

FEDERAL COMMUNICATIONS COMMISSION

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

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Courtroom 2, Room 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
April 1, 1997

The parties met, pursuant to notice of the Judge
at 10:00 a.m.

BEFORE: HON. EDWARD LUTON
Administrative Law Judge

APPEARANCES:

On Behalf of the Applicant:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>	<u>VOIR DIRE</u>
Herbert L. Schoenbohm	28	39	131	134	

E X H I B I T S

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>DESCRIPTION</u>
Schoenbohm 8	28	39	Statement and response to Issue C-1
Schoenbohm 9	28	39	Statement and response to Issue C-2
Joint 1	38	38	Stipulation and transcript of Mr. Schoenbohm

Hearing Began: 10:00 a.m.

Hearing Ended: 12:26 p.m.

P R O C E E D I N G S

10:00 a.m.

1

2

3

JUDGE LUTON: Good morning.

4

ALL: Good morning, Your Honor.

5

JUDGE LUTON: Are we ready?

6

MR. REIDELER: Yes, Your Honor.

7

JUDGE LUTON: All right. This is a hearing in the matter of Herbert L. Schoenbohm. We're here because of a remand by Commission to explore what Commission has called certain gaps in the record that we made earlier in this case. In response to the designation of those issues, Mr. Schoenbohm has submitted his testimony in writing as the rules require. And as far as I can see, that will be the only testimony that we'll have today.

15

The Bureau has indicated that it wants to cross examine Mr. Schoenbohm and Mr. Schoenbohm only. And the Bureau has submitted what is labeled a stipulation consisting of a transcription I believe, certain radio transmissions; Mr. Schoenbohm's written exhibits -- or by his written exhibits, I believe he proposes to offer the same thing. In any event, we shall see.

22

Let me take the appearances again. It's been a while since we've been together. So let me have the appearances please. Mr. Schoenbohm?

24

25

MR. COLBY: Lauren Colby on behalf of Herbert L.

1 Schoenbohm.

2 JUDGE LUTON: All right.

3 MR. REIDELER: Terrence Reideler on behalf of the
4 Bureau, Your Honor.

5 JUDGE LUTON: All right.

6 MR. FITZ-GIBBON: Thomas D. Fitz-Gibbon on behalf
7 of the Bureau.

8 JUDGE LUTON: Thank you. Any preliminary matters
9 before we start? Mr. Schoenbohm, then if you would take the
10 stand, we will proceed. You will continue to be sworn in
11 this proceeding from the last time.

12 Whereupon,

13 HERBERT L. SCHOENBOHM

14 having been previously duly sworn, was recalled as a witness
15 herein, and was examined and testified further as follows:

16 JUDGE LUTON: Mr. Colby?

17 MR. COLBY: Your Honor, I would like to identify
18 the exhibit, Schoenbohm Exhibit 8, statement and response to
19 Issue C-1. It is -- consists of four pages, the last of
20 which is a declaration of Schoenbohm affirming the accuracy
21 of the exhibit. I'm handing the Reporter the original --
22 and the original -- it indicates the original has the
23 signature. I'm handing the Reporter the original and one
24 copy of that exhibit which has been circulated to --

25 JUDGE LUTON: All right.

1 MR. COLBY: We request that it be marked for
2 identification as Schoenbohm Exhibit 8.

3 JUDGE LUTON: So mark it.

4 (The document referred to was
5 marked for identification as
6 Schoenbohm Exhibit Number 8.)

7 MR. COLBY: The next exhibit is an exhibit
8 entitled, "Statement and Response to Issue C-2". I'd like
9 to have it marked for identification as Schoenbohm Exhibit
10 9. It consists of three pages plus a transcript. And the
11 transcript is one, two, three, four, five, six, seven,
12 eight, nine, ten pages in length -- pardon me, 11 pages in
13 length, and is attached to the exhibit.

14 JUDGE LUTON: It will be marked as 9.

15 MR. COLBY: So I now hand two copies of that to
16 the Reporter.

17 (The document referred to was
18 marked for identification as
19 Schoenbohm Exhibit Number 9.)

20 DIRECT EXAMINATION

21 BY MR. COLBY:

22 Q Mr. Schoenbohm, I hand you a copy of Schoenbohm
23 Exhibit 8, statement in response to Issue C-1. Have you
24 seen the exhibit before?

25 A Yes, I have.

1 Q Who prepared the exhibit?

2 A Well, you prepared the exhibit.

3 Q Have you reviewed the exhibit?

4 A Yes, I have.

5 Q Is it true and correct?

6 A It is.

7 Q I now hand you a copy of Schoenbohm Exhibit 9,
8 statement of response to Issue C-2. Who prepared the
9 exhibit? Well, first of all, have you seen the exhibit
10 before?

11 A C-2, yes.

12 Q Do you know who prepared the exhibit?

13 A You did.

14 Q Have you reviewed the exhibit?

15 A I have.

16 Q Is it true and correct?

17 A It is.

18 MR. COLBY: I move the admission of Schoenbohm
19 Exhibits 8 and 9.

20 JUDGE LUTON: Any objection to Exhibit 8?

21 MR. FITZ-GIBBON: Yes. The Bureau has got some
22 objections.

23 JUDGE LUTON: 8 -- now, let's take them one at a
24 time.

25 MR. FITZ-GIBBON: All right. Schoenbohm Exhibit

1 8, we object to Paragraphs 2 through 4 as irrelevant. He's
2 reciting his version of the facts concerning the criminal
3 case. We're not retrying the criminal case here. So the
4 Bureau believes this is irrelevant.

5 MR. COLBY: Now, which paragraphs are you
6 objecting to?

7 MR. FITZ-GIBBON: Four -- 2 through 4.

8 MR. COLBY: Well, I don't know how we can meet the
9 burden of the new issues if we --

10 JUDGE LUTON: I don't either. I'm going to cut
11 this short. I don't either. No, we're not retrying the
12 criminal case. But this case has been remanded so that
13 Schoenbohm's testimony can be taken in an attempt by him to
14 reconcile what the Commission viewed as apparent differences
15 between what Mr. Schoenbohm earlier said in the proceeding
16 and what the Court found. So that objection is overruled.
17 Next.

18 MR. FITZ-GIBBON: The Bureau objects to the last
19 sentence, Paragraph 5. That sentence says, "My conviction
20 is based solely upon the use or possession of three six-
21 digit numbers which had been given to me by calls." That's
22 speculation.

23 MR. COLBY: I don't think that's --

24 JUDGE LUTON: Why is that speculation? What do
25 you mean speculation? He was convicted and he states --

1 MR. FITZ-GIBBON: Well, he doesn't --

2 JUDGE LUTON: -- his view of what the conviction
3 is based on.

4 MR. FITZ-GIBBON: Well, he doesn't --

5 JUDGE LUTON: You may not agree with it, but I
6 don't see it as being speculative.

7 MR. FITZ-GIBBON: Well, he --

8 JUDGE LUTON: There's no question about what he
9 was convicted of, is there?

10 MR. FITZ-GIBBON: No, there's no -- there's no
11 question about what he was convicted of. The -- but this --
12 this -- this speculates as to -- as to why the jury
13 convicted him. There is -- there is -- there is other
14 evidence introduced, too, besides what's referred to in that
15 sentence.

16 JUDGE LUTON: Well, Mr. Schoenbohm is entitled to
17 have his say about -- he's entitled to state his view of
18 that evidence and the view of the conviction, as well.
19 Overruled. Next.

20 MR. FITZ-GIBBON: Paragraph 6. It's not clear
21 from Paragraph 6 as to whether any of this testimony is
22 based on something that Mr. Schoenbohm may have learned
23 since the last hearing. And we think -- we think his
24 testimony should be limited to what he knew when he
25 testified at the first hearing so he thinks that the voir

1 dire is needed in order to -- to determine what the basis
2 for these statements --

3 JUDGE LUTON: Or cross examination. I'm assuming
4 you're not going to exclude something because it isn't clear
5 to Bureau counsel at the present time. You'll have an
6 opportunity to cross examine and clarify. Overruled.

7 MR. FITZ-GIBBON: Paragraph 7, this is
8 argumentative.

9 MR. COLBY: Which -- which portion of the
10 paragraph do you consider to be argumentative?

11 MR. FITZ-GIBBON: The whole paragraph.

12 MR. COLBY: Well, it's a statement of how he felt
13 and how his family may have felt after he had been fired.
14 And I don't think that's argumentative. I think he can
15 testify --

16 JUDGE LUTON: It is irrelevant.

17 MR. COLBY: -- to -- well, I think it is because
18 it shows that he has -- the extent to which he has already
19 paid his debt to society. We had evidence at the --

20 JUDGE LUTON: Well --

21 MR. COLBY: -- first hearing --

22 JUDGE LUTON: -- how his family felt about that is
23 quite another matter. That doesn't indicate how he paid his
24 debt to society. How his family felt isn't factual in that
25 regard, is it?

1 MR. COLBY: Well, how he felt about how his family
2 felt is certainly relevant. In other words, he suffered
3 from the apparent loss of his job and apparent loss of his
4 pension rights. And this is part of the punishment that was
5 inflicted upon him. And our argument is that he's been
6 punished enough.

7 And the famous Roberts case, was it Robert Roberts
8 or Richard D. Roberts, the marijuana case which is often
9 mentioned. The review which existed at that time allowed
10 testimony concerning the extent of the suffering which
11 Roberts had already undergone as a result of his conviction.

12 JUDGE LUTON: It seems to me that something like
13 this is already in the record from the first time around in
14 this case --

15 MR. COLBY: Yes, it was.

16 JUDGE LUTON: -- concerning these pension rights.
17 It's already there. So to exclude it now wouldn't make any
18 sense. Overruled. Next.

19 MR. FITZ-GIBBON: The last sentence of -- of
20 Paragraph 9, this is argumentative.

21 MR. COLBY: I would begin to --

22 JUDGE LUTON: Well -- go ahead, Mr. Colby. I
23 should permit you to try the case.

24 MR. COLBY: I would -- I would be willing to
25 revise the sentence to say -- so -- to strike the words, "No

1 harm was done, however, because". I would strike those
2 words.

3 JUDGE LUTON: Will that satisfy the Bureau if the
4 sentence were to begin, "So far as I can determine, nobody
5 ever wrote to any politician or the FCC in support of my
6 application"? Well, it ought to satisfy the Bureau because,
7 again, this is something very similar to what's already in
8 the record from the first time around. So let's strike it.
9 "No harm was done", that's certainly argumentative because -
10 - and we'll start the sentence with, "So far" or "Insofar",
11 whichever is grammatically correct. Next.

12 MR. FITZ-GIBBON: Exhibit -- Schoenbohm Exhibit 9,
13 the last paragraph -- the last sentence of the last
14 paragraph, Mr. -- in that sentence, Mr. Schoenbohm is giving
15 -- giving his opinion as to the legality of his actions.
16 And he's not qualified to give that.

17 MR. COLBY: But you were the one who asked him
18 about it at the deposition and asked for his opinion.

19 MR. FITZ-GIBBON: That's not part of the record.

20 MR. COLBY: Well, I could ask the Witness the
21 question.

22 JUDGE LUTON: I can sustain the objection to
23 strike this. In my opinion, it was perfectly legal. We
24 don't need that unless there is some evidence indicating
25 illegality. Then the conclusion would have to be that it

1 was perfectly legal. But we don't need the opinion of Mr.
2 Schoenbohm to guide us to that conclusion. Sustained.

3 MR. FITZ-GIBBON: This isn't really an objection,
4 but it was my understanding that we were going to use the
5 transcript that we -- that we agreed to in the stipulation.

6 MR. COLBY: Yes. I was going to introduce that.
7 I had anticipated --

8 JUDGE LUTON: Say that again for me. You're going
9 to do what?

10 MR. COLBY: Introduce the stipulation between the
11 Bureau and Mr. Schoenbohm concerning the accuracy of the
12 transcript. I was going to introduce that as a joint
13 exhibit.

14 JUDGE LUTON: Let's see, 8 and 9. That takes care
15 of the objections. These are offers that are pending. You
16 want me to hold off on them until we do something with the
17 transcript here? Because the transcript is a part of one of
18 these pending offers already as I understand it, is it not?

19 MR. COLBY: It's identical.

20 MR. FITZ-GIBBON: The transcript --

21 JUDGE LUTON: So by accepting 8 and 9, I will have
22 accepted this thing that you're about to start talking
23 about.

24 MR. FITZ-GIBBON: There are some minor differences
25 here --

1 JUDGE LUTON: There are some differences?

2 MR. FITZ-GIBBON: -- Your Honor, and we consider
3 the stipulation version to be the definitive version.

4 MR. COLBY: I had not realized any differences.

5 JUDGE LUTON: Then -- then there ought not be this
6 attached to someone's testimony -- his written testimony.
7 We don't need two versions, particularly when they're not
8 identical. I mean --

9 MR. COLBY: I agree.

10 JUDGE LUTON: -- this is -- this is crazy.

11 MR. COLBY: I will withdraw the -- let me
12 physically change the exhibits I've given the Reporter and
13 remove the transcript. And then we'll go with the official
14 version.

15 JUDGE LUTON: Then we'll go with the stipulation.

16 MR. COLBY: Right.

17 JUDGE LUTON: So we'll have one --

18 MR. COLBY: Right.

19 JUDGE LUTON: -- on which everybody can rest and
20 rely. Fine.

21 MR. COLBY: Let the record show that I'm removing
22 from Exhibit 9 the stipulation that was attached to Exhibit
23 9 -- physically removing it.

24 JUDGE LUTON: 9 now consists of one, two pages,
25 plus a declaration.

1 MR. COLBY: That's correct.

2 JUDGE LUTON: A total of three pages.

3 MR. COLBY: Right.

4 JUDGE LUTON: And now we've got a joint
5 stipulation submitted to me by the Bureau on behalf of the
6 Bureau and Mr. Schoenbohm, as well -- the Applicant. It's
7 signed by Mr. Colby.

8 MR. COLBY: Right. Now I'll hand two copies back
9 to the Reporter. It's already marked --

10 JUDGE LUTON: I will call this --

11 MR. COLBY: Joint Exhibit 1 is how it's marked.

12 JUDGE LUTON: -- Joint Exhibit 1.

13 MR. COLBY: Your Honor, I'm now handing the
14 Reporter -- I only have one copy of Joint Exhibit 1 with me.
15 Mr. Fitz-Gibbon, do you have another copy of Joint Exhibit
16 1?

17 MR. FITZ-GIBBON: Yes, I do.

18 MR. COLBY: Perhaps you would hand two copies to
19 the Reporter. And Joint Exhibit 1 consists of two pages
20 plus the transcript of the deposition. The transcript is
21 one, two, three, four, five, six, seven, eight, nine, ten,
22 eleven pages in length. The Reporter has two copies. I
23 request that it be identified as Joint Exhibit 1.

24 JUDGE LUTON: Mr. Colby, did you say that the
25 Joint Exhibit 1 consisted of some pages from the deposition?

1 MR. COLBY: No. It consists of two pages. The
2 first page is marked, "Stipulation". The second is a
3 signature page signed by the Bureau and by myself.

4 JUDGE LUTON: All right.

5 MR. COLBY: And then there's an 11 page transcript

6 --

7 JUDGE LUTON: Okay.

8 MR. COLBY: -- of -- prepared from an audio tape.

9 JUDGE LUTON: I've got it now. I misunderstood.
10 I now have the same thing.

11 MR. COLBY: I request it be marked as Joint
12 Exhibit 1.

13 JUDGE LUTON: So mark it.

14 (The document referred to was
15 marked for identification as
16 Joint Exhibit Number 1.)

17 MR. COLBY: Now I move the admission of Joint
18 Exhibit 1.

19 JUDGE LUTON: Joint 1 is received.

20 (The document referred to,
21 previously marked for
22 identification as Joint
23 Exhibit Number 1, was received
24 in evidence.)

25 MR. COLBY: Now --

1 THE COURT REPORTER: I only have one copy of Joint
2 1.

3 MR. COLBY: Oh, I thought Mr. Fitz-Gibbon was
4 giving you two.

5 JUDGE LUTON: Is there any more, Mr. Colby, to be
6 done with the Witness?

7 MR. COLBY: I offer the Witness for cross
8 examination.

9 JUDGE LUTON: All right.

10 MR. COLBY: But I -- let's see, we've now received
11 Exhibits 8 and 9 and Joint Exhibit 1, right?

12 JUDGE LUTON: That's correct.

13 (The documents referred to,
14 previously marked for
15 identification as Schoenbohm
16 Exhibits Numbers 8 and 9, were
17 received in evidence.)

18 MR. COLBY: Yes. I offer the Witness for cross
19 examination.

20 JUDGE LUTON: Who's going to cross?

21 MR. REIDELER: I am, Your Honor. May I proceed?

22 JUDGE LUTON: Please.

23 CROSS EXAMINATION

24 BY MR. REIDELER:

25 Q Good morning, Mr. Schoenbohm.

1 A Good morning.

2 Q Mr. Schoenbohm, you've attended college, is that
3 correct?

4 A Yes.

5 Q And part of your adult life is spent as -- in the
6 news business, is that correct?

7 A Yes.

8 Q You were a radio reporter?

9 A Yes.

10 Q You wrote a newspaper column?

11 A Yes.

12 Q You're a talk show host?

13 A Yes.

14 Q Is it fair to say that you're fairly comfortable
15 with the English language?

16 A Yes.

17 Q Generally pretty good at making yourself
18 understood?

19 A I believe so.

20 Q Okay. On December 30th, 1992, you were convicted
21 of violating Title 18 United States Code Section 1029(a)(1),
22 is that correct?

23 A That's correct.

24 Q And did you appeal that conviction?

25 A Yes, I did.

1 Q And did -- was the appeal successful?

2 A No, it was not.

3 Q And you appealed this to the 3rd Court -- 3rd
4 Circuit, excuse me?

5 A Yes, it was.

6 Q And did you petition for a rehearing?

7 A I did.

8 Q And was -- did the 3rd Circuit grant your
9 petition?

10 A No, they did not.

11 Q Did you appeal the case again?

12 A Yes, I did.

13 Q And to what body did you appeal the case?

14 A The -- under Title 18, Subsection 2255 under writ
15 of habeas corpus it's called, to the District Court.

16 Q And was that successful?

17 A No, it was not.

18 Q Did you appeal the case again?

19 A Yes. I appealed -- let me go back. I appealed
20 under Title 18, 2255, but also under Rule 33 for a new trial
21 on newly discovered evidence.

22 Q And was that successful?

23 A Neither were.

24 Q Now, did you appeal to another appellate court?

25 A I applied for cert.

1 Q To the United States Supreme Court?

2 A That's correct.

3 Q And was cert granted?

4 A It was not.

5 Q Mr. Schoenbohm, I will show you Schoenbohm 1.

6 Now, this is Schoenbohm 1 which was previously placed into
7 evidence. Let me direct your attention to page 1, Paragraph
8 2. And I quote, "I was convicted for defrauding a telephone
9 resell service provider by allegedly making unauthorized
10 long distance calls." Is that a correct statement?

11 A Basically, yes.

12 Q What's not correct about it?

13 A Well, there were three counts. And one of the
14 counts was for using a counterfeit access device.

15 Q But the conviction was for one count, isn't that
16 correct?

17 A That's correct. The unauthorized long distance
18 calls were -- were not convicted of that. I was acquitted
19 of those.

20 Q You were convicted of --

21 A I was convicted of --

22 Q Section 1029 --

23 A -- all three counts. And after the conviction,
24 the Court overturned two of the -- two of the three counts.

25 Q So your conviction is for the one count?

1 A For abuse or possession of a counterfeit access
2 device.

3 Q Well, the statement that you made in Schoenbohm 1,
4 it says, "I was convicted for defrauding a telephone resell
5 provider by alleging making unauthorized long distance
6 calls." Now, did I read that statement correctly?

7 A That's correct.

8 Q Now I'll show you Schoenbohm 7 which was also
9 previously introduced into evidence. It begins, and again I
10 quote, "Herbert Schoenbohm declares under the penalty of
11 perjury that the following is true and correct." Now, have
12 I read that portion of the document correctly?

13 A Yes.

14 Q On page 2, it states, again I -- well, I -- "I was
15 convicted solely of having knowledge in my mind of certain
16 telephone codes of which four of the six digit" -- "digits
17 were said to be similar to that" -- "to those that could be
18 used to make long distance calls without paying for them."
19 Did I read that portion of the document correctly?

20 A Yes, you did.

21 Q Now, that differs from the statement made in
22 Schoenbohm 1, isn't that correct?

23 A In what way?

24 Q They're different words. One -- in 1 -- we'll go
25 back to 1 -- it says you were convicted of defrauding a

1 telephone reseller --

2 A Yes, it does.

3 Q -- by making calls.

4 A It does differ, yes.

5 Q All right. Could you explain what the -- why they
6 are different?

7 A Well, in this deposition I was explaining from the
8 preceding sentence that I was not convicted of actually
9 stealing money or accessing the account of any telephone
10 subscriber. And I did not steal any money or cause the
11 account of any subscriber to be debited. I was convicted
12 solely of having knowledge in my mind of certain telephone
13 codes --

14 Q But --

15 A -- before the six digits were said to be similar
16 to those that could be used to make long distance calls
17 without paying for them.

18 JUDGE LUTON: Were you convicted because you did
19 anything? Did you do anything? Did your conviction rest on
20 something that you actually did?

21 THE WITNESS: It rested on me making phone calls.

22 JUDGE LUTON: All right. That's a bit more than
23 simply having numbers in your head.

24 THE WITNESS: That's true.

25 JUDGE LUTON: Okay.

1 BY MR. REIDELER:

2 Q Can you explain why you had a different version?

3 A I was -- I was saying that this was connected to
4 the previous sentence of a description of the circumstances
5 under which I was convicted.

6 Q Okay. Statute 1029(a) Subsection (1) provides in
7 part whoever knowingly and with intent to defraud reduces
8 uses or traffics in one or more counterfeit access devices
9 shall be punished, isn't that correct?

10 A That's correct.

11 Q Now, the statement contained in Schoenbohm 7, "I
12 was convicted solely of having knowledge in my mind of
13 certain telephone numbers", so on and so forth, that doesn't
14 match the crime described in the statute, does it?

15 MR. COLBY: Objection. The cross examiner well
16 knows that there's another sentence directly after the
17 sentence which he's asking the Witness about which does
18 refer to using these numbers. And I think it's unfair to
19 ask the Witness a question without referring to the entire
20 paragraph.

21 MR. REIDELER: Your Honor, I believe redirect --
22 these matters could be fleshed out by counsel if he feels
23 that the question's improper or that it was not crafted in
24 the proper way.

25 MR. COLBY: Well, I think the question is improper

1 in this sense: that it takes a single sentence out of
2 context from that paragraph. And I think the questioner, to
3 be fair, is -- needs to also ask the Witness about the other
4 sentence that the Witness describes the act of using the
5 telephone numbers.

6 JUDGE LUTON: Well, certainly the idea is not to
7 trick the Witness into giving any kind of testimony. So
8 what harm can there be in making reference to the second
9 sentence as well, the follow-up sentence and then we'll see
10 where we are.

11 MR. REIDELER: That would be fine, Your Honor.

12 BY MR. REIDELER:

13 Q And the second sentence being, "These numbers were
14 the counterfeit access device which I was convicted of
15 possessing or using." Now, you don't feel that that was
16 different from -- it doesn't differ from the -- the statute?

17 A It doesn't differ from the statute insomuch as the
18 previous sentence was merely an explanation of what these
19 devices I believed were apart from --

20 Q In other words, your answer is no, it doesn't
21 differ from the statute?

22 A Possession or using a counterfeit access device is
23 what 1029(a)(1) refers to.

24 Q At the hearing, do you recall your attorney asking
25 you, and again I quote, "Now, you've been convicted, have

1 you not, of the crime of possessing a counterfeit access
2 device?", and your answer being, "Correct"? Do you recall
3 that?

4 A Yes.

5 Q Now, the term, possession, is not really mentioned
6 anywhere in 1029(a)(1), is it?

7 A It is under trafficking. One would have to
8 possess --

9 Q Would you please show me or could you point to me
10 where it is in 21(a)(1)?

11 A Under the term, trafficking.

12 Q But that trafficking is not part of 21(a)(1), is
13 it?

14 A Would you read 21(a)(1) again? I don't have it.

15 Q Yes, I will. "Whoever knowingly and with intent
16 to defraud produces, uses or traffics in one or more
17 counterfeit access devices shall be punished." Isn't that
18 correct?

19 A The word is there. Trafficking is part of 29(a) -
20 -

21 Q But the word, possession, was the question; not
22 trafficking. Possession. Where is the word, possession, in
23 here?

24 MR. COLBY: Your Honor, I object to this for the
25 following reason: The Witness was asked a question by me