

**SEVENTH ANNUAL INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION
WILLIAMS *ET AL.* V. STATE OF BUENAVENTURA**

HYPOTHETICAL CASE QUESTIONS AND ANSWERS

1. **In paragraph 39 of the hypothetical there is a reference to the "adoption of the Democratic Charter in September of 2001." What is the "Democratic Charter"?**

The Inter-American Democratic Charter is the instrument adopted on September 11, 2001, by the special session of the OAS General Assembly held in Lima, Peru. (See www.oas.org)

2. **In paragraph 27 of the hypothetical it says that Collins was detained for 48 days and then released. Why was he released after 48 days, since he still had not revealed his source and there was no court ordering his release?**

Mr. Collins was released by judicial order, in application of the law in force in Buenaventura.

3. **In paragraph 11 of the hypothetical it says that the Office of Professional Responsibility forwarded its reports to the Prosecutor with the recommendation that they be filed due to "lack of evidence suggesting any need for further action." Are there objective evidentiary standards used by the Office and/or the Prosecutor to determine which reports are filed and which are pursued?**

Given that this determination concerns the question of eventual prosecution, the standards that would be taken into account are those established in the Criminal Code of Buenaventura. The Prosecutor also takes into account the recommendation of the Office of Professional Responsibility.

4. **With respect to paragraph 26: Article 15 of the Buenaventura Constitution provides ... "while the exercise of this right carries with it special duties and responsibilities." What are these special duties and responsibilities?**

This constitutional disposition is based on international standards, such as Article 13 of the American Convention.

5. **With respect to paragraph 33: "Information submitted by the State of Buenaventura...indicated that these recommendations had not been implemented." What information was submitted by Buenaventura?**

Buenaventura presented a brief response with a list of investigations underway.

6. **In paragraph 24, on the 23rd September, 1999, Mr. Collins reported his conversation with the confidential source. She heard the men say that they "took care of her yesterday". Elena Williams was killed on the 22nd September. If they "took care of her yesterday" then the source must have heard the conversation on the 23rd September. If she heard it on the 23rd, how could Mr. Collins report it on the 23rd? There appears to be a discrepancy in the dates. Unless he spoke to her**

in the early hours of the morning before printing time? The article should've been published in the 24th?

The facts broke out very rapidly between the 22 and 23 of September.

7. Which recourse is applicable to convictions under 6 months?

There is no specific recourse. However, in some cases, the courts of Buenaventura have admitted the recourse for protection of constitutional guarantees.

8. Is there any recourse to complain about the time elapsed in an investigation without a decision?

There is no specific judicial recourse.

9. How many times may a prosecutor require someone to supply information with respect to an investigation?

As many times as necessary.

10. In section three, "Proceedings Before the IACHR" EJM filed a petition with the Commission alleging violations of Articles 1(1), 4, 5, 8, 13, 16, 24, and 25 of the American Convention. In paragraph 32, the Commission declared the case admissible in regards to Articles 1(1), 4, 8, 13, and 25. Articles 16 and 24 were declared inadmissible. What happened to Article 5, is it admissible or inadmissible?

The allegations concerning Article 5 were declared inadmissible by the Commission.

11. Paragraph 37 states that there is a hearing scheduled for oral arguments on the preliminary objections of the State. What are the State's preliminary objections? We are asking this because we are unsure of how to counter the State's objections in our brief when we do not know what they are.

Each party must anticipate the arguments it thinks the other will offer.

12. Paragraph 31 says that a petition was filed with the Commission. Was the government of Buenaventura furnished with a transcript of the petition and a request for information pursuant to Article 48(1)(a) of the American Convention and did the State respond?

The petition was processed in conformity with the American Convention and Regulations of the IACHR. With respect to the response of the State, see the facts of the case.

13. What is the juridical nature of *habeas corpus* in Buenaventura? Is it equivalent to that provided for in the American Convention?

The legal dispositions concerning *habeas corpus* in Buenaventura establish that the detainee must be presented, without delay, before a judge competent to determine if the deprivation of liberty is in conformity with the law.

14. **Why did the Commission choose to remain silent on the allegations concerning the violation of Article 5?**

See the response to question 10.

15. **With respect to which specific facts did the Commission find the State of Buenaventura in violation of Articles 1(1), 4, 8, 13 and 25? Was this based on the same arguments set forth by the petitioners before the Commission?**

See the facts of the case.

16. **What is the reason for the Commission finding neither in favor or against the violation of Article 5 alleged by the petitioners in their original petition?**

See the response to question 10.

17. **Is the “request for review” available in the domestic jurisdiction equivalent to an extraordinary recourse?**

Yes.

18. **What internal law did the judge apply when he imposed the fine on Mr. Collins?**

This concerns an article included in the chapter on misdemeanors contained in the Criminal Code of Buenaventura.

19. **Paragraph 31 of the fact pattern states that the EJN filed its petition with respect to Articles 1(1), 4, 5, 8, 13, 16, 24 and 25 of the American Convention. Paragraph 32 declares that the case as regards Articles 1(1), 4, 8, 13 and 25 was admissible, but Articles 16 and 24 were inadmissible. Was the case based on Article 5 declared admissible or inadmissible?**

See the response to question 10.

20. **Is Article 15(3) of the Buenaventuran Constitution made subject to Article 15(1)(a) and (b) by that Constitution or any other piece of domestic legislation [i.e. is there any law making Article 15(3) subject to Article 15(1)(a) and (b)]?**

The parties must develop their arguments on the interpretation of this Article.

21. **Paragraph 23 of the hypothetical case mentions that the agents of the Cambacropolis Police Department were the first ones to arrive at the scene of the crime in the case of the death of Elena Williams. Can it be assumed that this procedure is in accordance with the internal legislation of the State of Buenaventura? That is, does the Police Department in that State have the**

competence of judicial police [i.e. to participate in investigations that may be used in judicial proceedings]?

The presence of the police at the scene of the crime corresponds to their functions as set forth in the domestic legislation of Buenaventura. See the response to question 37.

22. **Paragraph 27 of the hypothetical case says "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".** [This applies to the Spanish language version – where the word *recurso* [recourse] is used to refer to the appeal in the final clause.] **Does this [the *recurso*] refer to the writ of habeas corpus or the recourse of appeal?**

It refers to the recourse of appeal.

23. **How is the endless chain of events of the morning of September 23 to be interpreted? (The witness hears a conversation in headquarters, she gets in touch with Mr. Collins, he writes an article, it is printed and published and, finally, the police arrive to interrogate Mr. Collins. All in one morning).**

See the response to question 6.

24. **Paragraph 30 says "notwithstanding that there was evidence that she had resisted her assailants." What is the evidence?**

The physical appearance of the body appeared to point to this possibility.

25. **Did the State of Buenaventura sign and ratify the Democratic Charter? If so, when?**

The Inter-American Democratic Charter was approved by acclamation by the Ministers of Foreign Affairs of the member States of the OAS, including Buenaventura, on September 11, 2001.

26. **What is the scope of the writ of *habeas corpus* in the State of Buenaventura?**

See the response to question 13.

27. **What were the grounds to release "Free Press" journalist Teodoro Collins from prison?**

See the response to question 2.

28. **On page 3, paragraph 11 of the hypothetical case, it appears the word "not" is missing in the second sentence. Should the word "not" appear between "...recommendation that they..." and "...be filed due to lack of..."?**

[This applies to the English version.] No. The words "be filed" in this sense mean filed away, or archived.

29. **Which internal law of Buenaventura was applied by the courts to order Teodoro Collins to produce the notes from his interview with the anonymous source? (paragraph 26)**

This action was based on a judicial interpretation of the norms of Buenaventura concerning the public security.

30. **The petition filed on June 25, 2000 alleges that the State of Buenaventura is responsible for the violation of Articles 1(1), 4, 5, 8, 13, 24 and 25 of the American Convention. On January 22, 2001 the IACHR declared the case admissible with respect to Articles 1(1), 4, 8, 13, and 25; Articles 16 and 24 were declared inadmissible (paragraphs 31 and 32). What happened with respect to the allegations concerning Article 5? Did the State of Buenaventura controvert admissibility?**

See the response to question 10. Yes, the State of Buenaventura did controvert the admissibility of the petition.

31. **What is meant by “initial investigation” and “partially canvassed the area...for witnesses”? (paragraphs 20 and 30, respectively)**

The initial investigation is that conducted under the direction of the Prosecutor’s Office, in accordance with the law of Buenaventura. The search for witnesses conducted by the police was partial, in that they did not attempt to locate all of the persons who had been at the scene at the time of the killing of Elena Williams.

32. **In paragraphs 26 and 27 the "detention" of Mr. Teodoro Collins is mentioned, and in paragraph 35 reference is made to his being “jailed”. Is there any difference between these terms in the legislation of Buenaventura?**

[This applies principally to the Spanish version, which refers to “*arresto*” and “*encarcelamiento*”.] No, these terms are synonymous for the purposes of the hypothetical case.

33. **In paragraph 35, how long was Mr. Collins jailed?**

Mr. Collins continues to be incarcerated to date.

34. **In paragraphs 36 and 37, have any provisional measures been taken to protect the rights and liberty of Mr. Collins, as well as the rights of the members of EJNI?**

No. The Inter-American Court transmitted the Commission’s request to the State of Buenaventura and scheduled the hearing to receive information from both parties in order to determine if the requirements of Article 63(2) of the American Convention are met.

35. **What is the current legal situation of Mr. Collins? Is he free or in prison?**

See the response to question 33.

36. **When was the Article 50 report sent to the State of Buenaventura?**

On October 10, 2001, the same day the Commission adopted the report.

37. **What is the hierarchy of the National Police Department of Cambacropolis and the Attorney General of Cambacrópolis?**

The National Police Department is part of the public forces of Buenaventura and is charged, among other things, with the prevention and investigation of crime. To this effect, it works under the instructions of the Prosecutor's Office.

38. **Is there any legal regulation in the State of Buenaventura concerning the subsequent imposition of liability regarding freedom of expression?**

Yes, dispositions of a general nature.

39. **Is the Cambacropolis Civilian Review Board a public organ and what is its influence over the Police Department?**

The Civilian Review Board is an entity of a consultative character, composed in equal parts of representatives of the State and civil society of Buenaventura. It is competent, among other things, to review police action and formulate recommendations to the Commander of the National Police and the Office of the Prosecutor.

40. **Paragraph 31 indicates that EJM filed a petition before the IACHR in which it alleged the violation of Articles 1(1), 4, 5, 8, 13, 16, 24 and 25 of the American Convention. Paragraphs 32 y 33, in turn, indicate that the IACHR declared the case admissible and later established that the facts denounced constituted violations of Articles 1(1), 4, 8, 13 and 25 of the American Convention, while declaring inadmissible the allegations with respect to Articles 16 and 24 of that instrument. No mention is made, however, of Article 5 of the American Convention, which the petitioners denounced as allegedly violated. What happened with those allegations? Were they dismissed by the IACHR?**

See the response to question 10.

41. **Is there any higher instance above the Office of the Public Prosecutor to which someone could submit claims concerning eventual deficiencies in the investigation or attempt to have specific persons indicted?**

The Attorney General is the highest authority of the Office of the Public Prosecutor, and in this capacity is responsible for the activities of the institution. The Attorney General is subject to the same kinds of legal responsibility as any public functionary, and may be removed through impeachment.

42. [This applies principally to the Spanish version.] **Are the Office of the Attorney General [*la Fiscalía General*] and the Office of the Public Prosecutor [*Ministerio Público*] the same in Buenaventura.**

[This question relates to the Spanish version.] Yes.

43. **To which branch of the State do the Office of the Public Prosecutor and the civil servants mentioned in paragraph belong to? What are their functions and what are the functions of the Special Prosecutor?**

See the responses to questions 37 and 41. The forensic pathologists and the Special Prosecutor are functionaries of the Prosecutor's Office. The Special Prosecutor has the same functions as any prosecutor, but by designation of the Attorney General is dedicated exclusively to this case.

44. **Did T. Collins file his legal recourses in accordance with the procedural requisites and formalities provided for in the legal system of Buenaventura?**

Yes.

45. **Does the State of Buenaventura have regular measures for the protection of witnesses who may suffer imminent attacks on their personal integrity or their lives? If so, what are they, and were they applied in the case of Alberta Jones?**

The measures of protection in this kind of situation are determined by the Office of the Prosecutor, and are similar to those offered to EJM (see para. 19 of the hypothetical case).

46. **What is the connection between those eight officers with the complaints being investigated in the Office of Professional Responsibility and how was that connection established? If they were linked, what was the reason to assign them to tasks that implied no contact with those arrested? When were they suspended from duty? (paragraph 8)**

The decisions to separate the eight officers from detainees, and to suspend them were taken on the basis of the results of the internal investigation by the Office of Professional Responsibility. With respect to the suspensions, see paras. 8 and 16.

47. **Are the three policemen that witness Alberta Jones saw included among the eight officers who were suspended? (paragraph 16)**

Yes.

48. **What necessary actions was the Police Department taking? (paragraph 17)**

The declarations of this functionary to the press were of a general character.