

AFTERNOON SESSION

(Time noted: 1:03 p.m.)

JUDGE LUTON: On the record. Let's go ahead.

MR. HONIG: We've had some attrition, as you
can see.

JUDGE LUTON: I see that.

MR. HONIG: What happens if we don't settle
the case?

JUDGE LUTON: Right.

Whereupon,

CHARLEY CECIL WHITE

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

BY MR. HONIG:

Q Are you ready?

A Yes.

Q Okay.

Mr. White, this application is a general
partnership, with you and your wife being the only
general partners.

A Yes.

Q And there are no plans to bring in any other
partners, is that correct?

A No plans.

1 Q Have you ever discussed, bringing in other
2 people, with your wife?

3 A No, sir.

4 Q Now, I'm going to ask a series of questions
5 concerning who had primary responsibility for various
6 things that happened in the preparation of your
7 application: Yourself, your wife, or some other
8 person, so that we can do efficiently.

9 Let's start with the selection of your
10 attorney. Whose responsibility was that primarily?

11 A Initially, I had contacted someone in Miami.
12 I did that on my own after I told my wife that I was
13 going to.

14 Q That was Mr. Liebowitz?

15 A Yes, sir.

16 And then, after we receive the name of
17 another attorney -- it's not quite clear whether we
18 both were on the phone at that first opportunity or
19 not, but we both had discussed it together.

20 Q And in the terms of the ultimate retainer
21 that you worked out with Mrs. Moline, you negotiated
22 those terms?

23 A My wife and I together.

24 Q Okay. Now, the selection of the engineer who
25 prepared the engineering section of the application,

1 who had primary responsibility for that task?

2 A I initially contacted them and then, later
3 on, in the weeks to follow, my wife was in touch with
4 Roy Stiphe quite a bit of the time.

5 Q Did you know Mr. Stiphe before you contacted
6 him?

7 A Yes.

8 Q And what was -- what was the basis of your
9 knowledge of him?

10 A He had done some work for the station that I
11 worked for, moving a transmitter site and the like.

12 Q Now, the owners of your tower site -- I don't
13 recall their names off hand -- they were -- Stokes --

14 A Yes.

15 Q Did you know Mr. Stokes before you filed --
16 before you contacted him about the site?

17 A Yes.

18 Q And, were you, as opposed to your wife, the
19 person who made the contact?

20 A We drove out to his house together.

21 Q And, had you spoken with him before?

22 A No, we were taking a look at the restricted
23 tower site area and discovered that he owned a section
24 or two in that area.

25 Q What was the connection in which you had

1 known Mr. Stokes before?

2 A His company and/or his son, Mike Stokes, did
3 some land clearing work for me.

4 Q Now, establishing the public file, did you
5 personally do that or did Mrs. White personally do
6 that?

7 A I believe she initially placed the public
8 file in Baldwin, either on her way to work or on her
9 way to her doctor's office.

10 Q Publishing the public notices in the
11 newspaper at the time of filing of the application and
12 then when the case was designated for hearing?

13 A We worked on those projects together.

14 Q Now, negotiating the terms under which the
15 station construction and operation would be financed?

16 A I had made -- are we talking now about the
17 bank letters?

18 Q Yes, I'm going to break that down into parts.

19 A Please.

20 Q Okay. Well, let's start with the development
21 of that station's budget. I want to preface this so
22 you will understand by saying that I'm not going to ask
23 you about the particular dollar amounts. We've been
24 given a redacted document.

25 MR. WINSTON: Your Honor, excuse me.

1 When Mr. Honig said that apparently there was
2 an outstanding pleading concerning motion for
3 production of documents that should have been taken up
4 as a preliminary matter. I believe oppositions have
5 been filed and I didn't know if Your Honor was planning
6 on moving on that any time soon?

7 JUDGE LUTON: I've forgotten about it.

8 MR. WINSTON: I beg your pardon?

9 JUDGE LUTON: I had forgotten about it. No,
10 I'm not planning to rule on it now, at this point.

11 MR. WINSTON: Thank you, Your Honor.

12 MR. HONIG: I'd agree that this might be a
13 good time to take it up, if Mr. Winston wants to press
14 the point.

15 MR. WINSTON: I gather Your Honor hasn't had
16 a chance to consider a ruling on it, so I'm not sure
17 there is anything to press, Mr. Honig.

18 JUDGE LUTON: There is a motion -- I think
19 I've seen it. A motion filed by whom?

20 MR. WINSTON: By Northeast Florida.

21 JUDGE LUTON: Northeast? Seeking documents
22 from White?

23 MR. WINSTON: Seeking documents from all the
24 parties. Let me clarify it. Seeking unexpurgated
25 copies of financial documents from all parties which

1 have previously filed redacted documents.

2 JUDGE LUTON: What's the date of it, the date
3 of the motion, do you recall? Would it have been
4 August 2?

5 MR. WINSTON: Yes, Your Honor.

6 JUDGE LUTON: It is denied.

7 MR. WINSTON: Thank you, Your Honor.

8 JUDGE LUTON: This is the one which relied
9 upon the fact that new rules are in place and it had to
10 be to the stipulation and the parties are trying to
11 expand on the stipulation and all that?

12 MR. WINSTON: That's one reading --

13 JUDGE LUTON: That's the way I looked at it,
14 and my ruling is, it was denied. I did rule.

15 MR. HONIG: Was it denied for all parties or
16 just --

17 JUDGE LUTON: All parties.

18 MR. HONIG: -- those that filed oppositions?

19 JUDGE LUTON: All parties.

20 MR. HONIG: Okay.

21 BY MR. HONIG:

22 Q With that in mind, Mr. White, I may be
23 incorrect, but I have only one document produced in
24 discovery which appears to be a written budget and I'd
25 like to show it to you and be sure that --

1 MR. HONIG: Excuse me just one second, Your
2 Honor.

3 BY MR. HONIG:

4 Q Let me show you both of these two pages and
5 I'll identify them. One of them is a one-page
6 handwritten document which starts with salaries,
7 utilities, rent, taxes, loans in the left-hand column.
8 There are also items for music licensing supplies,
9 office equipment and rental and petty cash.

10 Now, looking first at this document, is that
11 your handwriting?

12 A That's my wife's handwriting.

13 Q That's your wife's handwriting?

14 A Um-hum.

15 Q And did she prepare this or did you prepared
16 this?

17 A We prepared it together at the kitchen table.

18 Q When was this prepared?

19 A Probably the middle part of November, late
20 November, sometime around that time period.

21 Q Then there is another piece of paper that we
22 have that's been exchanged which has a left-hand column
23 with items and then a right-hand column with numbers
24 and the numbers have been redacted.

25 To identify it, the items are never

1 transmitter, antenna, coax, portable building,
2 emergency generator, STLTSL, two control boards, three
3 cart machines, three CD players, two turntables,
4 related furniture, and what appears to be subtotal,
5 then miscellaneous, stereo mod monitor, optimontrosser,
6 two shared microphones, two mike arms, equipment rack,
7 EBS receiver, studio speaker, real to real, a total and
8 then three months.

9 A Two equipment racks.

10 Q Two equipment racks, forgive me.

11 Is that your writing?

12 A No, it is not.

13 Q This is whose writing?

14 A My wife's.

15 Q And when was this prepared?

16 A At the same time we prepared the three month
17 breakdown.

18 Q And were both of you involved in this
19 operation?

20 A Yes, sir.

21 Q I take it that the first document that I
22 described, the one that begins with salaries, is a
23 three-month estimate --

24 A Yes, sir.

25 Q -- operating cost, and the second one that

1 I've described is an estimate of construction costs, is
2 that basically correct?

3 A That's right.

4 Q Now, making reference to salaries, is it
5 correct that these salaries are for after program test
6 authority has been granted and not for before that?

7 A This -- I think that's a fair statement.

8 Q Now, the items there are one GM/SM. I'm
9 assuming that means general manager/sales manager?

10 A That's correct.

11 Q And that's yourself?

12 A Correct.

13 Q Then there is a line that says one SM, but
14 it's been crossed off.

15 A Yeah, we crossed that off and then we slid
16 the sales manager into my position basically.

17 Q So you are proposing to also serve as sales
18 manager, at least initially?

19 A Initially, yes.

20 Q But you are not proposing separate
21 integration enhancement credit for also being the sales
22 manager, is that right? Just being general manager?

23 A Just being general manager.

24 Q Then there is one secretary/bookkeeper.

25 A Yes, sir.

1 Q Do you have a person identified for that?

2 A Not particularly. I think possibly it would
3 have been my wife initially.

4 Q Okay, you mean, when this was written?

5 A When this was written, yes.

6 Q Then there is three jocks full-time, is that
7 right?

8 A Full-time, yes, sir.

9 Q Okay. And, then four jocks part-time.

10 A Part-time.

11 Q And an engineer part-time.

12 A Part-time.

13 Q Okay. Now, there is no item on here for
14 program director, is that correct?

15 A That's correct. That's why I'm thinking that
16 the secretary/bookkeeper was -- we had intended my wife
17 do that.

18 Q Okay.

19 A It was just an oversight that we didn't put
20 program director right behind it.

21 Q Now, when you say it was an oversight, did
22 you intend to have a program director but the person
23 wouldn't be paid?

24 A We always intended for my wife to initially
25 be program director. She would take on a lot of extra

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

1 equipment in Peaches Exhibit 8?

2 A We determined that together.

3 Q And, who was it that did the research on what
4 the items would cost?

5 A Primarily, my wife.

6 Q Now, Peaches Exhibit 7, who was it who
7 determined the cost of the items on Peaches Exhibit 7,
8 the operational cost?

9 A I think I probably would have had more of a
10 hand in that, knowing music licensing and some of the
11 other items on there that my wife was not familiar
12 with.

13 Q Okay. There is an item on Peaches 7, loans,
14 and then there is a number, \$80,000? What does that
15 refer to?

16 A That referred to a loan for -- a possible
17 loan for \$80,000 and then I think we had decided to --
18 what we thought that payment would be per month spread
19 out over I believe 12 years.

20 Q Now, the materials that we received in
21 document production don't reflect any \$80,000 loan. Is
22 that from a particular financial institution?

23 A That loan was never made. Never tried for
24 and never made. In other words, this is -- we wanted
25 to be sure that we had a good budget here and wanted to

1 be sure that we had enough money to pay for a possible
2 loan, should we need that.

3 Q Okay.

4 A That's what we were talking about there.

5 Q Now, there are in fact six different sources
6 of financing that are identified in your application.

7 If I could, I'd like to have marked for
8 identification as Peaches Exhibit No. 9 page 6 of your
9 Form 301 that identifies those sources.

10 (The document referred to
11 above was marked Peaches
12 Exhibit No. 9 for
13 identification.)

14 Now, Mr. White, the plan of financing that's
15 referred to on this page, if I'm understanding it
16 correctly, contemplates a budget of \$120,705 for
17 construction and initial operation and then the six
18 sources of funds.

19 What was your role in developing and deciding
20 upon that particular plan of financing?

21 A I'm not sure I understand the question. Are
22 you asking me what role I had in the \$120,000 figure or
23 --

24 Q Did you come up with that number or did --

25 A My wife and I together, after taking a look

1 at what we thought we could do this for.

2 Q Now, the idea to have six different sources
3 of funds rather than, say, one or two, whose idea was
4 that?

5 A Well, I don't know if it was a particular
6 idea. It just came to be that way.

7 Q Now, let me direct your attention to the
8 first two sources that are listed. There is a
9 Community State Bank of Stark and a Citizens Bank of
10 MacClenny.

11 Again, this is not going to be a memory test
12 so what I would like to do is have marked for
13 identification as -- what are we up to? -- Peaches No.
14 10 and Peaches 11, those two letters.

15 The one from Community Bank of Stark would
16 become Peaches 10 and then the one from Citizens Bank
17 of MacClenny becomes Peaches No. 11, and each of these
18 is a one-page letter. The -- Peaches No. 10 is signed
19 by Eugene Richardson and it's dated December 6, 1989.
20 Peaches No. 11 is signed by John D. Kennedy and it is
21 dated November 21, 1989.

22 And, I would ask that they just be marked for
23 identification.

24

25

1 (The documents referred to
2 above were marked Peaches
3 Exhibit Nos. 10 and 11 for
4 identification.)

5 Now, Mr. White, let's turn first to Peaches
6 Exhibit 10. Who primarily negotiated the terms of this
7 letter with Mr. Richardson, you or Mrs. White?

8 A I did.

9 Q And, did Mrs. White have any role in the
10 negotiation of Peaches Exhibit 10 at all?

11 A Only in that she knew that I would be talking
12 to Eugene and -- she couldn't get off work that
13 particular day.

14 Q Did you know Mr. Richardson before this
15 letter was written by him?

16 A Yes, sir.

17 Q And, in what context did you know him?

18 A Through civic activities and through seeing
19 him at the bank he previously worked at.

20 Q How long had you known him?

21 A Probably --

22 JUDGE LUTON: What does that have to do with
23 his wife?

24 MR. HONIG: It doesn't have to do with the
25 witness' wife.

1 JUDGE LUTON: It surely doesn't. It has to
2 do with -- it seems to be going -- you're digging up to
3 the letter.

4 If I were representing White I would object
5 and your response would be what?

6 MR. HONIG: My response would be, it's
7 foundation because I have to ask about a particular
8 item in the letter and the witness' understanding of it
9 in light of his knowledge of the institution.

10 JUDGE LUTON: Well, the witness has already
11 told you that he is the one who obtained the letter,
12 talked with Mr. Richardson. What do you need more
13 foundation for?

14 MR. HONIG: Well --

15 JUDGE LUTON: Ask your question directly.

16 MR. HONIG: I'll be happy to go right to the
17 question.

18 BY MR. HONIG:

19 Q Let me direct your attention in particular to
20 the --

21 MR. HONIG: Well, actually, Your Honor, there
22 is one question I have to try first. I beg your
23 indulgence.

24 BY MR. HONIG:

25 Q Did you have a prior banking relationship

1 with this bank?

2 A Which bank, Community State Bank?

3 Q Community Bank of Stark?

4 A No. They bought some advertising from me,
5 but that's the only relationship.

6 Q Now, was this -- you testified that you
7 submitted to Mr. Richardson a draft that you had asked
8 your lawyer to prepare or your lawyer sent you?

9 A A budget, are you talking about?

10 Q No, a draft of a letter.

11 A A draft of a letter.

12 Q That you wanted the bank to sign.

13 A An outline.

14 Q Okay. It wasn't an actual letter. It was an
15 outline of what --

16 A Not that I remember.

17 Q Okay. And, there is reference in this letter
18 to the bank's practice and you'll -- it's in the second
19 full paragraph, that starts, the terms of repayment.
20 References to the bank's practice being to ask for
21 collateral as a first security interest in the
22 company's equipment, personal guarantees of the
23 principals or such collateral as provided by law.

24 Let me break this down.

25 First, did you have an understanding of what

1 the bank wanted by --

2 THE WITNESS: Your Honor, I would object.

3 JUDGE LUTON: I'm going to sustain my own
4 objection.

5 MR. HONIG: You are permitted to do that,
6 Your Honor.

7 JUDGE LUTON: I'm going to keep on doing it,
8 too, so long as the questions continue in this vain.

9 MR. HONIG: Okay, let me try this this way.

10 BY MR. HONIG:

11 Q Personal guarantees, had your wife offered a
12 personal guarantee?

13 THE WITNESS: I would object, Your Honor. I
14 think that --

15 JUDGE LUTON: Overruled.

16 THE WITNESS: -- the letter is pretty self-
17 explanatory.

18 JUDGE LUTON: The letter is not on the stand,
19 Mr. White. You are. Please respond.

20 THE WITNESS: The question again, please.

21 BY MR. HONIG:

22 Q Had your wife offered a personal guarantee to
23 the bank?

24 A No.

25 Q Had you offered a personal guarantee to the

1 bank?

2 A A personal guarantee as to --

3 Q Do you understand what a personal guarantee
4 is, in your own words?

5 A Well, it would be signing for and
6 guaranteeing that you would pay back a loan.

7 Q Had you manifested to the bank that you would
8 do that?

9 JUDGE LUTON: Sustained.

10 BY MR. HONIG:

11 Q Now, at your deposition, you testified that
12 some of the collateral for this loan would be some of
13 the equipment which I gather has been listed in the
14 schedule in Peaches Exhibit 8?

15 A Yes.

16 Q Did and your wife discuss which equipment
17 would collateralize this loan?

18 A We had talked about possibly quite a bit of
19 it, including a transmitter.

20 Q Did you --

21 A Bits and pieces of equipment.

22 Q Did you communicate to Mr. Richardson which
23 equipment in Peaches Exhibit 8 would be serving as the
24 collateral?

25 A No.

1 Q Okay. Now, Let's turn to Peaches Exhibit 11,
2 if you could. That is the letter from Citizens Bank of
3 Stark. Who was involved in negotiating this letter,
4 you or your wife?

5 A My wife and I originally met with Mr. Kennedy
6 together.

7 Q And, did you know Mr. Kennedy before this?

8 A Yes.

9 Q Did your wife know him?

10 A Yes.

11 Q And, what was the context in which you and
12 your wife each knew him?

13 A Through the community. I believe at one time
14 his wife worked with my wife. And, civic activities
15 and seeing us on the street.

16 Q And, I think that your testimony was that
17 neither this bank nor Community Bank were provided with
18 any documents, other than an outline of what you wanted
19 them to write?

20 A That's basically right.

21 Q You had no prior banking relationship with
22 Mr. Kennedy or Citizens Bank of MacClenny?

23 A Only in that he knew me civically and that --

24 JUDGE LUTON: Banking relationship, is what
25 he is asking about.

1 THE WITNESS: Banking relationship?

2 No, sir.

3 BY MR. HONIG:

4 Q Now, if I could turn your attention to the --
5 there are three items which are represented in this
6 letter as conditions. They are listed as A, B, and C.
7 Now, there is reference in number C to the property
8 being pledged as collateral.

9 What was that property?

10 A Equipment. Radio station equipment.

11 Q Was it also equipment which is scheduled in
12 Peaches Exhibit 8?

13 A 8? Yes.

14 Q And, had you and your wife discussed which
15 items in Peaches Exhibit 8 would be used as collateral
16 to support the letter in Peaches Exhibit 11?

17 A Specific equipment, no.

18 Q And, then you did not communicate to Mr.
19 Kennedy what equipment that would be?

20 JUDGE LUTON: I object.

21 I'm going to propose this line of questioning
22 -- ask you to move away from these letters, unless you
23 can do it in a different way.

24 MR. HONIG: No, actually --

25 JUDGE LUTON: It's irrelevant --

1 MR. HONIG: Okay.

2 JUDGE LUTON: -- to any issue that's
3 presently designated.

4 MR. HONIG: Give me just one moment, Your
5 Honor.

6 Okay, I'll withdraw that question.

7 Actually, Your Honor, that's my last
8 question. I have no further questions for this
9 witness.

10 JUDGE LUTON: Who wants to examine.

11 MR. WINSTON: Your Honor, can I take a
12 second. Mr. Honig covered areas I wanted to get into
13 and I don't want to be repetitious.

14 CROSS EXAMINATION

15 BY MR. WINSTON:

16 Q Mr. White, would you turn to White Exhibit 1,
17 page 3, the White Broadcasting Partnership General
18 Partnership Agreement.

19 A Page 3, sir?

20 Q Yes. Page 3 of your Exhibit, which is page 1
21 of the Partnership Agreement.

22 A Yes, sir.

23 Q It's numbered in two different places. I
24 don't want to confuse you.

25 A Right.

1 Q For purposes of discussion we'll use the
2 Exhibit numbers. So, Exhibit 1, page 3 is what we are
3 looking at now.

4 A Okay.

5 Q Let's turn to page 9 of Exhibit 1 and look at
6 paragraph 7.01. Now, you take a moment to review that.
7 The questioning I'm going to go to is directed to the
8 first paragraph, not the numbered subparagraphs, just
9 the first paragraph. But you can look at the
10 subparagraphs if it helps you to get the context.

11 Ready?

12 A I'm ready.

13 Q Mr. White, looking at the second paragraph --
14 I'm sorry, the second sentence of the first paragraph,
15 that statement -- that sentence begins: Subject to any
16 limitations expressly set forth in this agreement, the
17 partners shall have the power and authority to take
18 such action from time to time as he may deem to be
19 necessary or appropriate or convenient in connection
20 with the management and conduct of the business and
21 affairs of the partnership, including without
22 limitation the power to -- and then it lists five
23 different specific powers provided to the partners.

24 The question I have for you, sir, is does
25 that section 7.01 give each of the partners separately

1 the power to conduct those five activities?

2 A As I understand it, each partner has an equal
3 voice in those decisions.

4 Q A partner cannot take those steps
5 unilaterally? One partner cannot take those steps?

6 A As I understand it, no, sir.

7 Q Mr. White, have you made any capital
8 contributions to White Broadcasting Partnership?

9 A Yes.

10 Q Has your wife made any capital contributions
11 to White Broadcasting Partnership?

12 A Yes.

13 Q What was the source of the contributions you
14 made? What was the financial source of the
15 contribution you made?

16 THE WITNESS: I would have to object to that,
17 Your Honor.

18 JUDGE LUTON: On what basis?

19 THE WITNESS: Going towards financial issue.
20 Broadcasting has no financial issue against it.

21 JUDGE LUTON: And, the question is?

22 MR. WINSTON: The question is --

23 JUDGE LUTON: The sources upon which -- that
24 Mr. White was going to rely on in making his
25 contributions? The ones that he has relied on to make