

**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 attracted a large number of students from throughout the region.

3. In the last five years, there has also been a notable increase in crime, mostly related to drug trafficking from neighboring countries and money laundering. The capital city of Cambacropolis, in particular, has seen a steady rise in crime and the increasing penetration of organized crime.

4. The government of Buenaventura, which has direct authority over the National Police Department in Cambacropolis, has been stepping up efforts to meet the threat and respond to calls for better citizen security through the allocation of greater resources, increased patrols, more community policing, and legal reforms designed to improve the efficiency and efficacy of the judiciary. In the upcoming elections of November 2002, all three major candidates are running on law-and-order platforms, as polls show it is the main concern for the population of Buenaventura.

II. FACTS OF THE CASE

5. Equal Justice Now ("EJN") is a community-based nongovernmental organization working in Buenaventura since 1992 on rule of law issues, specifically police reform. It was founded in Cambacropolis, and now has offices in the three largest cities of Buenaventura. It has one team dedicated to community-based strategies, and another dedicated to legal strategies. A central aspect of the organization's work has been the issue of police violence. In fact, EJN was founded by a group of community activists and family members of individuals killed in police shootings that were questioned as excessive uses of force. The group came together in the wake of a particularly notorious shooting, which local leaders and the family protested as a tragic case of police negligence. EJN's founders pressured for further investigation, and subsequent intervention by police, prosecutors and the judiciary resulted in the prosecution and punishment of the officer in question for negligent homicide.

6. EJN has been especially active in pressing for oversight on the use of force by the police, and to ensure that any such use of force is subject to strict guidelines and full clarification of the circumstances. Since its founding, EJN has been involved in the follow up to dozens of police shootings, insisting on prompt and full clarification of the facts. EJN also had a

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 Department through review of policies and oversight of the actions of the Office of Professional Responsibility of that Department. Over the years, the relationship of EJM with local officials has sometimes been collaborative, and sometimes strained, but they have always been able to express their concerns, and their proposals have often been well-received.

7. In the context of rising crime rates and increasing public pressure on the authorities to improve citizen security, the Cambacropolis Police Department has over the last five years focussed on improving the training of and increasing the number of officers on foot patrol in local communities and officers detailed to anti-narcotics activities. In fact, as these initiatives were implemented, rates of arrests and convictions have begun to increase. So too, however, have the number of complaints of police abuse of detainees and the number of police shootings, mostly in the capital. While EJM has expressed its strong support for increased police training, and the allocation of additional human and material resources to better protect the population, it has become increasingly vocal with respect to its concerns about the rising number of complaints of excessive or unjustified force.

8. In response to this situation, in 1999 EJM began intensifying its efforts to investigate both questionable police shootings and complaints of abuse in police custody. It was in the course of these investigations that EJM began encountering a new and deeply disturbing pattern with respect to certain shootings that took place between March and June of 1999. In all, EJM encountered five instances in which the victims of such shootings had previously filed complaints of serious abuse while in custody at the Central Police Station in Cambacropolis. Each victim had been detained in January or February of 1999, and had been released within several days. In early March, each of these five individuals had presented a formal complaint, with a medical certificate. Each certificate attested to extensive fresh bruises to the thorax and abdomen at the time of release from custody, and in two cases, the certificates attested to recently broken ribs. The complaints were investigated by the Office of Professional Responsibility, and subsequently transmitted to the Cambacropolis Prosecutor's Office for further legal action. While the complaints were before the Office of Professional Responsibility, the eight officers involved were assigned to other duties not involving contact with detainees. Once the complaints were passed to the Prosecutor's Office for legal action, in each case within six to eight weeks from the date of filing, the officers were placed on administrative suspension with pay.

9. The police reports on each of the five shootings referred to a situation requiring measures of force in self-defense. None of the reports made reference to the previously filed complaints of abuse. In each case, the family of the victim was absolutely convinced that the shooting had been unjustified.

10. In the course of their investigations, the EJM team was able to find a witness to one of those shootings, Alberta Jones, whose information contradicted any claimed use of force in self-defense. The witness indicated that, late the night of April 16, 1999, she had seen a young man turn the corner and walk through the alley behind her apartment building. Evidently unbeknownst to the young man, three police officers turned the corner shortly thereafter. She then saw one of the officers raise a gun and shoot the young man in the back. The police report on that shooting indicated that the officers had been chasing a suspect in a robbery who appeared to be reaching for a gun.

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 the investigation. However, some sectors of the Cambacropolis Police Department have been upset or frustrated by the way in which attention to this case has called the Department into question. For example, days after the filing of the EJM complaint, a high ranking officer of the Cambacropolis Police Department declared in a press interview that he believed the competent authorities were pursuing all the actions necessary in accordance with the law, and was outraged at the "interference with and pressure of the media" on the police and the courts of Buenaventura. He blamed problems in the effectiveness of the fight against crime on just such kinds of interference.

18. On August 21, 1999, the morning after the three officers connected with that shooting were placed in preventive detention, an anonymous note was found on the door to EJM's Cambacropolis office. The note stated: "If you don't want to be next, drop the investigation. Consider this a friendly warning." EJM immediately called the police, who sent a special unit to investigate. The Special Prosecutor called later that morning and offered EJM police protection for the office. EJM turned down the offer, both out of uncertainty for the level of the threat presented, and out of reluctance to have a constant police presence in their offices, where they received members of the community who felt they had been mistreated by the police. In its ten years of existence, EJM had twice received isolated, anonymous phone threats. In each case, EJM had taken the precaution of denouncing the threats to the police, but since the threats hadn't been repeated, no further action had been taken.

19. The next day, Elena Williams received an anonymous phone call. The caller stated: "I hope you understood the message yesterday. The next time it won't be friendly." She immediately called the police, who began investigating. The Special Prosecutor met with EJM that morning in the latter's offices. He reiterated the offer of police protection and offered to put a tracer on the EJM phone lines, in the event that another threat of that nature might be received. EJM consulted among its personnel, and decided not to accept such measures at that point, given the chilling effect they would have on communications with the people it serves.

20. On September 15, 1999, in the early hours of the morning of the very day the Special Prosecutor was to announce the formal criminal charges to be brought against the three officers in detention, and that three additional officers were to be detained in relation to the complaints of abuse in custody, Alberta Jones was found shot to death in the alley behind her apartment, in roughly the same location as the killing she herself had witnessed. The initial investigation indicated that she had not been shot from behind, but had been wrestled to the ground and shot at point blank range. The two bullets, which had entered and exited the victim's body, could not be found at the scene.

21. The Special Prosecutor immediately informed Elena Williams, and EJM then took four actions. First, they requested that the authorities provide security guards hired through a private company to provide protection for their offices, a request that the Special Prosecutor took under review and accepted later that same day. Second, they began their own inquiries concerning the death of Alberta Jones, with a view to filing a criminal complaint. Third, they began searching for witnesses in that case, as well as with respect to the five killings already

under investigation by the Special Prosecutor. Fourth, Elena Williams called a press conference to inform the media about what had happened.

22. The killing of Alberta Jones and detention of three additional officers was front page news in the Free Press the next day. EJNI hoped that the ongoing publicity might help them uncover some new leads, and that the notoriety of the case might also provide them with a measure of protection.

23. On September 22, 1999, Elena Williams was shot to death by unidentified men while waiting at a red light in downtown Cambacropolis on her way in to the EJNI office. Agents of the Cambacropolis Police Department were the first to arrive at the scene, which was immediately sealed off. The official Cambacropolis Police Department report prepared following the initial investigation and autopsy stated that the two bullets used, both of which passed through and exited the victim's body, could not be found at the crime scene.

24. On September 23, 1999, the day after the murder of Elena Williams, a front page article by Teodoro Collins, a member of the investigative team of the Free Press, appeared in that paper's front page. Mr. Collins reported in the article that a source inside the Cambacropolis Police Department—who had requested to remain anonymous—had contacted him to express concern for the safety of the other members of EJNI on the basis of a conversation that she had unintentionally overheard. She indicated that she had overheard two males make the following exchange: "We took care of her yesterday. Both bullets disappeared from the scene. If the others don't drop it, we will take care of them too". She says she was in a quiet back office of the Cambacropolis Police Department Central Station at the time, and heard the voices from a little-used corridor that runs behind that office.

25. The same morning the Free Press story was released, Cambacropolis Police Department officers arrived at the newspaper to question Teodoro Collins. He provided them with the same information that had been published, but indicated that he could offer nothing further. He indicated that he had promised to keep the identity of the source in confidence as a condition of publishing the information, and would not break that commitment. He also refused to hand over his notes from his conversations with that source.

26. Teodoro Collins was summoned to appear in court on October 5, 1999, with a subpoena to produce the notes from his interview with the anonymous source. The Special Prosecutor and the Commander of the National Police of Buenaventura have taken the position that this anonymous source may have information crucial both to their investigation of the killings of Elena Williams and Alberta Jones, as well as to protecting the personal security of the other members of EJNI. Mr. Collins refused to provide the information, based on his rights under the Constitution of Buenaventura as well as the American Convention on Human Rights ("American Convention"). The Constitution, in effect since 1963, sets forth, in pertinent part:

Article 15 Freedom of Speech and of the Press

1. Everyone has the right to freedom of opinion and expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers. While the exercise of this right carries with it special duties and responsibilities, it shall not be subject to prior censorship, and may only be subject to the subsequent imposition of liability, where this is provided by law and necessary to ensure:

- 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.