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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

DAVID ADELSON, et al.,
Plaintiffs,
v.

PACIFICA FOUNDATION, et al.,
Defendants.

PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. CAROL
SPOONER, et al.,

Plaintiffs,
v.

PACIFICA FOUNDATION, et al.,
Defendants.

) Consolidated Case No.: 814461-0
) [Consolidated with No. 831252-3
) and No. 831286-0]

) **PLAINTIFFS AND CROSS-**
) **COMPLAINANTS' MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN SUPPORT**
) **OF EX PARTE APPLICATION TO**
) **ENFORCE STIPULATION**

) Date: August 22, 2001
) Time: 3:30 p.m.
) Dept.: 22
) Judge: Hon. Ronald M. Sabraw

1 ROBERT ROBINSON, et al.,)
Plaintiffs,)
2 v.)
3 PACIFICA FOUNDATION, et al.,)
Defendants.)
4)
5 _____)
TOMAS MORAN, et al.,)
Cross-Complainants,)
6 v.)
7 PACIFICA FOUNDATION, et al.,)
Cross-Defendants.)
8 _____)

1 **INTRODUCTION**

2 The six current defendant members of Pacifica’s National Board (“Defendants” or
3 “Defendant Directors”) entered into a Stipulation at the request of the Court in which they committed
4 to the Court and to plaintiffs and cross-complainants in this consolidated action (“Plaintiffs”) that:
5 the Foundation’s authority to the contrary notwithstanding, the Directors of Pacifica
6 Foundation shall not, except upon thirty days written notice to all Directors and
7 plaintiff’s counsel, . . . other than in a bona fide emergency, direct any of the Pacifica
8 station managers to take any action respecting the broadcast by such stations of [the
9 Democracy Now!] program. The Executive Director of the Foundation shall be
10 informed of this Stipulation and shall act in accordance therewith.

11 In clear violation of their express Stipulation, Defendants have taken action interfering with
12 the broadcast of Democracy Now! without providing the requisite notice. In the last two weeks,
13 Pacifica management has changed the conditions at the studio in which Democracy Now! had been
14 produced so as to make it impossible for the Democracy Now! staff to create the broadcast, both by
15 forcing the staff into a technically deficient studio that is inadequate for the needs of a national talk
16 radio magazine and by causing physical assault, threats of violence, and increasing verbal harassment
17 directed at the Democracy Now! staff, such that the staff fears for their physical safety and is
18 justifiably unwilling to produce the program at the Pacifica studio.

19 Even though the Democracy Now! staff found alternate studio and office space to prepare
20 the broadcast, free of charge, and has delivered the feed for the Democracy Now! broadcast to
21 Pacifica in a timely and technically proper manner, Pacifica has further interfered with the broadcast
22 by refusing to carry the Democracy Now! program on Pacifica’s satellite feed to Pacifica stations and
23 affiliates, interfering with these stations’ ability to obtain and air the broadcast. As a result, Pacifica
24 yesterday suspended the Democracy Now! host and staff.

25 Moreover, there are now at least six directors of Pacifica (the plaintiff/cross-complainant
26 directors and Valrie Chambers) – *a majority of the Board* – who believe that the Democracy Now!
27 program should be broadcast remotely and that no punitive actions should be taken against the staff
28 of Democracy Now!

1 The interference with the broadcast of Democracy Now! is causing severe and irreparable
2 damage to Pacifica, as several Pacifica affiliates have informed Pacifica that the refusal to deliver
3 this program is a breach of Pacifica’s agreements with the affiliates, and have requested to terminate
4 the agreements.

5 Pacifica claims that the Democracy Now! staff is violating their employee obligations by
6 refusing to report to work at the Pacifica facilities. However, the facts show that this claim is bogus.
7 Prior to the recent escalation by Pacifica management, the WBAI Station Manager had repeatedly
8 stated to Democracy Now! staff that they should find alternative studio, and referred to them as
9 “unwanted tenants.” This demonstrates that Pacifica has no valid reason for refusing to carry the
10 Democracy Now! broadcast based on the location where the broadcast was produced.

11 Defendants claim that their actions simply involve a labor-management dispute concerning
12 compliance with workplace rules, for which the sole remedy under U.S. labor law is the collective
13 bargaining agreement governing the employees. However, the defendants, in entering into the
14 Stipulation, explicitly provided that the Stipulation overrides any such rights by the Foundation. The
15 first phrase of the provision reads “The Foundation’s authority to the contrary notwithstanding,” a
16 reference to labor-management laws and other laws that give Pacifica the right to make programming
17 decisions. By entering into the Stipulation, defendants expressly agreed that they would provide the
18 requisite thirty-day notice, even if Pacifica had authority under labor laws to take action concerning
19 the Democracy Now! broadcast.

20 Defendants’ violation of the Stipulation deprives Plaintiffs of the benefit of their bargain, as
21 they entered into the Stipulation precisely to prevent Defendants from taking any action to interfere
22 with the broadcast of Democracy Now! on less than 30 days’ notice, to allow Plaintiffs sufficient
23 time to bring a noticed and fully briefed and supported motion for relief. In fact, plaintiffs will file
24 tomorrow a Motion to Appoint Limited Purpose Receiver based in large part of Pacifica’s actions
25 interfering with and destroying the Democracy Now! program. If the Stipulation is left unenforced,
26 and Pacifica is not required to carry the Democracy Now! broadcast until after thirty days’ notice,

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1 there will be lasting damage done to the Democracy Now! program by the time the Motion to
2 Appoint Limited Purpose Receiver is heard and decided.

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5 **STATEMENT OF FACTS**

6 **1. The Stipulation concerning Democracy Now!**

7 The Stipulation provides:

8 11. The Foundation's authority to the contrary notwithstanding, the
9 Directors of the Pacifica Foundation shall not, except upon thirty days written notice
10 to all Directors and plaintiff's counsel, take any action respecting the current funding
11 status of Democracy Now!, nor, other than in a bona fide emergency, direct any of
the Pacifica station managers to take any action respecting the broadcast by such
stations of that program. The Executive Director of the Foundation shall be informed
of this provision of the Stipulation and shall act in accordance therewith.

12 Stipulation ¶ 11 (a copy of the Stipulation is attached to this Memorandum as Exhibit A).

13 Democracy Now! is a daily radio news magazine distributed by Pacifica Foundation and
14 carried nationally by five Pacifica stations and more than thirty other independent Pacifica affiliate
15 stations, as well as through the world wide web. Amy Goodman has been the host of Democracy
16 Now! (“DN”) since its inception in 1996. DN and Goodman have won numerous awards for radio
17 journalism, including the George Polk Award for International Reporting. Goodman Dec. ¶¶ 1-2;
18 Burstein Dec. ¶ 4.

19 Until August 13, 2001, the DN staff produced the show at the WBAI station facilities in New
20 York City. However, during the past two weeks Pacifica’s management has engaged in actions that
21 have significantly interfered with the ability of the DN host and staff to produce the show, including
22 verbal harassment, physical assault, and threats of imminent violence. These escalations have
23 created a dangerous situation of such intensity that the DN staff are in imminent danger of physical
24 harm if they were required to produce the show at the WBAI facilities, and that has interfered with
25 the ability of the DN host and producers to prepare the daily broadcasts. Goodman Dec. ¶¶ 11-12,

1 16-18, 25-30; Burstein Dec. ¶¶ 5-16.^{1/}

2 **2. Harassment of Democracy Now! that led to the Stipulation**

3 Over the past year, Pacifica management had engaged in and condoned actions that had
4 interfered with the ability of the DN staff to produce the program, out of animosity to Goodman
5 because she had publicly criticized management for actions in suspending and banning programmers
6 with whom management had disagreements. Goodman Dec. ¶ 5. Due to this past interference,
7 plaintiffs negotiated a provision in the Stipulation that required that Pacifica management could take
8 actions that affected the broadcast of DN only upon thirty days notice, to provide plaintiffs sufficient
9 time to bring a noticed motion to prevent such action.

10 The past actions included repeated threats of violence, slanderous and defamatory statements,
11 and threats of employment retaliation. The National Program Director had repeatedly shouted at DN
12 staff, used abusive language, and routinely issued what he calls “orders” and “commands” and uses
13 threats of discipline. Pacifica management made numerous false accusations against Goodman and
14 DN, with no basis, *e.g.*, that the DN staff had used material in the broadcast without permission and
15 that the DN staff improperly used a Pacifica floor pass at the Republican National Convention to
16 allow Ralph Nader (who was providing commentary for the DN broadcast) on the convention floor.
17 Pacifica management placed in a prominent position on the Pacifica website a page-long untrue
18 attack on Goodman replete with false and defamatory statements since October 22, 2000, and did
19 not give Goodman an opportunity to respond. Goodman Dec. ¶ 11 & Ex. B.

20 Utrice Leid, the WBAI station manager, repeatedly made threats on and off the air against
21 Goodman, and permitted others to do so as well, creating an atmosphere full of fear and the threat

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23 ^{1/} The recent escalations against DN began two weeks ago, when Pacifica management removed the DN
24 program from the main studio at the WBAI station for no valid reason, and placed the program staff in a
25 substandard studio with inadequate facilities for the demands of a national radio talk show, giving the staff
insufficient notice (approximately twenty minutes) of the move.

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1 of physical violence. For example, Leid: stating on the air: “We're talking here today about the
2 European psychological warfare against Africans and that's what the whole thing is about. I need
3 you stalwart soldiers out there to pick up the phone and make a call and put an end to white
4 supremacist thinking. This is a call to arms. I told you it's a war.” She said that Goodman was
5 “telling lies” and that she “concocted” and “orchestrated” a series of “untruths”. She accused
6 Goodman of racism, underscoring this by stating that Goodman was “from South Africa” and that
7 she was “white supremacist.” Leid stated that Goodman’s conduct is “tantamount to a crime” and
8 that her contribution to a Pacifica show is “defecation.” Leid stated that there was one person who
9 was behind all the trouble, referring to Goodman, and facing Goodman, said that Goodman
10 “defecated” on the air and “defecated” on the listeners. Leid stated on a nationwide broadcast, in
11 references that were understood to be an incitement to violence against the Democracy Now! staff:
12 _I need you stalwart soldiers out there _ This is a call to arms. I told you, it_s a war._ Leid said that
13 some of those who she says were sabotaging the station _are right here with us._ Leid has come into
14 the master control studio during a broadcast of Democracy Now! , asking belligerently, what are you
15 doing here? Goodman Dec. ¶¶ 12, 29-30; Burstein Dec. ¶¶ 6, 9, 12-13, 16.

16 Pacifica management permitted other Pacifica agents to make harassing and threatening
17 comments to Goodman. Clayton Riley shouted at Goodman during a meeting, “you are evil. You
18 are evil.” and stated he would lock Goodman out of the studio the next morning. Pacifica
19 management permitted Diabel Faye to make on-air references to Goodman as a “criminal,” “white
20 chick” and a “liar.” On one occasion, Riley came into the master control studio during a broadcast
21 by Goodman, and screamed at a woman guest to get out, ripping the headphones from her head;
22 when one staff member pinned Riley to the wall while the guest left, Riley screamed, “I’ll get you,
23 I know where you live, I know where you live.” Goodman Dec. ¶ 12. Goodman repeatedly
24 complained in writing to Pacifica management, but no action was taken to prevent such occurrences
25 or to discipline the individuals committing the harassment and threats. Goodman Dec. ¶ 13.

26 Riley has a history of physical violence, and is known for his history and fits of violence.
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1 Riley has threatened people at staff meetings forcing others to intervene. Riley has a history of
2 threats and assaults on other staff members. Riley physically threatened a WBAI reporter that spoke
3 in Goodman's defense, shouting at him repeatedly to _stop kissing the ass of that white bitch_ and
4 calling him a _slave,_ moving very close, within inches of Knight_s face, and minutes later,
5 assaulted the reporter. Riley publicly threatened a Democracy Now! engineer that he knew people
6 he could pay \$400 to break both his legs. Riley shouted obscenities at another Democracy Now!
7 producer for no reason in a threatening manner. In each case, Pacifica management was informed
8 of these incidents, but took no action against Riley, and instead rewarded Riley by increasing the
9 airtime of his programs. Goodman Dec. ¶¶ 26-28; Burstein Dec. ¶¶ 6-11.

10 **3. Interference with broadcast of Democracy Now! that commenced August 8, 2001**

11 The recent escalation of interference with the DN broadcast began on August 8, 2001, when
12 Pacifica management demanded that the DN staff produce the show not from the usual studio, but
13 from a substandard and inadequate studio, providing only twenty minutes notice prior to broadcast,
14 and making harassing comments as the DN staff hurried to move their equipment and materials.
15 Two days later, on August 10, 2001, Leid physically assaulted Goodman, grabbing a camera from
16 Goodman and violently shoving her when she requested the return of the camera, and then closing
17 her foot in a door. Though Goodman complained in writing to Pacifica management concerning this
18 assault, Pacifica took no action. Goodman Dec. ¶¶ 16-17 & Ex. G.

19 The next workday, Monday, August 13, 2001, two members of Pacifica and WBAI
20 management intentionally interfered with the production of Democracy Now! through verbal
21 harassment and threats of violence, yelling and threatening that Goodman should go on the air and
22 deny that she had been assaulted by Leid, forcing their way into the DN offices, and yelling so loudly
23 that they were heard over the air. Goodman another DN staff were fearful that this conduct might
24 turn violent. Goodman Dec. ¶ 18.

25 Due to the inadequate studios, the physical assault and verbal harassment, and Pacifica
26 management's failure to respond or take any action concerning this conduct, Goodman and the DN
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1 staff concluded that they could no longer safely work at WBAI, as they believed they were in
2 imminent danger of further harassment and physical violence. The DN staff then found an alternative
3 space from which to broadcast and produce Democracy Now!, from DC-TV studios, a state-of-the-
4 art studio and office space that was offered to them and Pacifica free of charge, and in which they
5 were not in fear of imminent bodily injury. Goodman Dec. ¶ 19 & Ex. H.

6 The next day, Tuesday, August 14, 2001, the DN staff prepared and broadcast the DN
7 program from the DC-TV studios. However, Pacifica management refused to broadcast the program,
8 instead airing a rerun of an old DN program that was edited by removing certain content that Pacifica
9 management did not like. Goodman Dec. ¶ 20.

10 Goodman and the DN staff then negotiated with Pacifica management, through union
11 representatives, from August 15-17, to determine if Pacifica would agree on a minimum set of safety
12 guarantees for our return. On August 17, 2001, Pacifica management and the union reached
13 agreement on certain issues. As to the issue of workplace violence, Pacifica was willing only to
14 issue a statement that stated in effect that Pacifica had a “commitment to maintaining a workplace
15 that is safe, secure, and free of discrimination, harassment, intimidation or physical altercation.”
16 Pacifica also agreed to restore the Democracy Now! broadcast to the main control studio, the only
17 adequate broadcast studio at WBAI for the program. With these agreements, AFTRA instructed the
18 DN staff to return to work. However, though Pacifica management offered to issue and post this
19 statement, they refused to prohibit the on-air personal attacks against the DN staff; and in fact never
20 posted the statement. Goodman Dec. ¶¶ 21-23 & Ex. I.

21 However, during and after these negotiations, Pacifica still permitted threats of violence and
22 verbal harassment at the workplace. For example, on Thursday, August 16, the morning show staff
23 encouraged listeners to attack Goodman and Democracy Now!, and when listeners called in to voice
24 their support for Goodman and DN, the hosts either mocked them or cut short their calls with the
25 sound of a flushing toilet. Then, on August 18 – while Goodman and the DN staff were considering
26 returning to work on the next Monday – Pacifica permitted and took no action against an explicit
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1 threat of violence. Producer Clayton Riley said on the air in a WBAI broadcast, in a context that
2 made clear he was talking about Goodman and the DN staff:

3 “When you talk about the enemy, you find the enemy, you isolate the enemy and you
4 destroy the enemy. These people have put themselves in the position of being the
5 enemies. This conflict is not going to end, in my judgment and let me be clear about
6 that, until the dissidents, until the so-called exile community is destroyed.
7 Unequivocally.”

8 Riley’s comments were not just inflammatory, but make Goodman and the DN fear for their physical
9 safety because of other threats and violence by Riley. For example, Riley had threatened a reporter
10 who had spoken in Goodman’s defense shouting at him repeatedly to “stop kissing the ass of that
11 white bitch” and calling him a “slave,” moving very close within inches of Knight’s face, creating
12 a clear fear of imminent violence; and then minutes later assaulted the reporter in Leid’s presence.
13 Riley had followed a DN engineer to the elevator at the WBAI offices, and threatened that he knew
14 people he could pay \$400 to break both his legs. Riley, in response to a normal question from a
15 former DN producer, began shouting “fuck you, fuck you” at her, and refused to stop shouting
16 obscenities. Riley has a history of physical violence, and is known for his history and fits of
17 violence. For example, there have been several other staff meetings when Riley threatened people
18 and his arms had to be pinned. In each instance of threats, Goodman informed WBAI and Pacifica
19 management of these incidents, both verbally and in writing, yet management never responded to
20 our complaints. Moreover, Riley was never disciplined for any of these threats or violence, but
21 instead rewarded, for example by having the air-time of his weekly program doubled. Goodman Dec.

22 ¶¶ 24-28.^{1/}

23 ^{2/} Goodman’s fear of physical violence has been exacerbated because Pacifica has refused to give
24 Goodman a key to the station or to her own office, creating a situation where if Goodman or staff are attacked
25 while inside the station, they do not have freedom of access to escape, even to enter their own offices. Pacifica,
26 through Leid, is demanding that Goodman provide her home and cell telephone numbers before she will
27 provide the keys, though there is no valid reason to do so (Pacifica had previously demanded Goodman’s home
28 address). Goodman is fearful that if she provided this information to Leid, who has threatened and assaulted
29 her, that she will be targeted for violence. Goodman Dec. ¶¶ 31-32.

1 Pacifica has no need for the Democracy Now! show to be produced at the WBAI facilities.
2 Prior to the recent events, Leid repeatedly demanded that Goodman find alternative studio and office
3 space for the Democracy Now! program, referring to Goodman as an _unwanted tenant._ Goodman
4 Dec. ¶ 34.

5 Due to Riley's threatening comments on August 18, the Democracy Now! staff felt in fear
6 of imminent physical injury if there were to return to the WBAI studios on the next workday. Thus,
7 on August 20, 2001, as well as on August 21-22, the Democracy Now! staff produced and provided
8 to Pacifica the Democracy Now! broadcast, from the alternate studio and office space at DC-TV.
9 Goodman Dec. ¶¶ 36-38 & Ex. G.

10 However, Pacifica national management has refused to broadcast the Democracy Now!
11 program each day, and refused to send the signal out over the Pacifica satellites, thus preventing any
12 other Pacifica station or Pacifica affiliate station from obtaining the broadcast through the Pacifica
13 satellite. Goodman Dec. ¶ 37. The decision not to make the Democracy Now! program available
14 by satellite was made by Pacifica's executive director. Declaration of Phil Osegueda, KPFA
15 Assistant General Manager, ¶¶ 2-3.

16 On August 21, 2001, Pacifica suspended Goodman and other members of the Democracy
17 Now! staff for refusing to report to work at the WBAI station, even though they have produced and
18 delivered the Democracy Now! broadcast to Pacifica every work day in a timely manner from the
19 alternate and safe DC-TV studios.^{1/}

20 Several Pacifica affiliates are cancelling their contracts with Pacifica, due to Pacifica's
21 failure to broadcast the Democracy Now! show live. Goodman Dec. ¶ 41 & Ex. L.

22 **4. A majority of Pacifica's directors do not support the interference with Democracy Now!**

23 A majority of the Pacifica directors believe that the Democracy Now! program should be

24 _____
25 ^{3/} Pacifica did not inform Goodman of her suspension, prior to telling the newspapers. In fact, Pacifica
26 had violated a gag order agreement it had insisted on during the negotiations, that no party should talk to the
27 media during the negotiations, as a Pacifica PR team spoke to numerous media during this time. Goodman
28 Dec. ¶¶ 38-39.

1 broadcast by Pacifica even if produced at a location other than the WBAI studios, and that Goodman
2 and the DN staff should not face any punitive measures. In addition to the five plaintiff and cross-
3 complainant directors, Valrie Chambers, a defendant in the consolidated lawsuits, today sent an
4 email to the board in which Chambers she states: “I am amenable to DN! Being broadcast remotely.
5 . . . DN! Staff should have assurances that NO punitive actions will be taken against them for
6 broadcasting remotely in a responsible way.” Goodman Dec. ¶ 40 & Ex. K. However, there has
7 been no board meeting concerning the situation with Democracy Now!, and all actions are being
8 taken without direction of the majority of the board.

9 ARGUMENT

10 **I. THE COURT SHOULD ENFORCE THE CLEAR TERMS OF THE** 11 **STIPULATION, WHICH REQUIRE 30 DAYS’ NOTICE BEFORE PACIFICA** 12 **CAN STOP DISTRIBUTING THE DEMOCRACY NOW! BROADCAST**

13 **A. The Refusal to Distribute the Democracy Now! Broadcast and the Suspension** 14 **of the Democracy Now! Staff Violates the Stipulation’s Provision that** 15 **Defendants and Executive Director Shall Not “Direct Any of the Pacifica Station** 16 **Managers To Take Any Action Respecting the Broadcast” of Democracy Now!** 17 **Without 30 Days Prior Written Notice to Plaintiffs’ Counsel”**

18 The Stipulation provides:

19 11. The Foundation's authority to the contrary notwithstanding, the
20 Directors of the Pacifica Foundation shall not, except upon thirty days written notice
21 to all Directors and plaintiff's counsel, take any action respecting the current funding
22 status of Democracy Now!, nor, other than in a bona fide emergency, direct any of
23 the Pacifica station managers to take any action respecting the broadcast by such
24 stations of that program. The Executive Director of the Foundation shall be informed
25 of this provision of the Stipulation and shall act in accordance therewith.

26 Stipulation ¶ 11 (a copy of the Stipulation is attached as Exhibit A to this Memorandum). Thus,
27 Paragraph 11 explicitly contemplates that the Pacifica directors and the Executive Director, despite
28 having authority under any other law or agreement to take an action respecting the Democracy Now!
29 broadcast, may not take such action on less than 30 days’ notice, except in a bona fide emergency.

30 It is undisputed that Defendants have not provided this notice to Plaintiffs’ counsel as

1 provided by the Stipulation. No notice was provided of Pacifica’s refusal to carry the Democracy
2 Now! broadcast, and no notice was provided of the suspension of the Democracy Now! staff.
3 Moreover, it appears that the entire escalation of harassment against Democracy Now! – the exact
4 situation that Paragraph 11 of the Stipulation was intended to address – beginning with the shift to
5 inadequate studio space on August 8, the assault and verbal harassment on August 10 and 13, and
6 the on air threats of violence on August 16 and 18, was designed to force Goodman and the
7 Democracy Now! staff into a situation where they are subject to termination by Pacifica. Clearly,
8 no notice was provided to plaintiffs’ counsel of this escalation of harassment obviously intended to
9 interfere with the broadcast of Democracy Now!

10 Further, it is clear that the actions being taken against Democracy Now! are being taken by
11 Pacifica management. Leid, as WBAI Station Manager, is part of Pacifica management, and is
12 subject to the supervision of the Executive Director. Moreover, the decisions on suspending the
13 Democracy Now! staff and on not broadcasting the Democracy Now! program that is being provided
14 to Pacifica clearly have been made by Pacifica’s executive director. Osegueda Dec. ¶ 2.

15 **B. There Has Been No “*Bona Fide Emergency*” To Permit Interference
16 With the Broadcast Without the Required Notice**

17 Paragraph 11 indisputably requires 30 days’ notice before taking any action concerning the
18 broadcast of DN, except in a bona fide emergency.

19 As the Court will recall, this Stipulation was requested by the Court in lieu of ruling on the
20 *Spooner* plaintiffs’ motion for a preliminary injunction. Rather than rule on the preliminary
21 injunction, the Court decided that the parties should enter into the Stipulation so they would be
22 required to meet and confer to discuss potential actions proposed by the Foundation. The parties
23 then met and included Paragraph 11 in the Stipulation, so that prior notice was required before any
24 actions were taken concerning the broadcast of Democracy Now! Any party could then bring a
25 specific motion to preclude specific actions. ***The very purpose of the Stipulation was therefore to
26 provide the parties adequate time to bring appropriately noticed motions to preclude particular
27 actions, after adequate notice*** — in the case of the especially controversial action to take any action

1 concerning Democracy Now!

2 In fact, plaintiffs and cross-complainants tomorrow, August 23, 2001, will be filing a Motion
3 to Appoint Limited Purpose Receiver, based in substantial part on the interference with Democracy
4 Now! by Pacifica's executive director.

5 Moreover, there is no bona fide emergency that would permit defendants to act in less than
6 thirty days notice. First, the Democracy Now! program is currently available for broadcast each day,
7 and thus there will be no interference with Pacifica's ability to provide its programming to its
8 stations and affiliates. Second, any "emergency" situation has been created by the actions of Pacifica
9 management, in creating and condoning an unsafe workplace, through the assault and threats against
10 Democracy Now! staff by members of Pacifica management, and the permitting and condoning and
11 rewarding of threats against the Democracy Now! staff.

12 Third, Pacifica's claim that the issue concerning Democracy Now! staff is simply a labor-
13 management issue that is governed by the collective bargaining agreement is simply not accurate.
14 Pacifica, by entering into the Stipulation, explicitly recognized that the Stipulation superseded
15 "Pacifica's authority to the contrary" – a reference to Pacifica's authority under any other law or
16 agreement, including the collective bargaining agreement.

17 Fourth, even if Pacifica could claim that the collective bargaining agreement required
18 Goodman and the DN staff to return to work following the August 17 negotiations, the fact that the
19 *very next day* Pacifica permitted threats of violence to be made on air, with no discipline taken against
20 the person making the threats, demonstrates that the workplace at the WBAI station is hazardous,
21 and Goodman and the DN staff are justified in not reporting to work at the station.

22 **C. A Majority of Pacifica's Directors Have Taken the Position That Pacifica Should**
23 **Broadcast the Democracy Now! Program Produced Offsite, and That**
24 **Democracy Now! Staff Should Not Be Suspended or Penalized**

25 Finally, *a majority of Pacifica's directors* have taken the position that Pacifica should
26 broadcast the Democracy Now! program even though it was not produced at the WBAI studios, and
27 that Democracy Now! staff should not face any punitive action due to producing the broadcast at the

1 alternative studio. Goodman Dec. Ex. K. Thus, the actions taken by the Executive Director and
2 Pacifica management to the contrary are not the official policy of Pacifica.

3 There has been no meeting of the board of directors because, under Pacifica's bylaws, a
4 minority of the board do not have the authority to call a board meeting. The plaintiff and cross-
5 complainant directors have been requesting a board meeting for many months, but the defendants
6 have been thwarting any such meeting.

7 Moreover, given the fact that the majority of the board has taken a position contrary to the
8 position of the Executive Director, there clearly is no bona fide emergency that would prevent
9 Pacifica from being required to provide the thirty days' notice required in the Stipulation.

10 **D. The Actions Interfering with Democracy Now! Violate the Stipulation Since
11 Taken By the Executive Director and Pacifica Management**

12 The Stipulation restricts the directors and the Executive Director from "direct[ing] any of the
13 Pacifica station managers to take any action respecting the broadcast by such stations of [the
14 Democracy Now!] program." Here, the actions that have interfered with the broadcast of Democracy
15 Now! plainly were taken by the Executive Director, or clearly are within the authority of the
16 Executive Director to control.

17 The Executive Director has explicitly taken action to instruct KPFA station managers not to
18 provide the Democracy Now! program that is currently being produced to the satellites. Osegueda
19 Dec. ¶¶ 2-3. Moreover, many of the actions have been taken by the WBAI Station Manager. The
20 Executive Director clearly has supervisory authority over the station manager, and, even if the
21 executive director had not been consulted and was not providing direction to the WBAI station
22 manager, obviously has the authority to instruct the WBAI station manager not to interfere with the
23 Democracy Now! broadcast.

24 **E. Plaintiffs Would Be Deprived of the Benefit of Their Bargain
25 and Suffer Irreparable Harm If Pacifica Were Able to Interfere
26 With the DN Broadcast on Less Than Thirty Days' Notice**

27 Plaintiffs entered into the Stipulation precisely to prevent the current circumstances from
28 occurring. If the Court does not enforce the 30 days' notice requirement, it will be depriving

1 Plaintiffs of the benefit of their bargain, and preventing Plaintiffs from presenting the Court with
2 their full arguments and evidence as to why there should be no interference with the DN broadcast.

3 Moreover, Defendant's blatant violation of the Stipulation, will cause irreparable harm to the
4 Foundation itself. Several affiliates have already terminated their agreements with Pacifica due to
5 Pacifica's interference with the broadcast of Democracy Now! If the Stipulation is left unenforced,
6 then Pacifica may lose important contracts with other stations to distribute the DN show, and may
7 lose the services of the Democracy Now! staff. This damage cannot be remedied after the fact.

8 CONCLUSION

9 For the foregoing reasons, the Court should order Defendant Directors to comply with the
10 Stipulation, and order that (1) the Democracy Now! program delivered by the DN staff will be
11 broadcast over Pacifica's satellite hookup so that every Pacifica station and affiliate can broadcast
12 the program; (2) the suspension of Goodman and DN staff be withdrawn; and (3) Pacifica can take
13 no action interfering with the ability of the Democracy Now! staff to broadcast or prepare the
14 programs without providing thirty days' notice to plaintiffs' counsel.

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16 Dated: August 22, 2001

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