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TRANSCRIPT

PACIFICA NATIONAL BOARD

MEETING – SEPTEMBER 17, 2000

EXECUTIVE COMMITTEE REPORT

This is a transcript of a tape recording I made on September 17, 2000. I, personally transcribed the tape, beginning on September 28, 2000 and completed October 1, 2000.

I, Gary Evans, recorded the tapes from which this transcript was taken. I was present throughout the recording process and have remained in sole control of the tape recorder and tapes from recording through and including the transcription process.

TAPE 1, SIDE B

MARY BERRY:

Well anyway, um, let us go on to the committee reports. And the first one is the Executive Committee. The Executive Committee – this is a report, Ms. Lyons, on what the Executive Committee did on Friday. I'm about to give this report. OK?

BETH LYONS:

I'm listening.

MARY BERRY:

The Executive Committee met and heard the Executive Director tell us about all of her problems and issues with everything from space for the national office and, ah, and WPFW co-located to, ah, various union contracts that are expiring and have to be, ah, ah, negotiated to the need to hire a consultant, as she was telling you here, to go in and look at the whole financial operations, ah, in the foun- foundation.

UNKNOWN PERSON

– (unintelligible)

MARY BERRY:

1 Beg your pardon? And th- that she was hiring a human resources director. This has been an
2 issue for a long time. The unevenness of the various benefits and everything else that happens in
3 Pacifica. Every time something occurs, as when someone dies, or somebody gets sick, or
4 something happens, then we have questions raised about our coverages; What are we doing for
5 employees? And how are we keeping track of all this stuff? And we don't have a human
6 resources, ah, director, so that whole area we spent a lot of time discussing the issues that relate
7 to human resources. And she urgently needs to hire someone. We also discussed the need for
8 her to hire herself immediately an administrative person who would be the number two to handle
9 some of these, ah, problems and the details of day to day, ah, management.

10 Ah, we also discussed an issue that was raised at, ah, -- sometime during the weekend --
11 about the law firm that represents us, and with the understanding that there'd been some
12 discussion of this, and whether there's some kind of conflict of interest, ah, that one of our board
13 members, who is a member of that firm, might have, and we, ah, of course were quite aware
14 already that the Executive Director, who has the authority to do so, had engaged this firm because
15 she had sent us out an email, and had informed us that she was doing it -- she sent the board an
16 email, and, ah, we had received some communication from some people objecting, and saying
17 they thought it was a conflict, and we assured ourselves again, as we had before, that, ah, and we
18 were told about conversations that had taken place during the weekend, that there's nothing, ah,
19 illegal, or immoral, or unappetizing, and indeed we should be grateful to the firm, in terms of the
20 rates that their giving us, and that Mr. Murdock is not, ah, self dealing, or being un- in-
21 aggrandized, or enriched, or anything else under the code, ah, for this, ah, for this matter. Ah, the
22 -- so these are the matters that, ah, we discussed. And, ah, we also, I've already told you about
23 David, and his -- the issues that, ah, with him. So that was the report of the Executive, ah,
24 Committee, ah, if I haven't left anything out. Ah, Frank -- yes, then -

25 **FRANK MILLSPAUGH:**

26 I --

1 **MARY BERRY:**

2 Tomas

3 **FRANK MILLSPAUGH:**

4 Yes. I think that it, ah, should be with [?thanks?] and with gratitude that, ah, Dr. Berry has, ah,
5 ah, consented to remain available, to, ah, consult and advise, and lend her good offices and good
6 will to the organization during a transition period while, ah, David cycles in as, ah, as the, ah,
7 chair of the, ah, board of directors and, ah, I think, as I say, that, ah, we should, ah, feel a great
8 deal gratitude for her willingness to, ah, put up with us for another, ah, couple of months in that,
9 in that advisory capacity. Ah, thank you.

10 **MARY BERRY:**

11 Yah, and, ah, being paid nothin'. We've not talked about paying anybody for being a consultant.
12 Somebody may think I'm gettin' some money from Pacifica. Yes Michael.

13 **SIMULTANEOUS SPEECH, TOMAS MORAN:**

14 [? I think you would recognize your ?]

15 **MICHAEL PALMER:**

16 And I think that, it, just as a note from, from me knowing David, that I think he would be very
17 grateful for the, the assistance in transitioning because he does have a lot of things on his plate,
18 professionally, his wife going to have a baby, and some other things, [unintelligible]. Thank you
19 for him in his absence.

20 **MARY BERRY:**

21 OK. Ah, Mr., ah, ah, Moran and then Miss Chambers.

22 **TOMAS MORAN:**

23 Um, ok. A couple of things. First, a, just a minor detail. Um, I don't think that I received, as a
24 board member, a copy of that email that you say that, ah, informed the board of the hiring of the
25 firm. Uh, so if-

26 **[? MARY BERRY ?]:**

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1 [unintelligible]
2 **TOMAS MORAN:**
3 Bessie could forward a copy of that original email, to look it up on the computer, and then do a
4 forward of that original email, that would be great so that I could have a copy of the original
5 email that, that was sent out. Um, ah, -
6 **LESLIE CAGAN:**
7 I never g -
8 **TOMAS MORAN:**
9 and -
10 **LESLIE CAGAN:**
11 I never got [?] -
12 **TOMAS MORAN:**
13 yah –
14 **BETH LYONS:**
15 I also. I did not get that –
16 **TOMAS MORAN:**
17 OK
18 **BETH LYONS:**
19 - email, that notification from that email – the hiring [unintelligible]
20 **TOMAS MORAN:**
21 So, um, I – Yes. So I, I just wanted to request a copy of that original email be forwarded to me.
22 Um, secondly, um, I want to, um, reiterate my concern that Executive Committee meetings are
23 not announced to the entire board and are closed to the board. Um, and thirdly, I want to ask, uh,
24 especially in light of having, uh, been served some papers this morning: What is the forum, as we
25 discussed yesterday, for me as a board member to, uh, go to that where could, ah, discuss
26 litigation strategy decisions that the board, uh, needs to make. Uh –
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1 **MEMBER OF BOARD:**

2 [unintelligible]

3 **TOMAS MORAN:**

4 uh, -- No we did not do that yesterday, and we were told that the forum for that was the board.
5 And I want to know which, uh, closed session of the board I will be afforded the opportunity to
6 discuss that and I'm making a specific request that that be agendized and scheduled, ah, before
7 the next board meeting, within say the next, uh, thirty days as a phone conference, at least, to
8 begin a discussion of where it is that that, ah, body assembles, and how do we, as board
9 members, get our, ah, rightful input into that process.

10 **MARY BERRY:**

11 Ah, Miss Chambers.

12 **VALRIE CHAMBERS:**

13 Ah, doubling back to the topic, ah, that came up, ah, afterwards with respect to your staying on in
14 an advisory capacity: I want to express my extreme gratitude for your generous offer. In light of
15 the fact, as Tomas pointed out, that we have all just been, ah, received something here that we've
16 not had a chance to look at [yet?]. Uh, but it's probably not good news. Uh, and I appreciate
17 the continuity, the leadership, and the access to the [unintelligible].

18 **MARY BERRY:**

19 Ah, Mr. Robinson.

20 **ROB ROBINSON:**

21 Dr. Berry, I'd like to understand why it is that you felt it necessary to make a determination to
22 hire Mr. Murdock's firm without discussing it with the full board, and then why you would go
23 the additional step of deliberately not personally notifying all of us of that decision if it was such
24 an important decision.

25 **MARY BERRY:**

26 Mr. Robinson, you misheard. I did not hire anyone to do anything, and I don't hire anyone to do
27

1 anything. So, that is a misstatement of the facts. Under Pacifica's rules, hiring is done by the
2 Executive Director who has full authority to hire whomever she pleases.

3 **AUDIENCE MEMBER:**

4 Who hired her?

5 **MARY BERRY:**

6 and counsel –

7 **AUDIENCE MEMBER:**

8 Who hired her?

9 **MARY BERRY:**

10 for the – ah, you will be in order please. – who has full authority to hire whomever the Executive
11 Director pleases to be counsel to this organization. It's one of the responsibilities of the
12 Executive Director. Now, the Executive Director, of course, informed us that she was making
13 this decision, but it could have been any firm that she wished to hire, and –

14 **ROB ROBINSON:**

15 It happened to be a firm that –

16 **MARY BERRY (SIMULTANEOUS WITH ROB ROBINSON ABOVE):**

17 Whoever occupies the office can do that.

18 **ROB ROBINSON:**

19 - employs a member of the board

20 **MARY BERRY:**

21 So, if you – ah, so if you wish to ask that question, you should not be asking me because I didn't
22 hire the person. You're asking the wrong person.

23 **ROB ROBINSON:**

24 If the board discussed the retainer of Mr. Murdock's firm, why was the full board not
25 participating in that decision?

26 **MARY BERRY:**

1 The board did not discuss the retainer of Mr. Murdock's firm. You misheard.

2 **ROB ROBINSON:**

3 Why did the board did not discuss –

4 **MARY BERRY:**

5 You misheard. Where did you hear this? -- that the board discussed this?

6 **ROB ROBINSON:**

7 Is Mr.-, Is Mr. Murdock's firm employed by Pacifica, or retained by Pacifica?

8 **MARY BERRY:**

9 Yes. The Executive Director -

10 **ROB ROBINSON:**

11 or working for Pacifica?

12 **MARY BERRY:**

13 The Executive Director hired Mr. Murdock's firm.

14 **ROB ROBINSON:**

15 When was this decision made?

16 **MARY BERRY:**

17 I don't remember.

18 **AUDIENCE:**

19 Let Bessie answer, for God's sake.

20 **ROB ROBINSON:**

21 Can someone answer the question? Can Bessie answer the question?

22 **MARY BERRY:**

23 Whenever it was. I don't know. [Unintelligible]. She says she believes that the date's in [?
24 June]. The date, the exact date of which she's unsure.

25 **ROB ROBINSON:**

26 OK. And Mr. Murdock is on this firm, is that not correct, Bessie?

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1 **AUDIENCE MEMBER:**
2 Why don't you answer the question?

3 **BESSIE WASH:**
4 Yes.

5 **ROB ROBINSON:**
6 OK. And, and was this discussed with members of the board?

7 **BESSIE WASH:**
8 I frequently discuss a lot of things with various people. So there were some people I discussed it
9 with, yes.

10 **ROB ROBINSON:**
11 Was – did the board participate in any kind of -

12 **MARY BERRY:**
13 I don't think, I don't think, I don't think this, the Executive Director has to submit to cross
14 examination on the part –

15 **ROB ROBINSON:**
16 I'm just trying to figure out what transpired. I'm a member of –

17 **[MULTIPLE SPEAKERS]:**
18 [unintelligible]

19 **MARY BERRY:**
20 You have -

21 **ROB ROBINSON:**
22 - this board

23 **MARY BERRY:**
24 You have the answer to the question. The Executive Director -

25 **[SIMULTANEOUS SPEECH]**

26 **ROB ROBINSON:**

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1 You didn't even bother to see that we got notified.

2 **MARY BERRY:**

3 Asked, asked and answered. The Executive Director has the authority to hire a firm. She hired a
4 firm. You've been told that the firm was hired.

5 **ROB ROBINSON:**

6 I was not told. I learned it in the meeting today.

7 **[SIMULTANEOUS SPEECH CONTINUES]**

8 **MARY BERRY:**

9 Well, what do you - Oh, you, you didn't know this until today. Is that what you are saying?

10 **LESLIE CAGAN:**

11 Well, we were not informed previous to - you know, we did not get email [unintelligible] -

12 **MARY BERRY:**

13 In other words, if we're going to have interrogation, is it your response, Miss Cagan, that you
14 were unaware until this morning that Mr. Murdock's firm was hired by Miss Wash?

15 **LESLIE CAGAN:**

16 No. I was, I was, ah, I, I, didn't learn about this earlier. I, I, as you don't remember the date he
17 was hired, the firm was hired - I don't remember, it was sometime in the last few weeks that I
18 heard about this. I did not hear about this from the national office or from the leadership of this
19 organization. I heard about it informally, as rumor. And, I would have appreciated notice either
20 from the Executive Director or the chair of the, ah, board. Somebody.

21 **MARY BERRY:**

22 Um, you are saying- Um, I'll ask you [unintelligible] ¼ we're engaging in interrogation here. Is
23 it the representation of you, Mr. Robinson, that you knew nothing about [unintelligible] ¼this
24 morning?

25 **ROB ROBINSON:**

26 It is my contention that I was not informed by responsible parties, whether board members or
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1 employees of Pacifica that this determination had been made.

2 **MARY BERRY:**

3 OK, well so that we don't spend time on this, the answer to the question is that the Executive
4 Director makes hiring decisions. If you don't like the way the Executive Director informed you,
5 or didn't inform you, of hiring decisions, that is a judgement that you can make about the
6 Executive Director. Not, you know, it's not some high policy matter. The person didn't tell you,
7 and you're, up- upset about it then that has nothing to do with whether she has the authority to do
8 it-

9 **[SIMULTANEOUS SPEECH]:**

10 Unintelligible.

11 **ROB ROBINSON:**

12 I didn't – I, I never discussed that issue.

13 **MARY BERRY:**

14 OK, why –

15 **ROB ROBINSON:**

16 I didn't discussed the authority –

17 **MARY BERRY:**

18 OK, so we assume you did not get in- in- information from the Executive Director that she hired
19 the firm. OK? The record shows that now. Can we- do you have something else to add?

20 **AUDIENCE MEMBER:**

21 Let him finish talking. Let's hear what he has to say.

22 **BETH LYONS:**

23 I have something, I have something else to say. Look, I'm concerned, I parti-, I obviously didn't
24 get the information from the Executive Director. I'm particularly concerned because I'm not
25 dealing with her power of decision, that's not what I'm suggesting; what I'm suggesting is a
26 board member who was a Jane Doe, and is now a named defendant, I assume, in one of these,

1 these papers which I haven't looked at, that the board, however its done, by whose ever authority,
2 the board leadership and / or delegating that leadership to the E.D. has a responsibility to let its
3 board members who are in fact named defendants, um, know, what kind of representation we are
4 getting; that includes names, etc.

5 I understand we have to go through you to deal with these people but just be informed of
6 the decision. My concern is that, my concern is that I be afforded as a board member, now I
7 can't speak for my other fellow board members, but that I, in my capacity as a board member be
8 afforded independent counsel. Counsel that's not, in any way, affected by anything or I - any
9 kind of situation that may prevent counsel from making the most balanced representation as he or
10 she has to do under the ABA model rules.

11 I'm not here to argue about the differences over whether there is, or isn't a conflict. I
12 perceive this differently for the record. I don't like it. I don't like the fact that we have a person
13 wearing three hats. I've expressed that. A board of directors hat, a firm hat – understanding that
14 you may not be directly paid by this [?particular?] firm, and a defendant hat. Um, I know there's
15 a debate in the profession about that. I'm not here to debate that, but for the record I'm not
16 pleased with that, and I'm concerned and welcome the fact, that I assume, the executive board
17 would want all of its board members to be zealously, independently represented. I was a little
18 nonplussed, because not hearing it through the proper channels, i.e. how the decision was made,
19 the issue, of it even becoming an issue. In normal circumstances, i.e. other organizations, um,
20 that are functioning differently, some of them, or, you know, th- than we are able to at this
21 moment; um, there's usually some kind of informed proc-, information process.

22 Members of the board, whether it's a, a corporation or a nonprofit, have said, look here's
23 the situation: We're hiring so and so, whether it's the CPA who's doing the accounting, if that
24 person is, is, is, is on here or the lawyer who's going to represent you in the ongoing litigation,
25 which is already there. There's some kind of information given and some kind of consent from
26 board members. There was no process, and I'm just concerned about that. This doesn't seem to
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1 me to be proper, and I don't want my representation as part of this board member, or in the
2 capacity as a board member, to be compromised by operational, ah, decisions that are not, for
3 whatever reason -

4 **MARY BERRY:**

5 You should add -

6 **BETH LYONS:**

7 Hopefully implemented.

8 **MARY BERRY:**

9 I will recognize Michael, but you should add as a tag into your statement, in order to be fair, Miss
10 Lyons, your argument that the situation is different in that we have board members who are suing
11 the very foundation and board on which they serve, which makes it impossible to give certain
12 kinds of information to them because they are litigants. So, [unintelligible].

13 **SIMULTANEOUS SPEECH:**

14 [Unintelligible]

15 **BETH LYONS:**

16 You can add that Ms., Dr. Berry, I cannot, I, I am not adding that. I adding that, I'm just saying
17 you added that.

18 **SIMULTANEOUS SPEECH:**

19 [Unintelligible]

20 **MARY BERRY:**

21 That, that tells me how fair you are, 'cause that clearly is relevant and material. Yes-

22 **MARY BERRY SIMULTANEOUS WITH MR. PALMER:**

23 ah, Mr. Palmer.

24 **MICHEAL PALMER:**

25 It might be helpful for Beth and perhaps the others to know that when the initial law suit, the
26 Siegel law suit was named, it was the then Executive Director that made the hire, and we were

1 told at that time who it was. That's how it occurred this time, and the fact is that on Friday, at
2 least on this Friday, you had a chance to direct your questions directly to John who answered
3 them, and you s- stated your unease with it, but I think you did a good job, and it was supported
4 by others, not in the board, but by others that said that he is not in a conflict of interest, and, of
5 course, the option always remains, as you're aware, that if you don't feel like you're getting good
6 independent counsel then you can, on your own, do that. And so to go on and belabor the point, I
7 think the main point that you want to get to, is that, you see a conflict of interest, and you
8 disagree with what I myself feel and the others do, and as, and in fact John has stated, and others
9 have stated, it's not. I think that's the long and short of it, and w-, and I've heard what you feel,
10 and, and I respect that, and I think we should move on to the other- [unintelligible with
11 simultaneous speaker – Mr. Moran]

12 **TOMAS MORAN:**

13 Point of information. Ah, I wanted to know, Dr. Berry said that there was a board member who
14 was an active litigant against the foundation.

15 **AUDIENCE MEMBER:**

16 Unintelligible

17 **TOMAS MORAN:**

18 I need to you to name that, Dr. Berry.

19 **MARY BERRY:**

20 I don't- You don't- You, you don't tell me what to do.

21 **TOMAS MORAN:**

22 Well, you made a statement for the record that I need to understand. Dr. Berry I am asking an
23 informational question-

24 **JOHN MURDOCK:**

25 She's in caucus, come on, would you wait a minute?

26 **TOMAS MORAN:**

1 In caucus?

2 **AUDIENCE:**

3 [Scattered laughter, and comments.]

4 **MARY BERRY:**

5 Um, the, - If any of you are interested in having him do so, we would, could ask Mr. Murdock to
6 provide us with a statement from his firm. [Unintelligible with simultaneous speakers]

7 **[MARY BERRY AND TOMAS MORAN - SIMULTANEOUS]:**

8 Unintelligible.

9 **TOMAS MORAN:**

10 I, I - You made a statement for the record here. Is that being reversed, or what? I don't get it.

11 **MARY BERRY:**

12 I'm not going to discuss anything else about the litigation. Ah, that a- also [Simultaneous with
13 Mr. Moran whose comments are not intelligible] if you would like introduce a motion - If you
14 would like to introduce a motion, ah, to, ah, have Mr. Murdock's firm no longer be counsel, for
15 his ah, organization because of your unease, you may do so, and I will entertain such a motion.

16 **[MULTIPLE INAUDIBLE SPEAKERS]**

17 **MARY BERRY:**

18 Yes Miss Cagan.

19 **LESLIE CAGAN:**

20 No. I, I, I just-, I don't want to introduce that motion. What, because I want to go back to
21 Tomas' motion, ah recommendation - I don't know if it was a motion or not - that there be some
22 time set aside when the board can have discussion about how we're dealing with the litigation in
23 that context. I then may want to make a motion like that, but I feel that there hasn't been a venue
24 for us to have that kind of discussion about litigations, [?], and, you know, how we're
25 responding. I, I, I haven't read this new, ah, document either. Um, you made reference that there
26 may be some other, ah, law suit. You know, I, I do feel that as part of this board, and I would

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1 hope that other members of the board also feel that we would, you know, have some time to have
2 that discussion. In that, as I said, in that context, then I or other people might want to make a
3 motion like you just suggested, but right now I certainly don't want to make that motion.

4 **MARY BERRY:**

5 My only point is that the decision was made by the Executive Director. It is, ah, being
6 implemented and the firm is representing us.

7 **LESLIE CAGAN:**

8 I'm not talking about representation –

9 **MARY BERRY:**

10 And if you are uneasy about it – [SIMULTANEOUS WITH CAGAN]. If you are -

11 **LESLIE CAGAN:**

12 I'm not, I'm not. I mean, I don't know if I'm uneasy about this firm because I don't know what
13 the strategy is. I don't know what the thinking is about how to handle these lawsuits. I haven't
14 had an opportunity to express my thoughts on this. That's what I would like an opportunity to
15 do, and that's, I'd like to hear what other members of the board have. I have my ideas, but I
16 might be convinced by other members of the board.

17 **MARY BERRY:**

18 Board members, what I am suggesting to you –

19 **TOMAS MORAN:**

20 I so move.

21 **MARY BERRY:**

22 - is that if you –

23 **MALE BOARD MEMBER ?ROBINSON?:**

24 I'll move.

25 **MARY BERRY:**

26 - wish to move to do so because of your -

1 **TOMAS MORAN [SIMULTANEOUS WITH MARY BERRY]:**
2 I so move because of your tactic Dr. Berry.
3 **MARY BERRY:**
4 [unintelligible phrases] - then please do so and you will – [unintelligible]
5 **[SIMULTANEOUS SPEECH]**
6 **AUDIENCE:**
7 It's done. It's done. There is a motion on the floor.
8 **ROB ROBINSON:**
9 Second the motion.
10 **MARY BERRY:**
11 OK. Second. Does anyone wish to speak to the motion, further?
12 **FRANK MILLSPAUGH:**
13 I wish to speak against the motion. Ah, it's, uh, we have had from a third party, from
14 independent counsel, [?] relationship to this firm. Ah, the ah, ah, [not intelligible] –or maybe it
15 was in orally. The, a, the position that this is not a conflict of interest.
16 **LESLIE CAGAN:**
17 I'm not talking about a conflict of interest.
18 **FRANK MILLSPAUGH:**
19 [not intelligible]
20 **LESLIE CAGAN:**
21 No. No. It's [unintelligible] It's Tomas – Could you rep – Maybe Tomas could repeat it and then
22 **FRANK MILLSPAUGH:**
23 I'm sorry, I understood that he was raising the motion –
24 **MARY BERRY:**
25 I thought the p- motion was- What is your motion? So that people are [?] clear what it is.
26 **TOMAS MORAN:**

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1 The motion now, or the last one that I pro-

2 **MARY BERRY:**

3 The motion that you introduced and was seconded by Mr. Robinson. So that the [unintelligible –
4 Mr. Moran speaking simultaneously]

5 **TOMAS MORAN:**

6 That motion was the motion, the only venue that you gave to raising the issue of, ah, having the
7 discussion that Leslie and I had talked about, and creating a venue for it. And, the only venue
8 that you gave through your tactics, an- a- which are procedural, manipulative tactics to force it
9 this way, is for me to make a motion saying that I am uneasy about Mr. Murdock's, ah,
10 relationship with his firm at this point, because, and this is discussion now, because-

11 **[MULTIPLE SPEAKERS]**

12 **[UNKNOWN SPEAKER]:**

13 What's the motion?

14 **[UNKNOWN SPEAKER]:**

15 That's the motion.

16 **[MULTIPLE SPEAKERS]:**

17 Unintelligible.

18 **TOMAS MORAN:**

19 No

20 **MARY BERRY:**

21 [unintelligible] Just a moment. The motion has been made in response to my suggestion that if
22 there were board members who were uneasy about the representation by this firm, and wished it
23 not to continue, to make such a motion. My understanding is -

24 **TOMAS MORAN**

25 [Simultaneous with Mary Berry]: I said so moved. So, whatever you said- so moved.

26 **MARY BERRY:**

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1 - is that, is that if this motion passes, the firm would be discharged. We would be directing the
2 Executive Director to discharge this firm from representing us. That's my understanding of the
3 motion.

4 **UNKNOWN MALE VOICE:**

5 Mine too.

6 **MARY BERRY:**

7 Now, ah, the motion has been seconded, moved and seconded. Ah, is there further discussion of
8 this particular motion? There may be other motions, but is there a further discussion of this
9 motion? If there is no discussion, all those in favor of the motion indicate by saying aye.

10 **BOARD:**

11 Aye [several]. Abstention.

12 **MULTIPLE SPEAKERS:**

13 Unintelligible.

14 **MARY BERRY:**

15 Ah, who said aye? [?] wasn't enough to-

16 **UNKNOWN MALE SPEAKER:**

17 I

18 **MARY BERRY:**

19 [?] was not a majority. I did not hear, ok, all those in favor-, a- all those opposed to the motion
20 indicate by saying aye.

21 **BOARD:**

22 Aye [several]

23 **MARY BERRY:**

24 So that means that by voice vote -

25 **[MULTIPLE SPEAKERS]:**

26 Not intelligible.

1 **BETH LYONS:**

2 Abstention

3 **MARY BERRY:**

4 I will call for abstentions. The motion, ah, is defeated, however there were abstentions.

5 [Multiple voices] Ms. Cagan abstained and Ms. Lyons abstained.

6 **LESLIE CAGAN:**

7 I had another motion.

8 **MARY BERRY:**

9 Yes.

10 **LESLIE CAGAN:**

11 I'd like to move that a, ah, a vehicle, a time and place set up, and this can be by conference call,
12 you know whatever is practical th- for the full board to be invited to, some board members may
13 choose not to attend, but to participate in discussion, um, amongst ourselves and with the
14 Executive Director, of our strategies, and approaches, and thinking about, ah, how we want to
15 handle the lawsuits that are presently before us, or may come before us, you know, in the future.

16 **MARY BERRY:**

17 [unintelligible] Is there a second?

18 **BETH LYONS:**

19 Second.

20 **MARY BERRY:**

21 Is there a discussion of the motion? Yes, Mr. Ford

22 **KEN FORD:**

23 Personally, I will be voting against that motion for the simple fact that this board is like a sieve.
24 Anything that comes in leaks right out. Any discussion of the strategy will be-, therefore I
25 wouldn't be surprised if the attorney for the opposition would be on the phone call. I have no
26 trust or faith in that these, my fellow board members, and therefore I could not, ah, support any

1 kind of a motion, because if we're going to discuss strategy, why don't we just put it on the
2 airwaves, because that's exactly where it's going to end up.

3 **AUDIENCE [MULTIPLE]:**

4 That's a good idea. [Applause and multiple unintelligible comments]

5 **MARY BERRY:**

6 You will be in order. Ah, Mr. Moran.

7 **TOMAS MORAN:**

8 The concerns of any board member about their level of trust of any other individual cannot
9 abrogate my legal right to be a participant in the forging of the, and direction of this foundation.

10 **MARY BERRY:**

11 Oh poppycock, Mr. Moran

12 **AUDIENCE [MULTIPLE]:**

13 [unintelligible, multiple comments]

14 **MARY BERRY:**

15 The, the, the hiring of an Executive - of a counsel is done by the Executive Director. Ah, no one
16 is interfering with your right to do anything. If you get the most support for what you want to do,
17 you can do it. Ah, so that's just poppycock. Ah, is any further discussion of this motion? Yes.

18 **VALRIE CHAMBERS:**

19 With all due respect to the rights of Mr. Moran, he does have his rights. He should aggressively
20 pursue his rights [?]. I feel I also have rights, and I have the right to the best defense as a
21 potential named litigant in the suit. I am concerned, I share the concerns of Mr. Ford that
22 discussing the strategy would weaken the ultimate defense [?].

23 **MARY BERRY:**

24 If - Does anyone else have a comment? Um, about this motion I mean. Yes.

25 **BETH LYONS:**

26 I'm in favor of the motion, and specifically you [?] it would be an opportunity to illuminate and
27

1 to make some decision about what we're going to say to counsel, and I think that we should
2 reserve the right, having heard counsel's decision yesterday, um, to make a decision about some
3 of these other issues including conflict of interest and false representation once the board has had
4 a proper process in which we all can decide what the direction is in response to any of these, or
5 all of these, ah, lawsuits.

6 **MARY BERRY:**

7 Mr. Murdock.

8 **JOHN MURDOCK:**

9 Thank you Dr. Berry. I'd like to suggest that, that perhaps the motion might be one that's better
10 brought in a closed session to discuss the issue of what you're asking about. It just might be
11 easier to do that in closed session.

12 **LESLIE CAGAN:**

13 Ah, it was a motion for a closed meeting

14 **JOHN MURDOCK** [Simultaneous with Ms. Cagan above]:

15 Since it does relat - No, no, I'm sorry. The issue, the motion that I understood, the motion that I
16 understand, at this point, is that there be a meeting to discuss strategy. What I'm suggesting is
17 that that motion -

18 **MULTIPLE SPEAKERS:**

19 Unintelligible.

20 **JOHN MURDOCK:**

21 - that motion, I'm suggesting that you might -

22 **[Less than one minute lost in changing tapes to TAPE 2, SIDE A]**

23 **JOHN MURDOCK:**

24 - in a closed meeting where people might be more comfortable with [?].

25 **LESLIE CAGAN:**

26 OK, I, I, I would, I would make a friendly amen-, I would am, you know, amend my motion to
27

1 say that the, that the, the p- proposal that I put forth for such a discussion be in closed session.
2 But your proposal to have a closed session to discuss whether or not we can have a discussion I
3 will not [?].

4 **MARY BERRY:**

5 Um, any other? I call for the question. All those in favor of Mr. Moran's motion- is there a-

6 **TOMAS MORAN:**

7 Not my motion.

8 **[MULTIPLE SPEAKERS]:**

9 Not intelligible.

10 **MARY BERRY:**

11 Ah, it's Ms. Cagan's motion. My mistake, sorry. I get confused. It was seconded by –

12 **FEMALE VOICE:**

13 Ms. Lyons. No, we're not all [?].

14 **MARY BERRY:**

15 Ah, all those in favor of the motion indicate by saying aye.

16 **BOARD MEMBERS:**

17 Aye

18 **MARY BERRY:**

19 Opposed to the motion, indicate by saying nay.

20 **BOARD MEMBERS:**

21 Nay

22 **MARY BERRY:**

23 I think the Nay's have it. Were there any abstentions? Ok, the nays have it. I want to suggest
24 that in terms of the litigation strategy, that, ah, those board members who wish to discuss it [?]
25 counsel, in the absence of a motion here to do so, get in touch with, let Bessie set up some time
26 with counsel for them to discuss it with counsel.

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TOMAS MORAN:

But that doesn't afford us to give direction to the-

MULTIPLE SPEAKERS:

Unintelligible.

LESLIE CAGAN:

Yes that's fine. I was cautioned yesterday, we all were cautioned about the cost of everything –

MARY BERRY:

But, I mean, if you really are worried about it, and you really are concerned, then you really ought to have a chance to [covered by Leslie Cagan]

LESLIE CAGAN:

I, I do. I also though was hoping for the benefit of the wisdom of my fellow board members to inform my own thinking about this and that's what I was looking for.

TOMAS MORAN:

Will meeting afford me, ah, the ability to affect the strategy or just to get informed about the strategy, because what we're asking for is a meeting in which this board, which is empowered to set strategy, ah, can have that kind of discussion and see if we even want to do that. And -

MARY BERRY:

Want to do what?

TOMAS MORAN:

That the mot-, that the meeting you're suggesting with the attorney, the informal meeting, does not provide a venue for me to have my rights to affect the strategy, and to vote on whether we want to affect the strategy, or not.

MARY BERRY:

But, but anytime you want to present motions, and go to the [?meetings?] and so on, you can. Yes, Mr. Murdock.

JOHN MURDOCK:

1 Sometimes we ex -, we tend to get lost in the woods. There's absolutely nothing that prevents,
2 there is nothing that prevents individual members of this board from speaking to one another and
3 caucusing on issues and concerns that they have, and if they find that they have some consensus
4 amongst one another, from making a written proposal to the board on what they believe ought to
5 happen. So, I mean, an argument over, an argument about this is kind of pointless; there's
6 nothing that prevents any of us from talking to one another. We can certainly do that.

7 **LESLIE CAGAN:**

8 Right. I don't have the money to set up a conference call this body. Right. I would like this to
9 be a, the foundation's responsibility to convene either a conference call or an, an, you know,
10 person-to-person meeting.

11 **JOHN MURDOCK:**

12 Well, person-to-person -

13 **LESLIE CAGAN:**

14 And not be my responsibility to convene a meeting of this board.

15 **JOHN MURDOCK:**

16 I'm not suggesting a meeting. I'm saying-

17 **LESLIE CAGAN:**

18 Well, I am.

19 **JOHN MURDOCK:**

20 - a caucusing. And I'm suggesting to you that there's an alternative, which is that we can all
21 caucus amongst ourselves individually or in groups, and see if there's a consensus, and then from
22 there develop approach.

23 **AUDIENCE MEMBER:**

24 Why not have a board meeting about it?

25 **MARY BERRY:**

26 OK, ah, ah, Ms. Lyons.

1 **BETH LYONS:**

2 But the proposal that Leslie's making, which I'm, which I, I second and support, is that we
3 particularly have that collective process in an effort to, to try to develop, and to hear our other
4 board members, and to try to develop some collective way to deal with whether it's this or
5 whether it's anything else, but particularly we're talking about this now – the litigations. And I
6 think that's the point. And I think that, that, that to do that, um, you know, I think that, that it, the
7 Pacifica should make that forum available, whether it's a conference call, whatever. We're all
8 gonna- we, we could talk to each other in caucus, that's not the point. I really want to hear what
9 other people have to say.

10 **MALE BOARD MEMBER:**

11 Point of order, please.

12 **MARY BERRY:**

13 But there's a point of order. You are right to call the chair to task for not keeping us in order.
14 I'm sorry. Ah, we have debated this motion and defeated it. It has been defeated, which means we
15 shouldn't still be discussing it. And also, whatever any individual board member might feel, the
16 majority of the board members do not believe that it is necessary to have such a meeting or to
17 talk about it. They seem to be, and there was not, there was not a majority that was uneasy about
18 our representation, as I read the votes that just took place here at this meeting. So, this is a matter
19 of persuading ones individual colleagues if one wishes to have a different consensus. So, I think
20 that that's the answer to question for this board meeting. Ah, the next item on the agenda is the
21 Program Committee. Mr. Millspaugh.

22
23 **[END OF EXECUTIVE COMMITTEE REPORT, BOARD MEETING CONTINUES**
24 **WITH NEXT COMMITTEE REPORT]**