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Vieques' Struggle for Freedom: Environmental Litigation, Civil Disobedience, and Political Marketing Proves Successful

The people of Vieques, inhabitants of a small Puerto Rican island once dominated by sugar cane plantations, have a long and troubled history with the United States Military. Their sixty-year rule and presence in Vieques has had a horrific effect on the residents' livelihood and their Caribbean environment.¹ Although live fire training on Vieques has ended, a new battle begins requiring the islanders to fight the United States Military into removal of the debris they left on the island.

The United States began using Vieques over sixty years ago as a comprehensive training site used to prepare soldiers for war.² In those years, the Government broke many of the promises they made to the people of this sovereign island. In response, the Viequense people have fought against the military's invasive presence through litigation and protest. While other U.S. islands have had success ending the military's destructive procedures with minor efforts, the Viequense's struggle to stop the gunfire and bombing of their island has proven harder to overcome.

This Comment evaluates the battles of the Vieques people have fought in order to overcome United States Military domination, and compares the tactics used in Vieques to those employed in neighboring Culebra, Puerto Rico, and the island of Kahoolawe, Hawaii. Section I of this Comment briefly discusses the history of Vieques and how the United States Military, specifically the Navy, came to dominate it. Section II examines the military's environmental statutory violations and Viequense utilization of litigation to enjoin these destructive practices on their island. Specifically, this section considers the legal elements courts consider before granting an injunction and the difficulty the

1. KATHERINE MCCAFFREY, *MILITARY POWER AND POPULAR PROTEST: THE U.S. NAVY IN VIEQUES, PUERTO RICO* 29 (2002) [hereinafter MCCAFFREY]. Vieques is 51 square miles. *Id.* at 3.

2. *Id.*

Vieques and Kahoolawe plaintiffs faced in overcoming these barriers. Section III considers the civil disobedience movements that took place in Kahoolawe, Culebra, and Vieques, and the most influential actions taken in the pursuit of an end to naval domination over their respective islands.

This article concludes with an explanation of the common result following an environmental violation claim when weighed against national security concern, that is, the court rules in favor of the military often citing the compelling interest of maintaining a trained soldier corp. Additionally, the conclusion describes how the Viequense people found success through compelling Government defense against relentless civil disobedience movements instead of the above traditionally bleak litigation strategy. Finally, I end by suggesting that it was the military's costs in battling protestors and continuous legal actions coupled with the growing importance of the Hispanic vote that finally proved successful for the Viequense.

I. History of Vieques

After taking ownership of Puerto Rico in the Spanish-American War, the United States government soon realized the tactical value of Vieques due to its ideal location in the Caribbean.³ When the Second World War was looming, Congress approved a 30 million dollar air and naval base on Puerto Rico, comparable to Pearl Harbor, built to protect the United States' investment and control over the Panama Canal.⁴ Vieques was the only location in Puerto Rico that could accommodate a facility that matched Pearl Harbor's scale and significance.⁵

The Roosevelt Roads Base consisted of 21,000 acres on Vieques and an additional 7,000 acres on Puerto Rico's mainland.⁶ In creating this "Caribbean Pearl Harbor," the Navy moved 3,000 Viequense to neighboring St. Croix Island. In addition, the Navy resettled 4,000 Viequense to the center of the island, between a military simulation area and an ammunition storage facility.⁷ As landowners, the U.S. Navy

3. ANTONIO AMILCAR BARRETO, *VIEQUES, THE NAVY, AND PUERTO RICAN POLITICS* 12 (2002) [hereinafter BARRETO].

4. *Id.* at 21-22; *see also* RONALD FERNANDEZ, *PRISONERS OF COLONIALISM: THE STRUGGLE FOR JUSTICE IN PUERTO RICO* 121 (1994) [hereinafter FERNANDEZ].

5. FERNANDEZ, *supra* note 4, at 119.

6. MCCAFFREY, *supra* note 1, at 30; *see also* FERNANDEZ, *supra* note 5, at 101. The Navy's total land holdings on Puerto Rico added up to the largest Navy complex in the world. FERNANDEZ, *supra* note 4, at 119. The Navy paid just 47 dollars an acre for the property on Vieques. FERNANDEZ, *supra* note 4, at 120.

7. FERNANDEZ, *supra* note 5, at 120; *see also* MCCAFFREY, *supra* note 1, at 3. Today, the total population of Vieques is about 10,000 and practically all of them reside in the middle portion of the island. MCCAFFREY, *supra* note 1, at 2 MCCAFFREY, *supra* note 1, at 3. The Navy was able to expropriate the Vieques citizens because they were

could practice their war tactics indefinitely, without paying taxes to the Puerto Rican government.⁸ In 1944, Supreme Court Justice Abe Fortas told Congress that, "by acquiring so large a portion of the land and taking it out of civilian use and occupancy, the Navy effectively destroyed the economy of the community . . . [and] the situation has now deteriorated to the point where almost the entire population is dependent upon the insular government for subsistence."⁹

Initially, the poverty-stricken people of Vieques were pleased with the Navy's buy-out because the new facilities needed on the base promised well-paying jobs.¹⁰ At the outset of construction, the Navy paid locals to cut into their hills to create storage space for military ammunition.¹¹ A larger project required that workers create a fourteen-mile stone breakwater through the Atlantic, from Vieques to the mainland of Puerto Rico.¹² However, this project ended prematurely after just one-mile was completed.¹³ Then, in 1941, after the attack of Pearl Harbor, the United States became concerned about risking everything on one endeavor, and drastically scaled back their plans for the Roosevelt Roads complex.¹⁴ This cutback left the people of Vieques without the jobs they originally anticipated.¹⁵ Then, in the 1950's, needing more land and ground clearance for their air-to-ground weapons training, the Navy bought an additional 4,340 acres on the island and relocated another 130 families into the middle of the island.¹⁶

In the late 1970's, with the threat of a Cold War, Vieques again became important to the U.S. Navy and the Viequense experienced an increase in the frequency and intensity of the Navy's use of their island.¹⁷

living on land owned by and given to them by the sugar plantation owners. *Id.* at 48. After the Navy moved them, residents were given a small amount of money or none at all for their homes and told to relocate to a designated section of the military's resettlement tract. *Id.*

8. FERNANDEZ, *supra* note 5, at 119. Previously, the land was taxable sugar cane plantation that provided seasonal jobs to the islanders. *Id.*

9. *Id.*

10. MCCAFFREY, *supra* note 1, at 30-31.

11. *Id.*

12. *Id.*; see also FERNANDEZ, *supra* note 5, at 120.

13. MCCAFFREY, *supra* note 1, at 31; see also FERNANDEZ, *supra* note 5, at 122.

14. FERNANDEZ, *supra* note 5, at 122; see also MCCAFFREY, *supra* note 1, at 32.

15. MCCAFFREY, *supra* note 1, at 32.

16. *Id.* at 124; see also MCCAFFREY, *supra* note 1, at 35. The United States government met to discuss displacing the remaining 10,000 Vieques residents all together, but ultimately decided against it. MCCAFFREY, *supra* note 1, at 35; see generally CARMELO DELGADO CRITRON, CULEBRA Y LA MARINA DE ESTADOS UNIDOS (1989); JANE DIBBLIN, DAY OF TWO SUNS: U.S. NUCLEAR TESTING AND THE PACIFIC ISLANDERS (1988); ROBERT KISTE, THE BIKINIANS: A STUDY IN FORCED MIGRATION (1974); JONATHAN WEISGALL, OPERATION CROSSROADS: THE ATOMIC TEST AT BIKINI ATOLL (1994).

17. FERNANDEZ, *supra* note 5, at 123.

In addition to the Navy's use of the island at this time, the French, English, Italian, and Dutch militaries leased the island from the U.S. government to train their own military.¹⁸ Roosevelt Roads became the testing ground for the equipment developed to combat the Soviet Union's new technical weaponry.¹⁹ To practice the operation of the new guided missiles, the Navy launched bombs from San Juan, targeting Vieques.²⁰

While the Navy intensified their training to prepare the soldiers against the looming communist threat, the Viequense economy continued to suffer due to the lack of civilian jobs on the base.²¹ Although shop owners previously benefited from the soldiers' presence on the island, they were left without this economic benefit as early as 1953 when the military stopped housing soldiers there.²² Additionally, tax revenue, once brought in by sugar cane owners, no longer existed.²³

To solve these problems, the Puerto Rican government attempted an economic revitalization for Vieques.²⁴ This revitalization included one company's commitment to build a resort on Vieques.²⁵ However, the Navy refused to allow the resort's construction fearing that the intensity of their training would be forced into reduction because of the presence of a tourist resort on the island.²⁶

The struggle between the Puerto Ricans and the Navy continued to intensify. The Viequense need for economic growth, a healthy environment, and healthy residents directly conflicted with the Navy's insistence on its need for training soldiers at an all-inclusive military training facility.²⁷

18. *Id.* Vieques, in conjunction with the military base on Culebra, another Puerto Rican island, served as part of the National Atlantic Treaty Organization (NATO) training complex. *Id.*

19. MCCAFFREY, *supra* note 1, at 36-37.

20. *Id.* at 51-57.

21. MCCAFFREY, *supra* note 1, at 36.

22. *Id.* Initially, thousands of sailors would rush into town after their training was over, causing mayhem in the streets. MCCAFFREY, *supra* note 1, at 52, 54-55. The local businesses that were brave enough to support the military's nightlife were never able to keep up with the demand of the soldiers. *Id.* In 1953, after reported brutal attacks on the islanders and a local death, the Navy forbid the sailors from making trips into town and later housed them only on the mainland of Puerto Rico. MCCAFFREY, *supra* note 1, at 55.

23. FERNANDEZ, *supra* note 5, at 119.

24. MCCAFFREY, *supra* note 1, at 36.

25. *Id.* at 37.

26. *Id.* A United States advocate for this decision said that the government had invested too much money in Vieques, over 100 million dollars, and turning it into a tourist attraction was not an option. MCCAFFREY, *supra* note 1, at 37 n.18 *citing* San Juan Review June 1964. Vieques was the only Atlantic location where the Navy could train soldiers in guided missiles and traditional strategic procedures. MCCAFFREY, *supra* note 1, at 37 n.19 *citing* El Mundo, July 24, 1961.

27. MCCAFFREY, *supra* note 1, at 37. Since 1992, the US Military has used Vieques to train soldiers for the interventions in the Balkans, Haiti, Iraq, and Somalia. *Id.* at 3.

II. Legal Efforts

In a long and passionate struggle, the people of Vieques, the Commonwealth of Puerto Rico, and environmental and anti-war interest groups have attempted to end the Navy's ruinous control by taking legal action against the government and staging aggravating protests. The legal actions alleged statutory environmental violations and asked the court to enjoin the military's activities in an effort to curtail damage to the island's diverse natural resources and the livelihood of its inhabitants. Although the legal efforts to end the Navy's activities on their island were disappointing, the Viequesese were not the first to experience such shortcomings in court.

A. *Obtaining Injunctive Relief*

When national security is at stake, plaintiffs requesting injunctive relief from military activities face bigger challenges than most. Throughout these environmental challenges, the courts protect the military's activities by manipulating the four factors considered before granting this "extraordinary remedy."²⁸ The first factor the courts consider when injunctive relief is requested is whether the moving party is likely to succeed on the merits of its case.²⁹ The courts' second consideration is the potential for irreparable harm if the military's activities continue.³⁰ Next, the courts contemplate the hardships faced by each party if a court were to either enjoin the activity or permit it to continue.³¹ Finally, the courts consider the effect of its decision on the public interest.³²

As this paper will illustrate, courts often choose not to consider all four of the injunction factors, but instead often weigh the factors unevenly, or focus on the one or two factors it finds most important. Also common in the environmental infraction cases described below, is a court's finding that despite military actions being clearly prohibited under the environmental statute, the military will merely be required to make an effort to comply with the statute and not be subject to an injunction.

28. *Water Keeper Alliance v. United States Dept. of Def.*, 271 F.3d 21, 30 (1st Cir. 2001); *see also* *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 16 (1st Cir. 1996).

29. *Water Keeper Alliance*, 271 F.3d at 30.

30. *Id.*

31. *Id.*

32. *Id.*

B. *Weinberger v. Romero-Barcelo*³³

Weinberger v. Romero-Barcelo is perhaps the most well known suit brought by Puerto Rico in its effort to end the Navy's simulation of war in Vieques. To understand the Supreme Court's final ruling in this case it is important to consider the holdings and reasoning of the lower courts.

Initially, several plaintiffs brought suit in the District Court of Puerto Rico against the Navy, seeking to enjoin the Navy's live-fire and amphibious training.³⁴ Alleging that the Navy's activities harmed the island's human and animal inhabitants and the surrounding environment, the plaintiffs charged the Navy with violating over ten federal environmental statutes and executive orders.³⁵ The district court found the military in violation of two environmental statutes and one presidential order, but denied the plaintiffs' request for injunctive relief.³⁶ The Court reasoned that national defense was far too important to require the Navy to abandon their training activities on Vieques.³⁷ However, the Court required the Navy to comply with the statutes, and presidential

33. *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982).

34. *Romero-Barcelo v. Brown*, 478 F. Supp. 646, 651 (D.P.R. 1979). Amphibious training involves land, sea, and air force invasion simulation. In addition to the governor of Puerto Rico, the original plaintiffs included the mayor of Vieques, the Environmental Quality Board of Puerto Rico, a cooperative of Vieques fishermen, and seven individual Vieques fishermen. *Romero-Barcelo* 478 F. at 650-51.

35. *Id.* at 650. Originally, the plaintiffs charged that the Navy violated the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4361 (1976); the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401-1444 (1976 & Supp. V 1981); the Clean Air Act, 42 U.S.C. §§ 1857-1858, 7401-7616 (1976 & Supp. V 1981); the Noise Control Act of 1972, 42 U.S.C. §§ 4901-4918 (1976 & Supp. V 1981); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6987 (1976); the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (1976 & Supp. V 1981); the National Historic Preservation Act of 1966, 16 U.S.C. § 470 (1976 & Supp. V 1981); the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1464 (1976 & Supp. V 1981); the Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-1407 (1976 & Supp. V 1981); the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 407-687 (1976); the First and Fifth Amendments of the Constitution; Presidential Orders relating to the end of military activity on a neighboring island; and state laws. *Id.* at 651-53.

36. *Id.* at 708.

37. *Id.* The Court included many reasons why injunctive relief was not necessary. Specifically, the Court stated that the Navy's infractions were merely technical and their activities were not harming the ecology of the island. *Id.* at 707. But, more importantly, the Court also found that Vieques was the cornerstone of the Atlantic Fleet and the only place where the Navy could carry out

combined exercises involving air-to-ground ordnances delivery, Marine amphibious assaults, anti-submarine warfare, surface-to-air missiles, close support bombardment, and electronic warfare; in short everything that a battle group would undertake to secure our sea lanes from interdiction by hostile forces. Vieques is the only location presently available wherein this training can be conducted within permissible peace time parameters.

Id. at 708.

order violated, "with . . . deliberate speed."³⁸

On appeal, the First Circuit Court reversed the lower court's ruling on the National Pollution Discharge Elimination Systems permit ("NPDES permit") violation only.³⁹ As part of the Federal Water Pollution Control Act, ("FWPCA") NPDES permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements in an effort to improve the cleanliness and safety of the Nation's waters.⁴⁰ The Court then remanded the issue to the district court with instructions to enjoin the Navy's discharging activities until they obtained an NPDES permit or an exemption for national security purposes.⁴¹ In so holding, the Court reasoned that the statute did not leave room for the district court to weigh the interests of the parties when deciding whether to enjoin an action prohibited under the statute.⁴²

When this decision was appealed and reached the Supreme Court, the Court reversed the injunction and ruled that, although a NPDES permit was required for the Navy to discharge artillery into the ocean, they did not have to stop.⁴³ The majority Court held that the district court had the equitable discretion to decide the efficient remedy for violations of the FWPCA.⁴⁴

Rather than going through the traditional four-element test considered when injunctive relief is requested, the Court found that this remedy was only appropriate when irreparable injury would result without a sufficient legal remedy.⁴⁵ The Court then went on to reason when equally injurious claims are presented to the Court, its decision will reflect a "nice adjustment and reconciliation" between the competing claims.⁴⁶ The Court found it inappropriate to award an injunction every

38. *Id.* The Court required the Navy to comply with the FWPCA by obtaining a NPDES permit for their discharge of weaponry into the coastal waters; to file an EIS required under NEPA; and required the Secretary of Interior to nominate sites that might be eligible for listing on the National Register of Historic Places. *Id.*

39. *Romero-Barcelo*, 643 F.2d at 851. FWPCA 33 U.S.C.S. § 1251 et. seq.

40. 33 U.S.C. § 1342. Noncompliance with a permit constitutes a violation of the Act. § 1342(h).

41. *Romero-Barcelo*, 643 F.2d at 851. In addition, the Court vacated and remanded the plaintiffs' claims under the Rivers & Harbors Act of 1899; the Noise Control Act and Puerto Rico's criminal nuisance statute for lack of jurisdiction. *Id.* The Court vacated and remanded for further consideration the plaintiffs' claims under the ESA. *Id.* The Court proclaimed the issue of filing an EIS under the National Environmental Protection Act moot, but required the district court compel the Navy to prepare and file the EIS. *Id.*

42. *Id.* at 861.

43. *Weinberger*, 456 U.S. at 307. The word "ordnance" is broadly used to describe all types of artillery.

44. *Id.* at 320.

45. *Id.* at 312.

46. *Id.* at 312.

time a defendant violates a federal statute.⁴⁷

Despite the fact that the FWPCA requires a permit for practically every discharge into U.S. waters, the Court reasoned that Congress only intended an immediate termination of unlawful discharges when "an imminent and substantial endangerment to the health of persons or to the welfare of persons" was present.⁴⁸ The Court cited the district court's finding that the Navy's discharge did not pollute the island's waters or endanger the public's health or welfare.⁴⁹

The *Romero-Barcelo* decision created a loophole in the FWPCA and resulted in a departure from the Court's original strict interpretation of environmental statute violations as displayed in *Tennessee Valley Authority v. Hill* ("TVA").⁵⁰ In *TVA*, the Court permanently enjoined the completion of a multi-million dollar dam to prevent harm to an endangered fish species.⁵¹ Any harm to an endangered species under the Endangered Species Act ("ESA") is impermissible.⁵² The court in *Romero-Barcelo* distinguished the *TVA* decision by stating that the FWPCA only compels a discharger to obtain a permit, but the ESA requires protection for all endangered species, no matter what the cost.⁵³

Perhaps the biggest difference in Vieques is not the underlying language of the statutes but the entities at risk. When considering the risk of losing an expensive dam, versus the risk of losing full authority over an extensive naval facility designed to prepare the country's national defense, it appears that the Court has found an injunctive remedy too severe when weighed against the country's public interest. The Supreme Court's decision in *Romero-Barcelo* created a higher standard to effectuate an injunction when national defense is involved. Despite environmental statutory infractions, courts have often avoided granting injunctive relief when required under environmental statute in favor of

47. *Id.* at 317.

48. *Weinberger*, 456 U.S. at 317, (quoting 33 U.S.C. § 1364(a) (1976 ed., Supp. IV)). However, the Act finds it unlawful to discharge any pollutants without a permit. 33 U.S.C. § 1311(a). Additionally, those discharging pollutants without a permit or in violation of the terms of the permit are subject to substantial civil and criminal penalties. *Id.* at § 1319(c), § 1319 (d) and § 1365.

49. *Weinberger*, 456 U.S. at 315.

50. *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 193-94 (1978).

51. *Id.* In *TVA*, the Court maintained that Congress made it clear in the language of the Endangered Species Act that endangered species are to be accorded "the highest priorities." *TVA* 437 U.S. at 104. The dam was the sanctuary of the Snail Darter, a species of perch. *TVA* 437 U.S. at 158.

52. 16 U.S.C.S. § 1536.

53. *Weinberger*, 456 U.S. at 314-15. The Court further distinguished the facts in *Weinberger* with those in *TVA*, reasoning that, the "purpose and language of the statute under consideration in *Hill*, not the bare fact of a statutory violation, compelled" the Court to enjoin the building of the Tellico Dam, preserving the snail darter as required under the Endangered Species Act, 87 Stat. 884, 16 U.S.C. § 1531. *Id.* at 313-15.

allowing military training to continue.

C. *Aluli v. Brown*⁵⁴

Although the district court in *Romero-Barcelo* was the only court to express the importance of national security, this subject was the chief concern of the court in *Aluli v. Brown*.⁵⁵ In the 1970's, the plaintiffs in this case attempted to enjoin the Navy's bombing activities on the uninhabited Hawaiian island of Kahoolawe.⁵⁶ Kahoolawe, the smallest of the eight major islands in Hawaii, was used by the Navy's Pacific Fleet from 1941 until 1990 for aerial and surface bombardment.⁵⁷

In *Aluli*, the plaintiffs accused the Navy of both failing to prepare and circulate an environmental impact statement ("EIS"), required under the National Environmental Policy Act of 1969 ("NEPA"), and of authorizing activities potentially in violation the National Historic Preservation Act of 1966 ("NHPA").⁵⁸ NEPA requires federal government agencies to use all practicable means to administer their programs in the most environmentally sound fashion.⁵⁹ The statute further requires agencies to submit an EIS report to government agencies and officials before commencing any project considered a major federal action significantly affecting the quality of the human environment.⁶⁰ The District Court found the Navy violated both NEPA and NHPA, but further found that the plaintiffs did not meet the standards required for granting injunctive relief.⁶¹ The Court ordered the Navy to submit a new EIS and to continue to comply with the NHPA by protecting all discovered national historical areas.⁶²

Instead of applying the traditional four-element test to determine if an injunction should be granted, the court cited two different tests.⁶³ Just

54. *Aluli v. Brown*, 437 F. Supp. 602 (D. Hawaii 1977).

55. *See Id.*

56. *Id.* at 610-11. The plaintiffs included the Protect Kahoolawe Association and several private citizens. *Id.* at 602.

57. *Id.* at 605. *See also* BARRETO, *supra* note 3, at 39-40. On February 20, 1953, President Eisenhower placed Kahoolawe under the jurisdiction of the Secretary of the Navy, reserving it for naval purposes by issuing Executive Order 10436. *Aluli*, 437 F. Supp. at 605. The Order requires that when the military no longer needs the island for training, notice should be given to the Territory of Hawaii and then upon request the area should be rendered "reasonably safe for human habitation" by the Department of the Navy. *U.S. v. Mowat*, 582 F.2d 1194, 1198 (D. Hawaii 1979).

58. *Aluli*, 437 F. Supp. at 605. Originally, the plaintiffs sought to enjoin and declare the Navy's activities unlawful under thirteen separate claims. *Id.*

59. 42 U.S.C.S. § 4332 (2003).

60. *Id.*

61. *Aluli*, 437 F. Supp. at 611-12.

62. *Id.*

63. *Id.* at 611-12.

as in the first element of the traditional injunction test, the Court first considered the plaintiffs' likelihood of showing irreparable injury.⁶⁴ The Court found that irreparable injury would not result if the Navy continued to fire live ordnances on Kahoolawe.⁶⁵ In reaching this conclusion, the Court only took the impact of the Navy's actions on the island's existing and future historic sites into account.⁶⁶ The Court failed to consider possible environmental damage or injury to the various plaintiffs vying to use the island.

The second test considered by the Court had been previously used by the Ninth Circuit, it asks whether any serious questions for litigation existed and what hardships would result by granting or denying the injunction.⁶⁷ After considering these two questions, the Court again ruled in favor of the military and allowed their activity to continue, but required they submit an updated EIS.⁶⁸

The Court attributed this decision to the military's estimation that an injunction would reduce the readiness of the Navy's Third Fleet by 30 to 40 percent.⁶⁹ The Court relied on this estimate despite its noting that the defendants did not depend on any measurable standards in making this approximation.⁷⁰ The Court failed to note, were it to enjoin the Navy's activities, readiness of the Third Fleet would only suffer until it reformulated and published an EIS as required under the statute.⁷¹ In denying the injunctive relief based on the significant hardships faced by

64. *Id.* at 610. This test was established in *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49 (1975).

65. *Aluli*, 437 F. Supp. at 611.

66. *Id.* The Court found that the historical sites were protected because the Navy removed all targets within a 500-yard radius of a ship-to-shore target and those within a 300-meter radius of an aircraft target except for one site that is 20 to 30 feet below the surface. *Aluli*, 437 F. Supp. at 611.

67. *Id.* at 611. This test was established in *Aguirre v. Chula Vista Sanitary Serv.*, 542 F.2d 779 (9th Cir. 1976). Although the Supreme Court's four-element test is well established, the Court may have considered the 9th Circuit test because Hawaii is within the jurisdiction of the 9th Circuit.

68. *Aluli*, 437 F. Supp. at 611. The United States government went on to appeal this ruling that required them to complete and submit an updated EIS for their activities in Kahoolawe. *Aluli*, 602 F.2d 876 (9th Cir. 1979). The 9th Circuit Court concluded that the Government did not have to file a yearly EIS because the appropriation request for the Navy's activities were not considered to be proposals for legislation or major federal actions and they therefore were not subject to the requirements of § 102(2)(C). *Id.* This ruling was based on a recent decision in *Andrus v. Sierra Club*, 442 U.S. 347 (1979). *Id.* at 877

69. *Aluli*, 437 F. Supp. at 611. Additionally, the Court reasoned that after considering other possible bases, Kahoolawe was invaluable to the Pacific fleet. *Id.* at 611. However once Kahoolawe was closed in 1990, the Pacific fleet moved to San Clement Island, California. *BARRETO, supra* note 3, at 40.

70. *Aluli*, 437 F. Supp. at 611.

71. *Id.*

the Navy, the Court again failed to consider the hardships faced by the plaintiffs.⁷²

The facts of *Aluli* and *Romero-Barcelo* are extremely similar. In both cases, the plaintiffs objected to the Navy's use of their island for target practice and attempted to end the devastating procedures by charging the Navy with environmental statute violations.⁷³ Although *Aluli* was decided five years before *Romero-Barcelo*, both cases resulted in a ruling that required the Navy to comply with the violated environmental statutes, but denied the immediate injunctive remedy desired by the plaintiffs.⁷⁴ These denials illustrate that when the enforcement of environmental statutes threatens to end military training, plaintiffs are at a huge disadvantage.

*D. Water Keeper Alliance v. United States DOD*⁷⁵

While attempting to protect thirteen endangered and threatened species known to inhabit Vieques, advocates sought to enjoin the Navy's harmful military activities by suing them under the ESA.⁷⁶ Under the citizen suit provision of the ESA, the plaintiffs sought to enjoin the Navy's activities claiming that its activities constituted a "major construction activity."⁷⁷ This designation requires the submission of a biological assessment ("BA"), a study evaluating the potential adverse effects the military's action would have on the protected species.⁷⁸ Once a BA is issued, the U.S. Fish and Wildlife Service ("FWS") can lawfully then issue a biological opinion ("BO"), which includes an "incidental

72. *Id.* The Court recognized that the plaintiffs intended to use the Island for religious rites, preserve the island's heritage, and use the waters surrounding it for fishing. *Id.* at 607. But, the Court also stated that the live ordnance significantly affected the quality of the human environment. *Id.* at 607.

73. *See generally Aluli*, 437 F. Supp. at 602; and *Weinberger*, 456 U.S. at 305.

74. *See generally Aluli*, 437 F. Supp. at 602; and *Weinberger*, 456 U.S. at 305 (1982).

75. *Water Keeper Alliance v. United States Dept. of Def.*, 271 F.3d 21 (1st Cir. 2001).

76. *Id.* at 24.

77. *Id.* at 28. The citizen suit provision of the ESA can be found at § 11(g)(1)(A), 16 U.S.C. § 1340(g)(1)(A). *Water Keeper Alliance v. U.S. Dept. of Def.*, 199 F.R.D. 445 (D. Puerto Rico Jan 22, 2001). In the original district court complaint, the plaintiffs sought to enjoin the Navy's activities due to violations of the Resource Conservation and Recover Act, 24 U.S.C. § 6903, the Equal Protection Clause, and charges of illegal takings in violation of section 9 of the ESA, 16 U.S.C. § 1538. *Water Keeper Alliance v. U.S. Dep't of Def.*, 152 F. Supp. 2d 155, 157 (D.P.R. 2001). Additionally, they claimed that the BO issued by the FWS was "arbitrary and capricious" under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) because it was prepared without a BA. *Id.* The lower court dismissed all claims. *Id.* For Definition a Biological Assessment, see 50 C.F.R. § 402.12(a).

78. *Id.*

take statement" specifying the amount or extent the military is authorized to "take" of the species.⁷⁹

The First Circuit Court considered the plaintiffs' claims within the four traditional injunction elements.⁸⁰ Considering the first element, the Court stated that the plaintiffs were not likely to prove the Navy's violation of the ESA.⁸¹ Under the second element of the test, the Court held that the plaintiffs' showing of irreparable harm from the death of one member of a species was insufficient to enjoin the Navy's military training.⁸² The Court reasoned that the FWS' and NMFS' concern of long-term damage to Vieques' endangered species was vague and insufficient.⁸³

The Court next balanced the relevant burdens.⁸⁴ Although the Court recognized previous decisions as requiring that endangered species be given priority over the Navy's principal mission, the Court in this case found that the previous rulings could not "blindly compel our decision in this case because the harm asserted by the Navy implicates national security and therefore deserves greater weight than the economic harms at issue".⁸⁵ The plaintiffs attempted to combat this finding by claiming that military preparedness would not suffer to the degree asserted, and that alternative sites for the Navy's activities existed elsewhere.⁸⁶ Despite the compelling nature of these arguments, the Court found the Navy's evidence to be more credible.⁸⁷ Additionally, the Court noted its wariness of making decisions for an agency, believing that the agency is in the best position to make these decisions.⁸⁸

Finally, the Court considered the fourth injunction factor and briefly

79. For the process used by the FWS or NMFS in considering a Biological Opinion see 50 C.F.R. § 402.14(h); 16 U.S.C. § 1536(b)(3)(A); 16 U.S.C. § 1536(b)(4); and 50 C.F.R. § 402.14(i).

80. *Water Keeper Alliance*, 271 F.3d at 31.

81. *Id.*

82. *Id.* at 33. The plaintiffs argued, under *TVA*, that the Court could not use its equity power for findings of irreparable harm. *Id.* The Court rejected the context of this argument in relation to this case. *Id.* at 34; see also *Tennessee Valley Auth.*, 437 U.S. 153.

83. *Water Keeper Alliance*, 271 F.3d at 34-35.

84. *Id.*

85. *Id.* at 34. The Court cites *Stranhan v. Cox*, 127 F.3d 155, 171 (1st Cir. 1997) (quoting *Nat'l Wildlife Fed'n v. Burlington N. R.R.*, 23 F.3d 1508, 1510 (9th Cir. 1994) and also *Tennessee Valley Auth.*, 437 U.S. at 153 (1978)).

86. *Id.* at 34-5.

87. *Water Keeper Alliance*, 271 F.3d at 35. The Court pointed out in a footnote that the Navy failed to follow section 7(j) of the ESA that grants "an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security." (16 U.S.C. § 1536(j)). *Id.* at 34 n10. But, because the violation was not raised in the plaintiffs' brief, the Court would not consider the violation.

88. *Id.*

88. *Id.* at 35.

noted that the public's interest in military preparedness outweighs the plaintiffs' interest in the species protected under the ESA.⁸⁹

Although the court considered the four injunction elements, the court stepped around the first three in support of an outcome that favors National Security. However, in doing so, the Court failed to consider the public's interest in preserving the endangered or threatened species, once found to be so important in the TVA. The Court was instead persuaded by the Navy's claim that Vieques was required for adequate preparation of its soldiers. This outcome arguably suggests that the Court consented to the military's taking of endangered and threatened species simply because that is what the military believes to be best. As a result, the Navy was once again successful in evading the economic burden of complying with the ESA.

*E. Vieques Conservation & Historical Trust v. Bush*⁹⁰

The plaintiffs in *Vieques Conservation & Historical Trust* charged that further military exercises would disobey a Presidential Order, violate their civil and constitutional rights, cause dispersion of uranium dust particles, and irreparably harm the island's environment.⁹¹ Although the plaintiffs requested a restraining order and not an injunction, the Court considered their claims using the four-factor injunction analysis.⁹²

Initially, the court denied all four of the plaintiffs' claims, reasoning that Congress had not expressly waived sovereign immunity, and therefore, the plaintiffs were barred from challenging the Navy's actions.⁹³ Subsequently, the Court went on to deny all of the plaintiffs' claims after consideration of only the first injunction factor, the likelihood of the plaintiffs success on the merits.⁹⁴

In its analysis, the Court first considered the plaintiffs' claim that the Navy disregarded and disobeyed a direct Presidential and Defense Secretarial Order that required the Navy to initiate and complete a study on the health of the Viequense before training on the island could continue.⁹⁵ In denying this claim, the Court relied on an affidavit of the Acting Secretary of the Navy stating that, neither the President nor the Secretary of Defense had asked him to suspend training on Vieques until

89. *Id.* at 35.

90. *Vieques Conservation and Historical Trust v. Bush*, 140 F. Supp. 2d. 127 (D.P.R. 2001).

91. *Id.* at 129.

92. *Id.*

93. *Id.* at 130.

94. *Id.*

95. *Vieques Conservation and Historical Trust v. Bush*, 140 F. Supp. 2d. at 130.

a conclusive health study was attained.⁹⁶

Second, the Court dismissed the plaintiffs' claim that adverse health effects would result if the Navy continued training on the island.⁹⁷ In support of their respective claims, both the plaintiffs and the defendants submitted favorable vibroacoustic studies to the Court.⁹⁸ Despite these submissions, the Court found that the plaintiffs' evidence was not strong enough, holding that they failed to meet their burden in proving that vibroacoustic disease existed, or affected residents of Vieques.⁹⁹ Specifically, the Court noted that it could not restrain the Navy's activities due to a disease that had not been "accepted by a majority of the scientific community."¹⁰⁰ The Court further depended on the sworn affidavit of a Medical Corps Navy Captain who cautioned against reliance on the small and exclusive sample used in plaintiffs' Vieques study without additional replication of its result.¹⁰¹

Additionally, the Court rejected the plaintiffs' claims that uranium particles would likely harm the residents of Vieques.¹⁰² After pointing to a previous case rejecting the same claim, the Court went on to reason that the Nuclear Regulatory Commission's investigation that concluded no public danger existed was sufficient to rebut any insinuation of harm.¹⁰³

Finally, the Court rejected the plaintiffs' claim that the continued use of Vieques would lead to an ecological disaster.¹⁰⁴ The Court denied that destruction of the surrounding coral reefs would result from ordnance embedding in the reefs or from the puncturing of unknown underwater barrels off the island's coast.¹⁰⁵ The Court recognized that

96. *Id.*

97. *Id.*

98. *Id.* at 132.

99. *Id.* at 130. Vibroacoustic Disease, or VAD, is a chronic, progressive, cumulative, systemic disease. Exposure to high-intensity/low-frequency sound and infrasound can lead to Vibroacoustic Disease. When exposed to high-intensity/low-frequency sound, which includes loud music, the body is subjected to powerful sound vibrations. This noise stressor leads to: homeostatic imbalance, disease, interference with behavior and performance, visual problems, epilepsy, stroke, neurological deficiencies, psychic disturbances, thromboembolism, central nervous system lesions, vascular lesions in most areas of the body, lung local fibrosis, mitral valve abnormalities, pericardial abnormalities, malignancy, gastrointestinal dysfunction, infections of the oropharynx, increased frequency of sister chromatid exchanges, immunological changes, cardiac infarcts, cancer, rage reactions, suicide, and altered coagulation parameters. Found on lowertheboom.org on January 27, 2004 at <http://www.lowertheboom.org/trice/vad.htm> [last visited Jan. 27, 2004.]

100. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d at 131.

101. *Id.* at 131-32.

102. *Id.* at 132.

103. *Id.* at 132 n.4. The previous case considering the effects of uranium particles was *Cruz-Ramos v. Puerto Rico Sun Oil Co.*, 2002 F.3d 381 (1st Cir. 2000).

104. *Id.* at 132.

105. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d at 132-33.

both sides presented compelling evidence regarding the threat of casualty faced by the surrounding coral reefs.¹⁰⁶ However, the Court dismissed the plaintiffs' study, conducted by a Professor of Ecology and Marine Science from the University of Georgia, due to language within its summary of the study stating, "[a] more detailed study of wider scope needs to be conducted before making further conclusions."¹⁰⁷ Despite the professor's finding, the Court states in a footnote that the study concluded, "... a preliminary assessment of the reefs does reveal that many of the reefs on Vieques have been seriously impacted by the military exercises."¹⁰⁸ Ultimately, the Court chose to depend on a sworn declaration by a civilian employee working in Norfolk Virginia as persuasive.¹⁰⁹ The Court quoted the employee as saying, "[n]one of the reefs that were the subject of the study cited by the plaintiffs will be affected in the upcoming exercises. The water hits during the exercises will occur to the north side of the island. . . ."¹¹⁰

Within her affidavit, the civilian estimated that "realistically only about eight percent of the total rounds will come to rest in the coral reefs."¹¹¹ The Court noted that the exercises challenged by the plaintiffs in this case included four to seven days of training where four to ten ships will fire 150 to 300 total rounds a day, and during an estimated 200 air to ground events flown, 600 non-explosive bombs will be dropped on the Live Impact Area.¹¹² Considering the Navy's conservative figures of these exercises and the civilians' eight percent estimate, twelve rounds discharged by ships and forty-eight non-explosive bombs will end up in the reefs.¹¹³ Yet, despite the Navy's "expert" admission that some of the discharge will come to rest on the reefs, the Court put more value on her suggestion that "natural influences and commercial exploitation of the land and water resources at Vieques" may be the real cause of the damage.¹¹⁴

In considering the possible ecological disaster that could occur if the Navy's activities caused nearby, unknown, sunken barrels to leak, the plaintiffs' expert declared that a toxic leak "could become highly

106. *Id.* at 132.

107. *Id.* at 132-33.

108. *Id.* at 133, n.5.

109. *Id.* at 132-33.

110. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d at 132-33. The court noted that the civilian employees' responsibility in this matter was to oversee a team of environmental experts while working as the NEPA Program Manager for Commander in Chief of the U.S. Atlantic Fleet. *Id.* at 132-3.

111. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d. at 133.

112. *Id.* at 128.

113. *Id.*

114. *Id.* at 133.

dangerous" both locally and regionally.¹¹⁵ The defendants countered with an affidavit taken from the Lieutenant in charge of investigating the sunken ships holding the underwater barrels of note.¹¹⁶ The Lieutenant, in his affidavit, stated that after three recent dives down to the barrels, no obvious environmental damage from the vessels or the drums had been detected.¹¹⁷

Ultimately, the Court found that, given the factual record, it was unable to conclude whether an ecological disaster would more likely occur as a result of leaking barrels or as a result of ammunition damage to the reefs.¹¹⁸ Despite the persuasive evidence presented by the plaintiffs, the Court ruled, "that more research is necessary before any scientific and hence legally acceptable conclusions can be drawn," that "plaintiff's likelihood of success on the merits as to their ecological disaster argument is thus at best questionable" and that plaintiff's claim is insufficient to support a court order enjoining the Navy's activities.¹¹⁹

Within its opinion, the Court asks a seemingly thoughtless question: "Why, after fifty-eight years of military activity is this bombing going to create irreparable injury to the point that it warrants a temporary restraining order by this court?"¹²⁰ One has to wonder what the Court is asking: is it asking why plaintiffs have not presented studies suggesting that more research is necessary; or is it asking why plaintiffs have chose to challenge one brief exercise on the island, after the island has suffered abuse for decades?

Although the Court's opinion rejects the plaintiffs' claims based on the "likelihood of success" element of injunctive relief, after considering the Court's reasoning it appears that it chose to favor reasoning supporting National Security concerns instead.

The Court clearly favors the military in this case, and since the September 11, 2001 terrorist attack on the United States, courts have been forthright in stating that the military's readiness in protecting against and attacking those threatening our country's democracy and peace comes before all else.¹²¹ Previously, courts would refrain from so

115. *Id.* The Navy identified one of the ships to be the USS Killen. *Id.* at 133-134. The USS Killen was sunk near Vieques in the early 1970s after being used for nuclear tests at Bikini Atoll Island in the late 1950s and for target practice around from 1963. Found on CNN.com, Sept. 13, 2002, at

www.cnn.com/extras/printer-friendly.asp?storyid=48377 (last visited Sept. 13, 2002).

116. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d. at 133.

117. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d. at 133-134.

118. *Id.* at 134.

119. *Id.*

120. *Id.*

121. *Id.* at 134-35. In a suit filed, claiming that the Navy failed to comply with the Costal Zone Management Act, the court took note of the terrorist attacks of September 11, 2001 and found that restricting the Navy's activities on Vieques any further could

bluntly stating a position, instead seeking to create environmental statutory loopholes, and/or attempting to discount plaintiff evidence proffers in cases where National Security concerns are implicated. Now courts make it clear that they "... cannot simply zoom in on the concerns of the United States citizens residing in Vieques, but must pan back and keep the larger picture in focus," "[n]ational security is too important of an issue to be neglected."¹²²

Within the courts' discussions of the importance of national security and the plight of the people of Vieques, it is clear that they believe that in maintaining democracy some should incur hardship.¹²³ The courts have stated that "[i]f world peace is to be achieved, the United States must continue to be the driving force of democratic principles."¹²⁴ It is unfortunate that for the last sixty-years the people of Vieques have had to unevenly bare the burden and have had to compromise their statutory right to a clean and healthy environment in supporting the United State's efforts to defend and maintain its democratic principles.

III. Civil Disobedience Efforts

Clearly, the Viequense legal effort to end the Navy's island bombing had been unsuccessful. Litigation based on the military breach of environmental statutes had also failed in freeing Kahoolawe from the Navy. Instead of legal efforts, the eventual success of those fighting to regain Kahoolawe's title had been attributed to the deaths of two demonstrators. A comparable scenario played out in Culebra, an island neighboring Vieques and once part of the Roosevelt Roads complex. After environmental statutes failed to protect these island residents, their success only came after they were able to capture the attention of the United States following numerous focused civil disobedience movements.

A. Kahoolawe, Hawaii

Those protesting the Navy's presence on Kahoolawe focused on the island's designation as a sacred and religious site, specifically playing on Hawaii's ongoing struggle to restore its culture.¹²⁵ In the 1970's, a group

interfere and compromise their obligation to train its forces. *Lopez v. Cooper*, 193 F. Supp. 2d 424, 435 (D.P.R. 2002).

122. *Vieques Conservation and Historical Trust*, 140 F. Supp. 2d. at 135.

123. *Id.* at 134-35.

124. *Id.* at 134.

125. MCCAFFREY, *supra* note 1, at 80; see also *Navy Agrees to Partial Cleanup of Hawaiian Island*, N.Y. TIMES, Dec. 7, 1980, at A31 [hereinafter "*Partial Cleanup*"]. The Island was believed to contain nearly 50 ancient living areas, burial grounds and other sites proponents attempted to list on the National Register of Historic Sites. *Aluli v.*

of activists known as the "Protect Kahoolawe Ohana (family)" ("PKO"), began demonstrating to gain recognition of the historical significance of the island and protect it from damaging military shelling.¹²⁶ Beginning in 1976, PKO members rowed to the island in the early morning to demonstrate on the island.¹²⁷ These demonstrations caused temporarily delays and interruptions in the Navy's daily schedule.¹²⁸

The turning point in PKO's civil disobedience movement came in early 1977, when the leaders of the group, George Helm and Kimo Mitchell were lost at sea while traveling by boat from Maui to Kahoolawe.¹²⁹ In 1980, after nearly forty years of military regulation, and pressure from the public, the Navy agreed to register the Island's historical sites, clear unexploded ordnances, and allow PKO limited access to the island for religious and cultural activities.¹³⁰

However, it was not until 1990 when President George Bush ordered a two-year freeze on the Navy's bombing of Kahoolawe.¹³¹ Before surrendering the Island to the State of Hawaii, the Navy's expression of displeasure at having to close the site was substantially similar to their protest after ordered to close the Vieques military base, stating, "[i]t is the only place in the mid-pacific where combined arms training in infantry, artillery, air-to ground strikes and naval gunfire can be practiced."¹³²

In 1993, President Clinton signed a bill granting 400 million dollars in funding to complete a ten-year clean up of Kahoolawe in an effort to return the island to its original condition.¹³³ However, the Navy did not begin cleaning the island until five years later.¹³⁴ Equally as troubling, were the unexpected and insignificant expenditures that depleted the

Brown, 437 F. Supp. 602, 605 (D. Hawaii 1977).

126. Debra A. Klein, *For the Future of Vieques, Look to Hawaii*, N.Y. TIMES, June 16, 2001, at A15 [hereinafter "*For the Future*"].

127. Eric K. Yamamoto, *Practically Reframing Rights: Culture, Performance, and Judging*, 33 UCCLR 875, 886-7 (2000) [hereinafter "*Reframing Rights*"].

128. *Id.* at 886-7.

129. *Id.* at 887.

130. *Id.*

131. MCCAFFREY, *supra* note 1, at 187 n.21.

132. *Partial Cleanup*, *supra* note 123. On May 7, 1994, the U.S. transferred title to Kahoolawe to the State of Hawaii. *Reframing Rights*, *supra* note 125, at 887. At the time, the United States was preparing for a war in the Persian Gulf, leaving the Navy begging for temporary use of the Island after the initial two year amendment halted their bombing activities. *Military Still Wants Access to Hawaiian Island*, N.Y. TIMES, Dec. 20, 1990, at B20.

133. BARRETO, *supra* note 3, at 40 and MCCAFFREY, *supra* note 1, at 178; also see *For the Future*, *supra* note 124. The clean-up job was assigned to the Navy and some activists complained that because of their experience the job should have gone to the Army Corps of Engineers. *For the Future*, *supra* note 124.

134. *For the Future*, *supra* note 124.

original 400 million dollars allotted by President Clinton.¹³⁵ These obstructive expenses included the cost of daily transportation of hundreds of workers to the island.¹³⁶ Additionally, the natural iron-rich soil made metal detectors ineffective for finding bombs.¹³⁷ Instead of utilizing metal detectors, surveyors, archaeologists, brush cutters, and surface sweepers were forced to tediously examine small patches of the land.¹³⁸

By the year 2000, the Navy had only restored one-tenth of the island's surface.¹³⁹ This effort was short of the original plan to clean the whole surface plus one-third of the subsurface.¹⁴⁰ The original plan to restore Kahoolawe also included a cultural and historic park on the island.¹⁴¹ As of this past year, the Navy believes that the original 400 million dollar grant will only allow cleaning to one-third of the island's surface.¹⁴²

B. *Culebra, Puerto Rico*

The history and struggle of the people of Culebra is also an important parallel to the struggle of the Viequesese against the Navy. Since the early 1900's, the Navy has caused similar damage to the ten-square mile island by testing artillery and bombs there.¹⁴³ Originally, the use of Culebra, in conjunction with Vieques and Puerto Rico's mainland naval base, formed a strategic triangle and made up the Roosevelt Roads Naval Station.¹⁴⁴

Records show that Culebra once had four thousand residents, but during the height of the Navy's use in the 1950's, the population dropped to just 580 residents.¹⁴⁵ In 1969, after the shift to missile technology, the island and its residents incurred 123 days of naval gunfire, 228 of direct

135. *Id.*

136. *Id.* Locals complained that the Navy's use of helicopters for the transports was wasteful. *Id.*

137. *Id.*

138. *Id.*

139. MCCAFFREY, *supra* note 1, at 178; see also *For the Future*, *supra* note 124.

140. MCCAFFREY, *supra* note 1, at 178 see also *For the Future*, *supra* note 124.

141. *For the Future*, *supra* note 124.

142. *Id.*

143. Lisa Napoli, *The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico*, 18 B.C. THIRD WORLD L.J. 159, 180-181 (1998). In 1901, President Roosevelt signed all the public land in Culebra to the Navy. Information found on GlobalSecurity.org on January 18, 2003; at www.globalsecurity.org/military/facility/culebra.htm. (last visited on Jan. 18, 2003) [hereinafter "Global Security"].

144. MCCAFFREY, *supra* note 1, at 70.

145. *Id.* At this time, the Navy dominated one-third of the Island and its entire coastline. *Id.*

missile hits and over thirty five thousand target runs made by planes.¹⁴⁶ During this time, the Navy did not always hit their target. Bombs were known to land in residential areas, and gunfire threatened the waters children played in.¹⁴⁷

The protests spurred by naval occupation in Culebra began in the 1970's after the Navy made its second attempt (the first being in the 1950's) to evict all of the island's residents in an effort to expand their bombing range.¹⁴⁸ Because the rest of Puerto Rico was struggling under the Navy's warfare, the protest to end their domination of Culebra became a widespread movement throughout Puerto Rico; a protest managing to cross all political lines.¹⁴⁹

The support of all the Puerto Rican political parties was significant in mobilizing a direct action campaign against the Navy's presence on the island.¹⁵⁰ Like Kahoolawe, the demonstrations in Culebra also included activists who in the course of their protest put their bodies in the line of fire by organizing on the beaches to stop the Navy's water-to-shore target practice.¹⁵¹ The protestors built a chapel and schoolhouse on the main target beach to symbolize Puerto Rico's struggle against U.S. Military command.¹⁵² The Navy combated these efforts by tearing down the buildings, blocking the beach's entry with police and building a barbed wire fence that jutted out into the ocean.¹⁵³

In January of 1971, the Secretary of U.S. Navy and the Commonwealth of Puerto Rico signed the Culebra Agreement, an agreement seemingly designed to commit the Navy to the finding of an alternative training site by 1972 and permanently ending their bombing by 1975.¹⁵⁴ However, in 1972, the Secretary of Defense declared that the Navy would continue to use Culebra for soldier combat until 1985.¹⁵⁵

146. *Id.*; see generally Ben Schemmer & Bruce Cossaboom, *Culebra Act II: House Panel Reschedules Hearings*, ARMED FORCES JOURNAL (June 6, 1970) at 16-20 [hereinafter "*Act II*"].

147. MCCAFFREY, *supra* note 1, at 70; see generally *Act II*, *supra* note 144.

148. MCCAFFREY, *supra* note 1, at 70-1 citing N.Y. TIMES, May 3, 1970. Many also attribute the Culebra protests to the increased air-to-ground and naval surface fire in the late 1960s. "Global Security," *supra* note 141. Additionally, some believe it was the Puerto Rican political parties unanimous call for an end to the Navy's bombing after children playing on a beach were in harms way when an unscheduled discharge of mortar fire landed on their beach. *Id.*

149. MCCAFFREY, *supra* note 1, at 71.

150. *Id.* The Puerto Rican political parties include the Puerto Rican Independence Party ("PIP") and the Puerto Rican Socialist Party ("PSP"). MCCAFFREY, *supra* note 1, at 71.

151. MCCAFFREY, *supra* note 1, at 71

152. *Id.* at 71 and 155.

153. *Id.* at 70 and 155.

154. MCCAFFREY, *supra* note 1, at 72.

155. *Id.*

Puerto Rican officials were infuriated at the Navy's "cavalier attitude" and "duplicity" in formulating this agreement.¹⁵⁶

Amidst chronic tensions, President Nixon ordered the Navy to leave Culebra in 1974.¹⁵⁷ President Ford later signed an executive order acknowledging that "[t]he United States owes a great deal to the people of Puerto Rico for their past sacrifices on behalf of our common national security."¹⁵⁸ However, the closing of the military base on Culebra ultimately proved tragic for Vieques. Congress simply shifted its equipment, weaponry, and remaining budget to Vieques' naval training compound, eventually leading to the instigation of the anti-Navy movement in Vieques.¹⁵⁹

After this shift, Culebra's struggle with the military did not end. Similar to the problems faced in cleaning up Kahoolawe, Culebra encountered problems with the timeliness and the Government's plans for the island. The allocation of funds for the cleanup of Culebra was delayed over two decades due to disagreements about what to do with an island full of ammunition discharge.¹⁶⁰ Currently, one quarter of the island is within a national wildlife refuge protected by the U.S. Fish and Wildlife Service.¹⁶¹ Additionally, in 2000, a private contractor was appointed to remove the unexploded ordnance.¹⁶²

C. *Vieques, Puerto Rico*

In comparing these three islands, the Viequenses have mobilized the longest, most far-reaching and tragic civil disobedience movement. The islanders' first organized protest against the Navy took place in 1978 when a group of fishermen declared a "fish-in."¹⁶³ The group claimed that the Navy's destruction and fishing restrictions denied them their right to make a living.¹⁶⁴ The group was successful in disrupting the military training efforts and notifying the world of their plight of

156. *Id.* citing U.S. House 1973: 4.

157. MCCAFFREY, *supra* note 1, at 72.

158. *Id.* at 187 n.21 and Pedro A. Sanjuan, *The Navy Doesn't Need Vieques*, N.Y. TIMES May 2, 2000, at A27.

159. MCCAFFREY, *supra* note 1, at 72 citing U.S. House 1994.

160. MCCAFFREY, *supra* note 1, at 178.

161. Found on Caribbean-ecoteam.fws.gov on January 19, 2003; http://caribbean-ecoteam.fws.gov/culebra_index.htm. [last visited on Jan. 19, 2003].

162. MCCAFFREY, *supra* note 1, at 70-1 citing N.Y. TIMES, May 3, 1970.

163. *Id.* at 76-7. Specifically, the protest was spurred after the Navy imposed a 30-day restriction on the fisherman to allow foreign military organizations to come together in Vieques to conduct amphibious exercises, mock invasions, missile firing and electronic warfare. *Id.* at 76

164. *Id.* at 76-7.

oppression.¹⁶⁵ The "Fishermen's War" continued into 1983, but like most protests the Viequesese staged, it was compromised by outsiders labeling it an anti-nationalist movement.¹⁶⁶

Although the "Fishermen's War" caught the eye of many, the tragic death of civilian security-guard, David Sanes Rodriguez, killed after a Marine F-18 jet pilot missed its mark, propelled the Vieques movement onto the national stage.¹⁶⁷ Days after the accidental killing, fishermen, anti-Navy activists, and the Rodriguez family entered the Navy's territory and honored David Sanes with a religious ceremony and the construction of a white, twelve-foot cross.¹⁶⁸ During the ceremony, a well-known Puerto Rican environmental activist spoke to the crowd and promised to remain within the "impact zone" to protest and block the Navy's bombing.¹⁶⁹ Gradually, supporters of the anti-Navy movement came to join the environmentalist and eventually, over a dozen encampments were set up on the target range.¹⁷⁰ Additionally, thousands from Vieques, mainland Puerto Rico, and the United States visited the demonstration area to support the movement.¹⁷¹ In the summer of 2001, the Reverend Al Sharpton joined the protest of the Navy's bombing exercises on the island.¹⁷² He was joined by environmental lawyer Robert F. Kennedy Jr., son of the late Senator Robert Kennedy, and labor leader Dennis Rivera.¹⁷³ Al Sharpton was arrested after trespassing at one of the Navy's firing ranges and served 90 days in prison.¹⁷⁴ During his prison term, New York Democratic Congressmen Charles Schumer

165. *Id.* at 77.

166. *Id.*

167. Found on Americas.org on November 15, 2002 at www.americas.org/News/Features/199910_Vieques/index.asp [last visited Nov. 15, 2002]; see also MCCAFFREY, *supra* note 1, at 147. Other past injurious accidents and close calls include: a man and his son killed when their horse stepped on a grenade in 1940; a lost "test bomb with nuclear characteristics" in the mid-sixties; five bombs dropped on the border of a civilian sector in 1993; serious injury to a fisherman after bombs were exploded in costal waters in 1996; and a parked police car and school bus sprayed with bullets in 1997. MCCAFFREY, *supra* note 1, at 148.

168. MCCAFFREY, *supra* note 1, at 147.

169. *Id.* at 147-8. The family members of the deceased wanted no part in the demonstration and all members of the ceremony left, leaving the environmental activist, Albert de Jesus, to remain by himself throughout the night. *Id.* at 148.

170. MCCAFFREY, *supra* note 1, at 148. A group called the Committee to Rescue and Develop Vieques had laid the foundation for this movement over the last six years by creating a network of supporters and speaking out about the health and safety threats faced by the island. *Id.*

171. MCCAFFREY, *supra* note 1, at 148.

172. Found on CNN.com on January 16, 2003 at <http://www.cnn.com/2001/LAW/08/17/sharpton.jail.release/index.html> [last visited Jan. 16, 2003.]

173. *Id.*

174. *Id.*

and Hilary Clinton visited Sharpton.¹⁷⁵ Sharpton followed his prison release with speeches and assemblies around New York City to discuss the battle for Vieques and to announce his intent on exploring the possibility of running for the Presidency in 2004.¹⁷⁶

The area was renamed "Monte David" in memory of those who died under the siege of the Navy.¹⁷⁷ Many brought crosses to join in the memory of their own loved ones who they believed died of cancer caused by the Navy's noxious use of the island.¹⁷⁸ Similar to the chapel and schoolhouse constructed within Culebra's impact zone, the Vieques demonstrators built a church within the camp and hung a Puerto Rican flag and white flag, symbolizing peace.¹⁷⁹

The activists were successful in warding off the military bombs for one year.¹⁸⁰ More importantly, this mobilization captured the attention of the entire country due to the diverse group speaking out against the Navy's activities on the island and their concentration on the health and safety of the people of Vieques.¹⁸¹ This movement remained uninterrupted and free from previous accusations that Puerto Rico was trying to gain independence from the United States.¹⁸² Once police removed the protestors from Monte David, they moved their camps to the entrance of Camp Garcia.¹⁸³

In the winter of 2000, the governor of Puerto Rico and President Clinton signed the "Clinton-Rossello Pact," allowing the Navy to continue military practices on Vieques for another year until a referendum vote took place, allowing the Vieques voters to determine if the Navy should stay or go.¹⁸⁴ The citizens of the Island were to receive over 90 million dollars in aid if they voted to allow the Navy's activities to continue.¹⁸⁵ In reaction to this agreement, a religious backed protest took place in San Juan on February 21, 2002, where an estimated 85,000

175. *Id.*

176. *Id.*

177. MCCAFFREY, *supra* note 1, at 148.

178. *Id.*

179. *Id.* at 155.

180. *Id.* at 170. On May 4 of 2000, federal marshals cleared all the camps, including the church built by the protestors and arrested over 200 people, including two members of the U.S. House of Representatives. *Id.*

181. MCCAFFREY, *supra* note 1, at 148-9. In comparison, the fisherman's protest in the 1970's centered on the livelihood and local objections of the residents. *Id.* at 160. This second prolonged demonstration was more successful in getting the attention of the world, in particular, the field of white crosses symbolizing to the world the health and safety hazards the people of Vieques face. *Id.*

182. MCCAFFREY, *supra* note 1, at 160

183. MCCAFFREY, *supra* note 1, at 166.

184. *Id.* at 169.

185. *Id.*

to 150,000 demonstrators denounced the agreement.¹⁸⁶ Intending to bring peace and resolve to the people of Vieques, the Agreement only intensified the protestors' anger and strengthened their efforts to get their message heard.¹⁸⁷

Equally unsatisfactory to the Vieques supporters was President George W. Bush's June 2001 announcement that the U.S. Military would stop using the island in May of 2003.¹⁸⁸ The Vieques citizens continued to protest because they distrusted the Government's promises and were upset that Bush's order would not result in an immediate end.¹⁸⁹

National attention to the Vieques cause began to wane after the September 11, 2001, terrorist attacks.¹⁹⁰ The presence and voice of the island protestors also slackened.¹⁹¹ With national security concerns higher than ever, and Bush's promise not legally bound, many were concerned that the Navy would never leave Vieques.¹⁹²

Despite being on the verge of war with Iraq, in January of 2003, Navy Secretary Gordon England signed a certification letter notifying Congress that they had located alternative sites of equal quality to Vieques.¹⁹³ The letter declared that Vieques would be officially closed to military training on May 1, 2003.¹⁹⁴ Despite this assurance, the Vieques protestors refused to stop their demonstrations and threatened to continue protesting until the last soldier left the island.¹⁹⁵

Instead of finding a new training island that permits a live-fire range site, ship to shore shelling and amphibious troop landing, once so important to the Navy, they decided that the soldiers could be adequately

186. *Id.*; see generally WASHINGTON POST, Feb. 22, 2000.

187. MCCAFFREY, *supra* note 1, at 170. Due to the increasing hostility between the residents and the Navy, armed riot police lined the gates of Camp Garcia, where protestors sat. *Id.*

188. MCCAFFREY, *supra* note 1, at 173.

189. *Id.* In October of 1983, the governor of Vieques signed the Fortin Accord with Navy officials that seemed to legitimize the local claims and cure their problems by promising to stimulate the island's economy, make efforts to mitigate the Navy's destruction of the environment, and to improve the relationship between the islanders and the military. *Id.* at 95-101. The Accord quieted the protest for nearly fifteen years while islanders waited for the Navy to make a change, but the changes never came. *Id.*

190. MCCAFFREY, *supra* note 1, at 174.

191. *Id.*

192. *Id.* at 174.

193. Found on CNN.com on January 12, 2003 at www.cnn.com/2003/WORLD/americas/01/10/vieques.alternatives/ [last on Jan. 12, 2003] [hereinafter "Vieques Alternative"]; see also www.cnn.com/2003/US/01/15/vieques.training/index.html. [last visited on Feb. 16, 2003] [hereinafter "Vieques Training"].

194. "Vieques Alternative," *supra* note 191.

195. See U.S.A. TODAY, Jan. 13, 2003 at 3A. The USS Theodore Roosevelt is to be the last battle group to use the range. *Id.* Their training is to end by February of 2003. *Id.*

trained at separate facilities. In May of 2003, the Navy relocated its firing range to a mainland facility and began to conduct offshore bombings out at sea, instead of the east end of Vieques.¹⁹⁶ However, as exemplified in Kahoolawe and Culebra, the Viequesese struggle with the Navy may just be reaching a new phase, one of environmental cleanup. As of this writing, the United States military has stated that once the base closes, it intends to do an environmental cleanup, but a timetable has yet to be set for the project.¹⁹⁷

IV. Conclusion

It has been a long and taxing fight for the people of Vieques, one unmatched by the struggles that took place in Culebra and Kahoolawe. As discussed, litigation efforts challenging environmental statute violations, proved ineffective in enjoining the Navy's hazardous activities on these small islands. When national security competes with environmental legislation, the courts often ignore or discount the first and second factors usually considered when granting an injunction, (the party's likelihood of success on the merits and the potential for irreparable harm.) Instead, the courts most often favor the third and fourth injunction elements, (balancing the hardships and the effect the injunction will have on the public interest), specifically they focus on the military and national security, rather than the adversities faced by the islanders. The judiciary's position is even more obvious in the cases discussed above, especially those decided after the events of September 11, 2001.

Just as in Kahoolawe and Culebra, the Navy's decision to close the Vieques base has been attributed to the pressure felt from the civil disobedience movements. However, the protests in Vieques have lasted much longer. Upon review of the Island residents' struggle, it is clear that participation of the diverse groups, both political and religious, that

196. "Vieques Alternative," *supra* note 191. The Navy considered the Padre Island National Seashore and the Laguna Madre estuary in Texas. Found on Environmentaldefense.org on September 15, 2002 at www.environmentaldefense.org/print_article.cfm?ContentID=81&displaymode=print [last visited on Sept. 15, 2002]; also see <http://texas.sierraclub.org/pressreleases/bombcorpus.html>. [last visited on Sept. 15, 2002]. The Navy ultimately took it off the list after ten Texas environmental and conservation organizations sent a letter to the Secretary of the Navy expressing their concerns about the effect the military's bombing activities would have on the diverse natural resources found in the area and the impact on tourism, which the area relies heavily on. *Id.* Possible locations for the live-fire drills include Eglin Air Force Base in the Florida panhandle; the Navy's Pinecastle Impact Range, within a Florida national forest and the Marine Corps' Base Camp LeJeune and Air Station Cherry Point in North Carolina. *Id.*

197. "Vieques Training," *supra* note 191.

came together to back a clear and sympathetic message focusing on the protection of the health, safety, and overall well-being of those same residents was instrumental.

One could also argue that the pressure felt from repeated lawsuits, coupled with the Viequense relentless civil disobedient measures represented the final ingredients in their success. Perhaps the Navy recognized that its activities could go unchallenged at another U.S. military location, making it economically sensible to close an initially inexpensive training facility. Alternatively, the precise timing of the promises made by the U.S. Executive Branch and other political front-runners suggests that the power of the Hispanic vote in the continental United States has compelled politicians to make promises to the people of Vieques in hopes of swaying the voting majority in their favor.

Despite the apparent Vieques victory in regaining control of their Island, the similar struggles faced in Kahoolawe and Culebra suggest that the island's battle with the Navy has not ended, but is likely to continue over matters of environmental clean up.¹⁹⁸

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198. As of January of 2004, the EPA had identified several areas on Vieques contaminated with hazardous waste. *EPA to Name Former Vieques Base as Hazardous Waste Site*, BUSINESS NEWS AMERICAS-ENGLISH, Jan. 6, 2004. The EPA recommended that the areas be declared Superfund sites, obligating the Navy to pay for the decontamination and restoration of the areas. *Id.*