

**SEVENTH ANNUAL INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE**

WILLIAMS *ET AL.* V. STATE OF BUENAVENTURA

I. INTRODUCTION

1. Buenaventura is a large island located in the Atlantic Ocean. It was a British colony during the eighteenth and nineteenth centuries, and is now a very important commercial center due to its accessible ports and proximity to mainland neighbors rich in natural resources. The population, mostly descendants of former West African slaves, as well as Spanish and British settlers and indigenous ethnic groups, numbers approximately 20 million. The official languages are Spanish and English. The Social Democratic Party, described as centrist, has been in power for the last four years.

2. The economy of Buenaventura is very strong, based mostly on international commerce and tourism. There has been a recent boom in higher education, with five new universities opened in only the last five years. The excellent standards of these institutions, especially in the areas of international law and medicine, have at,

central role in pressuring for and working with local officials in the establishment in 1997 of the Cambacropolis Civilian Review Board, which provides oversight of the Cambacropolis Police

11. EJM established that each of the five killings, and each of the prior complaints of abuse was tied to a specific police unit, that assigned to the Central Police Station, located in the most impoverished and crime-ridden section of the inner city of Cambacropolis. Whereas the complaints of abuse had been promptly investigated by the Office of Professional Responsibility and transmitted to the Prosecutor's Office for legal action, the reports on the killings had been subjected to an initial investigation and transmitted to the Prosecutor's Office with the recommendation that they be filed due to lack of evidence suggesting any need for further action.

12. EJM decided that this situation was different from those it had worked with in the past and required a more aggressive approach. The EJM team couldn't tell if the failure to connect the killings and prior complaints of abuse was the result of a cover-up or negligence or a combination. The organization decided, in consultation with the families of the five individuals who had been killed, to represent them in legal action designed to establish the criminal responsibility of the officers involved, and the civil responsibility of the Police Department for the failure to exercise proper oversight. EJM prepared the complaint for presentation to the Prosecutor's Office and called a press conference for August 1, 1999, at the time it was to be filed.

13. During the press conference, EJM's Legal Director, Elena Williams, set forth the organization's allegations that these shootings had not been in self defense, but had in fact been premeditated killings. She further indicated that the organization had located a witness who would prove their allegations in court. Given the gravity of the allegations presented, she declined to reveal the name of witness to the media in order to avoid any possible risk.

14. It should be noted that Elena Williams, one of the founders of EJM, is very well known in Cambacropolis and in all of Buenaventura as a human rights defender. She is frequently interviewed on television networks and by the main national newspapers, where she has been very outspoken about what she characterizes as the problem of police violence and the need for additional responses from the state.

15. In fact, the work of EJM often finds its way into the press. EJM has a good working relationship with a number of investigative journalists at the Free Press, a leading newspaper of Cambacropolis, and they keep each other informed of relevant developments. The journalists, in turn, have a good working relationship with certain well-placed sources in the local police and the administration of justice. The reporting of the Free Press has, in the past, been instrumental in terms of increasing pressure on the authorities of the Cambacropolis Police Department to respond to reports of unjustified or excessive use of force by its personnel. The filing of the EJM complaint with the Prosecutor's Office was carried on the front page of the Free Press the next day.

16. The Prosecutor's Office responded to EJM's complaint with expressions of strong concern, and immediately named a Special Prosecutor and initiated a criminal investigation. The previously filed complaints of abuse in custody were incorporated into this investigation to facilitate investigating whether there was any link between the shootings and those complaints. Within days, the eight officers linked to the killings and complaints of abuse had been called in for questioning, and were thereafter suspended from the police force without pay. Alberta Jones, the witness located by EJM, was also summoned for questioning. The three officers

connected with the shooting she had witnessed were thereafter ordered arrested and placed in preventive detention.

17. The Cambacropolis authorities, for their part, responded by publicly supporting

- a. Respect for the rights of others;
 - b. The protection of national security or public order.
2. The exercise of this right may not be restricted by indirect methods or means.
 3. The Congress shall not pass laws abridging the freedom of the press. A member of the press has the right to keep his or her source of information, notes and professional files confidential.

The court imposed a fine equivalent to US\$ 10,000, which he refused to pay. In view of that refusal, the presiding judge ordered that he be imprisoned for contempt of court.

27. On October 6, 1999, Mr. Collins filed a request for habeas corpus before the Federal District Court for Cambacropolis, which was denied on October 7, 1999, on the basis that his imprisonment was imposed by a competent judge in accordance with the laws of Buenaventura. He immediately filed an appeal before the Federal Court of Appeals, which rejected it on November 30, 1999, on the grounds that appeals were only heard for convictions resulting in sentences in excess of six months. He was detained for 48 days and released. Mr. Collins pursued his challenge to the legal action taken against him all the way to the Supreme Court. His request for review, filed on December 15, 1999, was rejected on March 18, 2000, without comment.

28. The Free Press has been taking care of Mr. Collins' legal expenses. Since Mr. Collins was incarcerated, a few public agencies in Buenaventura have cancelled their advertisement contracts with the Free Press. A few private companies have done the same. While the newspaper is sustaining a sizeable financial loss for the foregoing reasons, Mr. Collins remains adamant in refusing to reveal his source.

29. In the interim, the investigation and prosecution of the five police shootings, and the investigation into the killings of Alberta Jones and Elena Williams proceeded under the direction of the Special Prosecutor. On October 15, 1999, following the killing of Elena Williams, the remaining two officers implicated in the complaints of abuse were ordered detained. On February 20, 2000, all eight officers were brought to trial, all on charges of abuse of authority and battery, and three on charges of first degree murder. All were convicted and sentenced on March 12, 2000, five officers to five year prison sentences for abuse of authority and battery, and three officers to 30 year prison sentences, for abuse of authority and battery, and for homicide in the first degree. All eight have presented appeals which remain pending.

30. The killings of Alberta Jones and Elena Williams remain under investigation because the Special Prosecutor has been unable to link the crimes with specific perpetrators. This investigation has been subject to a number of problems, including the fact that the bullets disappeared from the scene. Although the forensic reports indicated that they were consistent with the caliber of a police service weapon, 9 mm., that type of weapon is in fairly wide circulation among the criminal element in Buenaventura. Further, in the case of Alberta Jones, the forensic pathologists were unable to find any hair, or fibers or similar evidence, and failed to take scrapings from under her fingernails, notwithstanding that there was evidence that she had resisted her assailants. In the case of Elena Williams, the police only partially canvassed the area where she was shot for witnesses at the time of the shooting. Notwithstanding having sufficient human and material resources to continue the investigation, the prosecutor has been unable to find conclusive physical or testimonial evidence. Given the lack of progress into these

two murders, EJM staff remain very upset and on edge about their security and work, as well as the future of the organization.

III. PROCEEDINGS BEFORE THE IACHR

31. EJM filed a petition before the Inter-American Commission on Human Rights on June 25, 2000, on behalf of Elena Williams, Alberta Jones and Teodoro Collins. The petition alleged that the State of Buenaventura bears international responsibility for violations of Articles 1(1), 4, 5, 8, 13, 16, 24 and 25 of the American Convention with respect to:

- The killing of Elena Williams and Alberta Jones, and the subsequent lack of judicial protection and due process;
- The threats against the members of EJM, and the impact on the ability of those members to function in association with one another;
- The chilling effect of the application of the coercive power of the judiciary to force Teodoro Collins to reveal a confidential source on his freedom of expression;

32. In a Report adopted on January 22, 2001, the Commission declared the case admissible with respect to Articles 1(1), 4, 8, 13 and 25, and placed itself at the disposal of the parties with a view to reaching a friendly settlement. Articles 16 and 24 were declared inadmissible for failure to present information sufficient to characterize a violation. The attempts at friendly settlement were unsuccessful.

33. On October 10, 2001 the Commission adopted a report pursuant to Article 50 of the American Convention. In its report, the IACHR found that the acts denounced by the petitioners constituted violations of Articles 1(1), 4, 8, 13 and 25 of the American Convention. In consequence, the Commission recommended that Buenaventura: (1) Carry out a prompt, thorough and effective investigation designed to fully clarify the circumstances of the violations set forth; (2) Ensure the prosecution and punishment of those responsible; and (3) Adopt the measures necessary to provide just reparation to the individuals affected. Information submitted by the State on December 10, 2001 in response to the Article 50 report indicated that these recommendations had not been implemented.

IV. PROCEEDINGS BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

34. On January 9, 2002, the Commission referred the case to the Inter-American Court of Human Rights ("Inter-American Court"). On January 14, 2002, the Inter-American Court notified the State of Buenaventura of the filing of the Commission's application. In its application, the Commission alleged the same violations as those found in its Article 50 Report.

35. On January 17, 2002, Teodoro Collins published an article reviewing the lack of progress with respect to the investigation into the killing of Alberta Jones and Elena Williams, and reporting on the presentation of the case before the Inter-American Court. He reported that he had again spoken with the confidential source cited in his article of September 23, 1999, who had indicated that, notwithstanding the conviction of the eight officers, she remained concerned about the safety of the EJM personnel. She would not elaborate on her reasons, but said that it would be "better for everyone not to insist with the investigation and to leave things as they are."

The police arrived at the Free Press' offices later that day to question Mr. Collins. He repeated the information that had been published, but again refused to reveal the source. He was summoned to appear in court on January 22, 2002. Because he refused to reveal his source, he was again fined, and because he refused to pay the fine, he was again jailed for contempt of court.

36. On January 29, 2002, the Inter-American Commission addressed the Inter-American Court to request that the latter issue provisional measures to protect the lives and personal integrity of the 18 staff members of the EJM office in Cambacropolis named in the request, and to protect the right of Teodoro Collins to freedom of expression, and to that end, to protect his personal liberty.

37. The Inter-American Court has scheduled a hearing for oral arguments on the preliminary objections of the State and on the merits of the case, as well as the Commission's subsequent request for provisional measures in favor of EJM personnel and Teodoro Collins.

V. RELEVANT INSTRUMENTS

38. Buenaventura is a Member of the Organization of American States (OAS) since its independence in 1960, and it is party to the following treaties:

- The Charter of the OAS, ratified on October 1, 1960.
- The American Convention on Human Rights, ratified in 1990 without reservations; declaration of acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights, deposited in 1991, without special agreement.
- The International Covenant on Civil and Political Rights, ratified without reservation in 1986.

39. In conjunction with its express policy of encouraging democratization and a free and active press in the region, within the OAS Buenaventura played a very active role in supporting the Inter-American Commission's work on freedom of expression during the last Summit of the Americas, and in the adoption of the Democratic Charter in September of 2001.

40. The Rules of Procedure of the Inter-American Commission which entered into force on May 1, 2001, and the Rules of the Inter-American Court of Human Rights which entered into force on June 1, 2001 apply in this case.