

1 Daniel Rapaport (Bar No. 67217)
Thiele R. Dunaway (Bar No. 130953)
2 WENDEL, ROSEN, BLACK & DEAN, LLP
1111 Broadway, 24th Floor
3 Oakland, California 94607-4036
Telephone: (510) 834-6600
4 Fax: (510) 834-1928

ENDORSED
FILED
ALAMEDA COUNTY

JUN 13 2000

CLERK OF THE SUPERIOR COURT
By Columbus Littleberry, Deputy

5 Attorneys for Defendants
PACIFICA FOUNDATION, MARY FRANCES BERRY,
6 DAVID ACOSTA, JUNE MAKELA,
ANDREA CISCO, FRANK MILLSPAUGH,
7 KEN FORD, MICHEAL PALMER and WILLIAM LUCY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA

10
11 DAVID ADELSON, LAUREN AYERS,
MARY BERG, JOANNE BOBB, LYDIA
12 BRAZON, CECELIA CARUSO, GAIL
DIXON, ANNE EMERMAN, SHERRY
13 GENDELMAN, TERRENCE GUY, JIM
HORWITZ, KAHLIL JACOBS-
14 FANTAUZZI, DAWUD KHALIL-ULLAH,
PELE DE LAPPE, STEVE LUSTIG,
15 ERROL MAITLAND, MIGUEL
MALDONADO, ANDREW NORRIS,
16 LEWIS O. SAWYER, JR., MARIALICE
WILLIAMS, and FRIEDA ZAMES,
17 individually, and on behalf of others
similarly situated, and on behalf of Pacifica
18 Foundation,

19 Plaintiffs,

20 vs.

21 PACIFICA FOUNDATION, a California
Nonprofit Corporation, MARY FRANCES
22 BERRY, DAVID ACOSTA, JUNE
MAKELA, ANDREA CISCO, FRANK
23 MILLSPAUGH, KEN FORD, MICHEAL
PALMER, WILLIAM LUCY, and DOES 1-
24 25, inclusive,

25 Defendants.

Case No. 814461-0

DECLARATION OF FRANK
MILLSPAUGH IN OPPOSITION
TO MOTION FOR
PRELIMINARY INJUNCTION

Date: June 23, 2000
Time: 2:00 p.m.
Dept. 31
Judge: James A. Richman

Wendel, R. Black & Dean, LLP
111 Broadway, 24th Floor
Oakland, California 94607-4038

1 I, Frank Millspaugh declare:

2 1. The following information is within my personal knowledge and if sworn as a
3 witness, I could competently testify thereto. I am currently employed by The Disarm
4 Education Fund's Cuban Medical Project, which seeks an end to the U.S. Embargo
5 against Cuba. I have spent 40 years in the management and development of progressive
6 non-profit organizations and I was a Pacifica Station Manager for WBAI-FM from 1966
7 to 1970.

8 2. In 1994, I was nominated by the Local Advisory Board at WBAI. In October,
9 1994, I was elected by the Board of Directors of Pacifica to my first term as a National
10 Board member. Since that time, I have attended virtually all of the Board meetings of the
11 Board of Directors. I have seen numerous LAB nominees come before the Board. Those
12 nominees have uniformly been nominated by their Local Advisory Board and stood for
13 election before the National Board. No one to, my knowledge, has ever been seated on
14 the National Board of Directors that was not voted on by the Board members. Often the
15 Board would identify a good candidate, who was not nominated by a Local Board. Some
16 times the Board would elect such persons. We deemed such persons to be "at-large
17 members."

18 3. Prior to 1997, at-large members were elected by a 2/3rds majority of the Board
19 while local nominees were only required to be elected by a bare majority. By and large,
20 this difference was never really an issue, since by the time a nominee got to the Board, it
21 was typically someone who the Board members knew or had heard of or had determined
22 would be a valuable addition to the Board. Thus, typically, most members were elected
23 virtually unanimously. When the Board was looking to revise Bylaws in 1997, one issue
24 was whether there should be a difference in the number of directors necessary to elect
25 members from those nominated by the local boards versus at-large members. After some
26 discussion, it was determined to amend the Bylaw to require only a simple majority of the
27 quorum present to elect any director, rather than requiring different percentages of the
28 total Board. The discussion which took place and the desire to make these voting

1 requirements uniform, clearly demonstrates that everyone understood that all nominees,
2 whether local or at-large, required approval by the Board of Directors before they could
3 be seated.

4 4. I was first elected to the Board in October of 1994. My term expired in
5 October of 1997. I was reelected to the Board for a second term in March of 1998. That
6 term expires in March of 2001.

7 5. I have reviewed the allegations that June Makela and David Acosta were not
8 properly elected to the Board. Ms. Makela's second term did expire on June 1999, but as
9 she was asked to remain until her term as Treasurer and Executive Committee Member
10 expired so as to ease the transition with the new Treasurer. This is customary. She
11 resigned in February of 2000, which is when she went off the Board. Plaintiffs allege Mr.
12 Acosta's term expired. However, Mr. Acosta was appointed to the Executive Committee
13 in March of 1997. The appointment to the Executive Committee and his appointment as
14 Vice Chair continues his Board membership until the expiration of these terms. His term
15 as Vice Chair does not expire until June 2001. In sum, no current directors of Pacifica
16 were in violation of any Bylaw or any other requirement related to limitations on service.

17 6. Most of the Board members who voted for the February 1999 Bylaw change,
18 which plaintiffs contend hurt LABs, were members of an LAB at the time they voted or
19 had been originally nominated to the Board by an LAB.

20 7. It does not surprise me that Ms. Gendelman did not get to vote on the 1997 and
21 1999 Bylaw changes, or the election of directors, since she was not a Board member. She
22 was present however and gave an oral report as Chair of the KPFA LAB on February 28,
23 1999. Yet she never asserted she had a right to vote on Bylaw changes or elect directors.
24 Rather, she requested the National Board consider developing Bylaws which would allow
25 for increased community input. She seemed to recognize that such decisions were up to
26 the Board. A true and correct transcript of her comments are attached as **Exhibit R**.

27 8. I, too, was present at the Board meeting in October of 1999 when the Board
28 elected Tomas Moran, Karolyn van Putten and Wendel Johns. The Bylaws required that

