

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of: ) MM DOCKET No.: 01-344  
 KEVIN DAVID MITNICK ) File No.: 00000-58498  
 Licensee of Station N6NHG )  
 in the Amateur Radio Service )  
 for Renewal of Station License) )  
 KEVIN DAVID MITNICK )  
 For Renewal of Amateur Radio )  
 General Class Operator License)

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WITNESS: Kevin David Mitnick

(REVISED & CORRECTED COPY)

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## HERITAGE REPORTING CORPORATION

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

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For Renewal of Amateur Radio )  
General Class Operator License)

Room TW-A-373  
445 12th Street, S.W.  
Washington, D.C.

Tuesday,  
June 18, 2002

The parties met, pursuant to the notice of the  
Judge or Commission, at 9:01 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of Name of Renewal Applicant:  
LAUREN A. COLBY, Esquire  
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P.O. Box 113  
Frederick, Maryland 21701  
(301) 663-1086

On Behalf of Federal Communications Commission:  
JAMES W. SHOOK, Esquire  
Federal Communications Commission  
Enforcement Bureau  
445 12th Street, S.W.  
Washington, D.C. 20554  
(202) 418-1420

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
Kevin Mitnick	46	46	93		
			101		
Alex Kasper	105	106			

VOIR

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Enforcement Bureau:</u>			
EB-1	41	41	
EB-2	41	41	
EB-3	42	42	
EB-4	42	42	
EB-5	43	43	
EB-6	66	68	
 <u>Mitnick:</u>			
1	45	46	
2	45	106	
3	45		
4	45	45	
5	45		
6	45		
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P R O C E E D I N G S1  
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(9:01 a.m.)

THE COURT: We are on the record. This is the first day of hearings in proceeding Docket No. FCC 01-359 or that's the hearing designation order, released December 21, 2001.

At this point, I am going to ask counsel to please state their appearances for the record. On behalf of the renewal applicant?

MR. COLBY: Lauren A. Colby on behalf of Kevin Mitnick.

THE COURT: Is there anybody else with you as counsel?

MR. COLBY: I'm here by myself today.

THE COURT: Thank you, sir. On behalf of the government?

MR. SHOOK: James Shook.

MR. LEAVITT: David Leavitt.

THE COURT: Okay.

MR. COLBY: I have two witnesses here. I presume there is no particular need to isolate the witnesses. Do you have a desire for witnesses -- what is the term?

THE COURT: Sequestration?

MR. COLBY: Sequestration -- do you want to sequester the witnesses? My first witness will be Kevin

1 Mitnick who is sitting right beside me.

2 THE COURT: That's fine.

3 MR. COLBY: I assume he doesn't need to be  
4 sequestered because he will not hear the testimony of the  
5 other witness. Then we'll send Mr. Casper up to the witness  
6 stand.

7 MR. SHOOK: Right. Of course, after Mr. Mitnick  
8 has testified, we have no objection to him being here  
9 listening to Mr. Casper.

10 MR. COLBY: Perhaps he can remain until we get  
11 ready to have Mr. Mitnick testify.

12 THE COURT: Well, I prefer you do it that way,  
13 okay.

14 I want to proceed with preliminary matters on a  
15 procedural basis. You have already indicated to me what is  
16 going to transpire today thus far. We do have a  
17 speakerphone set up for Ms. Long. We could do that today,  
18 tomorrow, sometime later this week:

19 MR. COLBY: Well, there won't be time to deal with  
20 the speakerphone witnesses today, I don't think.

21 THE COURT: I'm sorry, I don't mean to interrupt,  
22 but the one that you had mentioned in your letter yesterday  
23 was Ms. Long as speakerphone.

24 MR. COLBY: She's in the Boston field office.

25 THE COURT: Right.

1 MR. COLBY: But there will have to be arrangements  
2 made to open the field office and let her in -- for somebody  
3 to be there because field office don't normally stay open  
4 all alone -- at least that's been my experience. But  
5 Mr. Short, I think, can make arrangements to have him go  
6 over there and have somebody there.

7 MR. SHOOK: We have spoken with both Ms. Long and  
8 the Boston field office. Ms. Long is out of the area this  
9 week. She is going to be back in the Boston area next week.  
10 It is our understanding that the Boston field office will be  
11 as accommodating as possible in order to allow her to come  
12 there really any time that week that is mutually agreeable.

13 THE COURT: All right, when then it's just a  
14 scheduling question, is that right?

15 MR. SHOOK: Right.

16 THE COURT: I have to plan the use of this room  
17 and my staff and what not. So the only thing we're going to  
18 accomplish today would be the testimony of the two  
19 witnesses?

20 MR. COLBY: The two live witnesses today.

21 THE COURT: The two live witnesses, yes, sir.

22 MR. COLBY: I'll also introduce the statement of  
23 the probation officer.

24 THE COURT: The probation officer? And we can  
25 also, at least, introduce his marked exhibits -- get into

1 the record his marked exhibits. We'll have a very fruitful  
2 day.

3 With Mr. Mitnick is -- your name, sir -- the other  
4 witness, the second witness?

5 MR. KASPER: Alex Kasper.

6 THE COURT: Mr. Kasper.

7 MR. COLBY: Kasper has another name that he  
8 doesn't use very much, and I think it will become apparent  
9 if I ask him, what is your full name?

10 MR. KASPER: My full name is Alexis Kasperavicius.

11 THE COURT: Did you get that?

12 (Laughter.)

13 THE COURT: Well, you can straighten that out with  
14 the court reporter later. You'll have to excuse me.

15 If we are all set to go, Mr. Kasper can be  
16 excused. Do you know where the witness room is, sir? Let's  
17 go off the record for just a minute.

18 (Discussion off the record at 9:05 a.m.)

19 THE COURT: We are ready to proceed. In a brief  
20 off-the-record discussion it's been agreed that the first  
21 item of business will be the introduction of the Bureau  
22 exhibits marking them, introducing them, as to which  
23 Mr. Mitnick has no objection as we understand it.

24 So do you want to proceed Mr. Shook?

25 MR. SHOOK: Yes, Your Honor.

1           Your Honor, I'm going to hand the court reporter  
2 two binders, each of which contains five exhibits.

3           THE COURT: These are the ones that were exchanged  
4 on June 4th?

5           MR. SHOOK: Yes, sir. Copies have been given to  
6 both yourself and to Mr. Colby.

7           THE COURT: I have my binder with me, thank you.

8           MR. SHOOK: All right, the first exhibit is a  
9 certified copy of Criminal Indictment No. 96-881 United  
10 States v. Kevin David Mitnick and Louis DePayne (phonetic),  
11 filed on September 26, 1996 in the United States District  
12 Court for the Central District of California.

13           THE COURT: It is an 18-page document, I believe,  
14 as identified by counsel that will be marked as Bureau  
15 exhibit or EB Exhibit 1 for identification.

16           THE COURT: Are you up with us, Ms. Reporter?

17           COURT REPORTER: Yes.

18           THE COURT: Any objections to its being received?

19           MR. COLBY: No objection.

20           THE COURT: Then you are moving it into evidence  
21 at this time?

22           MR. SHOOK: Yes.

23           THE COURT: It is received -- EB No. 1 is now in  
24 evidence as EB 1.

25 //

1 (The document referred to was  
2 marked for identification and  
3 received into evidence as EB  
4 Exhibit No. 1.)

5 THE COURT: Your next document?

6 MR. SHOOK: We would liked marked for  
7 identification Enforcement Bureau Exhibit 2, a certified  
8 copy of Consent to Transfer a Case for a Plea and Sentence  
9 filed on May 2, 1996 in the case of The United States v.  
10 Kevin Mitnick, Criminal Case No. 96-20042-RMW/CR96-506 in  
11 the United States District Court for the Northern District  
12 of California.

13 THE COURT: That document will be marked for  
14 identification as EB Exhibit No. 2. Is there any objection  
15 to it's receipt?

16 MR. COLBY: No objection.

17 THE COURT: Then it is now in evidence as EB  
18 Exhibit No. 2.

19 (The document referred to was  
20 marked for identification and  
21 received into evidence as EB  
22 Exhibit No. 2.)

23 THE COURT: Next document.

24 MR. SHOOK: We would like marked for  
25 identification as Bureau Exhibit 3, a certified copy of

1 Judgment on Probation/Commitment Order, United States v.  
2 Kevin David Mitnick, Docket Nos. CR96-506-MRP and  
3 CR96-881-MRP, filed on August 16, 199 in the United States  
4 District Court, Central District of California.

5 THE COURT: That document as described by counsel  
6 is marked for identification as EB Exhibit No. 3.

7 THE COURT: Any objection to its receipt?

8 MR. COLBY: No objection.

9 THE COURT: The document is now into evidence as  
10 EB No. 3.

11 (The document referred to was  
12 marked for identification and  
13 received into evidence as EB  
14 Exhibit No. 3.)

15 MR. SHOOK: We would like marked for  
16 identification as Enforcement Bureau Exhibit 4, the  
17 Enforcement Bureau's request for Admission of Facts and  
18 Geniuness of Documents. It was served on Mr. Colby, counsel  
19 for Kevin David Mitnick, on February 8, 2002.

20 THE COURT: That document as described by Counsel  
21 as EB No. 4 for identification. Any objection?

22 MR. COLBY: No objection.

23 THE COURT: It's in evidence as EB No. 4.

24 (The document referred to was  
25 marked for identification and

1 received into evidence as EB  
2 Exhibit 4.)

3 MR. SHOOK: Finally, as Enforcement Bureau Exhibit  
4 No. 5, the Answers to Enforcement Bureau's Request for  
5 Admission of Facts and Geniuness of Documents filed by Kevin  
6 David Mitnick on February 25, 2002.

7 THE COURT: The document will be marked as EB No.  
8 5 for identification.

9 THE COURT: Any objection?

10 MR. COLBY: No objection.

11 THE COURT: It is received into evidence as EB  
12 No. 5.

13 (The document referred to were  
14 marked for identification and  
15 received into evidence as EB  
16 Exhibit No. 5.)

17 THE COURT: Does that conclude the government's  
18 case?

19 MR. SHOOK: Yes, sir.

20 THE COURT: Mr. Colby, you may proceed, sir.

21 MR. COLBY: I'm handing the reporter two bound  
22 copies of the exhibits of Kevin David Mitnick. There will  
23 be eight of those exhibits.

24 What I will do at this time is simply identify all  
25 the exhibits and get them marked.

1           THE COURT: We can do that and we can also move  
2 in, at this time, Mr. Mitnick's own declaration. You  
3 proceed as you see fit, Mr. Colby.

4           We can wait until he gets on the stand. I guess  
5 that would be the more appropriate procedure.

6           MR. COLBY: Yes, that is what I thought -- have  
7 him verify it.

8           THE COURT: All right, you go ahead, sir.

9           MR. COLBY: I ask to be marked for identification  
10 the following exhibits -- Exhibit 1 is a four-page statement  
11 of Kevin Mitnick; Exhibit 2 is a two-page --

12           THE COURT: Excuse me, these will be identified as  
13 he is indicating them to you, for the record, as Exhibits  
14 for identification, all right? Go ahead, sir.

15           MR. COLBY: Exhibit 2 is a two-page statement of  
16 Alex Kasper; Exhibit 3 is a one-page letter from David G.  
17 Hall; Exhibit 4 is a one-page letter from Larry Hawley, U.S.  
18 probation officer; Exhibit 5 is a two-page statement of  
19 Carol A. Long; Exhibit 6 is a one-page statement of Scott A.  
20 Press; Exhibit 7 is a five-page statement of Roy T. Tucker;  
21 and Exhibit 8 is a one-page statement of Robert V. Arker.

22           I ask that all of these exhibits be marked for  
23 identification.

24           THE COURT: These will be marked for  
25 identification. We will refer to them as Mitnick exhibits.

1 (The documents referred to  
2 were marked for identification  
3 as Mitnick's Exhibit No. 1-8.)

4 MR. COLBY: Now with respect to the statement of  
5 the probation officer, which is Exhibit --

6 THE COURT: Exhibit 4 for identification?

7 MR. COLBY: -- 4 for identification, I move that  
8 into evidence at this time.

9 THE COURT: Any objection?

10 MR. SHOOK: None.

11 THE COURT: Mitnick No. 4 for identification is  
12 now received in evidence as Mitnick No. 4.

13 (The document referred to was  
14 received into evidence as  
15 Mitnick Exhibit No. 4.)

16 MR. COLBY: At this time, I call Kevin D. Mitnick  
17 as a witness.

18 THE COURT: Mr. Mitnick, will you come forward?  
19 Please take the stand. If you want to bring your own water  
20 with you, you may. I can't vouch for the quality of this  
21 water, but we've done the best we can for you. That's about  
22 all I can say.

23 Whereupon,

24 KEVIN DAVID MITNICK

25 having been duly sworn, was called as a witness

1 and was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. COLBY:

4 Q Mr. Mitnick, do you have Exhibit 1 for  
5 identification before you at this time?

6 A Yes.

7 Q Was that exhibit prepared by you or under your  
8 direction?

9 A Yes.

10 Q Is that exhibit true and correct?

11 A Yes, it is.

12 Q I have one question that I don't think is covered  
13 in the exhibit that I want to ask you. In connection with  
14 your hacking activities for which you were convicted, did  
15 you ever realize any financial gain?

16 A No, I did not.

17 MR. COLBY: I have no other questions. I will  
18 turn the witness over to Bureau counsel.

19 THE COURT: Thank you, Mr. Colby. Mr. Shook.

20 CROSS EXAMINATION

21 BY MR. SHOOK:

22 Q Mr. Mitnick, we are going to have some questions,  
23 and to the extent you don't understand something, just say  
24 so. If I am not clear about something, feel free to ask for  
25 clarification.