

**Report of the Legal Defense and Assistance Committee (ARLDAC)**

**July 2016**

The Legal Defense and Assistance Committee has had only modest activity since January. No requests for assistance have been received.

This does not mean, however, that there isn't work to do! The group discussed by email back in March of this year that HR 1301/S 1685 would likely create the need for some updated legal arguments and approaches to support the inevitable court challenges that would develop under the new rules, since the PRB-1 based arguments would not be entirely applicable. I attempted to pull together a meeting of the group at Dayton. Fortuitously, as it turned out, I was for personal scheduling reasons unable to do this. In any case, around the time of Dayton, as you will all recall, the final nature of the bill was still in a great deal of flux, and it would have been premature, as well as sensitive from a negotiation standpoint, for us to have begun strategy discussions.

Thanks to the efforts of Chris Imlay, Mike Lisenco, and others we seem to have gotten over that hurdle, and it is now time to convene the committee to discuss how it is that we will advise the first few hams who, assuming that HR 1301 passes, reach court with an HR 1301 case. I intend to hold this meeting in the next few weeks.

There are also other topics of discussion for the Committee to pursue, but at this point, preparing for HR 1301 litigation tops the list.

In ongoing cases we can report the following (as reported by Chris):

- Jeffrey DePolo v. Board of Supervisors of Treddyfrin Township et al. (3rd Circuit United States Court of Appeals). In this case, the United States Court of Appeals for the Third Circuit has under review the USDC's dismissal of an Amateur PRB-1 complaint for failure to state a claim upon which relief may be granted. The Amicus Brief for ARRL was filed August 17, 2015. We have as yet no decision from the Third Circuit United States Court of Appeals in Philadelphia with respect to the appeal by Jeff DePolo, WN3A from the decision of the United States District Court for the Eastern District of Pennsylvania. The District Court dismissed the case filed by DePolo challenging the 35-foot height limit of the township and the denial of DePolo's application for a 180-foot antenna system. The Court employed a Section 12(b)(6) preliminary motion to dismiss the case filed by the Township. This case was argued at the time of the January Board meeting and there were supplemental briefs filed addressing the effect of a

Supreme Court decision on whether or not the Court of Appeals had to find that the DePolo case had been adjudicated already or whether DePolo was non-suited due to a collateral estoppel argument. It is difficult to predict the outcome of this case which stands to potentially create a negative precedent for PRB-1 cases. The facts of this case present very little equity for the Amateur Radio argument. There was a mediation session scheduled by the Court of Appeals but it failed due to the reluctance of the Township to engage in any meaningful mediation. The Township indicated that it was not convinced that it had any authority to participate in mediation relative to the administration of its ordinances. We are still awaiting a decision.

- Myles Landstein, N2EHG v. Town of LaGrangeville, NY. (Complaint vs. Lagrangeville; trial court resolution unfavorable to N2EHG; appeal pending.) As Chris mentioned to the Board in January, Landstein has suffered an adverse decision from the State court and plans an appeal. He received a draft brief that Landstein's attorney Adams prepared and commented on it. We are not aware of the status of the final brief. It may be that ARRL will file an amicus brief if the circumstances warrant it. and if it is timely to do so.

Finances so far this year are as follows:

**American Radio Relay League  
Legal Research Fund  
As of June 30, 2016**

11/30/15 Balance	\$	167,306
Contributions - 12/2015		1,606
Contributions - 1/2016-6/2016		5,565
DePolo antenna case		(670)
Research Armstrong V Exceptional Child		(200)
Landstein antenna case		(40)
6/30/16 Balance	<u>\$</u>	<u>173,567</u>

My thanks to the committee, which includes:

- o Mike Raisbeck, K1TWF, New England Division Vice Director
- o Marty Woll, N6VI, Southwestern Division Vice Director

- o Jim Tiemstra, K6JAT, Pacific Division Vice Director
- o Mike Lisenco, N2YBB, Hudson Division Director
- o James O'Connell, W9WU, Member
- o Jim Pace, K7CEX, Northwestern Division Director
- o Chris Imlay, W3KD, General Counsel

Respectfully submitted,

Mike Raisbeck, K1TWF

New England Vice Director

ARLDAC Chair