

## Reviewing USA v Baxter

This is a textbook case as to why one should always hire a lawyer experienced in the type of law under review (1). Nevertheless, for my own amusement, I will endeavour to examine a few of Baxter's more interesting and humorous responses. This analysis is my opinion only and furthermore, this submission should not be considered as being in any way authored by, or related to, the site VE7KFM.com, its author(s), owner(s), editor(s), or employee(s), if any. This opinion is solely my own, for the purpose of satire. (2)

Sincerely,

Jonas X. Hasenfus  
Professor at Law (Retired)  
Bern, Switzerland

In Baxter's response to the USA's reply memorandum in support of summary judgment, Baxter devises an unusual "master response key" which is a kind of map, roughly corresponding to his circling and numbering of various issues on the USA's original pleading.

This kind of "where's waldo" game may be appropriate for a children's menu at Denny's, but the end result is even more confusing than Baxter's usual rambling, irrelevant, and anecdotal reply. To make matters worse, Baxter numbers his "master response key" 2,3,9,4,5, etc., so that one needs to keep one's head on a continuous swivel, more or less like a bobble-head doll, resulting in moderate nausea by the time the reader has finished examining the documents.

One would assume that a Professional Engineer who claims to have refuted Einstein's theories would be able to type out a new document and count from one to ten in the normal sequence. Alas, such is not the case. As Felix remarked to Oscar, "when you assume, you make an ass of you and me." In this instance Baxter is the ass responsible for this mess. His notations begin with number 27 and progress to number 1, to number 9, back to number 2, to number 28, and so on.

In #1 Baxter admit's plaintiff's pleading.

In #2 Baxter denies plaintiff's pleading.

In #3 Baxter qualifies plaintiff's pleading.

In #9 (following Baxter's schemata) Baxter neither admits, nor denies, but claims there are issues that are trial-worthy. I haven't seen any, but let's continue to look for

this elusive snipe.

As one radio amateur put it recently, "Baxter knows his prose pleadings must be liberally interpreted, therefore, he seems to be throwing shit at a wall to see if any of it will stick."

In #4 Baxter contends that 'there is an issue as to whether he had pecuniary intent or received as much as one thin dime with regard to his web site references.' The FCC rule mentions "interest" not "intent" so there doesn't seem to be anything trial-worthy in that contention.

In #5 Baxter claims that 'a published and scheduled bulletin with intent to disseminate radio information cannot be illegal interference.' A novel argument, refuted on numerous occasions, both in warning letters to Baxter, and in the William Cross affidavit. Baxter also calls Plaintiff's claim "outrageous" but as usual, he fails to provide facts to back up his assertions.

Items #6 - #11 are vintage Baxter; they represent more of the same arguments we've already seen or heard, again and again.

Skipping ahead to a truly inventive construct, in #12, Baxter claims that the McNamara letter "did indeed preapprove future legal bulletin transmissions..." Unfortunately for Baxter, it is his illegal transmissions which are at issue in this action.

In #14 Baxter seems to refer to a portion of FCC rule 97.113 regarding scheduling of bulletins, while omitting the more relevant portion(s) as follows:

(iv) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

The USA has already noted K1MAN is not a club station; K1MAN did not operate on 6 bands, and; since Baxter was the control operator, the sine qua non appears to be an auto-administered coup-de-grace. Simply put, Baxter admits that he referred to his website where items were for sale.

The USA contends that Baxter, as the control operator, had a pecuniary (monetary) interest in the operation of the website. Since Baxter operated the website, this is an indisputable fact which must lead to summary judgment. Baxter says he never made a dime off his operation, but the rule clearly refers to pecuniary interest, and not to the control operator's profit margin.

In #15 Baxter again contends that other stations were interfering with his bulletin, which, even if true, has nothing at all to do with the undisputed facts of the case. He has admitted 'incidental' interference. All else revolves around semantics and interpretation, and as a matter of law, the court owes deference to the FCC's interpretation of its own regulations.

In #16, Baxter claims his bulletins are legally indistinguishable from W1AW's bulletins. True, except for the fact that W1AW has not received an affirmed Forfeiture, let alone a warning letter, and again, with feeling, W1AW has not been accused of wrongdoing by the FCC.

Numbers #17 and #18 refer (again) to Baxter's imperfect understanding of the scheduling rule.

In #19 Baxter states, "The Commission is wrong."

I searched the referenced documents four times for Baxter's #19 and I was unable to locate Baxter's notation. I finally gave up and took an aspirin because his incessant scribbling in the margins and the attempted mugging of Lady Justice made me feel more than a bit ill.

At this point it must be noted that if Baxter is intentionally trying to anger the judge, this is precisely the way to do it. Baxter has adopted the "LAZY SUSAN" method of reply. Rather than write out his arguments, referring to the plaintiff's clearly marked and numbered paragraphs, Baxter creates his own map and key, requiring all parties to hunt and peck for his responses by referring to circled items and then referring back to his cockamamie key. Maddening, ridiculous, nonsensical and confusing are a few of the printable words which could be used to describe Baxter's methodology. In the immortal words of W. Riley Hollingsworth, ESQ. -- "You can't fix stupid."

In #20 Baxter alleges that Mr. Webber was perpetuating a fraud on the court because Mr. Webber knew the Baxter Associates broadcast was not recorded by FCC personnel. Actually, Mr. Webber's name is Sharon and since there is no evidence that Sharon is undergoing gender reassignment, one wonders if Baxter can read as well as draw circles and numbers on the plaintiff's pleadings.

In #21 and #22 Baxter claims the FCC NAL and Forfeiture are barred from the current collection action, begging the question, if we can't mention the NAL or the Forfeiture, how can we determine how much he owes? ...Never mind.

In #23 and #24 Baxter contends that Mr. Larrabee and Ms. Mally are "lieing." Baxter may mean to say they are lying, the present participle of lie, which means to present something that is untrue, however, this is problematic since Ms. Mally is deceased and she can't very well defend herself from this post-mortem slur on her character. Moreover, there is no "Mr. Larrabee" involved in the case, so this will clearly not be an issue. Baxter couldn't bother to spell the man's name correctly, but it's not like this is a federal case or anything, so let's continue.

In #25 and #26 Baxter returns to his 20 year old old premise, that anyone found transmitting on a frequency on which he intends to transmit, is guilty of interfering with his station, because his is a scheduled bulletin station, which refers back to #14, where Baxter has applied only the portion of the rule which appeals to his rather unique sense of back and forth, up and down, and here and now. Perhaps this is an issue he addressed when refuting Einstein's Theory of Relativity?

In #27 Baxter reverts to his old style of ad-hominem attack, combined with irrelevant, albeit folksy, non-sequitor.

In #28 Baxter contends "no forfeitures are reasonable in this case." In that case I vote we all take Tanqueray with a splash of lime down to the lakeside and forget this devilish business of interpreting the law.

In #29 through #32 Baxter again reverts to "throwing shit at the wall" and there's a ton of it this time, as referenced in #9 which is conveniently located just after #4 and before #5 on Baxter's map.

In #32 Baxter includes an undated, unsigned copy of an affidavit, purportedly submitted to someone at some point by a George F. Arsics, who may be the George F. Arsics referred to in 932 F. 2nd 980.

Among other issues, the case makes reference to Mr. Arsics as follows:

**Constance Berry NEWMAN, Director, Office of Personnel  
Management, Petitioner,  
v.  
George F. ARSICS, Jr. and National Treasury Employees**

**Union,  
Respondents.**

"Briefly, Arsics was an employee of the Federal Communications Commission (FCC) at Powder Springs, Georgia. One of his responsibilities was to monitor radio communications stations for compliance with FCC regulations. Arsics was also a "HAM" radio operator.

On October 4, 1989, FCC officials at Powder Springs were directed to respond to a complaint about deliberate interference on a certain radio frequency. The officials, who taped the transmissions, tracked the signals to Arsics' home. Arsics allowed the officials into his home and told them that he been listening to that frequency, but that he had not been transmitting on it. The tapes revealed that Arsics had been transmitting on the frequency.

On October 13, 1989, the FCC proposed to remove Arsics based on violation of FCC rules, engaging in conduct having an adverse impact on the efficiency of the service, and deliberately misrepresenting, concealing, and withholding material facts during an official FCC investigation. On December 13, 1989, Arsics was removed and thereafter appealed to the arbitrator."

There is undoubtedly more here than meets the eye, however, Baxter is relying on an affidavit from a man who was supposedly removed from the FCC for "engaging in conduct having an adverse impact on the efficiency of the service, and deliberately misrepresenting, concealing, and withholding material facts during an official FCC investigation." why he does this is beyond the ken of this writer, but I'm sure it makes perfect sense in Baxter's mind, such as it is.

Items #32 - #37 refer to issues of semantics and language, which are best left to the FCC to interpret, and after all, who knows FCC rules better than the FCC?

And now that we've come to the end, there is nothing new, nothing very interesting after all. Thank you for reading and please bear in mind that any grammatical or spelling errors may be remedied by contacting my secretary, Lulu, who is even now playing Mozart on the hi-fi and serving bratwurst and schnitzel in the style of the Staatliches Hofbräuhaus in München. After our meal and a stein of Paulaner Salvator Doppel Bock (4), I'm going to see what's been happening on the amateur bands by reading that most

informative of websites, VE7KFM.com

I can see the Gerechtigkeitsbrunnen (3) from where I sit. Justice may be blind, but she's not dumb. Summary Judgment to the Plaintiff in the amount of \$14,000.

That's my two cents,

~Jonas

#### NOTES

(1) He who is always his own counsellor will often have a fool for his client.

[1809 Port Folio (Philadelphia) Aug. 132]

(2) In satire, vices, follies, abuses, and shortcomings are held up to ridicule, ideally with the intent of shaming individuals, and society itself, into improvement.

(3) See, e.g.,

[http://en.wikipedia.org/wiki/Gerechtigkeitsbrunnen\\_\(Bern\)](http://en.wikipedia.org/wiki/Gerechtigkeitsbrunnen_(Bern))

(4) Paulaner Salvator Doppel Bock (a highly recommended German beer) See, e.g., <http://www.paulaner.de/>