

**III Inter-American Human Rights Moot Court Competition
1998 Hypothetical Case Problem**

Rómulo Estrada v. Ithaka

History and General Background

In the early 1970's the Choclos, under the influence of Father Albino Marín, a charismatic religious leader, began to carry out a series of peaceful land occupations. This provoked bitter resentment and a generalized fear among the country's landowners.

On May 30, 1975, General Sófocles César Valencia led a military coup which ousted the civilian government of President Aquiles Losada. A state of emergency was declared, civil liberties suspended, and a military junta temporarily installed. General Valencia declared that there would be no persecutions and that the military would leave peacefully as soon as they had restored order.

The military immediately began to reinstate ousted landowners by arresting and killing the Choclos who had occupied land. Father Albino called on his followers to resist and formed the Ithakian Movement for the Liberation of the Land (IMLL).

Within a year, almost all of the peasants, most of whom had originally been an unarmed group unprepared for armed resistance, had been arrested, executed or disappeared. Nonetheless, the IMLL, isolated in the most remote areas of the country, resisted and were even able to seize control parts of the country. The movement became

our politicians”. The second interview, of a high ranking military officer closely involved in the campaign against the Choclos, included “disturbing claims and revelations of hidden aspects of the Choclo war and the peace that followed.” The brothers announced that articles containing surprising and disturbing revelations would follow.

The first article, based on the interview of the unidentified lady, was published on February 26, 1995, and contained a number of confusing and sometimes contradictory allegations. The lady claimed to have been intimate with both General Valenzuela and General Gómez, among many others, and to have knowledge of many facts that had been hidden from the public. She defended both generals warmly, affirming that they were true patriots. In particular, she claimed that General Gómez had been unfairly treated by the media. To illustrate the General’s worth, she described how he averted a post-election catastrophe by thwarting an alleged plot to stage a military-coup. Fortunately, she commented, he promptly imposed discipline on the troops. The journalists claimed that she had provided them with the plans of the coup including confidential documents of the Ministry of Defense and the Ministry of the Interior containing information on the number and location of the country’s secret military bases and detailed lists of the names of the country’s intelligence agents, the majority of whom were still in active service in the country and abroad. The brothers announced that the documents would be published at a later date.

Following the publication of the first article, General Gómez broke his silence to deny that he had ever had any kind of relationship with the lady in question, declared that he was outraged, and affirmed that he would take all steps necessary to protect his honor. Many persons mentioned in the interview made similar declarations. From Paris, Doña Isolda Bonaventura confirmed that she had given an interview to Rómulo Estrada, but declared that most of what had been published was a fabrication. She denied having had affairs with either General Valenzuela or General Gómez, “both of whom had always been good friends.” She also denied ever having confidential government documents in her possession.

The second interview, published on March 5, 1995, was even more controversial. In it, an unidentified high-ranking military officer made many serious allegations. The military officer declared that the Choclos were a lazy and treacherous people, and that the military campaign against the IMLL had been much aided by the fact they had always been ready to betray their own. He gave the name of Father Albino as an example of their treachery, affirming that he had been an army agent and had betrayed the IMLL.

The unidentified officer claimed that the number of dead among the Choclos was much lower than those published in the Truth Commission’s Report and that former President Ortiz had deliberately inflated the numbers so as to justify his agrarian reform program. President Ortiz was supposedly working with “foreign interests” who would later step-in to buy the land from the Choclos, all of whom were “ignorant and lazy animals by nature and incapable of farming the land.” He cited statistics that supposedly demonstrated that Choclo farmers had lower production levels than the non-Choclo and usually sold any land they had acquired through the Agrarian Reform program after two or three years. Landowners and true patriots, he declared, should take up arms to preserve the country from ruin.

their homes in order to clear his name. They once more demanded that all racist attacks by the press cease, that the truth of the massacres be re-established, and that the Government continue the reparations scheme.

On March 17, 1995, after a series of increasingly violent demonstrations by the Choclo, the Ministry of the Interior declared that the publication of “Cronos” with the announced article would be banned because of, 1) the great unrest created by the articles within the Choclo community, and 2) the grave security problems that would arise upon publication of confidential government documents that included the list of intelligence agents and the location of secret military bases. The Government ordered, by presidential decree, that all existing copies of upcoming issue of the magazine “Cronos” containing the announced article be seized. The Ministry of Interior based the censorship decree on Nation’s Security Law 2001 and made direct reference to Articles 13 and 32.2 of the American Convention on Human Rights.

The Government also declared that measures would be taken to clarify all doubts as to the number of dead during the military regime and to prove that all allegations that the Government had tampered with the evidence collected by the Truth Commission were unfounded. The Government also reassured the Choclos that the land reform program would go on as planned.

On March 21, 1995 the brothers Estrada filed a writ of “amparo” against the decree before the First Federal Court of Ithaka.

Proceedings concerning the writ of Amparo

Under Article 8 of the Constitution, Law 2001 defines the President’s power to guarantee internal security. The law allows that, among other acts, the Executive is authorized through its National Police, in accordance with the faculties and powers granted the President by the Constitution, to prohibit the publication and order the seizure or confiscation of material, whether in written, film, video, audio or in any other form, that:

- 1) would gravely imperil the Nation’s Security;
- 2) have the intention to disseminate to a large number of persons expressions or statements, threatening, insulting, or degrading a group of person on account of their race color, national or ethnic origin or belief, when such material is deemed responsible for creating a state of grave unrest and imperil public order.

The law also specifies that an appeal from such a decision is possible through a writ of amparo to the First Federal Court of Ithaka and that, if no such appeal is made, the Supreme Court has jurisdiction to review the legality of the measure within 30 days.

The brothers argued that most of the information in their articles was of general public interest and involved public figures. They stated that to censure the upcoming article would only deprive the public of information necessary to an balanced debate. Finally, they argued that the

Government's decision constituted prior censorship and infringed the constitutional protection of freedom of expression contained in Article 13 of the American Convention on Human Rights, creating a dangerous precedent.

On May 14, 1995 the Court denied the writ of amparo and upheld the Government's decision to ban the article. The Court declared that the articles would in effect, 1) create grave disturbances to public order and that their contents incited racial hatred and lawless action against the Choclo, and 2) gravely imperil the Nation's Security. The Court further stated that the possibility of such a limitation is inherent to Article 13 of the American Convention and that the instrument as a whole must be interpreted in the light of Article 32.2, even if the Article itself already contains specific limitations. The Estrada brothers appealed to the Supreme Court but the decision was affirmed on August 11, 1995.

Criminal Proceedings

According to the Ithakian Penal Code, defamation is defined as:

“ To make before others accusations of dishonest behavior or of behavior contrary to good morals; or the attribution of any behavior which affect a person's reputation or holds him or her up to ridicule or shame in the eyes of the community. Persons accused of defamation will not be punished if it is shown that the allegations are true.

- 1) The offence is aggravated if it is committed in print or broadcast or otherwise in such a manner that the defamation becomes accessible to a broad public.
- 2) Those who publish or reproduce defamatory statements made by other unidentified sources will be prosecuted as the author of the offense.

Defamation will be punished by the imposition of a fine of up to 500,000 Ulysses or prison sentences of up to two years.”

The Ortiz Case

Former President Ortiz initiated criminal proceedings against the Estrada brothers for defamation in reaction to the allegations he had tampered with the Truth Commission's statistics and the abusive language used in referring to his person contained in the articles published on March 5, and March 12, under the title, “Private Talk”.

they themselves had made were only value judgements, made in good faith, based on the facts presented to them by reliable sources.

On April 18, 1995, the Lower Court found the brothers guilty as charged of defamation and fined them an amount of 500,000 Ulysses (\$100,000US). The court found that brothers had failed to ascertain the veracity of the contents of the published materials. The court also ruled that many of the personal remarks aimed at the former President by the unidentified military officer and by Rémulo and Rómulo Estrada, being based on unverified and unproven facts, were insulting and defamatory. The Court of Appeals affirmed this decision on July 30, 1995. Seven days later, the Supreme Court declined to hear the case on appeal.

After the sentence, Rémulo Estrada gave an interview to the press. He lamented the Court's decision but promised to continue his research into the facts so as to clarify all of the remaining doubts. Former President Ortiz made comments in public that a new truth commission might be needed to settle all questions raised.

The Proceedings before the Ithakian Press Association

On August 1, 1995, after confirmation of the criminal sentence for defamation against Rómulo and Rémulo Estrada, the Ithakian Press Association initiated a professional ethics proceedings against the brothers. The Association is a professional body created by law to supervise the application of the Press Code of Ethics. Compliance with the code is supervised by a panel of three persons chosen by the Association's assembly, one each from television, radio, and the print media for a term of 5 years. During the panel's proceedings, the brothers were assisted by legal counsel. One of the tribunal members was the brother-in-law of former President Ortiz. The law did not make allowances for legal action in opposition to the decisions of the Association.

On August 15, 1995, the Ithakian Press Association voted to suspend the brothers for unethical conduct. Although suspension, and even expulsion, from the Association has no official consequence, in practice, due to the Association's prestige, it is very difficult for a non-member to find work in the majority of the country's newspapers.

Death of Rémulo Estrada

The conclusion of these different proceedings did not end the controversy created by the articles.

In early July 1995, Rémulo Estrada filed requested police protection because he had received numerous anonymous threats from persons demanding that he end his research. The government replied that this was not surprising, as many persons had been deeply offended by his articles. Nevertheless, they assigned Rémulo Estrada a police escort.

A few weeks later, Rémulo Estrada complained that the police escort intruded on his private life, hampered his research, and requested that it be suspended. On August 22, 1995, the country was

once more shaken by an unexpected development. The body of Rémulo Estrada, with six gunshot wounds, was found in a vacant lot in the outskirts of the country's capital. His brother Rómulo declared that on the previous night he had received a telephone call from Rémulo a few minutes after 9:00 pm. Rémulo Estrada had wanted to discuss something urgently and asked if they could meet that evening. Rómulo agreed to meet his brother, and though he waited until well after midnight, Rémulo never arrived.

The preliminary investigation took testimony from four homeless men who had been sleeping in the street in front of Rémulo Estrada's home; they affirmed that on the night in question, at about 10:00 p.m., they had seen five men drive up in a dark car and force another man, who had just come out of the home, into the car. They recognized this man as Rémulo Estrada. The men then drove off in the direction of the city's downtown.

On August 30, two policemen and two ex-soldiers were arrested under suspicion of having participated in the murder of Rémulo Estrada.

However, in September 1995, Ramón Angenor, an ex-policeman turned private security guard, confessed to killing Rémulo Estrada. He declared that, on the night of August 21 at a little after 10:00 pm, he saw Rémulo Estrada, whom he knew slightly, while making one of his rounds in the neighborhood. Rémulo asked for a ride into town as his car had broken down. Once inside the car, Rémulo allegedly began to act strangely, spoke of some great secret, and said that he was fearful for his life. He then pulled out a gun and said he had decided to kill himself. Ramón Angenor declared that he had tried to take away the weapon and accidentally shot Rémulo in the struggle that followed. Afraid of the consequences, he had then taken the body to a secluded place and shot several bullets into Rémulo's body to make it seem like an execution.

He denied having been accompanied by anyone else on the night of the crime. When asked why he had come forward, Ramón Angenor declared that he had recently re-converted to Christianity and wanted to make peace with God.

The prosecution chose to accept Ramón Angenor's statement in spite of many contradictions between his statement and those of other witnesses, and the repeated declarations by Rómulo that his brother had never possessed a gun and had acted perfectly normal. The prosecution established that the statements made by the homeless were unreliable and rejected their use in this criminal action. On September 16, 1995, all other suspects were released and the cases against them dismissed.

On January 10, 1996, Ramón Angenor was convicted and sentenced to a two-year suspended sentence. As allowed in the code of Criminal Procedure, an appeal was filed, and on February 2, 1996 the Appeals Court affirmed the Lower Court's ruling. Three days later, the Supreme Court declined to hear the case on appeal.

On February 7, 1996, Rómulo Estrada submitted a petition to the Inter-American Commission on Human Rights on his and his brother's behalf claiming violations of Articles 2, 4, 8, 13, 25, and 1.1 of the American Convention on Human Rights.

On February 2, 1998, the Commission adopted its preliminary report in accordance with Article 50 of the Convention. On February 8th, the Commission referred the report to the Government of Ithaka.

On April 3, 1998, the Government of Ithaka wrote the Commission to inform it that new facts had been brought to the attention of the prosecutor who had re-opened investigations into the death of Rémulo Estrada. The Government also announced that negotiations with the petitioner had begun once more and requested that the Commission to suspend the delay established in Article 51 to give it time to reach an friendly settlement and comply with the Commission's recommendations.

On May 4, 1998, Rómulo Estrada informed the Commission that he had been unable to reach an agreement with the Government. On May 8, 1998, the Commission referred the case to the Inter-American Court of Human Rights.