

# I'm from the Government... (*Planning Department*) ...and I'm Here!



9/16/2017

*Presenter:*

**Dr. Jonathan L. Kramer, W6JLK**

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Telecom Law Firm, P.C.  
Los Angeles, California

# Lawyers **LOVE** Disclaimers!

This lecture is for informational purposes only. Hopefully, you will find it entertaining, as well. If not, tough.

This lecture is not intended to provide legal advice, and may not reflect recent law changes, court cases, or ARRL petitions.

Also this lecture does not (necessarily) reflect the official positions, views, hopes, or even the deep, dark secret desires of the ARRL, any of my client local governments, or any person presently on this or any other planet.

*Ta Da.*



# Get Ready, take aim (at me)...



## Dr. Jonathan Kramer, W6JLK (Extra Class)

Licensed since 1971

Life Member of the ARRL since 1975ish

ARRL Volunteer Counsel, Volunteer Examiner

## FCC General Radio Telephone w/ Ship Radar

Originally 1<sup>st</sup> Phone/radar

GMRSS Maintainer & Operator



## Worked for local, state, fed governments since 1984

Wireless siting reviews, including amateur tower apps, for nearly 30 years

Wireless Ordinances, Amateur Provisions

RF safety issues (Co-author of FCC's guide to local governments)



## "I'm a lawyer"

Admitted in California and New Mexico

## I are really, really Smart.

JD

LL.M (IT/Telecom Law)

Doctor of Law & Policy





**Fire!**

# PRB 1...

## “Waiter! Reality check, please!”

- National policy established by the FCC defining the relationship between antennas (antenna structures) and local zoning considerations.
- *Limited* preemption of local zoning considerations
- Codified at 47 C.F.R. § 97.15(b)

# PRB 1...

“Waiter! Reality check, please!”

- History
  - 1984: ARRL Petitions FCC to preempt local government restrictions on amateur radio antenna structures
  - 1985: FCC adopts PRB 1.
  - 1999: ARRL petitions FCC to extend PRB 1 to preempt CC&Rs (more on this, later).
  - 2000; ARRL petitions FCC to reconsider 1999 denial.

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# PRB 1...

“Waiter! Reality check, please!”

**Sec. 97.15 Station antenna structures.**

**(a) [deals with antennas in excess of 200' AGL or near public airports]**

**(b) Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.)**

**[64 FR 53242, Oct. 1, 1999]**

# California's PRB 1 Law

Gov. Code § 65850.3 (2003)



# California's AB 1228 (Gov. Code § 65850.3) (2003)

65850.3. **Any** ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose. It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.

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HAM SHACK



# CC&Rs: Read the fine print!

- CC&Rs = Covenants, Codes, and Restrictions
- Covenants = ***Enforceable promises.***
- Codes = ***Rules you're bound to follow.***
- Restrictions = (Huh? What restrictions?)
- Status of a ***private contract*** between consenting ***adults (ahem)***
- CC&R's can be 'enforced' by others bound by the same promise (an 'equitable servitude')
- How far is the boundary of enforcement? Sight? Feet?



# CC&Rs: Read the fine print!

- PRB 1 and CC&Rs (2001):

- **ARRL to FCC:**

- Ah, would you please extend PRB 1 to preempt those pesky CC&Rs and similar private contracts based on OTARD?

- **FCC to ARRL:**

- Thanks for asking, but the answer is **no**.

But while we're on the subject, we will talk about *OTARD*, and you *won't like* what we have to say.

# SECTION 6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

A powerful zoning tool for hams.....but  
With Great Power comes Great Responsibility

Who knew

this applied to hams?

# Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012:

## **Sec. 6409. WIRELESS FACILITIES DEPLOYMENT.**

### (a) Facility Modifications-

(1) IN GENERAL- Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST- For purposes of this subsection, the term 'eligible facilities request' means any request for modification of an existing wireless tower or base station that involves--

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

(3) APPLICABILITY OF ENVIRONMENTAL LAWS- Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

# Basic 6409(a) Checklist for Hams

- Tower located private property?
- Increase tower height 20' or less?
- Increase antenna width 20' or less?
- No excavation outside of existing?
- Does not defeat camouflage?
- Complies with prior permits?



# H.R. 555

## Amateur Radio Parity Act of 2017

### AN ACT

- To direct the Federal Communications Commission to amend its rules so as to prohibit the application to amateur stations of certain private land use restrictions, and for other purposes.
- *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. Short title.*
- This Act may be cited as the “Amateur Radio Parity Act of 2017”.



***“That's the  
signpost up ahead  
- your next stop, the  
Planning Counter!”***

***...***



# PUTTING YOUR BEST FOOT (and Planning Case) FORWARD

- Some basics (Information collection):
  - **What, exactly, are the local zoning rules in your community governing amateur radio antenna structures? Get a copy (likely online) and study them. Add a musical score.**
  - **What previous cases have been decided under the current rules? Ask to review the files and find out why the cases were approved or disapproved. Explain why you're asking (“...so I can do the best job putting together a complete application...”)**
  - **Ask the counterperson for all of the forms you'll need, and find out all of the fees you may be asked to pay.**
  - **What about a fee waiver?**

# PUTTING YOUR BEST FOOT (AND CASE) FORWARD

- Some basics (Information collection):
  - **Know, exactly, what you're going to ask permission to do.**
  - **Loser: "I want to put some antennas up about 65 feet in the air. I know what's best here, not you!"**
  - **Better: "I want to erect an XYZ tower with a LMN rotator and an ABC yagi. Here's a drawing..."**

# THE PLANNER'S RESPONSE?

# STOP! TAKE A BREATH...

- Things to remember...the odds are very high that:
  - Your planner has little or no experience with ham tower projects;
  - Your planner thinks your project is just like a cell tower;
  - Your planner has no technical expertise...
  - Your planner wants to take an immediate vacation!

# STOP! TAKE A BREATH...

- And your planner thinks that RF is...



# PLANNER CPR:



- HELP restart your planner's heart by:
  - Keeping your voice calm and friendly at all times;
  - Take the time to explain, in detail, your project and why you need what you're asking for;
  - How?

# Making Your Case

**Planner:** “Why does it have to be that tall? It not permitted by our code.”

**Ham:** “Let me show you the engineering for the XYZ yagi antenna. That engineering justifies the height I need, and demonstrate that I comply with the federal and state laws that govern antenna height.”

- Roll your own antenna? NEC and EZNEC are your friends...use ‘um if you’ve got ‘um.
- Commercial antenna? Your antenna manufacturer is your friend...use ‘um to get NEC/EZNEC outputs.
- Show the relationship between height above terrain versus the angle of the main lobe (launch angle). Show the launch angle for multiple heights around your requested height. Explain why a low launch angle is critical for HF long-haul communications. ***This is likely the most important evidence you can submit to justify your height request!***
- **BEWARE: NEVER, NEVER, NEVER USE THE “R” WORD!**
- **...But be prepared to show compliance with FCC OET Bulletin 65 for amateur operations.**



# Making Your Case

- **Before and at the hearing:**

- Find out what the hearing notice range is (typically 300 to 500 feet). Figure out who might have a problem and reach out. Inviting your neighbors over before the hearing to discuss your project, and ham radio in general, is a good move. Be sure to mention you held the meeting at your hearing.
- Get a copy of the planner's report as soon as it's available. Carefully review it. Be prepared to respond to every negative point (if any).
- Prepare ***and repeatedly practice*** an opening and closing speech. Practice responses to potential objections. Watch the clock! If you've never been to a planning hearing before, consider going to observe the process *before* it's your turn!
- Dress in formal attire.



# Making Your Case

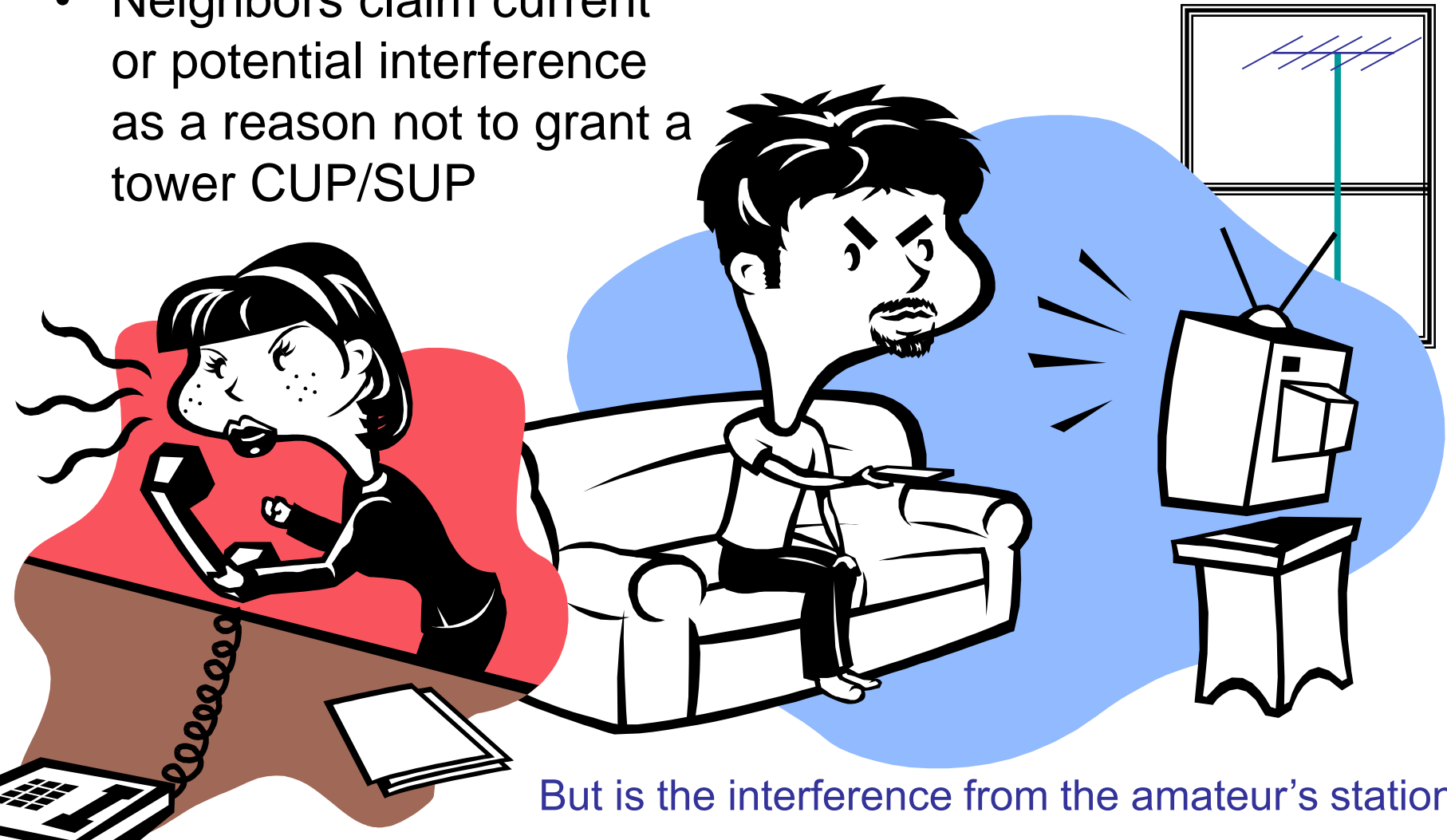
- **At the hearing:**
  - **Explain why under both PRB 1 and G.C. § 65850.3 (and perhaps Section 6409(a)) your project is justified *in light of the engineering documentation you provided.***
  - **IT'S CRITICAL TO GET "THE TROOPS" (Hams, friendly neighbors, CERT members, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR PROJECT!!!! (Each fills out a speaker's card).**

# Making Your Case

- **If you have to deal with an appeal:**
  - Get a copy of the formal reasons for denial. In your appeal **MUST** be timely, and you must address and appeal every basis of denial.
  - **Explain, softly and clearly, why the initial decision maker erred. DO NOT ATTACK, but be clear, and explain (again) why, under both PRB 1 and G.C. § 65850.3, (and perhaps Section 6409(a)) the project is justified on evidence you provided.**
  - **IT'S EVEN MORE CRITICAL TO GET "THE TROOPS" (Hams, friendly neighbors, CERT, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR APPEAL!!!! (Each fills out a speaker's card).**

# Yo\_\_'re Inte\_fe\_ring w\_\_\_\_th my Televi\_\_\_\_\_sion

- Neighbors claim current or potential interference as a reason not to grant a tower CUP/SUP



But is the interference from the amateur's station?

# YoIU'sre Intuxzerfeering wizth my Telaevizzion

- Neighbors may say **space aliens** will visit your tower as a reason ***not*** to grant a permit.
- Offer them an aluminum foil cap!



***(NO! Just kidding!)***

# You're Interfering With Me

- The FCC has spilled some ink on this subject.

Federal Communications Commission DA 03-2196

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

In the Matter of )  
 )  
Petition of Cingular Wireless L.L.C. for a )  
Declaratory Ruling that Provisions of the Anne ) WT – Docket No. 02-100  
Arundel County Zoning Ordinance are Presumpted )  
as Impermissible Regulation of Radio Frequency )  
Interference Reserved Exclusively to the Federal )  
Communications Commission )

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 2003 Released: July 7, 2003

By the Chief, Wireless Telecommunications Bureau:

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APPENDIX: List of Commenters

I INTRODUCTION

1. In this order, we find that federal law preempts provisions of the Anne Arundel County, Maryland ("County") zoning ordinance involving radio frequency interference ("RFI"). The provisions require that, prior to receiving a County zoning certificate, owners and users of telecommunications facilities must show that their facilities will not degrade or interfere with the County's public safety communications systems.<sup>1</sup> The Ordinance provisions also permit the County to revoke a zoning

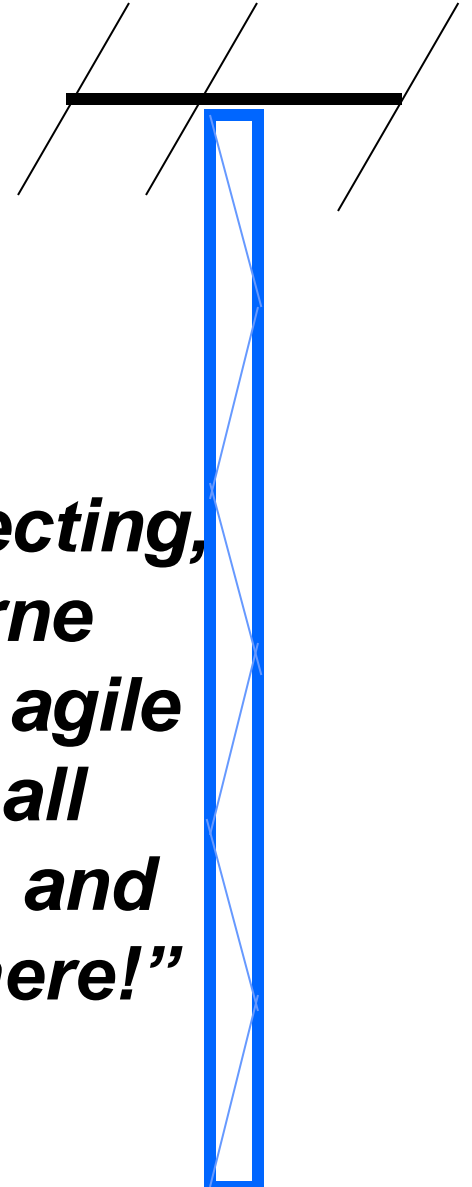
<sup>1</sup> See Article 28, §§ 1-101(14B), 1-128(a)(c), 10-125(j)(1)-(2), &(1)-(2) of the Anne Arundel County, Code ("Ordinance").

17. Taken together, these Commission and court decisions clearly establish that the Commission has sole jurisdiction to regulate RFI, to the exclusion of provisions in local zoning or other regulations.

# Yoiu'sre Intuxzerfeering wizth da Birdz

The neighbors may claim that your tower will be:

***“An anti-American abomination affecting, attracting and annihilating all airborne aviary (and additional adorable and agile animals) approaching at any angle, all absolutely absent any angst, anger, and agitation against Americans, anywhere!”***



# CC&Rs: You're Interfering With Me

CCRs: Status of a *private contract* between consenting *private parties*

- CC&R's can be '**enforced**' by others bound by the same promise (called an 'equitable servitude')
- Is an non-interference covenant legal? (**likely yes**)





An aerial, black and white photograph of a two-lane highway. In the upper third of the frame, five patrol officers in uniform are standing on the road. Two vintage patrol cars are parked on either side of the officers. The road has a dashed white center line and solid white edge lines. The surrounding terrain is flat and appears to be a rural or undeveloped area.

# Highway Patrol

# California Vehicle Code Section 23123.5(f)

- (a) A person shall not drive a motor vehicle while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the wireless telephone or electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation, and it is used in that manner while driving.
- (b) This section shall not apply to manufacturer-installed systems that are embedded in the vehicle.
- (c) A handheld wireless telephone or electronic wireless communications device may be operated in a manner requiring the use of the driver's hand while the driver is operating the vehicle only if both of the following conditions are satisfied:
  - (1) The handheld wireless telephone or electronic wireless communications device is mounted on a vehicle's windshield in the same manner a portable Global Positioning System (GPS) is mounted pursuant to paragraph (12) of subdivision (b) of Section 26708 or is mounted on or affixed to a vehicle's dashboard or center console in a manner that does not hinder the driver's view of the road.
  - (2) The driver's hand is used to activate or deactivate a feature or function of the handheld wireless telephone or wireless communications device with the motion of a single swipe or tap of the driver's finger.
- (d) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.
- (e) This section does not apply to an emergency services professional using an electronic wireless communications device while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.
- (f) For the purposes of this section, "electronic wireless communications device" includes, but is not limited to, a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.

# California Vehicle Code Section 23123.5(f)

## Enforcement of Section 23123.5 of the California Vehicle Code

To: All Commands

Reference: Action Required

Subject: Enforcement of Section 23123.5 of the California Vehicle Code

Effective January 1, 2017, Section 23123.5 of the California Vehicle Code (CVC) was amended by Assembly Bill 1785, which substantially expanded the scope of Section 23123.5 CVC, from simply prohibiting the use of a wireless phone to text while driving, to prohibiting holding and operating a handheld wireless telephone or an electronic wireless communications device while driving.

However, a driver may still use a handheld wireless telephone or an electronic wireless communication device while driving when:

The handheld wireless communication device is mounted to a windshield (in compliance with Section 26708[b] CVC), dashboard, or center console in a manner which does not interfere with the drivers view of the road, and; The drivers hand is used to activate or deactivate a feature with a single tap or swipe of the drivers finger.

Pursuant to Section 23123.5(f) CVC, the definition of an electronic wireless communications device includes, but is not limited to: a broadband personal communication device, a specialized mobile radio device, a handheld device or laptop computer with mobile data access, a pager, or a two-way messaging device.

Section 23123.5 CVC does not apply to manufacturer-installed systems which are embedded in the vehicle, nor does it apply to an emergency services professional using a wireless telephone while operating an authorized Emergency vehicle, in the course and scope of employment.

**For the purposes of Section 23123.5(f) CVC, a radio installed and mounted in a vehicle with a wired hand microphone (e.g., business band or citizen band [CB] radio) is not considered a wireless communication device, nor is it considered a specialized mobile radio device, and therefore is not subject to enforcement under this section.**

This information will be added to an upcoming revision to Highway Patrol Manual 100.68, Traffic Enforcement Policy Manual, Chapter 5, Other Enforcement Issues.

CHP Headquarters/Office of the Commissioner/061/18227

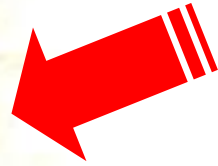
This Is My Official

**“We’re (almost) at the end of  
the lecture”**

Slide



Not a space alien



My thanks to Dick Norton,  
N6AA our ARRL  
Southwestern Division  
Director, for his courage  
appointing me as a Volunteer  
Counsel some 10 years ago!



Also **Not** a space alien



Also thanks to Diana  
Feinberg, AI6DF our  
ARRL L.A. Section  
Manager, for her  
lapse in good  
judgment when she  
asked me to present  
today!



**... YOU CAN DOWNLOAD AN  
ADOBE PDF OF THIS INCREDIBLE  
WIT AND WISDOM  
FROM MY HAM  
RADIO WEB SITE:**

**[W6JLK.com/arrl17](http://W6JLK.com/arrl17)**

Nope, sorry, I don't do VC work in planning cases unless it's on the government side (hey, they need the help, too!), but if you find yourself dealing with interference or FCC issues, give me a call!

# Really Important Legal Notice

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## **Dr. Jonathan L. Kramer, W6JLK**

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PS: If you're reading through these slides without having first suffered through the live lecture, all I can say is, "too bad; so sad!" Certain portions of some of the slides won't make any sense to you if you weren't there for the real thing. Some of the slides may not make sense to people where were actually at the meeting. It's kind of like real life, don't you agree?