

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

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Cecilia Herold, et al. v. Pacifica

1

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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 the banner of the "Committee to Protect the Family," publicly opposed the Coalition's goals of enhancing the political voice of women and published advertisements and editorials lamenting that members of the Coalition were spending their time on politics and divisiveness instead of "taking care of their homes and families."

In February of 1994, the Coordinating Committee decided it would be necessary for the Coalition to establish a computer network and database. Because the Party had a very restricted cash flow, three of the Committee members, Teresa Salieri, Maria Gomez-Clark and Cecilia Herold, offered to purchase computers and loan them to the Coalition for the duration of the campaign. Each of the three members applied to the First Provincial Bank of Concordia for a loan to finance the purchase and installation of the appropriate equipment, offering substantial collateral in addition to the equipment itself. The First Provincial Bank of Concordia is federally regulated and owned by a private/public partnership: the federal Government owns 33% of the shares, and private parties hold the remaining shares. It carries federally underwritten insurance on a percentage of its deposits, pursuant to legislation passed in Pacifica in the early stages of the financial crisis initiated in the 1980's.

Within a week, each woman's application was denied with a brief verbal explanation that she did not fit the Bank's "lending profile." These rejections were consistent with the lending practices of most local banks, which generally extended agricultural credit only to male heads of households who owned fairly substantial tracts of land. Although the Federal Constitution prohibits discrimination, local banking practices in Concordia had changed little since the era in Pacifica when certain legal provisions inhibited the ability of women to own property, and, consequently, to obtain credit. Each applicant immediately requested a written explanation of the rejection from the Bank. However, no responses were received. In fact, the law of Pacifica does not require that financial institutions provide a rejected loan applicant with a written explanation.

On March 4, 1994, Teresa Salieri, Maria Gomez-Clark and Cecilia Herold, believing that their financial standing had not been in question and that they had been rejected on the basis of their gender, filed a civil claim in the local court of first instance seeking a declaratory judgment that the First Provincial Bank of Concordia had discriminated against them in violation of Article 5 of the Constitution of Pacifica, and petitioning for damages and costs. Article 5 of the Constitution prohibits discrimination on the basis of sex, among other criteria, and establishes that "the rights and duties of women are equal to those of men in the public, private and family spheres." The plaintiffs subsequently obtained federal banking records concerning First Provincial which indicate that less than 10% of its loans to individuals or households had been extended in favor of female applicants. Because of generally heavy court dockets and the exigencies of clearing criminal cases, their case remains pending and has yet to be called for trial.

As the campaign intensified, opposition to the Coalition and its members assumed new forms. During February and March of 1994, individuals working at Party headquarters received a series of anonymous phone calls. Teresa Salieri received one such call, with the caller warning that: "Politics is a rough business. You should go home where you belong." Because the content of the calls varied, and they were received by different Coalition members,

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 toward identifying the perpetrators. The police were unable to locate any witnesses and no fingerprints were recovered from the scene. The Party's Coordinating Committee formally petitioned the local police to provide protection for Party workers by posting an officer in the Party's offices. The Police indicated that they could not remove officers from regular patrol duties to provide this type of protection, but would step up their regular patrols through the neighborhood of the Coalition's offices to every half hour. Several party volunteers stopped coming to work in the Coalition's offices after this incident.

On April 21, 1994, Teresa Salieri and Maria Gomez-Clark, having worked late to finish mapping out some campaign strategies, closed up the office and accompanied each other out of the building. Teresa walked Maria to her car. It was a fair evening, and had just gotten dark, so she declined Maria's offer of a ride and began walking to her apartment a few blocks away. A block from her home, a man stepped out a dark entryway to bar her path. She turned and saw another man coming toward her from behind. Both had stockings pulled down over their faces, and were wearing dark clothing and gloves. The first man carried a knife. In a low voice he told her, "It's late, you should be at home where you belong." He reached over and slashed the knife across the right side of her jaw. Just then the headlights of a car illuminated the dark street. The second man grabbed her briefcase, leaving her purse at her side, and both attackers ran. The occupants of the car stopped to assist Ms. Salieri, and took her to a nearby clinic. After the attending physician sutured her wound, which required 18 stitches, she spoke with two Police investigators to report the crime. The investigators examined the crime scene within the hour, but could find no physical evidence which appeared to be linked to the perpetrators. The block in question housed businesses which had been closed at the time of the attack. The occupants of the car could provide only a general description of two men of average build. The Police, concerned that this might not have been a random crime, sent an investigator to the Party's offices to : inform the workers that an investigation was underway, and that a patrol would drive around the immediate vicinity every 15 minutes between 5:00 p.m. and 8:00 p.m.; ask if anyone thought they might have information on the April 21 attack or the April 4 break-in; and warn Party workers that they should leave the office in pairs and avoid walking alone at night.

Cecilia Herold, President of the Party's Coordinating Committee, often worked long hours, and generally was the first to arrive at the Coalition's offices in the morning. On May 14, 1994, as she arrived for work, Cecilia Herold was attacked, beaten and raped by three heavily armed men wearing ski masks who had broken into her office to lay in wait for her. Her attackers fled upon the arrival of a group of her colleagues. Ms. Herold was left with serious injuries, and was hospitalized for ten days and unable to return to work for several weeks. The only item taken by her attackers was a list of financial contributions received by the Coalition with the names of the contributors. Ms. Herold reported the crime to the local Police, who recorded the complaint and initiated an investigation.

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 run off with them. The four men had run through the alley and around a corner. About twenty seconds later, the co-worker saw a white van speed back through the alley and turn away out of sight. The co-worker reported a partial license plate of 860-.

Although Pacifica had initiated a pilot program to establish police offices staffed by personnel with special training to deal with complaints of rape and other forms of violence against women, none of the five offices thus far established were located in the Province. Given the financial constraints under which the Province of Concordia was operating, the local police had received only limited training in appropriate techniques for gathering information concerning complaints of sexual assault or rape. Due to human resource limitations, the police carried out their investigation of the crime scene 36 hours after the attack. Because the Party's offices had remained in use during that time, critical evidence may have been lost in the interim. During their investigation of the site, for example, the Police were unable to locate any fingerprints or other physical evidence that appeared linked to the attack. Due to resource limitations in the Province, the medical examination of alleged rape victims is carried out by designated doctors from the nearest State medical facility. This examination is a legal prerequisite for the prosecution of certain sexual crimes, including rape. In Cecilia Herold's case, the designated doctor was unavailable. Due to the lengthy delay in locating another designated doctor, the results of important laboratory tests were deemed inconclusive.

Police investigators traced one white van registered in the Province with license plates containing the numbers 860-. It was registered to another of Huff's private security guards. The police detained both body guards for questioning. Within nine months, the owner of the vehicle had been charged and convicted for breaking and entering, destruction of property and assault. He was sentenced to a three year prison term, in accordance with the applicable legal provisions. The other body guard, who had been spotted at the scene keeping watch and fleeing with the perpetrators, was charged and convicted of having acted as an accomplice in the foregoing crimes. He was sentenced to an eighteen month prison term, in accordance with the applicable law. Due to the lack of an eyewitness identification, the lack of physical evidence at the scene, and the inconclusive results of the laboratory tests done pursuant to the forensic examination of the victim, the Prosecutor's office declined to bring charges with respect to the rape. No one else was arrested, and the other two perpetrators were never identified.

Pursuant to the attack against Cecilia Herold, a police officer from the local precinct was posted to patrol and monitor the Coalition's offices and the surrounding vicinity for the duration of the campaign. A number of Coalition members nonetheless stopped coming to the office, and the others were careful to arrive and depart in pairs or groups. There were no further attacks against the office or Coalition members during the several months prior to the election.

On December 30, 1995, Cecilia Herold, Teresa Salieri and Maria Gomez-Clark filed a petition before the Inter-American Commission on Human Rights. They alleged that the State of Pacifica had failed to respect and ensure their rights under the American Convention on Human Rights. Specifically, they alleged that the State had failed to comply with the

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 92nd Regular Period of Sessions.