

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

ORIGINAL

In re Applications of

) MM Docket No. 91-10  
)

WHITE BROADCASTING PARTNERSHIP  
et al.

) File No. BPH-891214MM  
)

For Construction Permit for a New FM Station  
Station on Channel 289A in Baldwin, Florida

RECEIVED

To: Hon. Edward Luton, Administrative Law Judge

SEP 23 1991

Federal Communications Commission  
Office of the Secretary

**MOTION TO ENLARGE ISSUES AGAINST  
WHITE BROADCASTING PARTNERSHIP**

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September 23, 1991

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**SUMMARY**

White relies on six sources to meet its budget of \$120,705. One of those sources -- a credit card with a \$5,000 limit -- is available. The other five sources aren't available.

Two bank letters are flawed by failing to include repayment terms; one of them also fails to identify the collateral. No documentation was supplied to neither bank by the Whites, who had prior banking relationships with neither bank. Both letters were mere accommodations.

Equity from a vacation home near Alachua, Florida had already been committed to another FM application, for Alachua, which Charley White had filed with Gregory Perich in November, 1987. The Alachua application was not dismissed until four months after the Baldwin application was filed.

Mr. Perich and Mr. White have fallen out; thus, Mr. White can hardly rely on Mr. Perich to buy out Mr. White's 50% stake in a tower the two of them own.

The White's home equity has not been supported with an appraisal, and thus cannot be credited.

The White's \$120,705 budget is unreasonably low and is not supported by any meaningful financial plan. Apart from the fact that only \$5,000 is available to build the station, the validity of the \$120,705 figure must also be tested in hearing.

\* \* \* \* \*

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Peaches Broadcasting, Ltd. ("Peaches"), by counsel and  
pursuant to Section 1.229 of the Commission's Rules, respectfully  
moves to enlarge the issues against White Broadcasting Partnership  
("White") as follows:

1. To determine whether White is financially qualified to construct and operate its proposed station;
2. To determine whether White falsely certified that it was financially qualified to construct and operate its proposed station; and
3. To determine, in light of the evidence adduced under the above issues, whether White possesses the basic qualifications to become a Commission licensee.

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1/ This Motion is timely filed. On September 6, 1991, 17 days ago, Peaches received copies of the hearing transcript in this case. The 15th day from September 6 was a Saturday; this Motion is being filed on a Monday. However, even were this Motion untimely, it raises matters of probable decisional significance and therefore should be considered in any event.

**FINANCIAL ISSUES**

White's application manifests plans for White to build and operate its station for \$120,705. Exhibit 3 hereto. Not counting 7.5% of this figure devoted to staffing, the cost of construction and equipment would be approximately \$111,652. See C. White Dep. Tr. 76.2/

The five largest sources of financing would be a \$100,000 loan from the Community Bank of Starke, a \$75,000 loan from the Citizens Bank of Macclenny, \$50,000 in equity on a house in Keystone Heights, \$18,000 in equity from Charley White's 50% interest in a tower company, and \$15,000 in equity on the Whites' Macclenny residence. Exhibit 3 hereto.

None of these sources is available to White Broadcasting.

White submitted no documentation to either bank, providing only an outline from counsel containing suggested language for a commitment letter. Tr. 92, 98, 101; C. White Dep. Tr. 49-50. Mr. and Mrs. White had no prior banking relationship with either bank. Tr. 98, 101-102.

The commitment letter from the Community Bank of Starke (Exhibit 4 hereto) does not state the length of time for repayment of the loan. The Citizens Bank of Macclenny letter (Exhibit 5 hereto) is no better. Like the Community Bank letter, it does not state a length of time for repayment, saying only that loans generally would be repaid "from five (5) to fifteen (15) years dependent upon the collateral being offered." However, the Citizens Bank letter does not specify the collateral.

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2/ References to the transcript of the August 20-22, 1991 hearing (excerpts supplied at Exhibit 1 hereto) are "Tr." References to the June 25, 1991 deposition of Charley White (excerpts supplied at Exhibit 2 hereto) are "C. White Dep. Tr."

The Keystone Heights house is the Whites' vacation home. C. White Dep. Tr. 15. The equity from that home was already spoken for: it had been pledged for another application in which Mr. White was previously involved.<sup>3/</sup> That application, filed November 24, 1987 to serve Alachua, Florida, was designated for hearing on February 12, 1990 by HDO, DA 90-15 (Exhibit 7 hereto), well after the Baldwin application was filed. The Alachua applicant, Charley C. White and Gregory G. Perich, did not move to dismiss the application until March 29, 1990. Exhibit 8 hereto. The Alachua dismissal was accepted by Judge Gonzalez on April 4, 1990. FCC 90M-708 (Exhibit 9 hereto).

Finally, the tower equity cannot be relied upon anymore, if it ever could have been. Mr. White and Mr. Perich each own 50% of the tower. At his deposition, when Mr. White was asked how he would go about deriving the \$18,000 in cash from the tower, he responded "we [he and Mrs. White] would probably sell our share of the tower to either a tower company or Greg Perich or some other individual." C. White Dep. Tr. 16-17. Mr. White had no standing offer for his share of the tower. C. White Dep. Tr. 17.

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<sup>3/</sup> Mr. White considered the Keystone Heights house as a source of funds for the Alachua application if bank financing was not available. C. White Dep. Tr. 23, 105. No bank financing was available; it hadn't even been sought. Tr. 73, 76.

Mr. White's hearing testimony first suggested that all of the Alachua financing would have come from his Alachua partner, Greg Perich. Tr. 72. Then Mr. White changed his testimony, stating that he would be 50% responsible for Alachua expenses if borrowing had been necessary. Tr. 73. Mr. White changed his testimony again when confronted with the transcript of his deposition. Tr. 74. There, Mr. White had testified that Alachua expenses were to have been met 50/50 by himself and Mr. Perich. C. White Dep. Tr. 21. Mr. White finally acknowledged that there would have been a 50/50 split on Alachua expenses, applicable to prosecution, construction, and initial operation. Tr. 74.

Unfortunately, a sale of Mr. White's interest is highly improbable now that the Mr. White and Mr. Perich are no longer on speaking terms. Mr. White testified that Mr. Perich, a potential competitor in the same market, has resorted to scurrilous tactics to try to derail White's application. Tr. 55-60. One side effect of the Perich/White dispute is that the tower interest can hardly be deemed a reliable source of funds anymore.

Finally, Mr. White testified at his deposition to make available the appraisal which he claimed existed to support the \$15,000 equity available from the Whites' personal residence. C. White Dep. Tr. 18-19. No such document was ever produced.

The unreliability of their five major financial sources leaves White with \$5,000 from a credit card upon they can rely on to construct and operate the proposed station. They are \$115,706 under budget.

Even that budget (Exhibit 6 hereto) is inherently flawed. It is far below the other applicants' estimates of the cost of construction and initial operation (Peaches: \$542,526; NEF: \$414,600; Johnson: \$392,000; JEM: \$250,000.)

The Whites may be very industrious people, and obviously it takes courage to try this case pro se. That is no substitute for having the money. They don't have it, and thus they aren't qualified.

Discussion.

The conclusion is inescapable that the Citizens and Community banks' letters are insufficient, and the Alachua house, tower site and personal residence are unavailable. Without sufficient reliable sources, the Whites were not qualified when they filed their application. Financial and misrepresentation issues must be designated. Shawn Phalen, 5 FCC Rcd 4669 (Rev. Bd. 1990); Marlin Broadcasting of Central Florida, Inc., 4 FCC Rcd 7945 (Rev. Bd. 1989), affirmed, 5 FCC Rcd 5751 (1990).

Even if their sources were reliable, White's \$120,705 budget is so unreasonably low in comparison to the genuine costs of construction and operation of an FM radio station that it would require thorough scrutiny in any event. Columbus Broadcasting Corp. (HDO), 3 FCC Rcd 5480, 5482 (Audio Services Division, 1988) (designating issue going to whether a 1987 cost estimate of \$150,388 to construct an FM facility is "unreasonable on its face"). See United Broadcasting Co., 93 FCC2d 482 (1983); California Stereo, Inc., 39 FCC2d 401 (Rev. Bd. 1973); Viking Television, Inc., 17 FCC2d 823 (Rev. Bd. 1969).

It is well established that the absence of a considered estimate for construction and operating expenses is disqualifying. Vela Broadcasting Co., 2 FCC Rcd 3663, 3665 (Rev. Bd. 1987); Las Americas Communications, Inc., 1 FCC Rcd 786 (Rev. Bd. 1986), recon. denied, 2 FCC Rcd 1614 (Rev. Bd. 1987). Since White's budget is patently insufficient, financial issues must be designated and tried.

**§1.229(e) DISCOVERY REQUEST**

If the issues herein are designated, Peaches will need to take the depositions of Charley White, Dianna White, Gregory Perich, Eugene Richardson (Assistant Vice President of Community Bank of Starke) and John D. Kennedy (President of Citizens Bank of Macclenny). Messrs. Kennedy and Richardson would be required to bring with them all their respective banks' files on the White loans/letters of credit, including all documentation supplied by White to the bank, all correspondence with White, and all internal correspondence and memoranda relating to the proposed loans/letters of credit. Mr. Perich would be required to bring with him all documents in his possession relating to the current ownership, possible changes in ownership, and value of the above-described broadcast tower.

All witnesses would be produced at a mutually agreeable time, at a site to be determined in Jacksonville, Florida, according to the same procedures followed in the June 24-26, 1991 depositions in this case.

Documents which would be sought by Peaches, pursuant to the definitions and other procedural rules previously followed by the parties, include the following, and relate to any material ever in the possession of Charley and Dianna White.

1. All equipment lists, staffing proposals, budgets, cost estimates, expense projections, financial plans and any other documents which reflect or relate to the cost to construct White's proposed station, operate White's proposed station for three months without revenue, prepare and prosecute White's application, and purchase, lease, or otherwise obtain the use of White's proposed transmitter site.

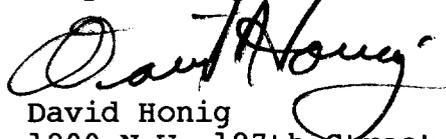
2. All cancelled checks, receipts, vouchers, invoices or other documentary evidence showing the purchase price or payment made of any item of property or service relating to the application or its prosecution.
3. All loan or credit applications, requests, correspondence, appraisals, or other documents evidencing efforts by the applicant, its principals or other persons to obtain loans, credit, leases, guarantees, or other financing or assurance of financing for the application or proposed station, as well as any responses thereto.
4. All documents relating to any agreement or understanding by any person, whether or not a principal of the applicant, to provide contributions, loans, property, services, credit, donations, gifts, guarantees or other things of value to the applicant for the construction and initial operation of its proposed station, or the preparation or prosecution of its application.
5. All financial statements, balance sheets and/or financial disclosure statements current as of (i) December 13, 1989, and (ii) within a 90 day period preceding August 20, 1991, which reflect the assets and/or liabilities of such person.
6. All documents that subjected any such person's assets to any option, restriction, lien, mortgage, pledge, or other encumbrance, and all documents that relate to any such encumbrance.
7. All documents that reflect or relate to any petitions for relief or for other protection under federal or state bankruptcy law filed by such person.
8. All documents that reflect or relate to any default under a note or other financial instrument, or any foreclosure action or repossession by lender against such person.
9. All documents that identify or otherwise relate to any lawsuits filed against or affecting any such person in which a money judgment is sought or has been awarded and is not yet satisfied.
10. All documents that identify or otherwise relate to any federal, state or local tax assessment, audit or inquiry that is, or potentially may be, a claim against any of the assets of any such person.

11. All documents relating to any such person's ability or willingness to meet or otherwise honor any agreement to provide anything of value to the applicant or its principals.
12. Unredacted copies of any documents produced by White heretofore in discovery in redacted form.
13. All budgets and all documents ever relied upon for assurance of financing in the Alachua, Florida FM applicant in which Mr. White was an investor.

**CONCLUSION**

For the foregoing reasons, misrepresentation and financial issues should be designated against White Broadcasting Partnership.

Respectfully submitted,



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September 23, 1991

**EXHIBIT 1**

# Transcript of Proceedings

BEFORE THE

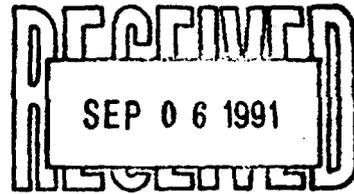
## Federal Communications Commission

In the Matter of:

Docket NO. 91-10

BALDWIN, FLORIDA

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### Capital Hill Reporting

*Official Reporters*

*1825 K Street, N.W.*

*Washington, D.C. 20006*

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1 connection with the case and that's all I would like  
2 you to focus on.

3 A Okay.

4 Q What is the roundabout connection?

5 THE WITNESS: Your Honor, I'd have to object  
6 to this, if I could, please.

7 JUDGE LUTON: What is the basis of your  
8 objection?

9 THE WITNESS: This leads directly to ex parte  
10 communications.

11 MR. HONIG: Your Honor, I don't think there  
12 has been a record of an ex parte communication received  
13 by Your Honor in this case.

14 JUDGE LUTON: I don't know what this means.  
15 You mean, ex parte communication to me?

16 THE WITNESS: No, sir.

17 JUDGE LUTON: To whom?

18 THE WITNESS: To, I believe, other -- some of  
19 the other applicants, I believe, and to possibly maybe  
20 some business -- businesses in the area.

21 JUDGE LUTON: I don't understand the  
22 objection and I don't understand the basis for it  
23 either.

24 I'm going to overrule the objection.

25 Mr. White, you have testified that, as I can

1 recall it, your decision to resign your present  
2 employment within the next two or three weeks was  
3 related to your participation in this case in a  
4 roundabout way.

5 The question is, in what way is that? What  
6 is that roundabout way? You're simply being asked to  
7 explain your testimony. I'm going to ask you to  
8 explain it.

9 THE WITNESS: I'm getting what I consider  
10 undue pressure from my employer.

11 BY MR. HONIG:

12 Q That's Mr. Perich

13 A Yes, sir.

14 Q You made reference to a letter, and I'm not  
15 concerned with any letter that might have been written  
16 to the Commission which, we agree, would be improper.  
17 Was there some other letter that you are referring to  
18 that was sent to, among others, my client?

19 A I -- I believe so. I'm in receipt of a  
20 letter that I believe was sent.

21 Q Do you believe Mr. Perich sent that letter?

22 A Yes, I do.

23 MR. HONIG: I know Your Honor must be  
24 confused as to where this is leading.

25 JUDGE LUTON: Sure am.

1 MR. HONIG: It was unexpected by me, too,  
2 Your Honor. It apparently just arose and regrettably.  
3 Because it occurred after we had discovery, I am trying  
4 to understand it myself.

5 I would beg a little bit of indulgence. I  
6 will try and focus it on this -- anything of relevance  
7 to this case.

8 JUDGE LUTON: What is the relevance to this  
9 case? You've asked the witness to explain what he  
10 meant by saying that his determination to resign his  
11 present employment in the next two weeks is related to  
12 this case. Now, he's taken a couple of stabs at it.  
13 Is that what you are still trying to understand?

14 MR. HONIG: Yes. I think I can try to  
15 understand this as we go along and I may have to beg a  
16 little indulgence, but let me try.

17 BY MR. HONIG:

18 Q I don't want to make reference to the  
19 contents of the letter. I don't have it here. And, I  
20 can tell you, Mr. White, I don't consider the contents  
21 of the letter to be --

22 JUDGE LUTON: Now, what letter is this?

23 MR. HONIG: It was a letter, Your Honor, that  
24 was written by an anonymous person and I still don't  
25 know who it is, that was sent to apparently a number of

1 people, including my client.

2 JUDGE LUTON: Including me, I suspect.

3 MR. HONIG: I don't know that it was sent to  
4 you. It wasn't addressed to you.

5 JUDGE LUTON: One was received by me.

6 MR. HONIG: There are two letters.

7 JUDGE LUTON: All right, I got one of them.

8 MR. HONIG: This is one that was received  
9 just a couple of weeks ago.

10 JUDGE LUTON: No.

11 MR. HONIG: Different letter.

12 I believe they were probably sent by the same  
13 person.

14 JUDGE LUTON: It was anonymous.

15 MR. HONIG: It was anonymous. It was, in my  
16 opinion, scurrilous and I consider the content  
17 irrelevant.

18 JUDGE LUTON: -- and it was handled  
19 appropriately at this end.

20 MR. HONIG: And let me say that, Mr. White, I  
21 consider the matter unfortunate.

22 BY MR. HONIG:

23 Q My question is that if your belief is that  
24 Mr. Perich either wrote or was involved in writing and  
25 sending that letter, does he have any connection with -

1 - why would he have done that?

2 JUDGE LUTON: Who is Mr. Perich?

3 MR. HONIG: Mr. Perich owns the station at  
4 which Mr. White works and I believe that they have --  
5 they were parties in some other application earlier.

6 JUDGE LUTON: Now you're asking the witness  
7 why would Mr. Perich have written the particular  
8 letter.

9 MR. HONIG: If he knows. He may not know. I  
10 would just like to find out if he knows what is going  
11 on here.

12 JUDGE LUTON: You didn't ask him whether he  
13 knew or not. You are inviting him to speculate.

14 BY MR. HONIG:

15 Q I'm sorry. Do you know why Mr. Perich may  
16 have written the letter?

17 A No.

18 Q Is it correct to say that the purpose of the  
19 letter on its face seems to be to try to discourage you  
20 in your efforts to obtain this permit?

21 A Yes.

22 Q And you, if you got the permit, would be  
23 competing with him, isn't that correct?

24 A Yes.

25 Q And, are you relying or have you ever relied

1 in this case on Mr. Perich for use of a tower site?

2 A No.

3 Q For --

4 JUDGE LUTON: I'm going to object to this. I  
5 don't understand the relevance any more.

6 MR. HONIG: I'm trying to see whether there  
7 is any aspect of this case on which the applicant has  
8 some reliance on Mr. Perich and is that reliance still  
9 justified in light of these subsequent events?

10 JUDGE LUTON: Oh, you've shifted. I thought  
11 you were still trying to determine the connection  
12 between the decision to tender his resignation and  
13 the -- and this case.

14 MR. HONIG: Oh, I understand the connection.

15 JUDGE LUTON: You've done that. You've done  
16 that and now you've gone into something else and you  
17 are trying to determine whether or not this witness  
18 ever placed reliance on Mr. Perich or anything having  
19 to do with this case and whether, if so, those reliance  
20 are still considered viable and good and in place?

21 MR. HONIG: That's one of the things that I'm  
22 trying to establish here.

23 JUDGE LUTON: Well, is that the one that you  
24 are presently trying to establish?

25 MR. HONIG: That's right.

1 Q How far away is MacClenny from Alachua?

2 A I would say probably -- oh, golly, probably  
3 55 miles, 60 miles, something like that.

4 Q Could you have done both?

5 A Lived in MacClenny and operated the Alachua  
6 station?

7 Q No. Remained as station manager at WJXR and  
8 also built Alachua?

9 A No, I wouldn't have -- I never thought about  
10 doing both and I'm sorry if I indicated that I did.

11 Q No, you didn't. I was just asking.

12 A No, it would have been full-time, many, many  
13 hours.

14 Q Okay. But you had made various commitments  
15 to the applicant in Alachua, isn't that right, in terms  
16 of time and effort that you would put in the  
17 application, financing that you were going to  
18 contribute to the project, isn't that right?

19 A Time and effort? A lot of time and effort.  
20 The financing for Alachua was going to come from Greg  
21 Perich. He would have loaned some money to the general  
22 partnership which, in turn, would have, as I understood  
23 it, would have paid him back. That's if we couldn't  
24 obtain bank financing.

25 Q Was that ever -- was that agreement with Mr

1 Perich ever reduced to writing?

2 A No.

3 Q Did you have any understanding that you would  
4 have a financial obligation to the Alachua application?

5 A There was some. We never really talked about  
6 the financial obligation, except that if we had to  
7 borrow money that I would be 50 percent responsible.

8 Q Now, let me refer you to page 21 of your  
9 deposition in this case and see if this refreshes your  
10 memory. I'm going to show you that page and in  
11 particular draw your attention to lines 14 through 22.

12 Now, so that the record will be clear and  
13 this will be understandable, I'd like to take the  
14 liberty of reading those lines into the record.

15 Question: Okay. Did you have any financial  
16 obligation to the Alachua application?

17 Answer: Just that we had -- it was a fifty-  
18 fifty partnership and my obligation was 50 percent.

19 Question: Okay. And, had you identified any  
20 sources of funding for that application?

21 Answer: No.

22 Question: You had no bank letter or anything  
23 like that?

24 Answer: No.

25 Does that refresh your memory on the extent

1 to which you were obligated for the funding of the  
2 Alachua application?

3 A Yes.

4 Q And, that 50 percent obligation referred both  
5 to prosecution and construction and operational costs,  
6 isn't that right?

7 A Yes.

8 Q Now, in fact, your 50 percent was going to be  
9 draw at least in part from the equity in your house in  
10 Alachua, wasn't that right?

11 A No. I think I stated in my deposition that I  
12 may have been thinking about that but I wasn't sure.  
13 And, on further reflection, I realized that the house,  
14 I don't believe, was completed at that time and that  
15 wouldn't have entered my mind.

16 Q Let me again turn your attention to your  
17 deposition and, in particular, page 22, line 24,  
18 through page 24, line 4. Now, again, this isn't the  
19 memory test. I would like you to take a minute to read  
20 that to yourself before you're asked questions about  
21 it.

22 Are you doing okay?

23 A Yes, ready.

24 Q Okay. Now, Mr. White, is it a fair  
25 characterization of this testimony that you did have in

1           A     Yes.

2           Q     Now, the rest of the funds for Alachua were  
3 going to come from the sale of WJXR, is that true?

4           A     Not exactly, no.

5                     He had indicated that we could get financed  
6 for this and I asked him how. And, I believe the  
7 conversation went to, well, we could get -- borrow  
8 money against possibly, maybe this station, which I  
9 didn't know for a fact at the time or didn't know  
10 exactly if that's what he had in mind or not, but it  
11 occurred to me that bank financing was a very viable  
12 option.

13          Q     You had never spoken with a bank, is that  
14 right?

15          A     No, no.

16          Q     And, he hadn't either, isn't that right?

17          A     I don't believe so.

18          Q     Okay.

19          A     I didn't.

20          Q     Did you sign the application?

21          A     I believe I did.

22          Q     Now, did you tell Mr. Perich that any other  
23 funds from you would be potentially available for your  
24 support of the Alachua application, or might be  
25 available?

1 duties and so would I.

2 JUDGE LUTON: Mr. Honig, are you still  
3 pursuing the point of the extent that Mr. White and his  
4 wife each participated in various aspects of the  
5 application?

6 MR. HONIG: Yes, I am.

7 JUDGE LUTON: -- move on to something else.

8 MR. HONIG: It's really a mixed question that  
9 I'm getting at. It's a closely related point.

10 BY MR. HONIG:

11 Q Now, Mr. White, has this budget ever been  
12 revised?

13 A No, sir.

14 Q Was either of these two budget submitted to a  
15 bank?

16 A No, sir.

17 Q Was any budget submitted to a bank?

18 A No, sir.

19 Q Was any written document submitted to a bank  
20 in connection with your attempt to obtain a financial  
21 commitment from such a bank?

22 A No budgetary documents were submitted.

23 Q Were any other documents submitted?

24 A If I recall, I believe I submitted some type  
25 of an outline, the form that possibly the letter could

1 take or should take.

2 Q Okay.

3 A Only to help them draft the letter, that's  
4 all.

5 Q And, that draft was not produced, but was it  
6 something that your attorney sent out that they might  
7 sign or did you write that?

8 A My attorney sent it to me.

9 Q Okay, that's Ms. Moline?

10 A Yes.

11 MR. HONIG: Now, I'd like to ask that both of  
12 these documents be marked as Peaches exhibits for the  
13 record. We would be at Peaches Exhibit 7 for the  
14 budget. It starts with salaries. And then, the other  
15 one would be Peaches Exhibit 8, and I don't -- may we  
16 withdraw and then supply the copies.

17 I do have copies of Peaches 7.

18 (The document referred to  
19 above were marked Peaches  
20 Exhibit Nos. 7 and 8 for  
21 identification.)

22 BY MR. HONIG:

23 Q Now, I'm going to put Peaches 8 before you,  
24 Mr. White, and ask which of you, Mr. White or Mrs.  
25 White, was it who determined the cost of the items of