

1 information in draft, whose words these were?

2 A Mr. Winston's office helped me in preparing
3 this.

4 Q So then you were relying on the fact that
5 someone in Mr. Winston's office wrote it and that was
6 the basis for your reliance?

7 A I need some more clarification on that.

8 Q You made reference to experts before, but you
9 didn't identify them. What I'm asking now is were you,
10 in fact, referring to someone in Mr. Winston's office?

11 A Yes.

12 Q Okay. Now, could you turn then to Page Three
13 of exhibit 1 in your direct case exhibits?

14 MR. WINSTON: Page Three of exhibit 1?

15 MR. HONIG: That's right.

16 BY MR. HONIG:

17 Q Now, if you'll look at Page Three, exhibit 1
18 and Paragraph Seven specifically. Now, looking at
19 Paragraph Seven, which begins Ms. Holt has resided in
20 Jacksonville, Florida, within the one millivolt per
21 meter contour of the proposed facility since February
22 1985.

23 Are those your words?

24 A Not that sentence, no.

25 Q Now, you'll notice that on Page Two of

1 exhibit 2, the second complete sentence is, my current
2 residence may be outside the project one millivolt per
3 meter contour of the station.

4 You signed both exhibit 1 and exhibit 2, did
5 you not?

6 A Yes.

7 Q And you read them before you signed them?

8 A Yes.

9 Q Now, it's a fair statement that those two
10 representations are inconsistent, isn't that right?

11 A Yes.

12 Q You don't have to be an expert to understand
13 that? You don't need to know what a one millivolt per
14 meter contour is, isn't that right?

15 A Yes.

16 Q Now my question is --

17 A Wait, could you say that again?

18 Q You didn't need to know what a one millivolt
19 per meter contour was, you didn't need to be an
20 engineer to realize that the two statements can't both
21 be true?

22 A I can't say yes to the whole thing. I
23 don't --

24 Q Do you see the point?

25 A No.

1 Q You're not an engineer.

2 A Correct.

3 Q You don't know what a one millivolt per meter
4 contour is?

5 A Right.

6 Q If I asked you for the definition, you
7 couldn't give it to me. And the reverse is true, too,
8 by the way. It's a technical term. It refers to a
9 contour.

10 Now, do you understand now what that contour
11 is?

12 A Today, yes.

13 Q Okay. Today you understand that it is, in
14 fact, the outer contour on exhibit 5A of your original
15 application, isn't that right?

16 A I don't have that. My original?

17 Q Let me ask your counsel to place that exhibit
18 before you. I think this might speed it up a bit. I'm
19 not trying to confuse you. I want you to see exactly
20 what we're talking about.

21 MR. WINSTON: Before I disconnect this whole
22 book, it appears that 5A is the same one that he's
23 using.

24 MR. HONIG: Yeah, this is 5A, with a little
25 footnote where it's been amended.

1 MR. WINSTON: I haven't had a chance to
2 compare the two. I just wanted to make sure they were
3 the same.

4 MR. HONIG: Do you want to look at -- it
5 appears to be the same.

6 MR. WINSTON: The map from exhibit 4 that was
7 offered, which was marked today, appears to be the same
8 map that was used in the original application. So,
9 your question goes to the map using the original
10 application, doesn't it, counselor?

11 MR. HONIG: That's right. It's the same map
12 except for R1 and R2 being drawn.

13 MR. WINSTON: Okay.

14 BY MR. HONIG:

15 Q Did you understand the -- when you signed
16 your direct case exhibits a few weeks ago, did you
17 understand the importance to your case of being
18 considered a local resident or as close to a local
19 resident as possible?

20 A Yes.

21 Q And you understand the importance of that
22 since before the application was filed, isn't that
23 right?

24 A No.

25 Q Let me refresh your memory. I'd like to have

1 marked as Peaches Exhibit number 12, a three-page
2 document which begins with a faxed cover sheet and has
3 two additional pages. You provided it to us in
4 discovery.

5 I'm distributing copies to counsel and to the
6 reporter and one to Your Honor.

7 Have you seen this before?

8 A Yes.

9 MR. HONIG: I'd like to ask that it be marked
10 for identification as Peaches Exhibit 12.

11 JUDGE LUTON: It is marked.

12 (The document referred to
13 above was marked Peaches
14 Exhibit No. 12 for
15 identification.)

16 BY MR. HONIG:

17 Q Now, you received this fax on December 8th,
18 1989.

19 Isn't that right?

20 A Yes, that's what the date says.

21 Q It was faxed to you at the Jacksonville Urban
22 League? Isn't that right?

23 A No, that's not right.

24 Q You were working at the Urban League when you
25 received this fax?

1 A Yes.

2 Q And it was faxed to you from Joe Mims in
3 Texas, isn't that correct?

4 A I don't know where he was calling from, but
5 the sender was Joe Mims.

6 Q And had you met Mr. Mims by this time?

7 A Not that I can -- I don't recall that, I
8 don't know.

9 Q Was he -- had you spoken with him at this
10 time?

11 A Yes.

12 Q Who is Mr. Mims?

13 A A person who called.

14 Q He called you at the Urban League, did he
15 not?

16 A Yes.

17 Q He had some a potential investor or investors
18 that wanted to invest in a radio station application in
19 Baldwin, isn't that right?

20 A No.

21 Q What did he call you about?

22 A About an application becoming available for
23 an FM station in Baldwin, Florida.

24 Q And he was a stranger to you when he called,
25 wasn't he?

1 A Yes.

2 Q Now, soon after he called you, perhaps on the
3 next day, he sent you this fax, didn't he?

4 A According to this, yes.

5 Q Now, take a look at the second page of this
6 exhibit, which is actually Page One of a two-page
7 outline.

8 Mr. Mims wrote this outline, did he not?

9 A I don't know.

10 Q Now, I refer you to roman numeral two B two
11 in the outline on the first page there. Now does that
12 refresh your memory as to how important it was to
13 reflect that you were a resident of the local area,
14 when you first learned that?

15 A I'm not clear on the two questions that you
16 just -- the previous one and this here.

17 Q Isn't a fact that when you received this fax
18 you became aware that it was important to be a resident
19 of the local community if you were a broadcast
20 applicant?

21 A Of a local community?

22 Q Of the local community where the station was?

23 A No.

24 Q Have you ever been aware of that fact?

25 A Maybe you need to clarify your --

1 Q Why do you think Mr. Mims was calling you in
2 Jacksonville, Florida rather than just filing the
3 application himself from Texas?

4 A I don't know.

5 Q Did you ask him?

6 A No.

7 Q Did you -- you mean Mr. Mims didn't tell you
8 that he wanted to identify local people?

9 A Yes.

10 Q He did tell you he wanted to identify local
11 people?

12 A Yes.

13 Q And, in fact, you considered a few other
14 people besides yourself?

15 A Maybe I need some clarification on local.

16 Q In the area near where the station is.

17 A In or near the station, yes.

18 Q Now, again, I'll ask if your memory is
19 refreshed. Isn't it a fact that you knew that it was
20 important to be able to show some connection, local
21 residence, close to local residence -- that's why he
22 didn't apply himself from Texas.

23 Isn't that right?

24 A I don't know why he didn't apply himself from
25 Texas.

1 Q Why didn't he call San Antonio Urban League?

2 A I don't know why.

3 Q Given the understanding that you've derived
4 of this process for the last two years, can you now
5 venture a pretty sound opinion why he was calling you
6 in Jacksonville and not your counterpart in San
7 Antonio?

8 A From this document here and from reading
9 further literature, the FCC looks at local residents as
10 a preference to applying to receive a permit to
11 construct a radio station.

12 Q Sure. Then you're now changing your
13 testimony. You didn't know that on December 8th, 1989?

14 MR. WINSTON: Objection.

15 THE WITNESS: I'm not changing --

16 BY MR. HONIG:

17 A You just testified that when you got this fax
18 and you read it, you didn't know that. Know you're
19 testifying that you do. I'm asking you, are you
20 changing your testimony?

21 A You asked me if I knew what Joe Mims was
22 thinking. I didn't know what he was thinking. I'm
23 telling you I know from this literature that it says
24 being a resident of a local community which the new FM
25 station is allocated for and then you said in or near

1 the radio station. That's a very ambiguous --

2 Q So you were aware that this Commission
3 considered localism important, however defined?

4 A Yes.

5 Q And that was why it was important to have a
6 local person apply?

7 A Yes.

8 Q And, in fact, that is why it's important to
9 an application's changes for success to be as close to
10 the community of license as possible, isn't that right?

11 A Yes.

12 Q Now, you recognized that there were going to
13 be other applicants in this case, isn't that right?

14 A I assumed that would be.

15 Q You recognized that they were entitled to
16 know correctly how you would evaluate your local
17 residence claim.

18 Isn't that correct.

19 A Could you repeat that?

20 Q You knew that those other applicants were
21 entitled to know, correctly and truthfully, how to
22 evaluate your local residence claims.

23 A No, I did not know that.

24 Q You would have wanted -- you would have been
25 rather upset if another applicant had represented

1 itself to be closer to Baldwin than it really was,
2 isn't that right?

3 MR. WINSTON: Objection, Your Honor.

4 MR. HONIG: I'm trying to get to the witness'
5 intention and state of mind.

6 JUDGE LUTON: Overruled.

7 BY MR. HONIG:

8 Q If one of the other applicants had
9 represented that it was farther away from Baldwin than
10 it really was, you would have been upset, wouldn't you?

11 A No. I would have been, no.

12 Q So then you didn't think it was particularly
13 important to have a representation be completely
14 accurate as to where you lived? It wasn't that
15 critical, is that what your testimony is?

16 A My testimony is that at the time the
17 application was filed, local residence was local
18 residence, Jacksonville area. If a person said they
19 lived outside of Jacksonville area, if that's what
20 you're asking me, then I might have claimed that they
21 did not meet that particular preference. But at that
22 time, that was my knowledge of it. At this time, I
23 have a greater knowledge and understanding.

24 Q Well, let's look at the second paragraph, the
25 second sentence of exhibit 1, Page Three. That

1 sentence reads, if Northeast Florida is awarded the
2 construction permit --

3 A I'm sorry, what am I looking at?

4 Q Exhibit 1, Page Three, Paragraph Seven.

5 MR. WINSTON: Exhibit 1, Page Three,
6 Paragraph Seven?

7 MR. HONIG: Right.

8 BY MR. HONIG:

9 Q If Northeast Florida is awarded the
10 construction permit, she has pledged to continue
11 residing in Jacksonville, Florida. Now, think back to
12 the time when you reviewed this exhibit number 1,
13 before you signed it.

14 Was it your intention in making this
15 statement to represent that you were going to stay at
16 your then current residence, which was College Street?

17 A My intent was to move to Baldwin, Florida
18 upon receiving a construction permit.

19 Q Baldwin is a -- isn't that an incorporated
20 community?

21 A Baldwin is a city of its own.

22 Q Okay. Now, if it says, she has pledged to
23 continue residing in Jacksonville, Florida but your
24 intent was to move to --

25 A Closer to the 70 DBU. That's my intent, if

1 I'm reading that correctly.

2 Q No, I'm not asking you whether you're reading
3 it correctly. I'm asking you what you intended.

4 A I have no intent -- I had no and have no
5 intention of leaving Jacksonville, Florida. My
6 intention, if I receive a construction permit, is to
7 move closer to, what is it, the 3.6 MVM. That's my
8 intention.

9 Q Don't throw numbers around. Let's just talk
10 about what you intended. A second ago you said your
11 intention is to move to Baldwin. Now Baldwin is an
12 incorporated town, right? It's got it's own
13 government. It's completely surrounded by
14 Jacksonville, isn't it? But it's not a part of
15 Jacksonville? Isn't that correct?

16 A It's not a part of Jacksonville and it's not
17 completely surrounded by Jacksonville. My intent is,
18 as stated, I pledge to continue residing in
19 Jacksonville, Florida.

20 Q Okay. At Your Honor's suggestion, I'm going
21 to move on. Give me just one minute to collect my
22 thoughts.

23 JUDGE LUTON: Good, this is really getting
24 quite tedious.

25

1 BY MR. HONIG:

2 Q Let's return to Peaches Exhibit 12 for one
3 moment. Now, Mr. Mims called you on or about December
4 8th, 1989 for the first time, isn't that right?

5 A No.

6 Q No. Well, when did he call you?

7 A According to this Peaches attachment,
8 whatever this is, Ms. Holt, this is a brief overview of
9 our discussion yesterday. This is dated 12/8/89.

10 Q So he called you on the 7th of December '89
11 and for your reference, you signed the application on
12 December 13th, six days after he called you.

13 A I'd have to look at the application to know
14 what date I signed it.

15 MR. WINSTON: I'll check it and stipulate to
16 it.

17 MR. HONIG: I think there are two signatures.

18 MR. WINSTON: Counsel is willing to stipulate
19 that Ms. Holt signed the application on December 13th,
20 1989.

21 BY MR. HONIG:

22 Q So, we're talking now just for reference
23 about the period December 8th through December 13th,
24 1989. I want to focus your attention on that period of
25 time.

1 After Mr. Mims sent you this fax, describe
2 what you did to follow up on his request.

3 MR. WINSTON: Objection. What request?

4 BY MR. HONIG:

5 Q There is a request in the fax, please review
6 and request that interested persons be present Saturday
7 at your office. It's on the first page of the exhibit.

8 A Well, upon receiving this information, I
9 spoke to, at that time, my employer, Jacksonville Urban
10 League, Ronny Ferguson, and discussed this with him.

11 Q Okay. What did Mr. Ferguson say?

12 A The people that we talked about did not think
13 that they would be in a position to take on this type
14 of business.

15 Q And who did you talk about?

16 A Mrs. Paine and Angela Wright or Angela
17 somebody, can't remember --

18 Q So you prepared a short list of people who
19 you thought might be interested in applying for the
20 Baldwin station? But you weren't on that short list
21 initially yourself, isn't that right?

22 A I didn't discuss myself.

23 Q Now, after you and Mr. Ferguson realized on
24 your short list no one was interested, what did you do
25 next?

1 A I reviewed the literature.

2 Q And the literature is the next two pages, is
3 that what you're referring to?

4 A Yes.

5 Q And then what did you do?

6 A Determined that I could do this myself.

7 Q Now, this was the first thought that you'd
8 had that you thought you might want to own a
9 broadcasting station, isn't that right?

10 A No.

11 Q Would you describe any previous efforts you'd
12 ever undertaken to own a broadcasting station?

13 A Not necessarily to own a broadcasting
14 station, but to be involved in the operations of a
15 broadcasting station and doing programming.

16 Q Have you ever worked at a broadcasting
17 station?

18 A No.

19 Q Okay. Then they were no such efforts that
20 resulted in your working at a station in the past,
21 isn't that right?

22 A I've only written children's programming for
23 a New York radio.

24 Q You didn't claim that in your application?

25 A No, I didn't.

1 Q This is the first we're hearing of this?

2 A Yes.

3 Q Now, off the record for just one second.

4 JUDGE LUTON: Off the record.

5 (Discussion off the record.)

6 JUDGE LUTON: On the record.

7 BY MR. HONIG:

8 Q Ms. Holt, thanks to the miracle of modern
9 technology, my associate has just handed me a December
10 '89 electronic calendar. It shows that Saturday in
11 question was December 9th. I don't want to introduce
12 the calculator, but I believe it to be true.

13 JUDGE LUTON: I'd like to have it.

14 BY MR. HONIG:

15 Q So, in fact, was there a meeting at your
16 office on Saturday, December 9th, 1989, with Mr. Mims?

17 A I don't know if it was the 9th, but it was on
18 a Saturday.

19 Q Do you recall it as having been the next day
20 after this fax?

21 A I don't recall the next day, no.

22 Q Okay. Now, Mr. Mims flew to Jacksonville for
23 the meeting?

24 A I have no idea.

25 Q But was he there by himself?

1 A When he was with me, he was by himself.

2 Q When he was there, do you know if he visited
3 with anyone other than yourself?

4 A No.

5 Q Did you ask him?

6 A No.

7 Q When he visited with you, did you meet him at
8 the Urban League?

9 A Yes.

10 Q How long did you meet?

11 A I'm not quite sure, maybe an hour or two or
12 so. I don't recall exactly.

13 Q Now, did you have any -- did you have his
14 resume or any independent information about him?

15 A I don't recall what I had.

16 Q Did he tell you who he was working for?

17 A I recall he said that he was some type of --
18 he had some interests in that area, that's all.

19 Q Did you think he was there out of the
20 goodness of his heart, was he there on behalf of
21 someone, or ?

22 A I don't know.

23 Q Did you know who was paying for him for be
24 there?

25 A No.

1 Q Did you ever pay him for any services of any
2 type?

3 A No.

4 Q Do you know whether your limited partner did?

5 A No.

6 Q Do you know whether Mr. Mims has ever been
7 paid?

8 A No.

9 Q Mr. Mims, in fact, gave you your limited
10 partner's name, isn't that right?

11 A I don't have a limited partner.

12 Q I'm sorry, you're non-voting stockholders.
13 Forgive me, I'm not trying to confuse you. You're a
14 two-tiered corporation. He gave you Ms. Wade's name,
15 isn't that right?

16 A Yes.

17 Q And he gave you at least one other name,
18 isn't that right?

19 A Yes.

20 Q You don't recall who that was though?

21 A No.

22 Q And you didn't call that person?

23 A No.

24 Q You just called Ms. Wade?

25 A Yes.

1 Q And did you call her on that Saturday, the
2 9th, or did you call her a couple of days later?

3 A I don't recall exactly.

4 Q Do you remember where you were when you
5 called her?

6 A At a public telephone.

7 Q Was Mr. Mims present?

8 A No.

9 Q Was he still in town?

10 A I don't know.

11 Q Other than at that meeting, have you ever
12 seen Mr. Wade again, Mr. Mims, I'm sorry.

13 A No.

14 Q Did Mr. Mims ever tell you whether he had
15 been involved in any other FM applications?

16 A I don't recall.

17 Q Did he mention any other cities where he
18 might have performed services of this type?

19 A Yes.

20 Q What were those cities?

21 A Pensacola.

22 Q Does Shreveport, Louisiana ring a bell?

23 A Yeah, I believe I got an article for that.
24 Yeah.

25 Q Does Beaumont, Texas ring a bell?

1 A No.

2 Q Did he tell you that he was part of an
3 applicant in Beaumont, Texas?

4 A I don't recall that.

5 Q Did you ever ask him whether he had any media
6 interests of his own?

7 A No.

8 Q You then spoke with Ms. Wade and before the
9 application was signed, that is, in the period between
10 your first phone call with her and December 13th, 1989,
11 inclusive.

12 How many conversations did you have with Ms.
13 Wade?

14 A I don't know exactly. Probably about three
15 or four.

16 Q Did you ask Ms. Wade whether she had any
17 other interests in other applications during those
18 conversations?

19 A I don't understand. I need clarification on
20 that.

21 Q Was she -- she became an investor in your
22 application. So, as you understand the meaning of
23 investor, did she tell you that she was an investor in
24 any other applications?

25 A No.

1 Q Now, after the application was filed until
2 your deposition, that is, from December '89 until June
3 of this year, approximately how many conversations did
4 you have with Ms. Wade?

5 A Maybe about 25 or 30 or something like that.

6 Q Okay, so that would have been every couple of
7 weeks or so you spoke with her?

8 A We spoke frequently.

9 Q Okay. And what were the sorts of things that
10 the two or you typically discussed?

11 A I would basically give her a report on what I
12 had been doing with the corporation.

13 Q Did you discuss expenses that were due?

14 A Yes.

15 Q Did you discuss programming that you might
16 put on the station?

17 A No.

18 Q Did you ever discuss any other applications
19 in which she might have become an investor?

20 A Could you repeat that?

21 Q Did you ever discuss any other applications
22 in which she might have become an investor?

23 A Did I, no.

24 Q Did she ever mention to you that she had
25 become an investor in Martinez, Georgia?

1 A I recall hearing about it and seeing a
2 document. I'm not going to say -- I can't say that for
3 sure.

4 Q What about Jupiter, Florida?

5 A I don't recall that.

6 Q Have you ever heard of the name Palm Bay?
7 It's nowhere reflected in the papers. I may need
8 counsel's assistance.

9 MR. WINSTON: Are you referring to an
10 applicant called Palm Beach Broadcasting?

11 MR. HONIG: That could be it.

12 MR. WINSTON: To my knowledge, Ms. Wade has
13 no involvement with that.

14 JUDGE LUTON: The question was have you ever
15 heard of an applicant named Palm Bay and I don't know
16 what the answer was.

17 THE WITNESS: No.

18 BY MR. HONIG:

19 Q Now, exhibits in your direct case -- it's
20 exhibit number three, consists of a set of Bylaws.

21 Did you have any participation in the
22 development of those Bylaws?

23 A Exhibit 3?

24 Q Yes.

25 A Yes, I did.

1 Q Would you describe what your participation
2 consisted of?

3 A Determining the amount of stock equity,
4 voting and non-voting. What was my participation in --

5 Q Did you -- this was written by your counsel,
6 wasn't it, these Bylaws?

7 A With assistance from me.

8 Q And whose idea was it, originally, to have
9 voting and non-voting stock?

10 A Mine.

11 Q Nobody suggested it to you. It was your
12 idea?

13 A Correct.

14 Q Would you take a look again at Peaches
15 Exhibit 12? I will refer you to Page Two of that
16 exhibit, which is the first page of Mr. Mims' outline
17 to Item IIIB and ask you to read that to yourself.

18 Does that refresh your memory on whose idea
19 it was to have voting and non-voting stock?

20 JUDGE LUTON: Come on. She never indicated
21 that her memory was faulty. She answered your question
22 very directly. Whose idea was it to structure the --
23 what was it, to have voting and non-voting stock? She
24 said it was hers.

25 MR. HONIG: That's hers.

1 JUDGE LUTON: That's her memory. So what's
2 to be refreshed?

3 MR. HONIG: Your Honor is correct. I did not
4 phrase the question right.

5 JUDGE LUTON: What you're trying to do is
6 talk -- something here by -- well, I can fairly well
7 anticipated what you're trying to do and I think it's
8 going to fail, because it just doesn't tie together.

9 The fact that it's mentioned here is not
10 necessarily inconsistent with the witnesses' testimony
11 that it was her idea. Because Mr. Mims had the idea
12 doesn't necessarily mean that it is inconsistent.

13 MR. HONIG: Okay, you're right and there's
14 one more thing I need to try to establish.

15 BY MR. HONIG:

16 Q This memo from Mr. Mims. Had you, at that
17 time, formed an opinion as to the corporate form that
18 an applicant, if you were to be involved in it, would
19 have?

20 A Could you repeat that again?

21 Q When you received Mr. Mims' memo of December
22 8th, 1989, had you at that time formed an opinion that
23 you were involved in an applicant, it would be voting
24 stock, non-voting stock?

25 A Yes.