

Lawyers Committee for Human Rights

THE AMERICAS

**THE "JESUIT CASE":
THE JURY TRIAL (*LA VISTA PÚBLICA*)**

September 1991

Lawyers Committee for Human Rights

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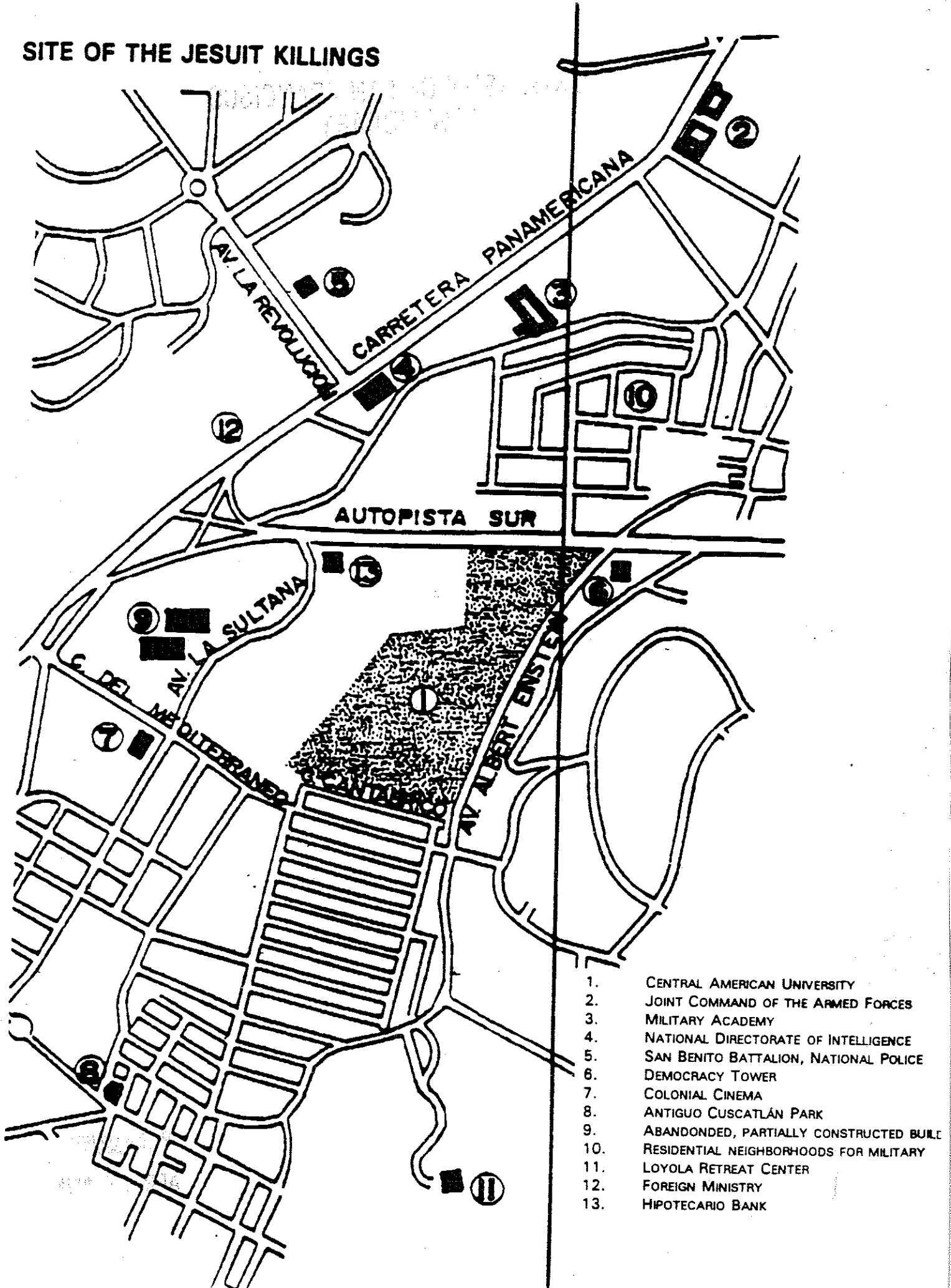
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SITE OF THE JESUIT KILLINGS



1. CENTRAL AMERICAN UNIVERSITY
2. JOINT COMMAND OF THE ARMED FORCES
3. MILITARY ACADEMY
4. NATIONAL DIRECTORATE OF INTELLIGENCE
5. SAN BENITO BATTALION, NATIONAL POLICE
6. DEMOCRACY TOWER
7. COLONIAL CINEMA
8. ANTIGUO CUSCATLÁN PARK
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12. FOREIGN MINISTRY
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PREFACE

This report examines the brutal murder in November 1989 of six Jesuit priests and two women at the Central American University in San Salvador. Nine members of the Salvadoran Armed Forces are about to go on trial for these murders, including Colonel Guillermo Benavides, the most senior Salvadoran military officer ever to be prosecuted for a human rights crime. The case has assumed a significance in El Salvador and elsewhere that transcends the tragedy of the killing and the sorrow of the victims' families, friends and colleagues.

The murder of the six priests and two women makes manifest a widespread pattern of state-sponsored and coordinated political violence. Such violence, in which members of the Armed Forces have abducted, tortured and murdered thousands of victims -- has created a climate of impunity in El Salvador.

In focusing attention on these eight murders, we do not judge them in any way more important or egregious than tens of thousands of other murders carried out at the hands of the Salvadoran Armed forces. But this case has become a symbol of the state's brutality, a test case for the Salvadoran justice system, and a potential blow to the impunity which continues to paralyze El Salvador.

In that context, the demand to fix responsibility in this case, and the demand that the full truth be known and acknowledged, are part of a far broader demand -- that human life and basic human rights be respected by those who govern El Salvador.

Regrettably, as the case against the nine defendants goes to trial, the governments of both El Salvador and the United States continue to ignore evidence that higher military officers ordered the crime and sought to cover it up. The role of the U.S. Government is important because the United States has been centrally involved in El Salvador and has provided substantial military aid and training, and continues to do so. Regardless of the outcome of the current judicial proceedings, we view it as an essential element of the resolution of this case that these issues be pursued.

This briefing paper is the Lawyers Committee's ninth publication on the Jesuit murder case in El Salvador. It provides basic information about the case in anticipation of the jury trial (*vista pública*) which is now likely to begin soon. Additional information about the case is available in previous publications prepared by the Lawyers Committee and by the Human Rights Institute of the Central American University (IDHUCA).¹

In preparing this briefing, we have sought to lay out and explain the legal and investigative process in the case. We have summarized the crime itself, describing the victims and the context in which their murders took place. We have compiled short biographies on each of the defendants, based primarily on information contained in the court's record. We have also outlined the legal proceedings in the case from November 1989 until the present, and those likely to occur at the jury trial.

Finally, we have identified a few key unresolved legal issues -- most notably the government's

¹ A list of Lawyers Committee and IDHUCA publications on the Jesuit case is appended to this report (Appendix B).

failure fully to investigate allegations of higher orders and to investigate or prosecute those who participated in a cover-up of the crime -- and briefly outlined some implications regarding U.S. policy.

This briefing was written by Martha Doggett of the Lawyers Committee staff, and Maggi Popkin of the Human Rights Institute of the Central American University (IDHUCA). Both authors have closely monitored the Jesuit case since the killings occurred. The briefing was edited by Fr. Michael Czerny, S.J., Director of IDHUCA, and Michael Posner of the Lawyers Committee.

September 1991
New York, New York

I. WHO WERE THE VICTIMS?²

Ignacio Ellacuría Beascochea, S.J. A world-renowned philosopher and theologian, Fr. Ellacuría was born in 1930 in the Basque region of Spain and entered the Society of Jesus in 1947. In 1948 he was sent to El Salvador to continue his novitiate. After taking first vows, he studied classics, humanities and philosophy in Quito, Ecuador (1949-1955). For three years he taught philosophy at El Salvador's diocesan seminary. During theology studies in Innsbruck, Austria (1958-1962), he was ordained a priest in 1961. In 1962, he began doctoral work in philosophy at the Universidad Complutense in Madrid, where he met the Spanish philosopher Xavier Zubiri, who became Ellacuría's teacher, mentor, friend, and a lasting influence on his thinking. He also did doctoral work in theology at the Universidad de Comillas in Madrid.

Fr. Ellacuría returned to El Salvador in 1967 and began to teach at the Central American University (UCA), the newly founded university to which he increasingly dedicated his time, work, and devotion. The university is today very much an expression of his vision, both in the design of the campus as well as in its approach to scholarship, teaching, and social outreach. On the tenth anniversary of the UCA he wrote that "in the process of liberation of the peoples of Latin America, a university cannot do it all, but what it can do is indispensable. And if it fails in this it has failed as a university and has betrayed its historical mission."³

At the time of his death Fr. Ellacuría was the UCA's rector (president), a post he assumed in 1979; the vice-rector (vice-president) for social outreach; chairman of the philosophy department, where he also taught; and editor-in-chief of *Estudios Centroamericanos (ECA)*, the university's academic journal. Under his direction *ECA* became El Salvador's leading journal of opinion and analysis, known for its insight and vision. Ellacuría's editorial in 1976, criticizing the Salvadoran government for bowing to pressure from the country's landowners by reneging on a pledge to redistribute land, cost the UCA its government subsidy. Five bombs were exploded on the campus in protest against the university's support for land reform.

Since the beginning of the armed conflict, Fr. Ellacuría consistently called for a negotiated solution to the civil war, provoking the ire at times of both the right and the left. Over the course of the 1980s he became one of the country's most sought-out analysts, on occasion assuming the role of mediator between the FMLN and the government, at times informally and at times quite formally, as in 1985 when he and Archbishop Rivera y Damas secured the release of President Duarte's daughter whom the FMLN had kidnapped. Perhaps because he was so effective, Fr. Ellacuría was particularly targeted by El Salvador's right, who regularly referred to him as "nefarious" and "satanic." In mid-1986, ARENA deputies in the Legislative Assembly launched a campaign to strip him of his Salvadoran citizenship, which he had obtained in 1975.

Fr. Ellacuría was in Europe when his colleagues moved into the residence where they died. While he was present when the soldiers searched the house on Monday evening, November 13, 1989, he did

² The biographies of the victims are based on *Noticias S.J.*, the newsletter of the Central American Province of the Society of Jesus (December 1989) and Rodolfo Cardenal, "Ser Jesuita Hoy en El Salvador," *ECA*, Nov./Dec. 1989, #493/494, at 1013-1039.

³ See *ECA*, 1975, #324-325.

not sleep there and in fact only spent one night in the residence before he was murdered early Thursday morning.

* * * * *

Ignacio Martín-Baró, S.J. Fr. Martín-Baró was born in 1942 in Valladolid, Spain. He entered the Society of Jesus in 1959 and, like Ellacuría, was sent to El Salvador to complete his novitiate there. From 1961 to 1966 he earned his undergraduate degree in classics, humanities and philosophy in Ecuador and Colombia. He returned to El Salvador in 1966 and taught for a year at the Externado San José, the Jesuit high school, and then at the UCA. During the 1970s he studied theology and psychology in Europe and at the UCA. In 1979 he earned a doctorate in social psychology from the University of Chicago.

At the time of his death Fr. "Nacho," as he was called, was the UCA's vice-rector for Research and Graduate Programs, chair of the psychology department, and on the editorial boards of *ECA* and the UCA's psychology journal. He was also the founding director of IUDOP, El Salvador's only public polling institute, which conducted 25 polls during its first three years probing such themes as health, employment, democracy and the war. IUDOP came under fire from the Christian Democrats when the institute predicted -- correctly, as it later turned out -- that the ARENA party would win the presidency in 1989.

Fr. Martín-Baró also served as pastor of the rural parish of Jayaque. A tireless worker, he published eleven books and scores of articles in journals around the world. In his last published work, Martín-Baró described how the authorities attempt to

create an official version of the facts, an 'official story' When . . . facts come to light that directly contradict the 'official story,' they are 'cordoned off.' A circle of silence is imposed that relegates the facts to quick oblivion . . . the continual violations of human rights by members of the Armed Forces enter this realm of blanketing silence.⁴

He predicted how his own murder case would be handled.

* * * * *

Segundo Montes Mozo, S.J. Born in Valladolid in 1933, Fr. Montes was sent to El Salvador in 1951 to complete his Jesuit novitiate. He studied at universities in Madrid, Innsbruck and Quito and during his earlier years as a professor taught physics at the Externado San José. He served as rector of this Jesuit high school from 1973 to 1976, the years when Lt. Espinoza, who led the murder operation, was a student there. In 1970 Montes became the first of the Spanish Jesuits to obtain Salvadoran citizenship.

⁴ Ignacio Martín-Baró, "Political Violence and War as Causes of Psychosocial Trauma in El Salvador," *International Journal of Mental Health*, Spring 1989, at 10-11

Fr. Montes gradually concentrated his energies in the UCA, heading the natural sciences department from 1970 to 1976. Sensitive to the social upheaval swirling around him, Montes decided he could better serve El Salvador's needs in the social sciences and became a student again, earning a doctorate in social anthropology at the Universidad Complutense in Madrid in 1978. Returning to the UCA, Montes taught sociology and headed the department from 1980 until his death. He was a contributing editor to *ECA* and other UCA academic journals.

As the civil war dragged on throughout the 1980s, Fr. Montes devoted himself to the study of the problems and needs of El Salvador's thousands of displaced persons. Each year he published a volume on the subject, which remain authoritative works in the field. He also served in suburban San Salvador parishes on the weekend, where many displaced sought refuge from rural conflict areas.

From 1985, Fr. Montes directed the UCA's human rights institute, IDHUCA, and was increasingly called around the world to speak about human rights, refugees and the internally displaced. He testified before the U.S. Congress on several occasions and in November, 1989 was honored with a human rights prize in Washington, D.C. Fr. Montes twice visited Salvadoran refugees in their camps in Honduras. Now returned to northern El Salvador, these people have chosen to call their community "Segundo Montes," in Meanguera, Morazán.

* * * * *

Amando López Quintana, S.J. Fr. López was born in Burgos, Spain in 1936 and was sent to El Salvador by his Jesuit superiors in 1953. He studied humanities, philosophy and theology in Quito, Dublin, Rome and Strasbourg.

López divided his professional life as a teacher between El Salvador and Nicaragua. From 1970 to 1972 he was the rector of the diocesan seminary in San Salvador, and taught philosophy at the UCA in 1973-1974. From 1975 to 1983, López worked in Nicaragua, first at Managua's Jesuit high school and later as rector (president) of Nicaragua's Jesuit university, also known as the UCA.

At the end of 1984, he returned to El Salvador. At the time of his death he taught philosophy and theology at the UCA. Fr. López was a recent addition to the university community of Jesuits, having lived until 1988 with the seminarians in Antigua Cuscatlán. He frequently contributed book reviews to *ECA* and the UCA's theology journal, *Revista Latinoamericana de Teología*.

* * * * *

Juan Ramón Moreno, S.J. Juan Ramón Moreno was born in Villatuerta, Navarra in 1933 and was sent to El Salvador to complete his novitiate in 1951. He earned two bachelor's degrees, one in humanities from the Catholic University in Quito in 1955 and another in theology from St. Louis University, Missouri in 1965.

Fr. Moreno devoted the early years of his professional life to the natural sciences, beginning in 1958 to teach chemistry in the Jesuit high school in Granada, Nicaragua. In 1968 he was sent to Rome for training in Ignatian spirituality in preparation for becoming the province's novice master in 1970,

charged with the training of young Jesuits. He also taught natural sciences at the UCA in San Salvador from 1971 to 1974, and for a short time served as rector of the Jesuit high school, Externado San José.

Fr. Moreno returned to Rome from 1974-1976, when he was sent to Panama. There he founded the Central American Ignatian Center, promoting spirituality in the tradition of the founder of the Jesuit order. In 1980 he moved with the Center to Managua, where he increasingly devoted himself to theology and spirituality, and became a much sought after speaker and leader of spiritual retreats.

In 1985 he was sent to El Salvador. At the UCA, Fr. Moreno was the deputy director of the Romero Pastoral Center, where the assassinations took place. He organized and computerized the center's theological library, the best in El Salvador, and today it bears his name *in memoriam*. He also served as secretary to the provincial, charged with maintaining the province's archives, and served a parish in Santa Tecla.

* * * * *

Joaquín López y López, S.J. Fr. López y López was of a different generation -- 71 years old -- than the other murdered priests, and the only Salvadoran born. At the time of his death he had been diagnosed with terminal prostate cancer.

Born into a wealthy Salvadoran family in 1918, Fr. López entered the Society of Jesus in 1938 and did his novitiate in the United States, since at the time it was not possible to be trained as a Jesuit in Central America. He later studied in Oña, Spain.

Fr. López worked his entire life in El Salvador, dividing his time between the Externado San José and "Faith and Joy," a Latin-America-wide after-school program for children which he started in El Salvador in 1969. Faith and Joy serves 48,000 children, youth, and adults in 30 educational centers around El Salvador.

Fr. López did not work at the UCA, but was one of its founders and an integral part of the UCA Jesuit community. In 1964, he led the campaign to gain approval of the law allowing private universities in El Salvador, and was instrumental in getting the university started.

* * * * *

Julia Elba and Celina Mariceth Ramos. Elba Ramos, the cook in a residence for Jesuit students near the UCA, and her daughter Celina, 15, were murdered, according to the lieutenants' declarations, because Col. Benavides "wanted no witnesses." The women lived in a small house near the murder site, and had sought refuge from the fighting inside the Jesuit residence. They slept in the room where they died on Sunday evening, November 12, but were not present on Monday evening, November 13, when the residence was searched. The soldiers were reportedly surprised to find them, and according to one unconfirmed account, radioed for instructions.

Elba was born in Santiago de Marfa in 1947. She met her husband in the late 1960s. Their first two sons died at birth. Their third child, Celina, was born on February 27, 1973. A son was born in 1976.

Elba started working with the Jesuits in 1985, as a cook and housekeeper. The family moved onto the UCA campus in July 1989, when her husband became a gatekeeper and gardener, with Fr. Montes tending the flowers, vegetables, and fruit trees surrounding the residence. At the time of her death, Celina, aged 15, was studying business in high school.

Given the fighting on November 15, the Jesuit seminarians encouraged Elba to spend the night at Antiguo Cuscatlán, instead of walking down the hill to the UCA. Elba insisted, however, that she had to fix dinner for her husband, telling the students to feed the dog themselves when they teasingly suggested she had not completed all her duties.

Elba's husband still tends the garden surrounding the Jesuit residence. The murder site is now a rose garden, where he has planted a red rose for each of the Jesuits, and two yellow roses for his wife and daughter.

* * * * *

The Society of Jesus

The Society of Jesus is the largest order of men in the Roman Catholic Church. Founded in 1540 by a Basque, Ignatius of Loyola, the Jesuits (as they were first pejoratively and are now commonly known) have always been dedicated to a wide range of service: education, missions, spiritual development, research and writing in many fields, public and social ministry. The majority of its members are ordained priests; there are also vowed brothers, and men still in formation (known as "scholastics" but popularly called "seminarians"). The Jesuits number approximately 25,000 worldwide.

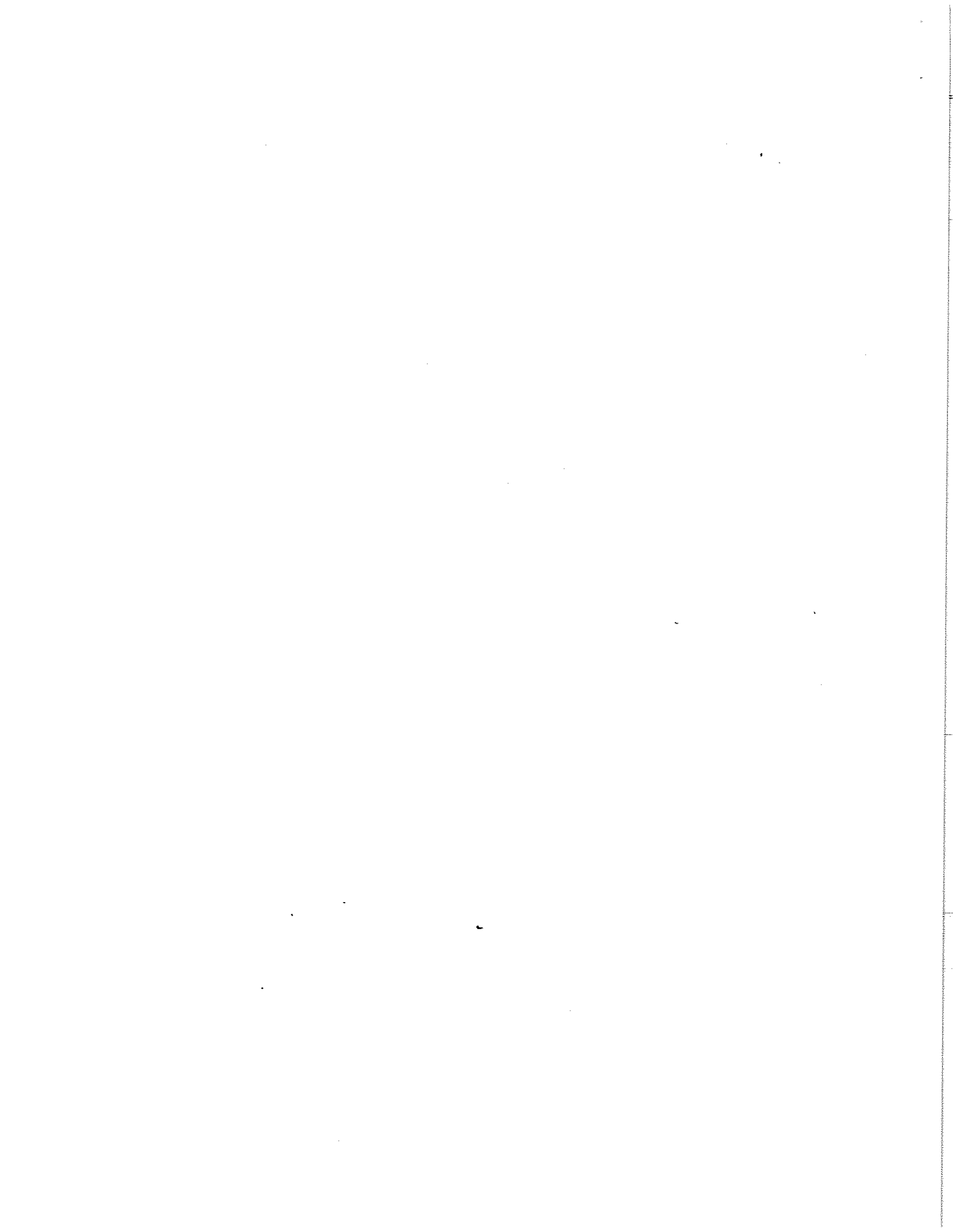
The superior general of the Jesuit order, usually referred to as Father General, is elected for life. From 1965 to 1983 he was Fr. Pedro Arrupe, a Basque like St. Ignatius. In 1983 the current general, Fr. Peter-Hans Kolvenbach, was elected. He is of Dutch origin, with many years' experience in Lebanon.

In 1975 the Society of Jesus asked, "What does it mean to be a Jesuit today?" and in answer reformulated its historic mission as follows.

To commit ourselves beneath the standard of the cross in the crucial struggle of our time, the struggle of faith and the struggle for justice which the faith itself demands. We shall certainly not work for the promotion of justice without having to pay a price.

Fr. Arrupe prophesied that the "price" would include martyrdom.

The Jesuits are organized into administrative units known as "Provinces." The Jesuits in El Salvador belong to the Central American Province, which covers Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama. The current Provincial, Fr. José María Tojeira, is a Honduran citizen of Spanish origin. His office (*curia*) is located in Jardines de Guadalupe, only a few blocks from the campus of the UCA. Some 300 Jesuits belong to the Central American Province.



II. HISTORY OF ATTACKS AGAINST THE JESUITS

The political right in El Salvador has long been obsessed with the Society of Jesus and with Ignacio Ellacurfa in particular. Since the early 1970s, El Salvador's Jesuits have been subjected to a vitriolic campaign of public attacks, which at times has erupted into violence. One typical article in the press referred to "Basque agitators at the UCA, headed up by Commander Ignacio Ellacurfa."⁵

The history of these attacks against El Salvador's Jesuit community offers some explanation of what happened at the UCA on the night of November 15-16, 1989. Fr. Ellacurfa was likely the killers' principal target. According to testimony in the court record of the Jesuit case, in ordering the killings, Col. Benavides reportedly told the lieutenants, "We are going to begin with the ringleaders, inside our sector we have the university, and Ellacurfa is there."⁶

The 1970s

The first acts of violence against the Jesuits came in 1976 when six bombs were set off on campus. The attacks came in response to the Jesuits' support for a modest agrarian reform, approved by the Legislative Assembly in June 1976, which would have affected only four per cent of the country's arable land. An *ECA* article suggested that without reform, civil strife would break out, and presaged the Jesuits' own fate:

Injustice cannot last long. The social cauldron will no longer stand the pressure. The Right can win some battles, but historically they have lost the war. This conviction [that they can win the war] leads them down an erroneous path: bomb the intelligentsia, as if by doing so they could kill adverse ideas.⁷

In March 1977, a Salvadoran Jesuit named Rutilio Grande was murdered in his home community of Aguilares, a rich agricultural area where social unrest had grown throughout the 1970s as agricultural workers organized to obtain better wages and working and living conditions. Fr. Grande and several other Jesuit priests and seminarians had come under attack for their collaboration with peasant organizations, which were expanding rapidly.

The early attacks on the Jesuit team in Aguilares echo themes that have remained constant over the last 20 years. According to their critics, these foreign Jesuit intellectuals have negatively influenced the minds of Salvadoran clergy, peasants and students, many of whom have in turn organized movements promoting fundamental social change. Some right wing critics have charged that, had there been no Jesuits in the country, the FMLN would never have existed. Jesuit-run

⁵ *Diario de Hoy*, Jan. 25, 1989.

⁶ Extrajudicial confession of Lt. José Ricardo Espinoza Guerra, Jan. 13, 1990.

⁷ "Las derechas ponen bombas," *ECA* #337, Nov. 1976, at 704.

schools were the "launching pad for the revolutionary praxis of the Catholic schools," wrote Freddy Delgado, a Salvadoran priest who collaborates closely with the military.⁸

In the early months of 1977, two former Jesuit seminarians working in Aguilares were deported. Another former Jesuit, Juan José Ramírez, was tortured with electric shock during a 10-day detention. Several foreign Jesuits working in El Salvador were refused entry to the country, among them Ignacio Ellacuría. After Rutilio Grande's murder, seven other Jesuits were detained, mistreated and deported. Flyers appeared on San Salvador streets saying "Be a Patriot, Kill a Priest."⁹ In June 1977, a death squad known as White Warriors Union (UGB) threatened to kill each of the country's 47 Jesuits unless they left El Salvador within one month.

The 1980s

Throughout the 1980s, violence against the Jesuits increased along with that directed against other sectors of Salvadoran society. Between 1980 and 1982, the country's death toll would reach 800 monthly. After the FMLN was founded in 1980, Fr. Ellacuría and other Jesuits were regularly referred to by right wing critics as "the intellectual authors of the guerrilla movement," the "ringleaders" or "brains" of the FMLN.

Buildings used by Jesuits were sprayed with machine-gun fire in early 1980. On February 18, 1980, bombs destroyed part of the UCA bookstore and another heavily damaged the printing press on June 29. The priests' home near the UCA was badly harmed by bombs in October when 12 bombs were lobbed over a surrounding wall. One explosive left a meter-wide hole in the wall next to the bed where Segundo Montes was sleeping. A Jesuit who lived in the house recalls that had Montes not changed the position of his bed one week earlier, he would have been killed at that time.

In late November 1980, Fr. Ellacuría fled El Salvador when he was warned about a military plot against his life. A friend in the military telephoned him to deliver a pre-arranged signal: "The patient is in grave danger." Ellacuría asked if it could wait, but was told, "No, the patient won't survive the night. He must be moved immediately." The priest sought refuge in the Spanish Embassy and left the country the next day.

A 1987 campaign attempted to paint Fr. Ellacuría as a defender of the FMLN's use of land mines because he stated that mines are a weapon of war directed against the Army and their use did not constitute acts of terrorism designed to hurt civilians.¹⁰ In late 1988, the Armed Forces ran paid ads suggesting that Ellacuría supported the FMLN's use of car bombs. The verbal attacks against the Jesuits increased steadily throughout the late 1980s, taking on new intensity after ARENA won the March 1989 presidential elections.

⁸ Monsignor Freddy Delgado, *La Iglesia Popular Nació en El Salvador: Memorias de 1972 a 1982* (no date or publisher appears on the booklet, which circulated in late 1988), at 42.

⁹ "Haga patria, mate un Cura."

¹⁰ *Diario de Hoy*, July 6, 1987; see also *Diario de Hoy*, May 23 and 30, 1987.

In the final years of his life, Fr. Montes also became a frequent target for El Salvador's right wing. In April 1989, ARENA conducted a campaign against him for his alleged support for terrorist acts on the part of the FMLN.¹¹ An ARENA press release accused Montes of supporting FMLN terrorism in "an arrogant and cold manner" during a television interview. A 1989 paid advertisement by the Salvadoran Army ran a quotation from Fr. Montes superimposed over a dead body. The headline read, "In El Salvador there are groups who insist on defending the terrorism of the FMLN-FDR and their front groups."¹²

In April 1989, the UCA printing press was again bombed in the first act of physical violence directed against the Jesuits since 1983. On July 22, 1989, the press was hit again in the most serious bombing in the last decade; the damages exceeded \$60,000.

Cable traffic between the U.S. Embassy and the State Department in the early 1980s indicates a preoccupation with the critical analysis of Salvadoran events and the U.S. role being published in *ECA*. A June 1982 cable referred to *ECA* as "the most important of the very few non-clandestine pro-FMLN/FDR publications available in El Salvador."¹³ An internal State Department memorandum identified the media's "source" of information on irregularities in the March 1982 vote count as the "strongly leftist Central American University (UCA) in San Salvador. From the beginning of the Salvadoran conflict, the UCA has sympathized with the Salvadoran armed left, and this sympathy is reflected in university publications." Another cable in August, 1983 discusses an *ECA* issue on the U.S. role in El Salvador. "The articles [material deleted] show a bias for a negotiated solution to the Salvadoran conflict which will ultimately lead to an authoritarian leftist (but not Marxist-Leninist) regime."

Over the course of El Salvador's decade long civil war, Fr. Ellacuría became the most respected and effective advocate for a negotiated solution to the conflict. Able to talk to both sides, he was at times called upon to mediate between the government and the FMLN. After the FENASTRAS union office was bombed at the end of October 1989, President Cristiani eagerly sought to appoint the priest to a special investigatory commission. Reached in Spain before his return to El Salvador, Fr. Ellacuría communicated to President Cristiani that he preferred to make the decision only after returning to El Salvador, and provided the president with his return date.

In June 1991, attorneys for the defendants asked that two right-wing books attacking the Jesuits be added to the court record. The works, by Delgado and Jérez Magaña, concern the popular church in El Salvador and its alleged responsibility for the "Communist aggression of the FMLN." Their inclusion in the official court record suggests the defense may revisit these themes during the trial.

¹¹ *Prensa Gráfica*, April 13, 1989; *Diario de Hoy*, April 13, 1989; *Diario Latino*, April 13, 1989; *El Mundo*, April 13, 1989.

¹² *Prensa Gráfica*, April 16, 1989.

¹³ Several U.S. government documents on the Jesuits in El Salvador were obtained by the National Security Archives under the Freedom of Information Act.

What is the UCA?

The "UCA" is the acronym commonly used to designate the Universidad Centroamericana "José Simeón Cañas" (Central American University) in San Salvador. The university is named for José Simeón Cañas, a Salvadoran priest and academic who in December 1823 spoke out in the National Assembly in support of liberation of the slaves in Central America.

The UCA was founded in 1965 expressly as an alternative to the University of El Salvador (UES), the national university which El Salvador's influential families considered too left wing. The country's first private university, the UCA was intended to be an elite institution of higher learning, divorced from the political fray.

But especially after 1975, when the UCA began to implement the Society's new commitment to the service of faith and the promotion of justice, the university's profile in El Salvador shifted. Over and over again, Fr. Ellacuría spoke out in favor of the interests of the poor majority (*las mayorías populares*). In 1989 Jérez Magaña opined that "the UCA . . . is a logistical center of Communist subversion. The Jesuits who direct this center of studies are agents of the Marxist conspiracy at the service of the Kremlin"¹⁴ and to some members of the Salvadoran right, the UCA itself continues to be a center of subversive activities.

As a private university, the UCA is a public non-sectarian institution, administered by a governing board the majority of whose members belong to the Society of Jesus. The rector of the UCA is elected by the board and appointed by the Jesuit Provincial.

The structure of the UCA reflects the university's three major emphases -- research, teaching and social outreach -- by having a vice-rector responsible for each of these areas. At the time of his death, Fr. Ellacuría was both rector and vice-rector for social outreach. Fr. Martín-Baró was vice-rector for research and graduate programs.

On November 28, 1989, a Salvadoran Jesuit, Fr. Miguel Francisco Estrada, whose degree is in business administration, was named to succeed Fr. Ellacuría as rector. There are currently about 7,000 students studying at the UCA.

¹⁴ Alvaro Antonio Jérez Magaña, *La Infiltración Marxista en la Iglesia* (Editorial Dignidad, Instituto de Relaciones Internacionales, San Salvador, 1989), at 27.

III. SUMMARY OF THE CRIME

Prior dates in 1989:

- June 1 President Alfredo Cristiani of ARENA was inaugurated.
- mid-October Fr. Ellacuría left for Spain to accept an award for the UCA and attend a meeting of the Superior University Council of the Iberoamerican Postgraduate University, of which he was elected president. While in Europe he also addressed the West German parliament.
- October 31 A powerful bomb exploded at the office of the FENASTRAS labor federation, killing ten people.
- November 2 Planned talks between the Government of El Salvador and the FMLN were cancelled because of the FENASTRAS bombing.

Saturday, November 11: The Offensive Begins

Shortly after 8:00 p.m. on November 11, 1989, forces of the FMLN launched their strongest urban offensive in El Salvador's 10-year-old civil war. FMLN combatants struck simultaneously at scores of locations around the capital. Within minutes, fierce gun battles could be heard in many locations throughout the city.

It is estimated that some 1,500-3,000 combatants had entered San Salvador in the preceding weeks. The troops seemed well-prepared and able to resupply with both ammunition and food. Working class neighborhoods forming a ring around the capital soon became "rebel strongholds," occupied and controlled by the FMLN.

It is still not clear when Salvadoran intelligence detected the guerrilla plans, but by all accounts they had at least one or two full days' warning. However, the Armed Forces were clearly unprepared for the strength of the FMLN assault and the guerrillas' ability to hold large sections of the capital for days. Salvadoran military, civilian and diplomatic sources describe the military as an institution in disarray during the first days of the FMLN action, caught off guard and performing poorly. Colonel René Emilio Ponce, head of the Joint Command, and other ranking officers were reported to have said that the military seriously considered the possibility that they could lose power, or that San Salvador could become a divided capital, much like Beirut.

Broadcast Death Threats

In the first few hours, Salvadoran radio stations provided excellent coverage of the FMLN offensive. Journalists as well as private citizens phoned in on-the-scene accounts of battles in many neighborhoods. At approximately 11:00 p.m., however, all stations were instructed to tie into a nationwide network, which was actually Radio Cuscatlán, the station of the Salvadoran Armed Forces.

Once under the control of the Armed Forces, programming changed fundamentally. Repeated messages from the governmental Center of National Information (CIN) provided assurances that the

fighting was extremely localized and would soon be under control. The nature of the calls coming from private citizens also changed radically. Salvadorans were no longer seeking information about relatives' well-being, or sending word to family that they were safe. Instead, caller after caller denounced opposition political figures, labor and church leaders, and members of nongovernmental organizations, and often labeled them "FMLN fronts." The statements, vitriolic and vindictive in tone, regularly urged violence against those named.

In keeping with the long history of harassment and persecution of the Society, the Jesuits were also singled out for attack. Fr. Ellacuría was prominently mentioned by several callers. "Ellacuría is a guerrilla, cut off his head!" said one caller. "Ellacuría should be spit to death," said another.¹⁵ Vice-President Francisco Merino accused Ellacuría of "poisoning the minds" of Salvadoran youth while teaching at the UCA and at the Externado San José.¹⁶

Jardines de Guadalupe, November 11-12

Jardines de Guadalupe is the comfortable middle class neighborhood in which the UCA is located. Shortly after the offensive began, a group of FMLN combatants entered the UCA campus. They used a low-powered explosive to open the gate on Avenida Albert Einstein adjacent to the Jesuit residence and fled through the campus.¹⁷ Within 10 minutes the Armed Forces were on the scene and "controlled the situation," according to a chronology prepared by the Jesuits.

The next day at about 9:00 or 10:00 a.m., a military patrol of some 8-10 men asked permission to examine the scene, which they did accompanied by Fr. Segundo Montes. Montes told other Jesuits that the men belonged to the Beloso Battalion. The soldiers took away with them an unexploded device, apparently left behind by the FMLN, which the Jesuits had found near the gate. Fr. Ignacio Martín-Baró left in his computer a one-page description of some of these events. "From this moment," he wrote, "a group of soldiers was posted at the entrance to the university complex, checking (*registrando*) everyone who entered or left, and from Monday, November 13, prohibiting the entrance or departure of anyone." Martín-Baró also told a U.S. Jesuit with whom he spoke by phone at 6:15 p.m. on Monday evening that "no one could enter or leave the university."

Due to its proximity to several military installations, Jardines de Guadalupe was heavily occupied by soldiers. UCA neighbors have testified that troops were posted throughout the week on Calle del Cantábrico, which forms one border of the campus, and the adjacent Calle del Mediterráneo.

Weapons Found at Loyola Center

At about 11:30 a.m. on Sunday, November 12, ten Treasury Police agents entered the grounds of the Loyola Center, a Jesuit retreat complex located on the edge of a coffee plantation one and a half kilometers from the UCA campus. Fr. Fermín Saíenz, the Jesuit who directs the center and was called

¹⁵ "Ellacuría es un guerrillero. Que le corten la cabeza." "Deberían sacar a Ellacuría para matarlo a escupidas!"

¹⁶ See *Proceso*, Nov. 29, 1989, at 8.

¹⁷ See "Cronología de Acontecimientos Relacionados con el Asesinato de los Seis Jesuitas de El Salvador," Provincia Centroamericana de la Compañía de Jesús, San Salvador, Nov. 17, 1989; Ignacio Martín-Baró, "Cateo de la Universidad Centroamericana y la Comunidad Universitaria Jesuítica," San Salvador, Nov. 14, 1989.

to the scene by the center staff, says the soldiers brought along a young man, who was handcuffed, to locate the arms. Buried under a shallow pile of ashes left from burning leaves, the troops found equipment for four guerrilla combatants. Saínz says the lieutenant in charge told him, "Don't worry Father, we're finding things like this all over the city." FMLN combatants in flight were abandoning equipment rather than risk getting caught with it.

Monday, November 13: Atlacatl Commandos Arrive in San Salvador

On the afternoon of November 13, the Joint Command decided to create a special security zone (*Comando de Seguridad*) which included the area surrounding the UCA. Located within several blocks of the university are the Joint Command headquarters, which also houses the Ministry of Defense, the Military Academy, the National Intelligence Directorate (DNI, one of several intelligence bodies), the San Benito Battalion of the National Police, and two military residential neighborhoods, Colonia Arce and Colonia Palermo. The Military Academy was chosen as headquarters for this zone. Its director, Colonel Guillermo Alfredo Benavides, was named commander.

Despite optimistic predictions to the contrary, by Monday it was clear that the guerrillas would not be easily routed. Curfew was imposed from 6:00 p.m. to 6:00 a.m. Of paramount importance to the Armed Forces was protection of their key command centers. By chance, the UCA fell within those perimeters.

Since the Military Academy does not normally have combat-ready troops, portions of several other units were stationed at the school in the first few days of the offensive. Among those troops who were temporarily assigned to the Academy was a 47-man commando unit of the Atlacatl Battalion, an elite U.S.-trained force established in 1981.¹⁸ On November 10, one day before the FMLN launched its offensive, 13 U.S. Special Forces from Fort Bragg, North Carolina, commenced a training course at Atlacatl Headquarters in Sitio del Niño, La Libertad. Among their students were these Atlacatl commandos, seven of whom are now standing trial for the Jesuit killings.

On arriving in the capital, the Atlacatl commandos reported to the Military Academy to await orders. The lieutenants who led the unit reported directly to the Joint Command, where they were given an order to search the Jesuit residence (see below). The fact that these lieutenants reported directly to the Joint Command and that the commandos searched the Jesuits' home within two hours of arriving in the capital suggests that the unit may have been brought to San Salvador specifically for this purpose. Colonel Joaquín Arnoldo Cerna Flores, chief of C-3 (Operations) in November 1989, told the court on September 21, 1990, that he and Colonel Ponce decided it was "appropriate" to send the Atlacatl commandos to conduct the search because of their "age, experience in combat and because they had no other mission assigned at the moment."¹⁹

¹⁸ Forty-seven soldiers comprise the Atlacatl commando unit that is implicated in the crime. At least 88 other members of the Atlacatl also came to the capital and participated in the November 13, 1989, search of the Jesuit residence.

¹⁹ *El Mundo*, Sept. 26, 1990.

Father Ellacuría Returns from Spain

In the late afternoon of November 13, Fr. Ellacuría landed at Comalapa airport and was met by Frs. Amando López and Miguel Francisco Estrada (then assistant to the Provincial). The three men drove the 50 kilometers to the city without incident, arriving at the UCA campus shortly before the 6:00 p.m. curfew.

Entering the main gate off the Southern Highway (*Autopista Sur*), the priests were stopped by soldiers who had been posted there since Sunday. No one had been allowed to enter the campus, and only after the car's driver was identified as the university rector were the priests allowed to proceed up the hill. The Jesuit Provincial José Maria Tojeira told agents of the Special Investigative Unit on November 28, 1989 that the man who appeared to be in charge of the patrol at the gate said, "Let him pass. It's the Father."²⁰ Though the soldier did not mention Ellacuría's name, the priests were left with no doubt that the officer recognized Ignacio Ellacuría, who often appeared on Salvadoran television and in the newspapers.

It has still not been established which unit was on duty at the UCA entrance that night or whether they were instructed to report Fr. Ellacuría's arrival. In response to a specific request from the private prosecutors in June 1991, Ponce, who was appointed defense minister in September 1990, said he was unable to identify the unit.

The Monday Night Search of the Pastoral Center²¹

At 6:30 p.m., half an hour after the beginning of curfew, some 135 men surrounded the UCA campus in order to conduct a search of the Jesuit residence and the Theological Reflection Center (CRT) housed in the same building. Many entered the campus by breaking the lock on the back gate on Calle del Cantábrico.

Fr. Ellacuría asked the officer in charge to identify himself, which he declined to do. Ellacuría introduced himself, and the officer addressed Frs. Segundo Montes and Ignacio Martín-Baró by name. Lt. José Ricardo Espinoza Guerra, the Atlacatl officer in charge, had been a student at the Jesuit high school, Externado San José, while Montes was its rector, though Montes did not recognize him. Ellacuría challenged the Army's right to examine the building, which he pointed out belonged to the Society of Jesus and not the university. He asked that the Minister of Defense be called. The officer answered that according to the state of siege imposed the previous day, they could do anything they wanted, and added that they had orders to search the entire campus. Ellacuría suggested that the men come back in daylight to search the rest of the UCA, but they did not return the next day. Segundo Montes later told colleagues that the troops were members of the Atlacatl.

The Jesuits described the search as "correct" and said the soldiers were well-behaved. Martín-Baró observed that the officer in charge "at all times conducted himself respectfully toward the professors" On previous searches soldiers had spent hours examining written materials to

²⁰ "Déjenlo entrar, que es el Padre."

²¹ This account is based on Lawyers Committee interviews with Jesuits in San Salvador; on Fr. Martín-Baró's description of the search written on November 14, 1989; and on *Proceso*, Nov. 29, 1989, at 8.

determine if they were "subversive." This time, no questions were asked and the soldiers did not seem interested in papers or books.²² Nothing about the intrusion led the Jesuits to believe that it was anything more than a routine search. Fr. Tojeira told the SIU on November 28 that the Jesuits believed that the search was conducted "because of the arrival of Fr. Ellacuría."

Argentine Col. José Luís García, an expert witness for the prosecution who testified in San Salvador on May 27, 1991, told the court that the search conducted by the Atlacatl appeared more to be scoping out terrain than a serious attempt to locate hidden arms or combatants.

Wednesday, November 15: Atlacatl at the Loyola Center

About 3:00 p.m. on Wednesday, November 15, some 120-130 members of the Atlacatl Battalion moved into the Loyola Center.²³ Fr. Fermín Saíenz, the director, immediately went to the center on being informed of the soldiers' presence. A housekeeper unlocked doors for the troops who rapidly examined the center's 45-odd rooms. One soldier asked, "This also belongs to the UCA, right? Here they are planning the offensive." The soldiers occupied the center all afternoon; most just sat around resting and awaiting orders.

At about 6:30 p.m. -- after the start of curfew -- an officer ordered the men to move out, and they headed down toward the UCA campus. Before they left the center, Fr. Saíenz saw the officers looking at a large piece of paper which he took to be a map, as they pointed at the campus below. A lieutenant later commented that "it's possible to talk with this priest, but the ones down below just get furious." The officer was presumably referring to the behavior of Fr. Ellacuría and the others when they challenged the soldiers' right to search the Jesuit residence on the UCA campus on Monday night. For this reason, Fr. Saíenz believes that these Atlacatl men may have been the same unit now charged with the murders.

The Preparations

At 11:00 p.m. on November 15, Lt. Espinoza was ordered to report to Col. Benavides in the Military Academy.²⁴ In the Academy he met Lt. Yushy Mendoza Vallecillos, who repeated that the colonel wanted to see him and Second Lt. Guevara Cerritos. According to their accounts, once in his office Col. Benavides said to them:

This is a situation where it's them or us. We are going to begin with the ringleaders. Within our sector we have the university and Ellacuría is there.

²² See Martín-Baró, "Cameo a la Universidad Centroamericana y la Comunidad Universitaria Jesuítica," Nov. 14, 1989. Fr. Ellacuría asked Martín-Baró to write a brief description of the search, which was found in his computer after his death.

²³ See F. Saíenz, "El Martirio en la Iglesia Universal, Martirios Actuales: Padres Jesuitas," Feb. 1990 (unpublished manuscript); Lawyers Committee interviews with Fr. Fermín Saíenz, Feb. and Sept. 1990.

²⁴ This account is an edited and abridged version of *Narración de los Hechos* which was prepared by the Jesuits in early 1990 and later appeared in *ECA*, #493-494 Nov./Dec. 1989, at 1125-1132. The quotations and dialogue in this narrative are taken textually from the extrajudicial statements of those currently charged with the murders.

He immediately turned to Lt. Espinoza and said:

You conducted the search and your people know the place. Use the same tactics as on the day of the search and eliminate him. And I want no witnesses.

As they prepared to leave, Lt. Mendoza offered an AK-47 to any man who could use it. Oscar Amaya Grimaldi, an enlisted man in the Atlacatl who took charge of the weapon, says Espinoza told him that they were going to kill "some delinquent terrorists who were inside the UCA university."

They left the Academy in two Ford 250 pick-ups, and congregated at the empty apartment buildings located on the west side of the UCA. Various statements indicate that the three lieutenants gave instructions for the operation, including plans to provide cover and security for those who were going to kill the priests. Dozens of soldiers entered the walled campus.

Before leaving the empty apartment buildings, Amaya Grimaldi remembers Lt. Mendoza saying to him: "You are the key man." and he understood that "he was the one in charge of killing the people who were inside this place."

The Murders

The soldiers state that they entered the campus through the pedestrian gate. For at least 30 minutes, they waited near the parking lot. In front of the parking lot the soldiers feigned the first attack, damaging the cars and launching at least one grenade.

According to the soldiers' statements, the operation involved three concentric circles. One group of soldiers kept a distance from the Jesuit Residence, others encircled the building, some climbed on the roofs of neighboring houses. Finally, a smaller group did the actual killing. After encircling the house where the Jesuits were sleeping, the soldiers began to bang on the doors. Simultaneously, they entered the lower floor of the building, destroying and burning the offices. Those who encircled the Jesuit residence yelled at the priests to open the doors. The priests rushed out the back door.

Two soldiers, Ramiro Avalos Vargas and Oscar Amaya Grimaldi, say they ordered the priests to lie down on the ground at a time when they feared losing control of the five priests because they were alone. The search of the house continued.

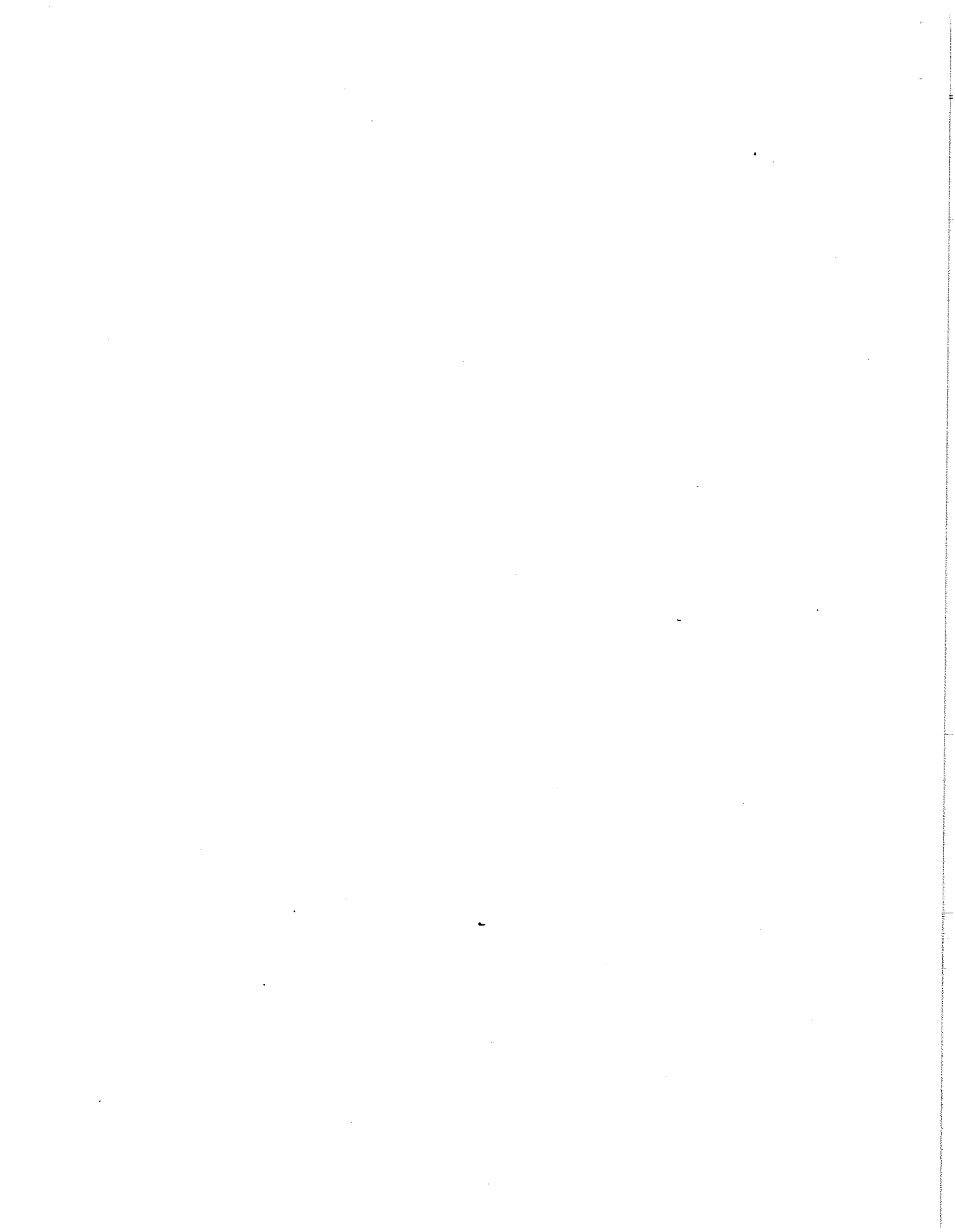
In his statement, Ramiro Avalos Vargas says that Lt. Espinoza called him over and asked, "At what time are you going to proceed?" The sub-sergeant stated that he understood the sentence "as an order to eliminate the men who were lying face down."

Avalos killed Juan Ramón Moreno and Amando López; Amaya shot Ignacio Ellacuría, Ignacio Martín-Baró, and Segundo Montes. Tomás Zarpate was "providing security" -- according to his testimony -- for Elba and Celina Ramos. On hearing the voice ordering, "Now," and the following shots, he "also shot the two women" until he was sure they were dead, because "they no longer groaned."

Fr. López y López appeared in the doorway of the residence when the shooting was over and immediately went back into the house. The soldiers shot him inside. Inspecting the scene, one "felt Fr. López y López grab his feet. He moved back and shot him four times."

At the end of the shooting, the soldiers launched a Bengal light, the signal to withdraw. Avalos Vargas passed in front of the guest room where Elba and Celina had been sleeping and heard someone groaning. According to his testimony, he "lit a match, seeing that inside the room . . . were two women lying on the floor, embracing each other and moaning, so he ordered the soldier Sierra Ascencio to shoot them again."

As the soldiers left the scene they feigned an attack on the Pastoral Center. It was part of the plan. On the doors and walls of the building the soldiers wrote the initials "FMLN." One of them scrawled a sign which was left on the back gate: "The FMLN executed the enemy spies. Victory or Death, FMLN."



IV. WHO ARE THE DEFENDANTS?

In December 1990, 13 months after the murders took place, Judge Ricardo Zamora decided that there was sufficient evidence to take the case to trial against ten members of the Salvadoran military. Nine of these men will face a jury trial for the murders and related charges, while Lt. Col. Carlos Camilo Hernández is charged solely in the cover-up, which is a nonjury offense. All of the defendants remain on the military payroll, except for private Jorge Alberto Sierra Ascencio who deserted before charges were brought. The three lieutenants and four enlisted men on trial all confessed to being part of the military operation which occurred at the UCA in the early morning hours of November 16, 1989. While the lieutenants denied responsibility for the killings, the enlisted men admitted playing a role in the murders. In court, all have professed their innocence and denied knowing the contents of the confessions they signed in police custody.

Seven of the defendants are members of the elite Atlacatl Battalion commando unit. A U.S. advisor who worked with the military described the commando unit as "probably [the Atlacatl's] best unit."²⁵ Major Ramírez explained that the commandos were more motivated and experienced, although they did not have any special training or skills. He also noted that "they have been known to carry AK 47s from time to time" and would disguise themselves as guerrillas to try to infiltrate enemy lines. They are professional soldiers, not new recruits, and have been among the chief beneficiaries of U.S. training.

Col. Guillermo Alfredo Benavides Moreno. Col. Benavides, 46 years old, is the highest ranking officer ever to face trial for a human rights crime in El Salvador. Col. Benavides is a member of the *Tandona*, the unusually large 1966 graduating class from the Military Academy, which includes the most powerful officers currently in the armed forces.²⁶

Col. Benavides began his military career in the Air Force. As a lieutenant colonel in 1984 he was named commander of the Belloso Battalion, and then became commander of Military Detachment #3 in La Unión for a six-month stint in 1986. In 1987 he was named head of Military Detachment #5 in Cojutepeque; the following year he was assigned to head the Intelligence Section (C-2) of the Joint Command, where he remained for a year until he was named Director of the Captain General Gerardo Barrios Military Academy on June 1, 1989.

As director of the strategically located Military Academy during the FMLN offensive, on November 13, 1989, he was named head of a special security zone which included the most important military installations in the country and the UCA within its perimeter. Troops from different military units were placed under his operational command, including the Atlacatl commando unit now charged with carrying out the murders. He is charged with murder, acts of terrorism and planning and conspiracy to commit acts of terrorism. Of the nine defendants, he is the only one thought not to have been present when the crime was committed. Instead, he is charged with giving the order to the lieutenants who allegedly directed the operation.

²⁵ From Interview Transcript of Dec. 12, 1990 Interview of Maj. Samuel Ramírez, Ft. Campbell, Kentucky, entered in court record, 4th Criminal Court, San Salvador

²⁶ See, Arms Control and Foreign Policy Caucus, *Barriers to Reform: A Profile of El Salvador's Military Leaders, A Report to the Arms Control and Foreign Policy Caucus*, May 21, 1990. (Prepared by the staff of the Arms Control and Foreign Policy Caucus.)

Col. Benavides, who has never confessed to any role in the killings, has steadfastly maintained his innocence and professed a total ignorance of any missions (including the November 13 search) carried out by the Atlacatl commandos in the UCA. He is charged as the person responsible for the zone and the troops involved who, according to army regulations, must have given the order, authorized the deployment of troops and the use of Military Academy weapons.

Col. Benavides sold his home on January 2, 1990, days before his arrest.

Lt. Col. Carlos Camilo Hernández. Lt. Col. Hernández, 38 years old, was interim deputy director of the Military Academy at the time of the killings. When the Security Command was formed, he was named its coordinator, but was not among those implicated in the crime by the military Honor Commission. He was later charged in the cover-up for his alleged role in ordering the destruction of Military Academy records.

In May 1990, the SIU reported that Military Academy registries sought by the court had been burned under the orders of Camilo Hernández; subsequent court testimony by the Academy archivist and defendant Yushy Mendoza substantiated this charge. Testifying on June 15, 1990, Hernández denied giving any order to have Academy records burned. On June 26 the court charged him with destruction of evidence (*encubrimiento real*). The military was slow in bringing him to court; he did not actually appear until July 18 at which time his lawyer resigned, alleging that he had been the object of threats. Since then, Hernández has been represented by the same group of lawyers as the other defendants, despite his obvious conflict with Yushy Mendoza, who accused him of ordering the burning of the logbooks.

At the time he was charged, Hernández was the second-in-command (*Ejecutivo*) of the Belloso Battalion. Freed on bond on July 31, 1991, he returned to the field only to be injured by a guerrilla mine in Chalatenango a few weeks later. Since then, he has apparently been transferred to a less dangerous position in San Salvador.

Many were surprised when Camilo Hernández was charged in connection with the crime, as he was known as a leader of the younger officers. Some speculate that he was implicated in the case to draw in the younger officers who had been characterizing the crime as entirely the responsibility of the *Tandona*. Others, however, believe that because of Hernández's strategic position at the time of the killings, he must be more involved in the actual crime. The crime with which he is charged will be heard only by the judge.

Lt. José Ricardo Espinoza Guerra. Lt. Espinoza, 30 years old, studied at the Externado San José while Fr. Segundo Montes worked there, graduating in 1979. He graduated from the Military Academy in 1984 and, like Col. Benavides, began his military career in the Air Force. After three years in the Air Force, he was expelled on January 30, 1987, for "serious errors committed within the service." He was immediately reassigned to the Atlacatl Battalion.

A product of U.S. training,²⁷ Espinoza was sent to the United States on various occasions: for English studies at Oakland Air Force Base in San Antonio, Texas from March 5 - August 9, 1985; as a pilot aviator from August 19, 1985 - September 22, 1985, subsequently extended through December 31, 1985. He was authorized to participate in yet another unspecified official mission in the United States between January 1 and November 25, 1986. In 1988 he again went to the United States for a Special Forces officer training course. Espinoza served as a point of contact for U.S. trainers and as head of the Atlacatl commando unit maintained his popularity with U.S. advisors.²⁸ According to U.S. Maj. Samuel Ramírez, who began working with Espinoza shortly before the November 1989 offensive,

[h]e was the primary point of contact that we worked with to coordinate the training for this special force. He speaks excellent English and I believe he was trained by our special forces school in Ft. Bragg, North Carolina. If I am not mistaken, he is a pilot I found out he spoke English and was pretty intelligent. He had been through our pilots course and was helicopter qualified and I know he has been to the special forces course. He is the person I went through to coordinate the training, the requirements, the bedding, the food we were going to need for the special forces team that was going to come down.²⁹

Espinoza, codenamed "Bull," faces charges of murder, acts of terrorism, planning and conspiracy to commit acts of terrorism, and acts preparatory to terrorism. While the primary evidence against Espinoza is his extrajudicial confession taken by the SIU on January 13, 1990, he was also the immediate commanding officer of the troops implicated in the killings.

Espinoza's extrajudicial confession constitutes the most complete account of the events surrounding the crime. He recounts having received the order from Benavides to eliminate Fr. Ellacuría and to leave no witnesses. According to Espinoza, Benavides assigned Military Academy Lt. Yushy Mendoza to head the operation "to make sure there are no problems." Espinoza described how he transported his troops and rounded up three patrols already in the UCA area. Inside the campus, however, Espinoza sought to distance himself from the action, claiming to have retreated from the Jesuit residence with tears in his eyes. (His troops, however, place him closer to the scene.) He further claimed to have lodged a complaint with Benavides who reassured him, "Calm down, don't worry, you have my support, trust me."

Lt. Yushy René Mendoza Vallecillos. Lt. Mendoza, 27 years old, graduated from the Military Academy with Espinoza Guerra in 1984 and went on to serve in the Artillery Brigade. On September 1, 1987 he was assigned to the Military Academy as a section leader. Mendoza accompanied Espinoza on the Salvadoran OCS course at the U.S. Army Infantry School in Fort Benning in early 1982. In 1988, he returned to Fort Benning to participate in the commando course.

²⁷ The U.S. Department of Defense acknowledged that Espinoza Guerra attended the Salvadoran Officer Candidate School course at the U.S. Army Infantry School between Jan-April 1982 and the Special Forces Officer's Course from Nov. 11, 1988 to Jan. 21, 1989 at the Special Warfare Center in Ft. Bragg, North Carolina. His service record, however, indicates considerably more training in the United States.

²⁸ From Interview Transcript of Dec 12, 1990: Interview of Maj. Samuel Ramírez, Ft. Campbell, Kentucky.

²⁹ *Ibid.*

Mendoza is charged with murder, acts of terrorism, planning and conspiracy to commit acts of terrorism, acts preparatory to terrorism, and the destruction of evidence (*encubrimiento real*) for his alleged role in burning Academy records. How investigators linked Mendoza to the crime remains a mystery, as SIU records turned over to the court provide no mention of him prior to the completion of the Honor Commission's work, when the names of the nine to be charged in the case were made public. While Mendoza, like Espinoza, denied responsibility, he provided the primary evidence against himself in his extrajudicial confession.

According to Mendoza's account, Benavides ordered him to accompany Espinoza without specifying what the mission involved. He describes witnessing Espinoza's men surrounding the building that included the Jesuit residence, conducting a search and seeing two women sitting on a bed, after which he heard a series of continuous shots. Others involved credit him with a far more active role, assigning the AK-47 rifle to Private Amaya Grimaldi and giving orders.

While Mendoza now denies having made the statements contained in his extrajudicial confession, he subsequently admitted his role in burning Military Academy records, although he claims to have done so at the orders of then Academy Deputy Director Lt. Col. Camilo Hernández and in accordance with routine practice.

Second Lt. Gonzalo Guevara Cerritos. Lt. Guevara Cerritos, 28 years old, joined the Army in 1980 but did not attend the Military Academy, instead working his way up through the ranks. He was promoted to second lieutenant at the end of 1988. He began his military career in the Air Force, subsequently serving in the Beloso Immediate Reaction Battalion from 1982 through 1988, after which he joined the Atlacatl as a section commander. From July through December 1988 he was in the United States, receiving an OCS training at Fort Benning, Georgia. At the time of the killings, he was the executive (second in command) of the Atlacatl commando unit.

Guevara Cerritos ("Lynx") faces charges of murder, terrorist acts, planning and conspiracy to commit acts of terrorism, and acts preparatory to terrorism. Along with the other lieutenants, in his extrajudicial confession he denied responsibility while admitting participation in the military operation in the UCA the night of the killings. His confession constitutes the major evidence against him. He recounts being present when Benavides gave the order to go to the UCA and told them, "Well señores, we are playing for all or nothing. It's them or us. These have been the intellectuals directing the guerrillas for a long time." In his statement to the court, he calculated that some 80 Atlacatl troops participated in the operation.

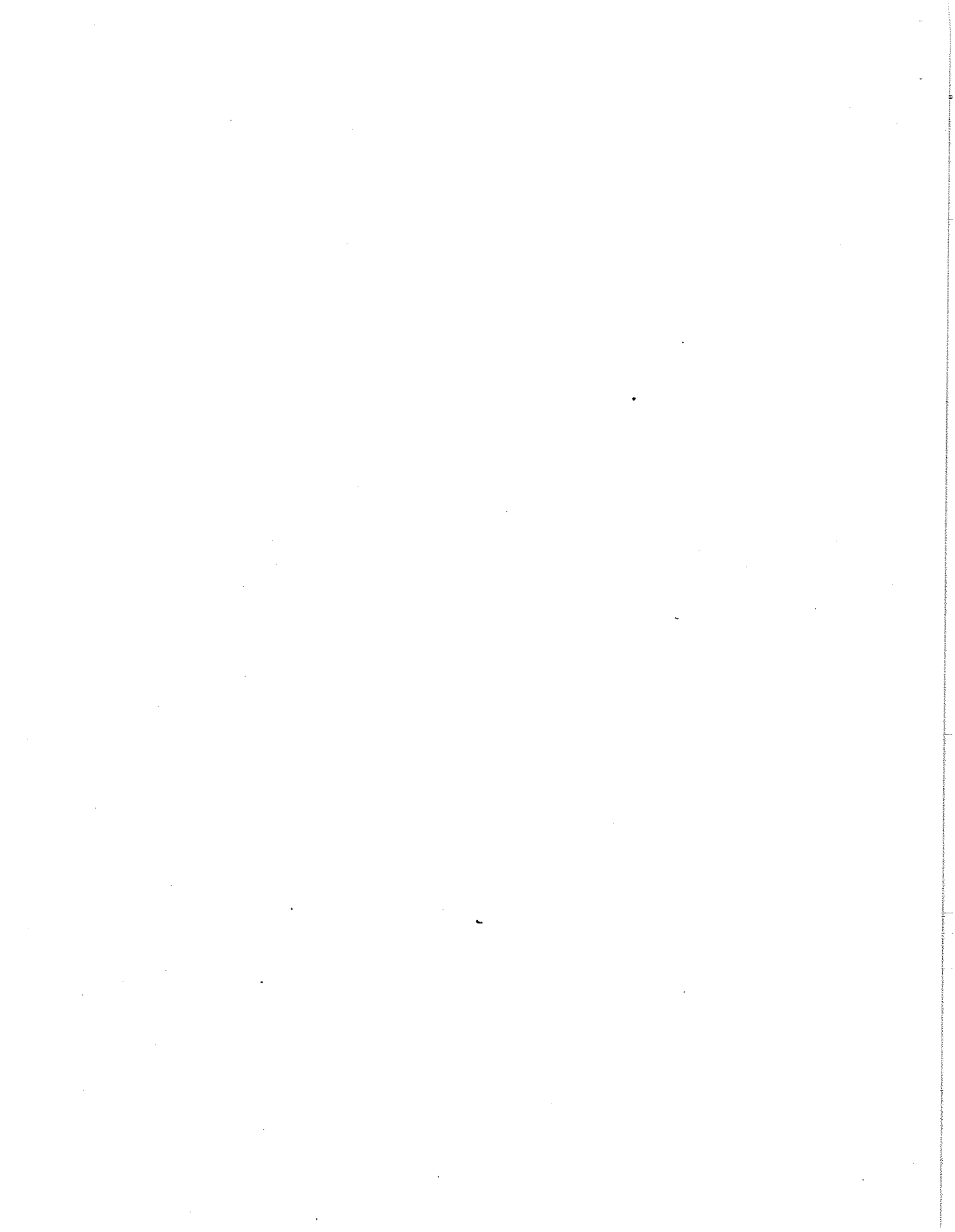
Subsergeant Ramiro Avalos Vargas. Subsergeant Avalos Vargas, 23 years old, was known as "Toad" or "Satan." He led the second patrol of the Atlacatl commandos. Two other members of his patrol are charged in the killings. He received Small Unit Management Training in the United States from September 30 to December 14, 1988. He is charged with murder, terrorist acts and acts preparatory to terrorism. In his confession to the SIU, he admitted having killed two of the priests (apparently Frs. Amando López and Juan Ramón Moreno). Following instructions from Lt. Espinoza, Avalos Vargas claims to have said to Amaya Grimaldi, who was also guarding the five priests, "Let's proceed." After the shooting, as he was leaving the area of the residence, Avalos heard groans coming from a room and told Private Jorge Alberto Sierra Ascencio to go check. When he saw two women lying on the ground, embracing and moaning, Avalos told Sierra Ascencio to finish them off, which he did. In court, Avalos Vargas, like the others, has denied that he confessed.

Subsergeant Tomás Zarpate Castillo. Subsergeant Zarpate Castillo, 30 years old, was the leader of the third patrol of the Atlacatl commandos and was known as "Samson." He is charged with murder and terrorist acts. Like the other enlisted men, he admitted his role in the crime. Specifically, he admitted in his extrajudicial confession to having shot the two women and left them for dead.

Corporal Angel Pérez Vásquez. Corporal Pérez Vásquez, 31 years old, was a member of the fourth patrol of the commandos. He is charged with murder, terrorist acts, and acts preparatory to terrorism. Like Subsgt. Avalos Vargas, he was sent to the United States for a Small Unit Training Management course in 1987. In his extrajudicial confession he admitted to shooting and killing Fr. López y López, when the priest was already on the floor (having been previously wounded by another soldier) and had grabbed his foot.

Private Oscar Mariano Amaya Grimaldi. Private Amaya Grimaldi, known as "Piliyay," 28 years old, entered the Atlacatl Battalion in 1982. He had been in the commando unit for 18 months and knew how to use an AK-47 rifle. In his extrajudicial confession, Amaya Grimaldi admitted that he was entrusted with an AK-47 by Lt. Mendoza and told that he was the "key man." With this rifle he admitted to killing Frs. Ellacurfa, Martín-Báro and Montes. He said he drank a beer in the residence kitchen afterwards and stayed around to join in shooting up the building.

Private Jorge Alberto Sierra Ascencio. Private Sierra Ascencio, 28 years, joined the Atlacatl in July 1985 and the commando unit in 1987. A member of the second patrol commanded by Avalos Vargas, he deserted in December 1989, and therefore did not give an extrajudicial statement or enter a plea in court. He will be tried *in absentia*. He is charged solely with murder, as the person who finished off the two women at Subsgt. Avalos' direction.



V. THE LEGAL PROCEEDINGS

Despite unprecedented attention given the Jesuit case, many aspects of the investigation have been slow and inadequate. Throughout this process official investigators have neglected to question key witnesses. Critical evidence has been revealed in highly unusual ways and from unexpected sources. The police and judicial investigation has in many respects been defined by events and factors outside the process. The case can be divided into six phases:

The first phase began with the crime itself, on November 16, 1989, and ended on January 2, 1990, when U.S. Maj. Eric Buckland came forward with information which led to the arrests of eight of the defendants now on trial.

The second phase occurred in January 1990, when the defendants were identified, seven from among the 47 members of the Atlacatl commando unit which entered the UCA on the night of the crime and two others from the Military Academy.

The third phase lasted from January 1990, when the arrests were made, until April 30, 1990, when the U.S. Congressional Task Force, chaired by Congressman Joe Moakley, issued its first report, sharply criticizing the lack of progress in the case and the Army's lack of cooperation.

The fourth phase, in mid-1990, was characterized by greater attempts by the court to investigate, with some limited cooperation from the military. Yet the investigation of issues of higher orders and cover-up still were not pursued. On August 15, 1990, Congressman Moakley charged that the High Command was "engaged in a conspiracy to obstruct justice in the Jesuits' case." This charge prompted President Cristiani to convene a meeting with the Army High Command, the Supreme Court president and Judge Zamora.

The fifth phase, following the meeting convened by President Cristiani with members of the Army High Command and Judge Zamora, apparently paved the way for the judge to examine key issues in greater depth. Yet because he was thwarted at every investigatory turn, Judge Zamora ended the investigation phase (*instrucción*) on December 6, 1990, elevating the case to the trial (*plenario*) stage.

The sixth and penultimate phase of this legal process consists of the plenary phase. It is during this phase that additional evidence has been admitted into the record. This phase will close in the courtroom, when the jury trial (*vista pública*) will be held.

* * * * *

Phase One: The Initial Investigation: November 16, 1989 to January 2, 1990

On January 13, 1990, President Cristiani, flanked by the Army High Command, announced on Salvadoran television that "elements of the Armed Forces" were responsible for the Jesuit killings. At that time and in many subsequent accounts, this admission was credited to the "good police work" carried out by the Special Investigative Unit (SIU). Created in 1985, the SIU is part of U.S.-AID's Administration of Justice program. A careful examination of the SIU's performance reveals a pattern of poor judgment, lack of professionalism, a failure to follow obvious leads, and an unwillingness to pursue the most sensitive aspects of the investigation. No doubt aware that it did not have a mandate to probe the crime fully, the SIU investigation lacked competence, zeal and good faith.

The court record -- which includes the SIU's own account of its work -- provides persuasive evidence that while it carried out various investigative steps, it failed to do so in a timely fashion, allowing evidence to be disturbed, removed, and even destroyed. The SIU's lapses gave military witnesses the opportunity to organize an extensive cover-up.

One graphic example was the destruction of the Military Academy's logbooks. Testifying before the judge on October 18, 1990, SIU Lt. José Luis Preza Rivas said that the SIU had planned to examine the Academy's logbooks in January 1990, but since by that time arrests had already been made, nothing was done. By late May when Judge Zamora requested the registries, it was revealed that they had been burned in December 1989.

In addition to errors such as these, the SIU failed to provide the court with a complete account of its investigation, omitting records of crucial visits and interrogations.

The Interrogation of Lucía Barrera de Cerna

One event, which took place in late November and early December 1989 in San Salvador and the United States, served to define public perceptions of the police investigation and the U.S. role in the case. Lucía Barrera de Cerna, a Jesuit housekeeper who was the first witness to provide testimony placing soldiers on the campus at the time of the murders, fled the country under the protection of the Jesuits and European diplomats. U.S. officials, who said they wished to accompany Ms. Barrera to help her through immigration procedures at Miami airport, actually turned her over to the custody of the FBI. Belatedly apprised of what had transpired, the Jesuits felt deceived by U.S. officials, who had not mentioned the possibility of FBI questioning, though they had arranged for an FBI agent to be on the plane with Barrera out of El Salvador.

The FBI submitted Barrera to four days of grueling, incommunicado questioning during which she recanted her testimony, saying she in fact had seen no soldiers that night. Broken emotionally by the experience, Barrera says she decided to tell her questioners what she thought they wanted to hear.

Also present during Barrera's questioning by the FBI was Lt. Col. Manuel Antonio Rivas Mejía of the SIU, although Barrera was not told that he belonged to the Salvadoran Army. That Rivas chose to absent himself from San Salvador in the first key days of the investigation suggested mistaken priorities and a lack of seriousness that subsequent events only reinforced. Barrera had already given a full statement before the judge, and the utility of her testimony -- relating to what she had seen during a period of less than twelve minutes -- was in fact extremely limited. Both Salvadoran and U.S. officials, however, set about discrediting Barrera's testimony and impugning her motives for testifying in the first place. The SIU, in fact, sought to prove that she had never even been in the Jesuit house from which she viewed the soldiers.

As noted in the Moakley report, the "investigation of possible military involvement began slowly."³⁰ Investigators were even slower in examining the Atlacatl and, at least according to the official record, did not consider the potential involvement of Military Academy personnel or of its director, Col. Benavides, until confronted with the colonel's role by U.S. diplomats on January 2, 1990. Two Jesuits told the court in November 1989 that the Atlacatl had searched the Jesuit residence two days before the murders, and several Security Force agents posted in the area told the SIU in the first few days that the Atlacatl had passed by their position at Democracy Tower, at one corner of the campus, at 12:30 a.m. on November 16. This means that well before the end of November the SIU had leads from a variety of sources suggesting that the Atlacatl Battalion should be investigated in connection with the crime.

Only after the Atlacatl commando unit was officially identified as the unit that carried out the November 13 search did the SIU begin to call its members for questioning. The statements emerging from these mid- to late December 1989 interviews were riddled with contradictions. While inconsistencies in testimony are not uncommon, the sheer number of significant differences in the commandos' stories suggests that they had something to hide.

In December, the SIU also interviewed members of other military units stationed in the area on the night of the killings. None admitted knowledge of the Atlacatl presence, despite the fact that several were stationed in the same unfinished apartment buildings which the killers used as a staging ground before entering the UCA.

More significant than what the SIU did, is what it did not do. The failure to question Col. Benavides prior to January 1990 is inexplicable, given that he was commander of the zone in which the university lies and had recorded shots and explosions at the UCA that night. Only one of Benavides' subordinates was questioned. The SIU apparently never interviewed then Academy Deputy Director Lt. Col. Camilo Hernández. Well-placed to know what went on in the Academy that night, Hernández was later charged with destruction of evidence.

³⁰ *Interim Report of the Speaker's Task Force on El Salvador*, April 30, 1990, at 21 [hereafter *Interim Report*].

Major Eric Buckland

In early January 1990, a U.S. military advisor assigned to work with C-5 (Psychological Operations) at the Joint Command headquarters told his superiors that he had received information implicating Col. Benavides in the assassination. According to Maj. Buckland, on about December 20, 1989, C-5 chief Col. Carlos Armando Avilés told him that Benavides confessed his role in the killings to Lt. Col. Manuel Antonio Rivas Mejía. At the time Lt. Col. Rivas was spearheading the investigation into the crime as head of the Special Investigative Unit (SIU). Buckland's statement says that "Lt. Col. Rivas was scared and did not know what to do. As a result, the investigation slowed"

Maj. Buckland's statement was no doubt vital in moving the investigation forward, but his information also has other important implications. If Col. Benavides confessed early on to SIU chief Rivas, Rivas' testimony could help convict Benavides. Further, if he failed to report this conversation to the judge, Lt. Col. Rivas would be implicated in the cover-up.

* * * * *

Phase Two: The Honor Commission: January 1990

The first two weeks of January 1990 were arguably the most decisive in the case. During that time, U.S. Embassy officials confronted the High Command with information linking Col. Benavides to the crime. It was during these two weeks that the nine current defendants were identified, and that seven of them confessed their roles in the murders to the SIU. Their extrajudicial confessions remain -- almost two years later -- the most complete account of the crime.

Unfortunately, naming the defendants represented the limits of the Army's willingness to provide information about the killings. The testimonies of scores of officers and enlisted men have added nothing to the events described in the extrajudicial confessions. Only one member of the Salvadoran military has provided any corroborating testimony, while scores of soldiers, including the defendants, have denied all knowledge of the events surrounding the killings described in the extrajudicial confessions. In many aspects of the murder -- including the key issues of who gave the order and when -- not much more is known now than what was established in January 1990. This suggests an extensive and extraordinarily successful cover-up orchestrated by the military hierarchy.

The U.S. Embassy revelation resulted in the appointment of a special Honor Commission (*Comiston de Honor*) on the case on January 5, 1990. Appointed by then-Defense Minister Rafael Humberto Larios, the Commission was made up of six high-ranking officers and two civilian legal advisors. It met with some 30 soldiers, almost all members of the Atlacatl commando unit. From the beginning, the purpose and the actions of the Honor Commission were unclear; the names of its members were not revealed to Judge Zamora until March 1990. The closest any member of the Commission has

come to describing its actions was to report that "the object of those interviews was to try to exalt patriotic values, human rights, and military values, making those involved in the act see that they had to tell the truth because the interests of the Fatherland were in danger"31

The Honor Commission concluded its work on January 12, 1990, when it presented a report to President Cristiani. He publicly announced the names of the nine defendants on January 13. How and when these names were actually obtained remains a mystery; the Honor Commission claims to have received them from the SIU, while the SIU denies having selected them. Moreover, the names of the Military Academy officers had not surfaced in the investigation prior to January 5, yet both were detained on January 8. Records provided by the SIU do not indicate that the defendants confessed their involvement in the killings, nor do they mention the Military Academy officers prior to their extrajudicial confessions on January 13 and 14.

The confusion leaves open the question of whether the defendants actually confessed their participation earlier than reported or whether the SIU received information from other sources not set forth in the record. The absence of these statements from the official case record is inexplicable and fuels suspicion that the SIU failed to investigate every suspect identified by the evidence. In retrospect it is clear that the Honor Commission played a major role in minimizing damage to the Army as an institution and in confining the case to manageable parameters.

* * * * *

Phase Three: The Military's Refusal to Cooperate: January - April 1990

Believing that their work had been successfully completed, both the Honor Commission and the SIU bowed out of the case. The locus of activity now shifted to San Salvador's Fourth Criminal Court, whose Presiding Judge, Ricardo A. Zamora, is also responsible for the practically dormant case of Archbishop Oscar A. Romero, murdered in March 1980. Judge Zamora immediately ordered that the eight suspects who were in detention be held for 72 hours, the legal inquiry period.

On January 16, the judge began taking official statements from the suspects. Col. Benavides ratified his extrajudicial statement, insisting that he first learned of the Jesuit murders from the media. He said that while he had been assigned the Atlacatl commando unit as a reserve, he gave them no orders on November 15-16.

Six of Benavides' fellow defendants declined to give statements on January 16, saying they felt ill, confused, depressed; and that they had been "pressured" while at National Police headquarters. Corporal Angel Pérez said he was kept blindfolded in a dark room and rarely fed. Subsgt. Tomás Zarpate Castillo claimed he was forced to sign a blank piece of paper and had been told that if he did not sign he would face charges for being a "delinquent terrorist," as the Army calls FMLN members. Subsgt. Antonio Ramiro Avalos Vargas likewise said his captors threatened to label him a guerrilla if he did not sign.

³¹ Testimony of Dr. Antonio Augusto Gómez Zarate, May 14, 1990.

The following day, January 17, each of these three men gave his version of events surrounding the November 13 search and his role in it. None, however, admitted to participating in the assassination, as they had done earlier.

On January 18, Dr. Zamora decreed the provisional detention of the nine defendants for the crime of murder. He based his decision on the establishment of the *corpus delicti* by the Justice of the Peace and the extrajudicial confessions of seven defendants. Lacking a confession from Col. Benavides, Zamora nonetheless found enough evidence to order his provisional detention as well. The judge based his decision on Col. Ponce's December 8 declaration certifying that Benavides had been named commander of the zone including the UCA. He also cited the extrajudicial declarations of the lieutenants, who asserted that Benavides had ordered them to kill the Jesuits.

On January 22, defense attorneys presented a motion to revoke the provisional detention order, arguing that the extrajudicial declarations were not valid proof because they were taken after the 72-hour limit following detention. On January 26, the court denied the defense's petition, finding that the 72-hour period did not begin to run until the defendants were turned over to the SIU on January 13, 1990; their earlier confinement was pursuant to the military's own investigation.

Over the next four months, the defense tried repeatedly to remove the case from Judge Zamora's court, arguing that the location of the campus dictates that the case should be heard in Santa Tecla. The attorneys apparently believed they would get a more sympathetic hearing elsewhere. The judge issued his third and final ruling on the matter in July 1990.

During the investigative phase the court encountered a series of obstacles that impeded an already cumbersome process. Witnesses, mostly soldiers, failed to appear when cited; some appeared without the necessary identification documents. Four summonses were required over the course of a month in January-February 1990 before the judge was able to question nine members of the Atlacatl commando unit who had given statements to the SIU. In one case, the Armed Forces provided the court with the wrong witnesses. Several witnesses were outside the country on military assignment, while others had been transferred or changed employment. The military's unwillingness to investigate the crime seriously was quickly apparent.

The information gathering process was further limited because high ranking government officials and military officers are not required to testify in person, but can instead answer a written questionnaire with certified sworn statements. Should this written testimony raise additional questions, a new questionnaire must be sent out.

Progress was impeded most, however, by the failure of military witnesses to disclose what they clearly knew. The record is replete with the testimony of soldiers and officers who saw nothing, heard nothing, remember nothing, and whose testimony contradicted themselves, each other, official military documents, military discipline and common sense.

* * * * *

Phase Four: The Moakley Report: May 1 to August 20, 1990

On April 30, a Congressional Task Force, chaired by Congressman Joe Moakley, published the *Interim Report of the Speaker's Task Force on El Salvador*. The publication of this report marked a turning point in the judicial investigation of the Jesuit case. The task force summarized its findings

in five points: (1) The Jesuit killings reflect an institutional problem within the Salvadoran Armed Forces and major reforms of the institution are necessary. (2) In some respects, the investigation shows "progress," in that at the outset "good police work was done." (3) Despite "good police work," arrests might not have been made if it were not for the testimony of a U.S. major who stepped forward in what proved to be a watershed event. (4) Little effort has been made to determine if Col. Benavides was acting on higher orders. (5) The investigation and preparations for prosecuting the case had come to a virtual standstill at the time of publication.³²

Based on the Moakley report's findings, Judge Zamora attempted to trace investigative leads concerning the participation of intelligence officer Lt. Cuenca Ocampo in the November 13 search, and to follow up on information provided by U.S. Maj. Eric Buckland.

In the weeks following publication of the task force's report, more witnesses appeared more promptly in court, while the quality of the information proffered remained poor. A series of steps initiated by Zamora led to significant disclosures concerning the cover-up of the crime and to questions about the SIU investigation and the Honor Commission's role.

For example, one officer, not previously linked to the crime, was charged in the cover-up. Yet no progress was made in examining the question of whether Col. Benavides was acting on higher orders. Nor did new evidence emerge against those already charged.

Illustrating the obstacles facing prosecution, four cadets who the military said were on duty at the Military Academy on the night of the killings, testified that in fact they were not on duty that night. Several months passed before Judge Zamora was able to cite those men who actually were on duty on November 15-16 and record their testimony. Those who admitted to being on duty failed to provide any useful information.

On May 29, it was reported that all the logbooks kept during 1989 at the Military Academy had been burned, allegedly on the orders of Deputy Director Lt. Col. Carlos Camilo Hernández, who had not previously been linked to the crime. Hernández was subsequently charged with "destruction of evidence."

Throughout the spring and summer of 1990, Judge Zamora continued trying to build the case against the defendants and to uncover new information that might lead to the identification of others implicated. These efforts yielded little fruit as the military consistently stalled, withheld and destroyed evidence, and repeatedly lied to the court.

³² *Interim Report*, at 6-7, *supra*, note 30.

On August 15, 1990, Congressman Moakley released another statement that proved to be a turning point in both the judicial investigation and public perceptions of Army cooperation. Moakley said that the High Command was "engaged in a conspiracy to obstruct justice," citing "withheld evidence, destroyed evidence" and perjury.³³

The High Command responded defensively, nonetheless making a gesture of cooperation just five days later. Meeting with President Cristiani, Supreme Court President Gutiérrez Castro and Judge Zamora, the officers renewed their pledge to cooperate and to make communication with judicial authorities more "agile." For his part, President Cristiani offered to appear personally in court, thereby hoping to set an example to the officer corps by waiving his privilege to submit written testimony.

* * * * *

Phase Five: August 21 to December 6, 1990

The August 20 meeting among military and judicial officials marked a new phase in the case. On the heels of the session came the first arrests of military witnesses for perjury. High ranking officers were called to testify about a meeting held at the Joint Command just hours before the assassination. And after President Cristiani set the example, five colonels waived their right to avoid a court appearance and submitted themselves to cross examination.

While these sessions were unprecedented in El Salvador, none yielded significant new evidence. Moreover, the army's show of cooperation was also short-lived; after October 2, 1990, no other officer waived his privilege to submit written testimony. Most notably, current Defense Minister René Emilio Ponce has consistently failed to follow the example set by his commander-in-chief, instead submitting four written statements to the court.

The limits of Army cooperation were graphically illustrated on August 24, 1990, when Atlacatl Sgt. Oscar Armando Solórzano Esquivel appeared before the court for the second time, contradicting key aspects of earlier testimony. Dr. Zamora immediately ordered his detention on charges of "false testimony," or perjury. Accompanied by fellow members of the Atlacatl, Solórzano fled the courtroom, escaping in a waiting vehicle. The incident was recorded by Salvadoran news cameras and figured prominently on nightly news and in the press the following day. Embarrassed by the publicity, the military apprehended Solórzano and brought him before the judge on August 28.

Like other events outside the judicial process that had a great impact on what went on in court, the August 20 meeting clearly emboldened court officials. In subsequent weeks they took steps -- albeit cautiously -- to look at the issue of whether Col. Benavides was acting on higher orders.

Despite newspaper accounts of a meeting at the Joint Command which Benavides attended hours before he allegedly ordered the killings, and rumors of the possible criminal involvement of the

³³ Congressman Moakley's statement of Aug. 15, 1990.

Vice-Minister of Defense, Col. Juan Orlando Zepeda, no attempts were made to question Zepeda or 23 other officers who attended the meeting. Finally, in September 1990, eight months after the gathering became public, these interviews were conducted. Not surprisingly, none of those interviewed revealed information that would illuminate the question of higher orders. All those who testified denied that there was any discussion of the UCA or the Jesuits during the meeting.

On September 7, 1990, President Cristiani made a surprise appearance in court, revealing that he was at Joint Command headquarters at the exact time when the murder operation was unfolding just a short distance away. He said he met with the High Command from about 10:30 or 11:00 p.m. until 12:30 a.m., when he went to the military's command center for a briefing on the military situation. Two U.S. advisors were present in the command center, Cristiani said. He left the complex about 2:00 in the morning.

On September 28, Maj. Eric Buckland flew into El Salvador for one day, testifying for six hours at the home of a U.S. Embassy official. The veracity of Buckland's account had been called into question when two Salvadoran officers denied their part in the events as described by Maj. Buckland. In San Salvador, he confirmed his account of having learned from a Salvadoran officer around December 20, 1989, that Col. Benavides had ordered the Atlacatl unit to kill the priests.

On November 16, Judge Zamora set another legal precedent in El Salvador by filing additional charges against the defendants for acts of terrorism. Never before have members of the Salvadoran Armed Forces carrying out official missions been accused of engaging in terrorist acts.

On December 6, just over a year after the murders, the judge raised the case to the plenary, or trial phase, ordering the nine defendants to stand trial on the principal charges.

* * * * *

Phase Six: The Plenary Stage: December 7, 1990 to September 1991

On December 19, defense attorneys appealed Judge Zamora's decision to try their clients on murder and terrorism charges, thereby sending the case to San Salvador's First Appeals Court.

While a decision is on appeal, no new action may be taken by the judge and no new evidence entered into the record. Despite the lack of activity in court, the case did not sit idle. On January 8, 1991, Henry Campos and Sidney Blanco, the principal public prosecutors on the case for the most of the last year, resigned in protest, saying they had been prohibited by the Attorney General from aggressively pursuing the investigation. Officials in San Salvador and Washington reacted with surprise, attempting to downplay the resignation. A series of articles followed in the press accusing the two attorneys of "a lack of professional ethics" and of being "mercenaries of justice."

On April 8, the appeals court upheld Dr. Zamora's decision to take the case to trial. One step closer to the courtroom, the family members filed habeas corpus petitions on behalf of Col. Benavides

(on April 16) and Lt. Espinoza (April 26), which were rejected by the Supreme Court in a decision applying to all the defendants on May 8.

On May 6, former public prosecutors Blanco and Campos entered their appearance in court as private prosecutors on behalf of the victims' families. In their 36-page brief the attorneys explained that their participation is "grounded in the same general concept of prosecution and with the same zeal as when we carried out these functions as public prosecutors" The document builds a case that the killings resulted from a collective criminal plan that implies institutional responsibility on the part of the Armed Forces and, quite possibly, culpability on the part of the High Command.

Because the lawyers called for a more complete investigation of the case and suggested institutional responsibility for the crime, on May 7 Gen. Ponce threatened to initiate libel proceedings against them. Col. Montano, Vice Minister for Public Security, termed them "reckless."

The eight-day evidentiary period opened on May 23 and ended on June 3. The new private prosecutors requested a series of investigatory steps, many of which were rejected by Judge Zamora. Consistent with the largely fruitless efforts throughout some 20 months of judicial investigation, testimony given during this final evidence period and written declarations provided by ranking officers contradicted one another, failed to answer outstanding questions, frustrated every attempt to learn more and contributed to the impression of a full-scale cover-up.

New Information

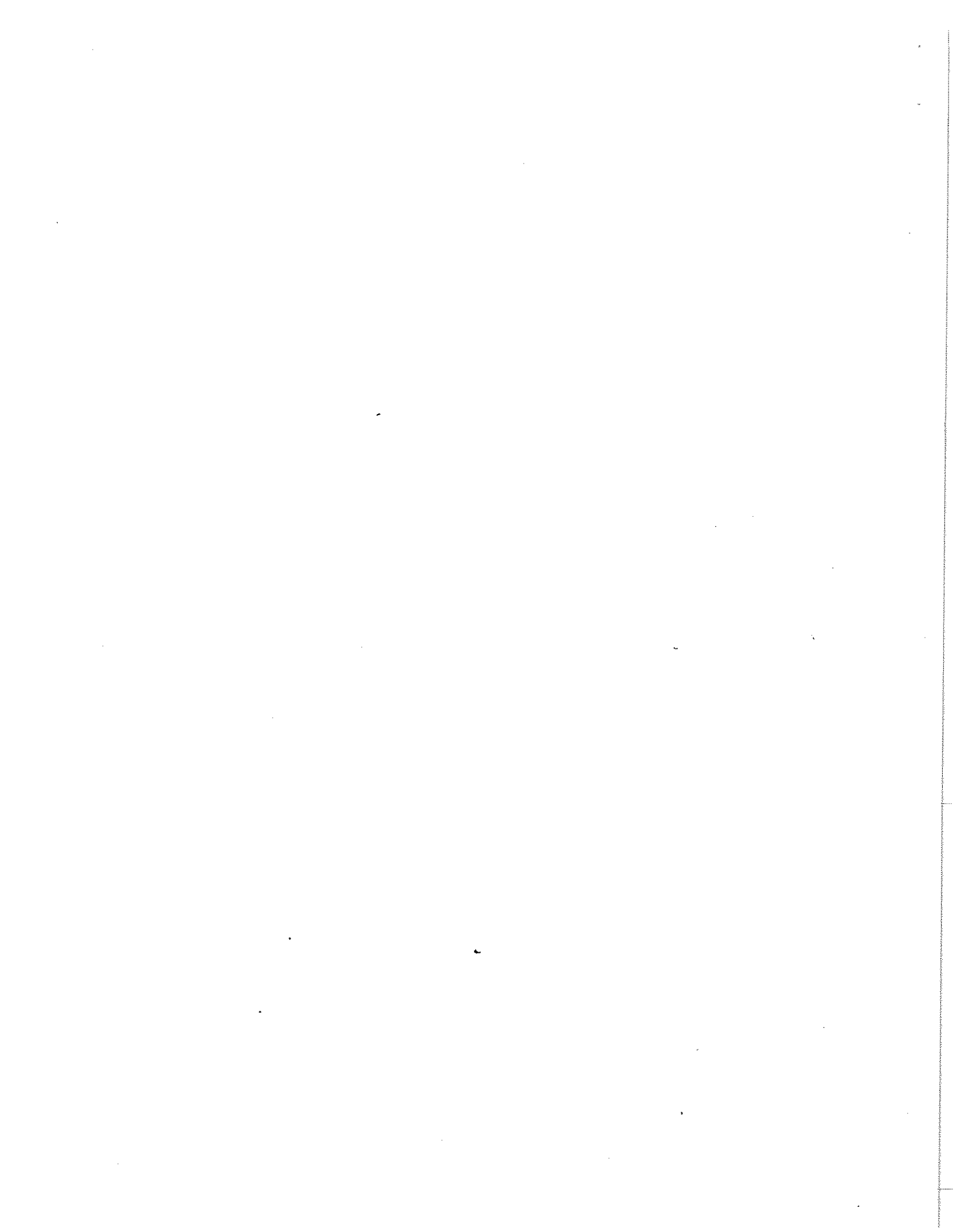
A few new pieces of information emerged during the eight days:

- News of the Jesuit murders was discussed on a closed circuit military radio frequency in the early morning hours of November 16, not on a commercial radio station as the military earlier reported. The initial report said Fr. Ellacuría had been killed resisting arrest.
- The AK-47 was not officially assigned to the Military Academy, as earlier reported, but was indeed on hand at the Academy. Logbooks provided recently to the court indicate that the AK-47s were turned over to the Honor Commission by a Military Academy officer in January and that the incriminated M-60 machinegun had been loaned to the Atlacatl troops on November 14.
- According to Gen. Ponce, Col. Iván López y López was on duty at the military's command center on the murder night. Previous questioning had failed repeatedly to establish who was on duty in the critical hours at Joint Command headquarters. Col. López y López was temporarily re-assigned to the SIU in the aftermath of the murders to oversee the unit's investigation. According to the testimony of Maj. Buckland, Col. López y López was also told early on of Col. Benavides' role and is thus implicated in the cover-up of the crime.

Letters Rogatory

Under a process known as Letters Rogatory used to collect evidence for a foreign court, ten U.S. citizens were questioned by the U.S. Justice Department. U.S. officials denied the Jesuits' request to be represented during the sessions in order to be able to pose follow-up questions. The pro-forma depositions consisted simply of a Justice Department attorney reading aloud a questionnaire to the deponent. The U.S. officials made no attempt to probe deeper, missing opportunities for follow up. For example, a U.S. intelligence advisor revealed that he at one point worked closely with Col. Benavides, yet he is not asked to expound on this. While little was revealed in these statements, they did bolster Maj. Buckland's account that he received information about Benavides' role in December 1989. The statements also confirmed that Col. Rivas, accompanied by U.S. Embassy personnel, visited Col. Benavides in the Military Academy in early December, something Rivas had denied under oath in October 1990 court testimony.

With the submission of the Letters Rogatory, the extraordinary plenary evidence period closed. The case against the ten defendants will now go to trial based on the 28 volume record of the investigation and legal proceedings.



VI. THE JURY TRIAL

The Vista Pública

Although Salvadoran criminal proceedings are conducted fundamentally in writing, many nonetheless culminate in a public trial.

The jury trial in the Jesuit case will be based largely on a summary of the court's written record, and arguments by lawyers based on that record. Thus, the evidence consists almost entirely of the written record, the relevant parts of which (the *minuta*) are summarized to the five-member jury by the judge. While witnesses may be called on to testify at the *vista pública*, this rarely happens in practice. Instead, jurors must usually base their decisions on the existing record and the arguments of the parties. Trials often last one day. However in the Jesuit case, because the record is so voluminous, and because it involves multiple victims, defendants and charges, the *vista pública* is likely to last for several days. While trials are considered public, the judge has a non-reviewable right to decree that the proceedings be closed.

The Charges

The defendants³⁴ face charges of murder; terrorist acts; acts preparatory to terrorism; planning and conspiracy to commit terrorist acts; and cover up. The first three crimes are subject to a jury trial; the remaining two will be decided by the judge after the jury has reached its verdict.

Steps Leading up to Jury Trial

The first step before the case goes to trial is the preparation of the *minuta* or summary of the evidence. The judge prepares an index to the evidence in the record which is intended to serve as the basis for the jury's decision. The *minuta* must start with evidence that establishes the existence of the crimes, followed by that referring to the defendant's participation in the crime, and, finally, evidence relevant to mitigating or aggravating circumstances. The judge also prepares a list of questions concerning each defendant's responsibility to be answered by the jury. The record in this case is contained in 28 volumes, each consisting of some 200 pages.

Insaculación y Sorteo; Selection of Jury List

The list of jurors to be called for a particular case is chosen by lot in the presence of the parties. Jury lists, based on town records, are notoriously inadequate because of the mobility -- and displacement -- of the population.³⁵

The names of the 12 potential jurors on the list are to remain secret until the time of trial: only the judge and the employee charged with citing the jurors may know the names. Despite these

³⁴ Note that not all defendants are charged with all of these crimes; for a guide to the charges against each defendant, see section IV.

³⁵ A new system for jury selection was established in the 1991 reforms to the Criminal Procedure Code; however, the revised system has yet to be implemented and will not be used in the Jesuit case, purportedly to avoid accusations of jury packing.

precautions, Salvadoran jurors have in the past reportedly been subjected to threats and are sometimes bribed by one party or the other. In criminal trials, defendants often view these kinds of extrajudicial influences as a means to obtain an acquittal.

No more than 15 days can elapse between choosing the jury list and the actual trial. Jurors who fail to appear without just cause are to be fined between 100 and 500 colones (\$12.50 to \$62.50), depending on their economic situation. Failure to pay the fine within five days of notification can result in incarceration for five to 15 days.

If at least five jurors appear on the day of the trial, the judge will reveal the case they were cited for and will read them the grounds for exclusion of jurors.

Jurors must be at least 21 years old, know how to read and write, be of "good conduct," and be engaged in a known occupation, profession, artistic endeavor or job.³⁶ The parties can challenge jurors for cause; they must do so in writing and their challenges must be based on other reasons for doubting the impartiality of the juror for which substantial evidence must be presented. The judge then determines whether there is sufficient basis to excuse the juror. Attorneys who rely on false allegations to disqualify jurors are subject to sanctions.

If more than five jurors are deemed eligible to serve, the judge picks five names by lot to determine the composition of the jury. The remainder serve as alternates, in the order that their names were picked. If only five jurors are available, no selection is necessary.

If fewer than five potential jurors are found to be eligible to serve, the jury selection process must be repeated in its entirety with a new pool of jurors. This means postponement of the trial to a later date. Salvadoran jury trials are often "frustrated" for lack of jurors; however, the current Supreme Court reports that two thirds of the juries cited this year have been successfully seated.

After the jurors are selected, they elect a president and a secretary and are sworn in. Once the jury is seated, the judge introduces the case and jurors are read the passages of the record cited in the *minuta*. The jurors may ask for explanations or clarifications of what has been read to them. If the jurors and the parties agree, the reading of the *minuta* can be abbreviated, as long as no significant portion is omitted relating to the existence of the crime, the defendant's participation in it, and the circumstances which exclude or modify responsibility.

Witnesses

The witnesses whose testimony is included in the *minuta* are to be available to testify should the jury wish to hear their testimony. The jury itself can ask that the defendants or other key witnesses testify before them. (In practice, this rarely occurs, and given the nature of the defendants and some of the key witnesses cited by the judge in this case -- Generals Ponce and Zepeda -- it seems unlikely.) The law allows the parties to present new witnesses during the jury trial if they make their request at least five days before the public trial with a list of the questions they will ask each witness. After the jury

³⁶ A series of "incompatibilities" are based on the potential juror's employment: e.g., judges, members of the military, members or employees of the security forces, certain government officials, etc. Jurors who do not meet the basic qualifications will be disqualified as will others who have some relation to the case, the victim or the parties. (*Criminal Procedure Code*, arts. 319-321, [hereafter *CPP*]).

questions each witness, the parties may also pose questions subject to a decision by the judge that their questions are irrelevant or otherwise objectionable.

Arguments of the Parties

After the reading of the record and questioning of witnesses or defendants, the "debate" period of the trial opens. The jury hears first the private prosecution, then the Attorney General's office and finally defense counsel. Each party is normally granted a period of three hours, followed by a second intervention of no more than two hours. Judge Zamora has indicated that he plans to allow six hours for the private prosecution and the Attorney General's office in the first round and six hours to the defense, followed by three hours for the two sides in the second and final round. The parties are not limited to admissible evidence in their arguments, but they may not refer to evidence outside the record. It is the judge's prerogative to determine if arguments are irrelevant and thus impermissible.

At the conclusion of the arguments the judge will turn the case over to the jury foreman along with a series of questions to be answered. In this case there will be a total of 80 questions presented to the jury. The jury will then retire to begin its deliberations and will remain sequestered until a verdict is reached. The verdict requires only a simple majority.

Sentences and Appeals

The sentence for murder (*asesinato*) is a maximum of 30 years.³⁷ Acts of terrorism are sanctioned by five to 20 years in prison, while acts preparatory to terrorism have a sentence of two to six years. The two non-jury crimes, planning and conspiracy for acts of terrorism and *encubrimiento real* have a maximum sentence of three years. Sentences are to be accumulated, however, so the maximum sentence is 30 years.

Based on the jury's verdict, the judge must issue a sentence within 30 days of the public trial. Definitive sentences of the trial court go to the appellate court in consultation even if the parties agree with them or fail to appeal, unless the sentence does not exceed three years. Appeals must be filed with the trial court judge within three days of notification of the sentence. The appellate court's ruling can be further appealed (*en casación*) to the Criminal Chamber of the Supreme Court.

The jury's verdict may be challenged through a petition for annulment if, for example, one or more votes were obtained through bribery, intimidation or violence or other irregularities in the jury process.

The Judge

In El Salvador a first instance judge performs both investigatory and sentencing functions. Fourth Penal Court Judge Ricardo Zamora has handled the case from the outset, serving as the investigating judge (*juez de instrucción*) as well as the sentencing judge (*juez de sentencia*).

He was in charge of the judicial investigation, bringing charges against the defendants, receiving

³⁷ Article 154 of the Criminal Code still includes the death penalty for the crime of *asesinato*, however. The 1983 Constitution eliminated the death penalty for virtually all crimes.

testimony and other forms of evidence, as well as making the decision to raise the case to plenary. He will preside over the jury trial. He is required by law to insure that neither side pursues issues or arguments which are "irrelevant to the establishment of truth." At the same time he is bound to insure that he does not suppress the legitimate exercise of the prosecution and the freedom of the defense."³⁸ After the jury's verdict, if any of the defendants are convicted the judge imposes a sentence. He also issues his own verdict on the non-jury offenses.

The Attorney General's Office

The *Fiscalía General de la República* is mandated to prosecute all criminal and civil actions in the public domain. Historically the Attorney General's office has been highly politicized. Not surprisingly, its performance in the Jesuit case has been weak. In the initial stages of the proceedings the prosecution role was limited. At one stage it attacked the role of the Archdiocese's legal aid office, *Tutela Legal*, and joined with the defense in its effort to have the case transferred to another court.

The current attorney general who took office in June 1990, Dr. Roberto Mendoza Jérez, has yet to involve himself in the Jesuit case proceedings. At least eight prosecutors, headed by Lic. Eduardo Pineda Valenzuela in the human rights division of the *Fiscalía*, will be present at the jury trial.

On January 8, 1991, the two lead prosecutors on the case resigned, charging that the attorney general had blocked their attempts at further investigation of the case, especially at efforts to examine the SIU's work and higher-ups who might have participated in the crime. The attorney general sought to downplay their resignations, asserting that they left for "personal reasons." Subsequently, the Salvadoran press published a series of unfounded accusations against the two former prosecutors, suggesting that they had resigned for economic or political reasons.

Henry Campos and Sidney Blanco charged that they had been ordered not to ask for perjury charges against any other soldiers after three were charged in late August and early September; that they were forbidden from giving statements to the press in early October 1990; that they were instructed either not to attend or not to cross-examine the testimony of SIU officers in October. Following their resignation, the *Fiscalía* has played a passive role in the case. To cite one example, during the eight-day evidentiary period of the plenary phase the *Fiscalía* did not request a single witness.

The Private Prosecution

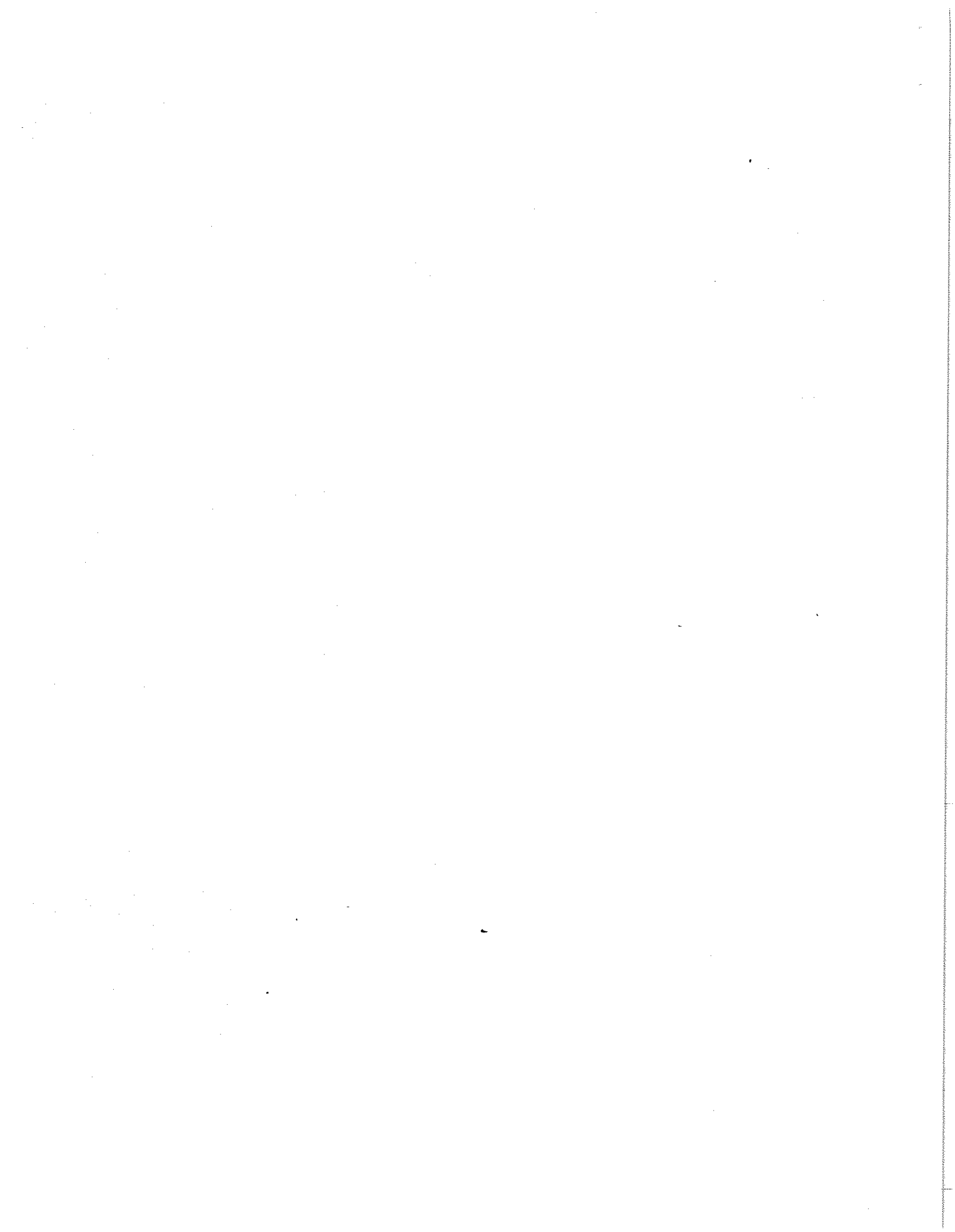
In late January 1991 former public prosecutors Sidney Blanco and Henry Campos were hired by the Central American Province of the Society of Jesus to represent the family members of the victims. They entered their appearance in court as private prosecutors on May 6, 1991, and filed a 36-page brief which describes the victims, their lives and work and argues that the UCA murders did not occur in isolation. The private prosecutors presented two hypotheses of higher-up involvement, arguing that the killings might have been an officially authorized massacre or the result of a collective criminal plan of certain members of the Armed Forces. In either case they argued under Salvadoran and relevant international law that the Armed Forces bore institutional responsibility for the crime.

³⁸ CPP, art. 340. 6.

Lawyers for the Defendants

When the defendants were consigned to court, several attorneys promptly appeared to represent them. The defense team consists of Dr. Carlos Alfredo Méndez Flores, who was the lawyer for Col. Francisco Morán, the head of the Treasury Police in the early 1980s, Dr. Raúl Méndez Castro, Dr. José Adalfredo Salgado, and Joaquín Eulogio Rodríguez Barahona. Because the defendants are not in a position to pay the legal costs involved, it is likely that these expenses are being paid for by the Armed Forces. According to the *Miami Herald*, "Influential military friends of Benavides have been meeting regularly to raise legal funds and map out a strategy . . ." ³⁹ The defense repeatedly sought to transfer the case to a different judge. To date, defense counsel have presented no witnesses and virtually the only evidence they have added to the record consists of two attacks against the popular church and the Jesuits in El Salvador, linking both to the guerrilla movement. The service records of the officers charged in the case were added to the record at the defense attorneys' request.

³⁹ *Miami Herald*, Feb. 23, 1990.



VII. UNRESOLVED ISSUES: HIGHER ORDERS AND COVER-UP

Anyone who is at all familiar with the facts in the Jesuit case must conclude that the murders reflect problems within the Salvadoran Armed Forces that go far beyond the actions of a particular unit on a particular night. They reflect problems that are deeply embedded in the Armed Forces as an institution.

Congressman Joe Moakley
November 13, 1990

Two key issues in the Jesuit case have not been fully investigated: first, whether there were "higher orders" to kill the priests, and second, who participated in a cover-up of the crime. Extensive circumstantial evidence points to the existence of higher orders, as well as to the existence of a cover-up. Both issues demand close attention and a thorough investigation and prosecution by Salvadoran authorities. Neither issue is being addressed satisfactorily in the current trial.

Higher Orders

What we know of the crime indicates that it was planned and carried out within the military command structure, using forces that were officially assigned to Col. Benavides shortly before the murders. The facts strongly suggest that others within the command structure had prior knowledge of the crime or were involved in planning it.

On the evening of November 15, 1989, 24 senior military officers met at Joint Command headquarters to discuss how they should be responding to the FMLN's military offensive.⁴⁰ One of the participants described the meeting to a newspaper reporter as "the most tense and desperate gathering of the country's top military commanders since the war against leftist insurgents began a decade ago."⁴¹

Ponce, who was then head of the Joint Command, told the Lawyers Committee that the meeting began at 7:30 p.m. and was called "to analyze the positions we had lost since November 11. We analyzed what we needed to do to regain them. We understood that we needed to take stronger measures."⁴²

According to participants at the meeting, several decisions were taken, including one to intensify aerial bombardments against the guerrillas. There was also some discussion of eliminating FMLN "ring leaders" and "command posts."

Later that same night, according to several sources, a second, smaller meeting was convened. One person who has described that second meeting is Col.(Ret.) Sigifredo Ochoa, once a top field commander and now a senior official in ARENA. When asked in January if Col. Benavides was acting

⁴⁰ Among those who attended the meeting were the Minister of Defense, the two vice-ministers of defense, commanders of all the units in the metropolitan areas, the commanders of special security zones set up during the offensive, Security Force chiefs, the head of the military press office (COPREFA), members of the Joint Command and its chief, Col. Ponce.

⁴¹ *San Francisco Examiner*, Feb. 5, 1990

⁴² Interview with Col. René Emilio Ponce, Feb. 14, 1990. Other participants in the meeting have said it started at 6:30 p.m.

alone, he told *Agence-France Presse*, "[t]his action involved much higher officers."⁴³ In April, Col. Ochoa elaborated on what he had said in an interview on the U.S. television program *60 Minutes*. According to Col. Ochoa, it was at the second, smaller meeting on November 15 that Col. Benavides was given an explicit order to kill the Jesuits. Col. Ochoa said that, following the first meeting, "A group of commanders stayed behind. It seems each was responsible for a zone in San Salvador. They gave the order to kill leftists, just as Col. Benavides did. I'll say it again. Benavides obeyed, it wasn't his decision."⁴⁴

When asked if Col. Benavides would have been capable of ordering the Jesuit murders, Ochoa replied: "No, I don't think so. Knowing him, he's a man who could never take or even conceive of making a move as big as assassinating the Jesuits. Benavides acted under orders. He didn't act alone."⁴⁵

On May 3, 1990, an anonymous group of young officers in the Salvadoran military wrote a public letter supporting Col. Ochoa's assertion. In their five-page communique, they refer to the Jesuit case, saying, "The Ochoa case should be considered more carefully; his position is supported by many young officers, and also by some of our superiors. He has said something which many of us cannot express because we would be punished."⁴⁶

According to Argentine Col. (Ret.) José Luís García, an expert witness who testified on how military structures work within a top security zone, it is simply not possible for Col. Benavides to have acted on his own, and in the extremely unlikely event that he had done so, a whole series of reactions would have automatically come into play. None of them did.

These and other elements of circumstantial evidence have never been pursued. Neither the SIU nor the Attorney General's office have made any attempts to conduct an aggressive investigation of the issue of higher orders. To the contrary, both bodies have acted to limit the scope of the investigation as much as possible.

One piece of circumstantial evidence may link General Ponce to the crime; at a minimum it indicates that he had some prior knowledge of Col. Benavides' criminal intentions. This evidence is contained in a statement made by U.S. Army Major Eric Buckland, who was stationed in El Salvador at the time of the murders. Maj. Buckland's statement was taken on January 11 and 12, 1990 by the FBI. In it he says that in late October or early November, 1989, he was told that Col. Benavides wanted to kill the priests. He learned this on a visit to the Salvadoran Military Academy, with Col. Carlos Armando Avilés. Col. Avilés went to the Academy to meet with Col. Benavides. Avilés told Buckland that then-Col. Ponce had sent him to "solve a problem with Col. Benavides." Avilés told Buckland that Benavides "wanted to do something about the priests and things coming out of the UCA." According

⁴³ Paris AFP in Spanish 2112 GMT, Jan. 12, 1990, as reported in Foreign Broadcast Information Service, *Daily Report* (Latin America), Jan. 16, 1990.

⁴⁴ *60 Minutes* (CBS News, April 22, 1990).

⁴⁵ *Ibid.*

⁴⁶ See Open Letter from the Movement of Young Officers "Domingo Monterrosa Vive" to the President of the Republic and Commander in Chief of the Armed Forces, May 3, 1990, in *Diario Latino*, May 4, 1990.

to Maj. Buckland's statement, Col. Benavides told Avilés that "Ella Coria [*sic*] was a problem." In his January 11, 1990 affidavit, Buckland said "Avilés told me they wanted to handle it in the old way by killing some of the priests."

One week later Maj. Buckland recanted his statement. He said,

I do not recall and am not aware of any specific information regarding any proposed threat to or attack on the University of Central America, including any of the Jesuit priests prior to the incident on November 16, 1989. I wish to specifically retract information or comments or statements made to FBI agents last week to that effect.⁴⁷

On September 28, 1990, Maj. Buckland was questioned by Judge Zamora in San Salvador under conditions imposed by the State Department. These conditions included a grant of only a limited waiver of diplomatic immunity and a prohibition of any questioning by the judge about Maj. Buckland's activities after he returned to the United States in January, 1990. The latter limitation is significant because the U.S. government did not provide Maj. Buckland's two January affidavits to the court for ten months. In fact, they only came to light on October 18, 1990, when Congressman Joe Moakley revealed their existence. Both statements are now part of the court's record, as is a subsequent statement by Maj. Buckland taken on August 7, 1991 in response to a letter rogatory from the court. In that statement, Maj. Buckland repeats that he had no prior knowledge of the crime, explaining that he "felt there was a lot of pressure, and I ended up saying a lot of things at that time that I -- that were not true."

There are important points regarding Maj. Buckland's declaration. First, the fact that he has recanted part of his testimony does not mean that it is not true. The standard practice of law enforcement investigators is not to accept a recantation as truthful without further inquiry. The Salvadoran investigators have never pursued this type of inquiry. Second, Maj. Buckland's January 12 statement was videotaped by the FBI. Judge Zamora requested the videotape, but it was never provided to the court. Instead, the Embassy provided Zamora with a transcript. The failure of the U.S. government to comply with this request for evidence raises further suspicions about the manner in which Maj. Buckland's situation has been handled. If Maj. Buckland's assertion about having prior knowledge of the crime is true, then the head of the Joint Command of the Salvadoran Armed Forces also had prior knowledge of a threat against the Jesuits several weeks before they were killed. Yet, as commander of the Armed Forces, he had direct responsibility for assigning Col. Benavides to command the military zone where the Jesuits lived and worked. The implications of this are so serious that a full and expeditious investigation of this point is crucial.

Maj. Buckland's assertions are particularly troubling in the context of a series of events which indicate broad institutional involvement by the Armed Forces in the killing of the Jesuits. Consider these facts:

- On November 13, two days before the murders, the Army conducted a search of the UCA, allegedly looking for guerrillas and their weapons. The search was authorized by then-Joint Command Head Ponce, with the approval of then-Defense Minister Larios and President Cristiani. The approval of the defense minister and president indicates the delicacy of this operation.

⁴⁷ Eric W. Buckland's January 18, 1990 statement to FBI made at Ft. Bragg, North Carolina.

- The purported search was very superficial and the soldiers refused an invitation from Fr. Ellacurfa to return the next morning to examine the campus in daylight. The most plausible explanation for the search of the Jesuit residence is that the troops were sent to verify Fr. Ellacurfa's presence at the UCA and to reconnoiter the residence and the CRT.
- Extensive military records which have been provided to the court fail to document either that the search took place or the reasons for it.
- It may be significant that although the search took place at about 6:30 p.m., according to several eye-witnesses, it was not formally authorized until 8:50 p.m. the same evening. This discrepancy certainly deserves further investigation.
- One officer who was at the Joint Command headquarters on the night of the murder has testified that,

When those explosions were heard, there was grave concern in the Armed Forces Joint Command; likewise there was concern that the nerve centers of the Armed Forces, for example, the Joint Command or the Defense Ministry might be under attack.⁴⁸

Despite these "grave concerns," no-one from the Joint Command headquarters made any attempt to find out what was happening at the UCA -- less than one mile away.

Another unexplored aspect which may shed light on the military's institutional involvement concerns the role of the DNI (National Intelligence Directorate), whose offices are adjacent to the Military Academy. According to the court record, a DNI agent participated in the search of the Jesuit residence on the night of November 13. Later that night Atlacatl commandos helped repel an FMLN assault against DNI headquarters. According to the testimony of one intelligence officer, on November 14, the DNI loaned five MX radios to the Security Command. Another DNI agent who provided testimony to the judge in this case said he visited the Military Academy regularly in order to get his daily "password." None of these leads has been pursued adequately, and the role of the DNI with regard to the crime remains a mystery.

Finally, the very nature of the operation to kill the Jesuits strongly suggests institutional involvement by the military at a very high level. This was not a crime carried out by an ad hoc group of military people or a clandestine death squad. It was carried out by a large military force in the city of San Salvador, operating under a formal command structure, using forces that were formally assigned to Col. Benavides by the Armed Forces Joint Command. Considered together, the evidence suggests the very real possibility that the murder of the priests was ordered at a higher level than Col. Benavides. Such evidence must be investigated.

⁴⁸ Testimony of Col. Carlos Armando Avilés, Fourth Criminal Court, Oct. 30, 1990.

Cover-up of the Crime

A second, closely related issue concerns who participated in a cover-up of the crime. The cover-up clearly began immediately after the murders were committed, a conclusion to which virtually everyone familiar with the case subscribes. In August 1990, Congressman Joe Moakley concluded:

I believe that the High Command of the Salvadoran Armed Forces is engaged in a conspiracy to obstruct justice in the Jesuits' case. Salvadoran officers have withheld evidence, destroyed evidence, falsified evidence and repeatedly perjured themselves in testimony before the judge. I do not believe this could be done without at least the tacit consent of the High Command.⁴⁹

Part of the murder plan was for the commandos to feign combat with the FMLN, hoping to implicate the guerrillas in the murders, and to hide the shooting amidst the combat going on throughout the city. The army set out to implicate the FMLN from the moment the crime was committed. The Joint Command's log for November 16 includes an entry for 12:30 a.m. saying that "delinquent terrorists used grenade launchers . . . damaging the [UCA's] theology building . . . without any casualties reported." Another later entry attributes the assassination to "D/Ts" short for "delinquent terrorists," a term used by the Army when referring to the FMLN.

On December 12, 1989, Col. Inocente Orlando Montano, Vice-Minister of Public Security, said that "[i]t is inconceivable that any member of the Armed Forces should choose to kill innocent religious citizens and their staff in cold blood." Several other military and civilian officials also made statements explicitly implicating the FMLN. In December, Col. Ponce provided two false intelligence reports to the court -- both of which implicated the FMLN in the crime.

On December 9, 1989, President Cristiani also commented publicly on the case, announcing at a news conference that an eyewitness, Lucia Barrera de Cerna, was lying when she said that soldiers were at the UCA when the crime occurred.

A month later, on January 7, 1990, President Cristiani finally announced that "elements of the Armed Forces" were involved in the crime. Yet even after coming to this conclusion, he failed to provide needed leadership, or to cooperate in a manner that would advance a thorough investigation. Several examples illustrate this point:

- President Cristiani waited five months before providing the court with a written report by the military Honor Commission. The Commission recommended that formal charges be filed against the nine defendants now on trial. President Cristiani did not volunteer that he had the Honor Commission's report until a witness told the judge that the report had been submitted to the president and the judge formally requested it.
- On July 12, 1990, President Cristiani told reporters that guerrilla weapons had been found at the UCA when a search was conducted on November 13, 1989. In fact, no weapons were found, a point Mr. Cristiani first officially acknowledged in June 1991, almost a year later.

⁴⁹ Statement by Congressman Joe Moakley. Aug. 15, 1990.

In connection with that search, President Cristiani did not admit that he had authorized it himself until July 1990, despite wide speculation as to who had done so.

- It was not until September 7, 1990 that President Cristiani told the court that he was at the Joint Command headquarters on the night the Jesuits were murdered. He told the court that he was briefed on military operations at about 12:30 a.m. In the COCFA were also two or three U.S. military advisors, the president said.
- Finally, President Cristiani failed to disclose the information provided by U.S. Maj. Eric Buckland, although he personally viewed Buckland's videotape in late January or early February 1990. The existence of these statements was not known publicly or by the court until October 1990. A memo by the Moakley task force observes that President Cristiani "did not suggest that the videotape, or accompanying statements, be made available to the judge."

The President's failure to carry out his responsibilities has only exacerbated the deficiencies in the investigation.

Most of those officially charged with investigating the crime have shown a remarkable lack of determination to learn the truth about how the crime occurred and who was responsible. The performance of the Special Investigative Unit (SIU) in particular has been characterized by incompetence, bad faith and an apparent desire above all to limit the scope of the investigation. Consider these actions on their part:

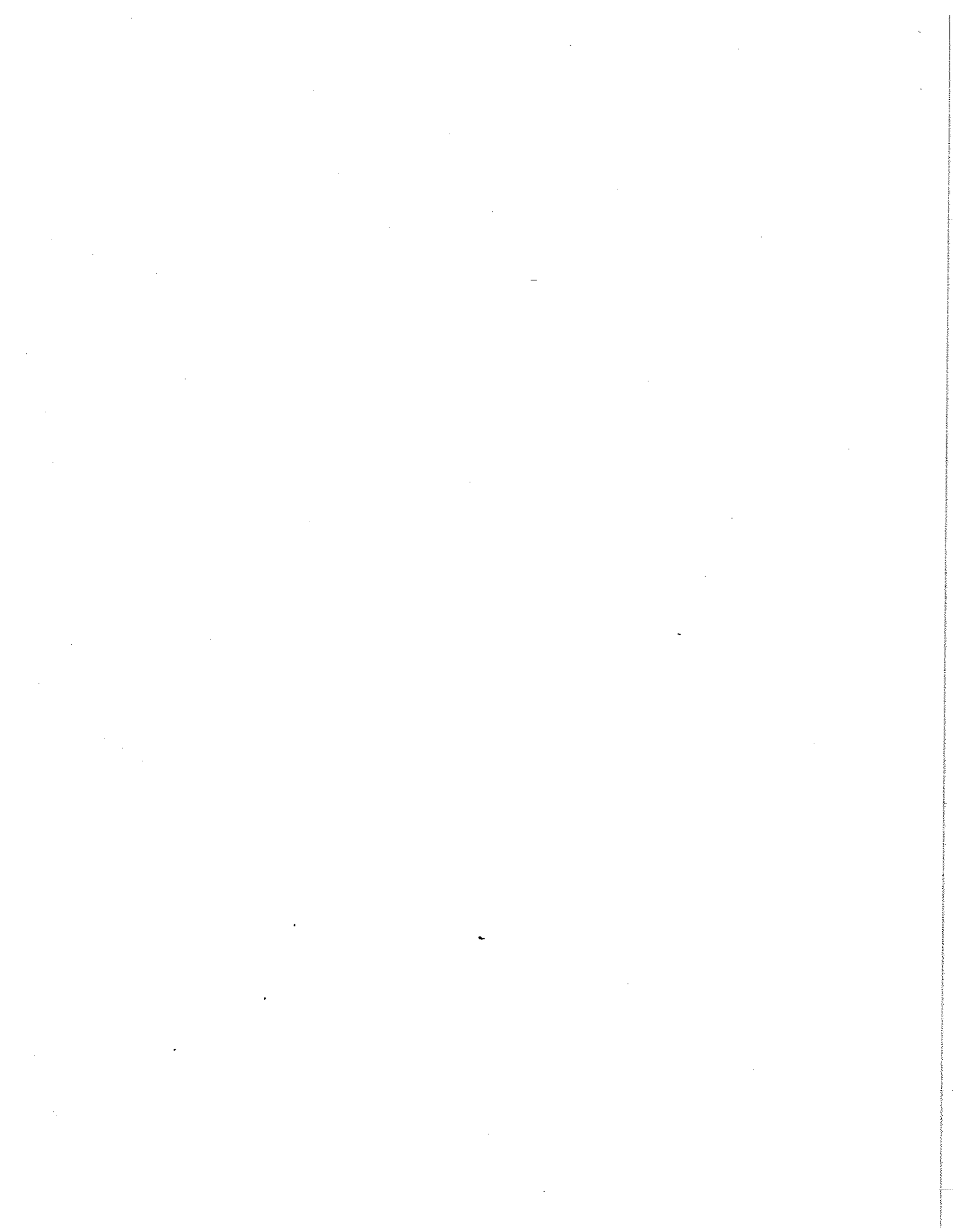
- On November 17, 1989, the SIU interviewed two police witnesses. Both men reported seeing tanks and troops from the Atlacatl Battalion pass by near the UCA around midnight. These interviews were not included in the SIU's own summary of the case and not pursued for almost a month. When the SIU returned to take formal statements, one of the policemen "did not remember" seeing either tanks or troops, the other "saw nothing." Neither mentioned the Atlacatl.
- The SIU failed to formally interview the man who commanded the military zone where the UCA is located, Col. Benavides, until early January 1990, a month and a half after the crime.
- According to the testimony of a U.S. Embassy official, the head of the SIU, Lt. Col. Rivas Mejia, visited the Military Academy in early December to obtain information about the location of troops. This visit was not included in the SIU's official record of the investigation. Testifying in October 1990, Col. Rivas denied visiting the Military Academy at all in December.
- The SIU failed to secure Academy logbooks in a timely fashion, giving the Army time to burn this potentially important evidence.

The conclusion is inescapable that members of the Salvadoran Armed Forces have participated in an ongoing and extensive cover-up of the crime. Military witnesses have refused to testify, blatantly lied under oath, destroyed evidence, and otherwise sought to impede progress in the case. Scores of

soldiers who were at or near the crime scene claim to have heard and seen nothing.

Four soldiers were formally charged in relation to the cover-up, including one officer, Lt. Col. Carlos Camilo Hernández, who has been charged with "destruction of evidence" for ordering the burning of the log books from the Military Academy in December 1989.

The criminal prosecution of Lt. Col. Hernández and the others is a positive first step, but it is only that. Hundreds of soldiers and officers lied in court, yet only three were charged with perjury. Clearly a great deal remains to be done to investigate the full cover-up of the Jesuit murders.



VIII. THE U.S. ROLE AND U.S. HUMAN RIGHTS POLICY

Over the nearly two years since the Jesuits were killed, the role of the U.S. government has been critical and contradictory. U.S. officials have simultaneously pressed the Salvadorans for a speedy resolution of the case and taken measures to impede such an outcome.

That the murders occurred at all demonstrates the failure of U.S. human rights policy. According to the State Department, U.S. human rights policy had succeeded in educating a so-called "New Army" respectful of civilian lives. U.S. officials have consistently argued that the more U.S. training for Salvadoran soldiers, the more they will comply with international human rights and humanitarian law standards. After the killings the Pentagon told the Moakley task force that "[h]uman rights issues have been and continue to be a central issue in the U.S. military efforts in El Salvador. The very presence of U.S. military advisors is a reminder to the Salvadoran Armed Forces of the U.S. Government's commitment and insistence on human rights."⁵⁰

Yet eight of the nine men now on trial for the murders had received U.S. training. Lt. Espinoza, the officer who led the murder operation, was a product of U.S. training and was close to U.S. advisors and reportedly also some Embassy staff.⁵¹

Within a week of the murders, a series of incidents surrounding the treatment of Jesuit housekeeper Lucía Barrera de Cerna set the stage for how the State Department and the U.S. Embassy in San Salvador have handled the case, as well as how their performance is viewed by those following the investigation.⁵² After she came forward with eyewitness testimony in San Salvador, the State Department and FBI subjected her to several days of interrogation in Miami in which she was not given an opportunity to consult with or obtain counsel from any priest, lawyer or other person she knew. Eventually she broke down and changed her story. The State Department's handling of Ms. Barrera had the effect of undermining and potentially discrediting her testimony, as well as effectively dissuading other eyewitnesses from coming forward.

At the highest level, Washington has repeatedly stated its commitment to pursue the investigation wherever it may lead. Yet Washington's reluctance to pursue leads involving U.S. personnel calls this commitment into question. Consider the following:

- Those charged with murdering the Jesuits participated in a training course taught by U.S. Green Berets up until a few hours before the search of the Jesuit residence and two days before the assassination. Almost two years after the crime, these Special Forces have still not been questioned. The testimony of another U.S. trainer, Samuel Ramírez, was belatedly added to the court record in June 1991. Ramírez revealed that he worked closely with one of the defendants, Lt. Espinoza. Further, he said that without authorization the Jesuits' killers took with them to San Salvador night vision equipment

⁵⁰ See Appendix C of *Interim Report*, *supra* note 30.

⁵¹ See section IV on defendants.

⁵² On Lucía Barrera de Cerna, *see supra* page 26.

belonging to the U.S. team.

- Under the U.S. Freedom of Information Act the Society of Jesus has requested all documents pertaining to the case. Although the U.S. government has now generated thousands of documents, only a small portion of those documents has been made available to the Jesuits and few of them have been useful. At one stage, the National Security Agency provided eleven documents, all copies of articles from daily newspapers. Several federal agencies admit to having documents classified TOP SECRET or SECRET, but are withholding them on "national security grounds."
- In August 1991 when ten U.S. citizens, including Maj. Buckland, answered a series of written questions under the Letters Rogatory process, U.S. officials refused the Jesuits' request to be represented by legal counsel. Their refusal seriously reduced the utility of this exercise.

* * * * *

Jesuit Provincial Fr. José María Tojeira recently emphasized that the upcoming jury trial "is not the most important event in the case: the most important moment occurred when it was demonstrated that individuals involved in the killings remain free with command positions in the Armed Forces."⁵³

If a jury is successfully seated and the nine defendants are actually convicted, the case will still not be over. Fr. Tojeira has characterized the upcoming trial as a potentially positive step, but emphasized that when it is completed, justice will be only partially served, with much work still to be done. He emphasized that "the Society of Jesus reserves its right to continue demanding the full truth; the trial does not mean the full truth."

As the Jesuit Provincial wrote in the *Los Angeles Times*⁵⁴:

Resolution of the Jesuits' case has taken on increased importance in light of hopeful signs that U.N.-mediated peace talks may bring an end to a decade of war in El Salvador. Only by establishing the truth can justice be done, the first step toward reconciliation for El Salvador's bitterly divided people.

⁵³ Press Conference, Sept. 6, 1991

⁵⁴ *Los Angeles Times*, April 26, 1991

Appendix A

ACRONYMS

AK-47	Automatic assault rifle often used by the FMLN.
ARENA	<i>La Alianza Republicana Nacionalista</i> , the party currently in power, founded by Maj. (ret.) Roberto D'Aubuisson.
Atlatl	An elite, immediate reaction battalion (BIRI), recipient of considerable U.S. training. Seven of its members are on trial for the murders at the UCA.
BIRI	<i>Batallón de Infantería de Reacción Inmediata</i> , a rapid-reaction infantry battalion; generic name for several elite battalions, among them the Atlatl, Belloso, Bracamonte, etc.
CEBRI	<i>Centro de Entrenamiento de Batallones de Reacción Inmediata</i> , Training Center for the BIRIs, adjoining Atlatl headquarters in La Libertad.
CH	<i>Comisión de Honor</i> , the Honor Commission.
CIDAI	<i>Centro de Investigación y Documentación de Apoyo a la Investigación</i> , a social research center at the UCA, publisher of <i>Proceso</i> .
CIHD	<i>Comisión de Investigación de Hechos Delictivos</i> , Special Investigative Unit (SIU).
CIN	<i>Centro de Información Nacional</i> , the governmental National Information Center.
COCFA	<i>Centro de Operaciones Conjuntas de la Fuerza Armada</i> , a command center at Joint Command headquarters.
COPREFA	<i>Comité de Prensa de la Fuerza Armada</i> , the Armed Forces press office.
CRT	<i>Centro de Reflexión Teológica</i> , the Romero Theology Center at the UCA, also known as the Pastoral Center; building where the priests and women were killed and which was heavily damaged during the murder operation.
DNI	<i>Dirección Nacional de Inteligencia</i> , a Salvadoran intelligence service.
D/T	<i>Delincuentes terroristas</i> , delinquent terrorists, the usual tag employed by the Armed Forces to name members of the FMLN.
ECA	<i>Estudios Centroamericanos</i> , the UCA's major academic journal, published ten times a year.
EMCFA	<i>Estado Mayor Conjunto de la Fuerza Armada</i> , the joint chiefs of staff.

Status of the Investigation of the Jesuit Murders in El Salvador, April 12, 1990.

El testimonio de Lucía Cerna: algunas sombras judiciales en el caso de los Jesuitas, PROCESO 413, 10 de enero 1990. (Resumen en Español del informe de Lawyers Committee)

The Jesuit Murders: A Report on the Testimony of a Witness, December 15, 1989.

These reports are available from the Lawyers Committee for Human Rights (330 Seventh Avenue, 10th Floor, New York, NY 10001; 100 Maryland Avenue, Ste. 502, Washington, DC 20002; c/o IDHUCA, Apdo. (01) 168, San Salvador, El Salvador, Central America; telephone: (503) 24 00 11 ext. 185).

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