

**II Inter-American Human Rights Moot Court Competition  
1997 Hypothetical Case Problem**

**Elizabeth Abi-Mershed<sup>1</sup>**

*Cecilia Herold, et al. v. Pacifica*

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Pacifica, a member of the Organization of American States, emerged at the close of the 1980's from a period of bitter internal conflict fought between an elected but increasingly repressive Administration and several irregular armed factions. Restive under the constraints imposed by the regime, and frustrated by the ongoing financial crisis exacerbated by the conflict, the electorate swept a new Administration into office in 1990, with a mandate to lead the transition to a more fully democratic process of governing.

The new Administration began discharging this mandate with a series of measures to strengthen the economy, renew the image of the nation abroad, attract foreign investment and revitalize the role of the institutions of civil society in national life. In particular, the Government of Pacifica determined that building a stable democracy and achieving sustainable economic growth required enhancing the ability of women to fully and equally participate in processes of decision making at the local and national levels. Traditionally, the proportion of women elected or appointed to decision making bodies in Pacifica had been very low. In 1992, in order to more fully recognize the rights and responsibilities of its female citizenry, the Executive Branch promulgated a set of policy guidelines designed to enhance the participation of women in the political life of the nation by recommending that, *inter alia*, the national legislature approve funding for a State-wide program designed to reach and educate women not fully informed as to their civic rights and responsibilities; and that political parties ensure the more equitable participation of women in their party leadership structures and in selecting their lists of candidates for public office.

In the small rural Province of Concordia, however, the promulgation of these policy guidelines had very little impact. Earlier in 1992, a small group of women in Concordia had joined together to form a new political party called the Coalition for Community Renewal. The basic objectives of the Party were to:

- (1) develop and support the ability of all citizens and sectors of the community, particularly women, to participate in the political life of the country;
- (2) pursue a community-based political platform focusing on the provision of: education, social services, and alternative sources of credit through the initiation of a program to support the establishment and development of micro-enterprises;
- (3) work toward the implementation of a more equitable distribution of tax revenues between Provinces and root out corruption in local government in order to pay for enhanced basic services.

The Party's founders formed a Coordinating Committee, and worked throughout 1992 to build a small but growing constituency, at first comprised primarily of women. Over the next year, the party began attracting the support of labor, student and other community-based groups. Early in 1994, an election year, the Coalition presented candidates for the contested seats in each of the six Municipal Councils in the Province. Eight of their 12 candidates were women.

As the Coalition began to campaign in favor of their candidates and publicize the Party platform, certain local interests began to manifest their opposition to the idea of women participating actively in the political life of the Province. The Municipal Councils in

Concordia had long been controlled by a small circle of male politicians acting to preserve the interests of the wealthy landowners who provided their financial backing. Only a few women had ever held Council seats. A number of the Coalition's opponents, individuals working under

no one could be certain as to whether they were random or placed by a particular individual or group.

On the night of April 4, 1994, the offices of the Coalition for Community Renewal were broken into and ransacked. Some office equipment was damaged as a result, but the only items taken were documents identifying party members and supporters. The local police initiated an investigation into the break-in, but were unable to locate any witnesses and recovered no fingerprints from the scene. Due to the dearth of evidence, the Police made few advances

One of the co-workers whose arrival at the scene had prompted the flight of the perpetrators reported to police at that time that, just as he was entering the building where the Coalition's offices are located, he had recognized the bodyguard of a local politician, Municipal Council Member Victor Huff, standing in the shadows of an alley across the street watching the building. When the three attackers fled, the co-worker reported that he had watched from a window and had seen the bodyguard

obligations to which it was bound according to Articles 1, 2, 5, 8, 23, 24 and 25 of the American Convention on Human Rights.

Pacifica became a party to the American Convention on Human Rights on March 20, 1983. In its instrument of ratification, the State of Pacifica declared that it recognized as binding, *ipso facto*, the competence of the Inter-American Court of Human Rights with respect to all cases concerning the interpretation and application of the Convention pursuant to Article 62. On February 20, 1990, Pacifica ratified the Inter-American Convention to Prevent and Punish Torture, and on March 20, 1995, ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women." Pacifica has been a party to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women since June 11, 1991.

On January 1, 1997, the Commission adopted its preliminary report setting forth its findings and conclusions, in accordance with Article 50 of the Convention. On January 5, 1997, the Commission transmitted the report to the Government of the State, and requested that it inform the Commission within a period of two months as to the measures that had been taken to resolve the situation denounced. During the processing of a the case, the Government had alleged that available and effective domestic remedies remained to be exhausted, and that the appropriate authorities were continuing to take the appropriate measures. In its February 5, 1997 response to the Article 50 report, the Government argued for the first time that the case should never have been admitted because the originating petition had been filed more than six months after the final judgement sentencing the two body guards to prison terms. As its recommendations had not been implemented, the Commission decided to refer the case to the Court on March 5, 1997, and submitted its application on March 5, 1997.

On March 5, 1996, the attorneys for the three victims were named as legal advisors to the Inter-American Commission on Human Rights to provide assistance in the presentation of the case before the Inter-American Court. The Regulations of the Court applicable to the litigation of this case are those adopted during the Court's XXXIV Regular Period of Sessions, and effective as of January 1, 1997. The Regulations of the Commission applicable to the litigation of this case were last amended during the Commission's 92<sup>nd</sup> Regular Period of Sessions.