveniently overlooks the facts in Premus that the complaining witness deliberately operated on CW ("continuous waves", or Morse code) in the middle of the 75 meter telephony band, running only 20 watts, and called "CQ" for extended periods of time, merely in order to irritate Premus and prevent him from using telephony mode²⁰ in the portion of the band designated for it. The Commission found that the complainant deliberately used such low power so he could claim that anybody else using the frequency, using a normal power level, was jamming him, which in itself caused serious interference to other amateurs.²¹ The gravamen of the complainant's case was his claim, which the Commission obviously disagreed with, that Premus interfered with other stations merely because the complainant considered him to be a "long talker"; *i.e.*, his transmissions were longer than the complainant desired them to be²². Then the ALJ conveniently fails to mention that, consistent with Applicant's

¹⁹ In re: Myron Henry Premus, 17 FCC 251 (1953).

²⁰ Id. at p. 255.

²¹ Id. at p. 255.

²² Id. at p. 252.

claims, it was necessary for the Commission to have actual intercepts made by Commission personnel in order to prove its case.²³ The Commission found that the complainant lied to the Commission by failing to disclose the fact that he habitually monopolized the frequency in question, for no apparent purpose other than to try to set Premus up for an FCC enforcement case.²⁴ The Commission further found that the complainant subjected Premus to "considerable provocation" by following him around the 75-meter telephony band, trying to cause interference to him on whatever frequency he tried to utilize; that the complainant actually caused more interference to Premus than Premus caused to him; and that the complainant tried to deny or disguise his own conduct in filing his complaint against Premus.²⁵ Yet the ALJ misconstrues the Commission's holding in Premus by claiming the Commission never said that hams lie about their fellow hams when they complain to the Commission. Again, the ALJ shows he will not hesitate to distort the holdings in FCC enforcement cases in order to screw Applicant.

Again displaying either his ignorance of the law, the ALJ either fails to understand or deliberately distorts the holding in the FCC enforcement case of In re: Richard Boston, Safety and Special Services Bureau Docket No. 87346 (July 29, 1977). In Boston, Safety and Special Services Radio Bureau Chief Higginbotham *specifically found* that amateurs will and do use false tape recordings and false call signs to try to get the Commission to revoke the licenses of amateurs they don't like, and that this type of perjury by amateurs is "**known to occur**"²⁶. However, the ALJ conveniently omits that part of the Boston holding in order to create a record adverse to Applicant.

Moreover, Riley Hollingsworth also admitted in his February 22, 2006 warning letter to licensee Steven Wingate, K6TXH, that "not all of the complaints [against Wingate] are valid, and some of the recordings are fake."²⁷ Yet the ALJ again conveniently overlooks Hollingsworth's admission and claims that hams do not lie. Nothing could be more clear than that this represents either deliberate ignorance (i.e., "hear no evil, see no evil") or a misreading of the law by the ALJ.

23 Id. at p. 253.

24 Id. at p. 255.

25 Id. at p. 255.

26 Boston at p. 3.

27 Applicant's Supplemental Responses to Enforcement Bureau's First Request for Production of Documents, Exhibit B-25.

O. Applicant is Entitled To Preserve His Objections to the Bureau's Interrogatories for the Purposes of An Appeal Pursuant to 47 U.S.C. §402(b), So Long As He Then Answers the Interrogatory In Question Truthfully and Completely.

The ALJ incorrectly claims that Applicant was being less than candid merely because, in the first sentence of each of his Supplemental Answers to the Bureau's Interrogatories, he merely sought to preserve his objections thereto, and then proceeded to fully, completely and honestly answer each Interrogatory as ordered. Applicant is entitled to preserve his objections in this fashion, and had he not done so, he might well have waived same. Applicant intends to re-assert said objections on the eventual and inevitable appeals to the Commission and to the Washington, D.C. Circuit under 47 U.S.C. §402(b) herein, and therefore does not wish to waive his objections thereto. Moreover, the Enforcement Bureau answered Applicant's Interrogatories in exactly the same fashion, but the ALJ permits them to do so with impunity under the illegal double-standard he has created herein. The ALJ is trying to create an immoral, illegal double standard under which Applicant must waive his objections to the Bureau's interrogatories or he will be held in contempt, while the Bureau is free to object repeatedly to Applicant's Interrogatories, even after being ordered to answer.

P. To Admit Recordings Made By Amateurs Into Evidence Would Violate 31 U.S.C. §1342 As An Illegal Donation of Labor to the U.S. Government. That's Why It Was Necessary To Add §154(f)(4) to the Communications Act In 1988.

The ALJ claims that the recordings, sent to the Bureau by hams as a result of a concerted campaign by Riley Hollingsworth to concoct a case against Applicant, are admissible in evidence herein. They are not. Again, we see the ALJ's utter ignorance of the law in action. Only intercepts are admissible, and intercepts must be made by Commission personnel; otherwise they constitute a prohibited contribution of labor to the federal government under 31 U.S.C. §1342. It is clear that the ALJ either has absolutely no understanding of the law, or he deliberately and immorally ignores the law. Obviously, were ordinary recordings from amateurs admissible in evidence, there would have been no need to have added §154(a) to the Act in 1988. However, the ALJ is apparently either too obtuse to understand that argument or deliberately refuses to