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offered opportunities that have not previously been available. Still, those people who are relocated to areas that are not as economically stable and that either were not given the right to return or were unable, for screening reasons, will continue to live in economically desperate communities with little or no chance of reaping the benefits that the CHA's Plan for Transformation aspires to provide to its displaced residents.

The future of the Plan for Transformation is indefinite. Some CHA residents are content in their new surroundings, while others feel that the CHA has denied them the opportunities that will be available in these new mixed-income communities. The Wallace case addresses many of these overwhelming issues and, as a result, CHA may decide to implement a relocation plan that is better able to suit the needs of public housing residents. Still, as of today, the CHA's Plan for Transformation has accomplished little more than the extensive demolition of CHA high-rise structures.

1. Chicago Housing Authority, *The CHA's Plan for Transformation*, (2004) at <http://www.thecha.org>.
2. Fischer, Paul, *Where are the Public Housing Families Going? An Update*, (Jan. 22, 2003), available at <http://www.povertylaw.org>.
3. *Id.* at 12.
4. *Id.* at 1.
5. Plaintiff's First Amended Complaint at 8, *Wallace, et al. v. The Chicago Housing Authority, et al.* (2003) (No. 03 C 0491).
6. Sargent Shriver National Center on Poverty Law, *Plan for Transformation Year 5 - NCPL's Analysis*, (2004), at <http://www.povertylaw.org>.
7. Fischer, *supra* note 2 at 13.
8. Silver, Daniel, *Families file lawsuit against CHA for forcing them to move to poor communities*, (Jan. 23, 2003) available at <http://xavier.cs.northwestern.edu>.
9. *Chicago Housing Authority*, *supra* note 1
10. *Id.*
11. Fischer, *supra* note 2 at 5.
12. *Id.* at 6.
13. Plaintiff's First Amended Complaint at 2, *supra* note 5.
14. Sargent Shriver National Center on Poverty Law, *Hearing on Hope VI and the Low Income Housing Crisis*, (2003), at <http://www.povertylaw.org>.
15. False HOPE, *A Critical Assessment of the HOPE VI Public Housing Redevelopment Program*, June 2002, prepared by the National Housing Law Project, Poverty & Race Research Action Council, Sherwood Research Associates, and Everywhere and Now Public Housing Residents Organizing Nationally Together (ENPHRONT).
16. Rajesh D. Nayak, Staff Attorney, Sargent Shriver National Center on Poverty Law.
17. Silver, *supra* note 8.
18. Chicago Housing Authority, *Resident Stories - Chavele Adams*, (2004) at http://www.thecha.org/relocation/chavele_adams.html.
19. Chicago Housing Authority, *supra* note 1.

Illegal Mahogany Lands Greenpeace in Federal Court

Mary E. O'Malley

The environmental group Greenpeace has a new, albeit unwanted label: criminal defendant. *United States of America v. Greenpeace, Inc.* marks the first time that a public-interest organization must defend itself against criminal charges for the protest activities of its members.¹ Greenpeace claims the government action is a "heavy-handed attempt" aimed at punishing prior protests against the Bush Administration. Assistant U.S. Attorney Cameron Elliott claimed in court papers that Greenpeace simply broke the law.

Civil Disobedience or Sailor Mongering?

On April 12, 2002, *Jade*, a cargo ship carrying seventy tons of Brazilian-cut mahogany, lowered its fifty-foot ladder three miles off of the Miami coast. Exporting or importing Brazilian mahogany is illegal. A harbor pilot climbed aboard to steer the ship into the Port of Miami, but he was not alone. Reacting to intelligence that indicated mahogany was on board, Scott Anderson and Hillary Hosta, hired by Greenpeace, leapt from inflatable boats to climb aboard *Jade*. Toting a banner stating "President Bush, Stop Illegal Logging," the two activists climbed up the ladder.

However, the activists were stopped before they could unfurl the banner. They and fellow demonstrators pled no contest to a misdemeanor charge of "sailor mongering" and

paid fines between \$100 to \$500. "Just another day at the office for Greenpeace," said Scott Paul, one of the arrested protestors. But that was only the beginning.

In July 2003, fifteen months after the arrests, a federal grand jury indicted Greenpeace. The government charged Greenpeace with violating a 19th century federal law originally intended to stave off brothel owners from climbing aboard ships "about to" dock. Owners used to row out to incoming ships and persuade sailors to patronize the brothels upon docking. Responsive sailors were soon parted with their money.

The government likens Greenpeace and its protestors to those brothel owners. The indictment announced that Greenpeace supplied money and people to facilitate the Florida protest. The user of a single Greenpeace corporate credit card rented the rafts and small boats used to stop the *Jade*.

The Danger of Mahogany
The *Jade* occurrence evolved from Greenpeace's work in protecting forests, such as the Brazilian Amazon.² Mahogany is the only Amazonian wood valuable enough to entice loggers into the rainforest.³ Roads built by mahogany loggers cause the Amazon's destruction.⁴ Clean air and water, animal and plant species, and people and cultures are all threatened by deforestation.⁵

Dealing in mahogany contraband also requires playing a dangerous game. Large criminal enterprises

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forage and destroy the Amazon to export its riches.⁶ Not only is the Amazon stripped of its resources, but bribery, slavery, and murder are also prevalent in the mahogany trade.

Investigations conducted by Greenpeace contributed to Brazil's October 2001 suspension of the mahogany trade until it could be properly monitored. Furthermore, Greenpeace claims the *Jade* incident prompted other nations to agree in November 2002 to give mahogany greater global protection. However, smuggling has continued despite the illegality of importing Brazilian mahogany.

Problems continue today. While continuing its exposure of illegal logging in Brazil, Greenpeace endured further abuse in November 2003. Three hundred Brazilian loggers menaced the Greenpeace ship, *M.V. Arctic Sunrise*.⁷ Armed loggers threatened violence against the ship and crew near Porto de Moz, Brazil. Local officials and the mayor (who owns the largest logging franchise in the region) encouraged the loggers to incur violence. Greenpeace defused the situation by allowing some loggers on board for discussion and by moving the ship away from the area.

However, three days prior to the stand-off, heavily armed loggers held hostage officers of IBAMA (Brazil's environmental agency) and Brazil's federal police. Pro-environmental community leaders also received death threats and sought haven in a local church. "Renegade loggers routinely use violence and death threats against those who are trying to save this rainforest from destruction," said Jeremy Paster, Greenpeace Forest Campaigner, who is on the *Arctic Sunrise*.

Statutory Overview and Procedural Update

Exporting Brazilian mahogany is illegal.⁸ So too is importing mahogany into the United States.⁹ At the time of the *Jade* occurrence, mahogany was listed on Appendix III of The

Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES").¹⁰ The United States signed the CITES Treaty in 1973.¹¹ Under CITES, a state cannot import mahogany, unless approved by the exporting state's "Management Authority."¹² IBAMA is Brazil's Management Authority.¹³ Contravention absent IBAMA approval also violates 16 U.S.C. § 1538(c)(1) of the Endangered Species Act, which includes criminal penalties.^{14 15}

Although Brazil banned mahogany exportation, many mahogany shipments continued to arrive in the U.S.¹⁶ The U.S. government seized some of the shipments.¹⁷ However, large quantities escaped detection and flowed into the U.S. despite the ban.¹⁸ Throughout this time, Greenpeace continually worked with IBAMA to stop the flow of the illegal mahogany trade.¹⁹

In Spring 2002, Greenpeace received intelligence about the *Jade's* cargo.²⁰ Greenpeace claimed that its activists boarded the *Jade* to prompt authorities to seize the mahogany. They also wanted to hold President Bush to his commitment against illegal logging.

Rather than prosecute the smugglers, the government originally indicted Greenpeace in July 2003, but sought an amended indictment in November 2003.²¹ The original indictment charged that Anderson and Hosta boarded the *M/V APL Jade* "based upon Greenpeace's erroneous belief that the *M/V APL Jade* carried a shipment of Brazilian mahogany lumber."

However, Greenpeace demonstrated that its belief was real. Greenpeace proved that after leaving Miami on April 14, 2002, the *Jade* unloaded tons of Brazilian mahogany in Charleston. The government abandoned its original allegation in November 2003, but amended its complaint and rearraigned Greenpeace under the same criminal charges.

The indictment resulted in

Greenpeace being charged with a substantive violation of and conspiracy to violate Title 18 U.S.C. § 2279, the statute entitled "Boarding Vessels Before Arrival."^{22 23} The statute essentially punishes one who boards a vessel that is about to arrive at its place of destination. In court papers, Greenpeace attorney Jane W. Moscovitz argued that the indictment failed to charge a crime, that the statute is impermissibly vague, and that the government is conducting a selective prosecution.²⁴

First, Greenpeace maintains that the *Jade*, which was located three miles offshore and moving at ten miles per hour, falls outside the

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"about to" dock requirement.²⁵ Second, the indictment fails to state where the ship was located at the time of boarding and fails to provide notice of the conduct the statute prohibits.²⁶ Third, Greenpeace claims the government violates the equal protection guarantee of the United States Constitution because it is singling out Greenpeace in retaliation for its criticism of the Bush Administration.²⁷

Federal prosecutors deny targeting Greenpeace.²⁸ They also reject the idea that the First Amendment plays any role in the decision to enforce a law not used since the 1800's. "There is no evidence that the government has discriminated against Greenpeace because of its political views," Elliott claimed. Greenpeace's dissent against government policy "makes it no different from thousands of other political advocacy groups," he said.

On December 12, 2003, Greenpeace asked U.S. District Judge Adalberto Jordan to dismiss the charges.²⁹ Jordan indicated that he would rule on the motion to dismiss in early 2004.³⁰ If the motion is denied, a trial could follow in May 2004.

Greenpeace Objectives

Instituted in 1971, Greenpeace and its 250,000 supporters are known for sailing their boats into restricted waters and interfering with ships that promote anti-environmental purposes. Greenpeace claims that the *Jade* incident met two objectives: to draw attention to mahogany logging and the Bush Administration's failure to compel compliance with an import ban. "This was an entirely peaceful action," said John Passacantando, executive director of Greenpeace.

Greenpeace contends that the government is using the *Jade* incident to target Greenpeace. The organization has been energetically critical of the Bush Administration, citing President Bush as "the toxic Texan." Although Greenpeace does not deny the need to protect American ports, Passacantando asserts that Attorney General John Ashcroft is using national security concerns to promote a political agenda.

Potential Consequences

If convicted, Greenpeace could be fined \$10,000 and placed on five years' probation. Greenpeace argues that such an outcome would subject it to unprecedented government scrutiny of memberships and political strategies. Furthermore, a conviction could cost Greenpeace its tax-exempt status. According to Greenpeace, the government is trying to quash its objectives. "They are trying to silence us," said Tom Wetterer, general counsel for Greenpeace.

When the First Amendment is at stake, silence is not golden in a

country that traditionally supports civil disobedience. "Greenpeace is an advocacy group," said First Amendment expert Floyd Abrams. "It is important that they be as free as possible to engage in their advocacy." During a November 2003 speech to the American Constitution Society, former Vice President Al Gore noted that legal scholars contend that the prosecution "appears to be aimed at inhibiting Greenpeace's First Amendment activities."³¹

While individual activists are routinely arrested for conducting peaceful civil protests, federal prosecutors took unprecedented action by bringing criminal charges against Greenpeace itself.³² "Until the federal indictment, this episode was a routine example of civil disobedience, essentially a sit-in on the high seas," said Bruce Ledewitz, teacher of First Amendment law at Duquesne University.³³ According to Passacantando, if the prosecution succeeds, the American tradition of peaceful political protest will be severely threatened.³⁴

1. Associated Press & South Florida Sun-Sentinel, *Florida Greenpeace Protest Brings Federal Charges Under 1872 Law* (Jan. 23, 2004), available at http://seattletimes.nwsource.com/html/politics/2001842170_greenpeace23.html.
2. John Passacantando, *Civil Disobedience on Trial* (Dec. 02, 2003), available at www.tompaine.com/feature2.cfm/ID/9522.
3. Defendant's Motion for Discovery on Claim of Selective Prosecution at 2, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
4. Associated Press & South Florida Sun-Sentinel, *Florida Greenpeace Protest Brings Federal Charges Under 1872 Law* (Jan. 23, 2004), available at http://seattletimes.nwsource.com/html/politics/2001842170_greenpeace23.html.
5. John Passacantando, *Civil Disobedience on Trial* (Dec. 02, 2003), available at www.tompaine.com/feature2.cfm/ID/9522.
6. *Id.*
7. *Lawlessness in the Amazon Underscores Need for U.S. to Stop Import of Illegal Wood*, (Nov. 24, 2003), available at www.greenpeaceusa.org/bin/view.fpl/8154/article/936.htm.
8. *Castlewood Prod. v. Gale A. Norton*, 264 F.Supp.2d 9, 11 (D.D.C. 2003).
9. *Castlewood*, 264 F.Supp.2d at 11.
10. *Id.* at 11.
11. Defendant's Motion for Discovery on Claim of Selective Prosecution at 4, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
12. *Id.*
13. *Id.*; *Castlewood*, 264 F.Supp.2d at 11.
14. Defendant's Motion for Discovery on Claim of Selective Prosecution at 4, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
15. "It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of [CITES], or to possess any speci-

- mens traded contrary to the provisions of the Convention." 16 U.S.C. § 1538(c)(1)
16. *Castlewood*, 264 F.Supp.2d at 11.
17. *Id.* at 11-12.
18. *Id.*
19. Defendant's Motion for Discovery on Claim of Selective Prosecution at 4, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
20. *Id.* at 4-5.
21. John Passacantando, *Civil Disobedience on Trial* (Dec. 02, 2003), available at www.tompaine.com/feature2.cfm/ID/9522.
22. Defendant's Motion to Dismiss on Grounds That the Statute Does Not Apply to the Conduct Charged or is Impermissibly Vague at 2, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
23. The statute provides in relevant part as follows: "Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined under this title or imprisoned not more than six months, or both." 18 U.S.C. § 2279.
24. Defendant's Motion to Dismiss on Grounds That the Statute Does Not Apply to the Conduct Charged or is Impermissibly Vague at 2-6, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577); Defendant's Motion for Discovery on Claim of Selective Prosecution at 4-7, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
25. Defendant's Motion to Dismiss on Grounds That the Statute Does Not Apply to the Conduct Charged or is Impermissibly Vague at 2-6, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577);
26. *Id.* at 2-11.
27. Defendant's Motion for Discovery on Claim of Selective Prosecution at 4-7, *United States of America v. Greenpeace, Inc.*, (S.D. Fla., 2003) (No. 03-20577).
28. Catherine Wilson, *Associated Press, Opponents See Greenpeace Indictment as Threat to Dissent*, (Jan. 05, 2004), available at <http://www.bradenton.com/mld/bradenton/7634320.htm?template=contentModules/printst...>
29. *Ashcroft v. Greenpeace Overview*, (Jan. 11, 2004), available at www.greenpeaceusa.org/bin/view.fpl/16961.html.
30. Associated Press & South Florida Sun-Sentinel, *Florida Greenpeace Protest Brings Federal Charges Under 1872 Law* (Jan. 23, 2004), available at http://seattletimes.nwsource.com/html/politics/2001842170_greenpeace23.html.
31. *Ashcroft v. Greenpeace Overview*, (Jan. 11, 2004), available at www.greenpeaceusa.org/bin/view.fpl/16961.html.
32. Associated Press & South Florida Sun-Sentinel, *Florida Greenpeace Protest Brings Federal Charges Under 1872 Law* (Jan. 23, 2004), available at http://seattletimes.nwsource.com/html/politics/2001842170_greenpeace23.html.
33. *Id.*
34. John Passacantando, *Civil Disobedience on Trial* (Dec. 02, 2003), available at www.tompaine.com/feature2.cfm/ID/9522.