

THE CHURCHWOMEN MURDERS:
A REPORT TO THE SECRETARY OF STATE

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INTRODUCTION

In the early days of December, 1980, four American churchwomen, Ita Ford, Maura Clarke, Dorothy Kazel and Jean Donovan, disappeared and were later found murdered in the Central American Republic of El Salvador. Occurring at a time of increasing concern about the growing violence in that country, the killings and the resulting criminal investigations have provoked intense interest, frequent frustration and occasional dismay in the United States as the citizens of this country have observed the workings of the Salvadoran justice system as it first investigated, and eventually sought to prosecute, those responsible for the killings.

From the outset, the handling of the case by Salvadoran authorities has been caught up in Congressional deliberations about the larger questions of American military, diplomatic and economic involvement with the Republic of El Salvador. But many of the questions, in Congress and out, focused on this case: Have the true killers been identified? Were higher-ups involved? Was there an attempt to cover-up the crime or conceal the murderers? Do the Salvadoran authorities have the will and the capacity to

handle the prosecution of this and similar crimes of violence involving members of the security forces?

By the spring of 1983, five National Guardsmen had been accused of the crime, but their detention for over two years did not make the prospect of a speedy trial seem propitious. Increasingly, members of Congress, the families of the murdered churchwomen and other citizens asked with legitimate concern whether the Salvadoran government was serious about prosecuting the responsible parties and whether the United States was doing as much as it could to encourage the prosecution.

On April 26, 1983, the Secretary of State reported to the Chairman of the Foreign Operations Subcommittee of the House Appropriations Committee that he had directed an "independent and high-level review of all the evidence available to the United States government pertaining to the churchwomen's case."^{1/} By a letter dated May 23, 1983, Deputy Assistant Secretary of State for Inter-American Affairs James H. Michel, on behalf of the Department of State, requested that I conduct this review.^{2/} Mr. Michel, and thereafter, the Deputy Secretary of State, Kenneth Dam, pledged the full cooperation of all concerned Federal agencies.

Together with my colleagues, Togo D. West, Jr. and Gregory L. Diskant, I have reviewed the evidence. In the

process, we have received the cooperation that was pledged to us. Since May, we have had access to pertinent State Department files, both classified and unclassified, including the numerous cables that had been transmitted between the State Department and the United States Embassy in San Salvador on this matter. We have had similar access to the classified and unclassified files of the Federal Bureau of Investigation (FBI), and of other pertinent agencies as well. No documents necessary to our inquiry have been withheld from us.

We have talked extensively with present and former government officials of both countries who have been involved in the various investigations of this unfortunate tragedy: The State Department and the Federal Bureau of Investigation have been especially helpful in bringing their personnel from locations far removed from the cities of Washington, D.C. and New York, our principal bases of operations, for whatever interviews we have deemed necessary. Our discussions have included interviews with personnel presently assigned to the United States Embassy in San Salvador and with those who were assigned to that Embassy during the time of the earlier investigations into the murders. We have consulted with Salvadoran prosecutors, with Salvadoran attorneys in and out of government, and with representatives of the Catholic Church in both this country and El Salvador.

For obvious reasons, we have sought to maintain a particularly close liaison with the representatives of the families of the victims. Our conversations with those representatives, the Lawyers' Committee for International Human Rights Under Law, and with members of the Maryknoll Order, have been characterized by candor and cooperativeness on the part of those who met with us. These groups have made their files available to us and have patiently assisted us in our efforts to determine how we could increase the likelihood that the perpetrators of these crimes will be brought to justice.

Our mission has had both sobering and heartening aspects. To an extent that is impossible to detail in this report, the criminal justice system in El Salvador is in a state of disrepair.^{3/} A handful of inexperienced, under-educated, and occasionally corrupt prosecutors represent a society that seems to have lost its will to bring to justice those who commit serious crimes against it. Intimidation and corruption of prosecutors, judges and juries are widespread, and a rigid legal system renders successful prosecutions all the more difficult. The military exerts a pervasive influence over the nation and, as will be documented herein, has sought to shield from justice even those who commit the most atrocious crimes.

There are some bright spots. Some Salvadorans, most notably Judge Bernardo Rauda Murcia and Lieutenant

Colonel Jose Adolfo Medrano, have exhibited the courage, independence and fortitude to pursue an unpopular investigation of the crime in a country where the price for such vigilance is all too often sudden and brutal death. Representatives of United States Government agencies, particularly the Department of State and the Federal Bureau of Investigation, have been vigorous and effective in pressing the Salvadorans to investigate and prosecute this crime and, when the prosecution was finally underway, in rendering critical investigative and technical assistance. At least one United States Government officer has repeatedly exposed himself to great personal danger to obtain evidence crucial to the investigation. We believe the American public, and the families, can ask no more than that from their representatives.

SUMMARY

Five former members of the El Salvador National Guard are now in custody and charged with the murder of the four churchwomen: Luis Antonio Colindres Aleman, Carlos Joaquin Contreras Palacios, Francisco Orlando Contreras Recinos, Daniel Canales Ramirez and Jose Roberto Moreno Canjura. Perhaps our most important conclusion is that these men in fact committed the crime and that the evidence of their guilt is overwhelming. Not all of the evidence is admissible in the Salvadoran courts, but that which is

remains compelling. The admissible evidence consists of partially incriminating statements by the defendants themselves, including one complete confession; statements by their former colleagues in the National Guard, including those who participated in the abduction of the women and those to whom the defendants made incriminating statements following the crime; statements of other third-party witnesses; and technical evidence developed by the Federal Bureau of Investigation in the form of ballistics tests linking two of the defendants' weapons to the crime.

The inadmissible evidence renders the guilt of the defendants even more clear. This consists of polygraph examinations that the defendants failed, a fingerprint of Subsergeant Colindres Aleman found on the van in which the churchwomen were traveling, and highly confidential information collected by the United States Embassy through the efforts of an Embassy official at great personal risk. The reliability of this information has been proved certain, but we are convinced that lives would be endangered by public revelation of this evidence or its sources. (We shall refer to this information in our report as "special Embassy evidence.") With respect to each category of inadmissible evidence, we have explored whether in some manner it could be introduced as part of the prosecution case. In each instance, although with varying degrees of certainty, we have concluded that the evidence cannot be used.

The evidence taken as a whole shows irrefutably that the five defendants, following the orders of Subsergeant Colindres Aleman, kidnapped the women at a checkpoint outside the El Salvador Airport on December 2, 1980. They rode through the countryside to a remote location some fifteen miles from the airport, where they raped and murdered the women. Thereafter, the National Guardsmen drove the church-women's van to another remote location and set it afire.

The first reaction of the Salvadoran authorities to the murder was, tragically, to conceal the perpetrators from justice. Evidence available to the United States, including the special Embassy evidence, shows beyond question that Colindres Aleman confessed his involvement in the crime to ranking members of the National Guard within days of the murder. They responded by concealing this fact from the outside world, and ordering the transfer of the killers from their airport posts and the switching of their weapons to make detection more difficult.

At a minimum, then Major Lizandro Zepeda Velasco, the National Guard officer in charge of the Guard's internal investigation, was aware of the identity of the killers and participated in these acts. Sergeant Dagoberto Martinez, Colindres Aleman's immediate superior, has admitted that he also knew of Colindres Aleman's guilt. We believe it is probable that Colonel Roberto Monterrosa, head of the government's official investigation of the crime, was aware

of the identity of the killers and, further, that he participated in the cover-up by purposely failing to provide Colindres Aleman's fingerprints to the United States for analysis. We believe as well that it is quite possible that Colonel Carlos Eugenio Vides Casanova, then head of the National Guard and now a General and Minister of Defense, was aware of, and for a time acquiesced in, the cover-up.

The cover-up was shattered in April, 1981, when officials of the United States Embassy identified the killers through their own investigation. This effort, although significantly assisted by ballistics and fingerprint work, performed by the FBI, came principally by the development of the special Embassy evidence by an Embassy officer. The special Embassy evidence first provided identification of the perpetrators to the United States. When the Embassy learned the defendants' names, it pressed Salvadoran authorities to arrest them. At that point, Colonel Vides Casanova, the Director of the Salvadoran National Guard, ordered the arrest of the men.

Thereafter, Salvadoran prosecution efforts continued to stall, although the men were at least incarcerated. Finally, in December, 1981, a year after the killings and, again responding to United States pressure, the Salvadoran government undertook a serious investigation of the crime. National Guard Major (now Lieutenant Colonel) Adolfo Medrano led a group of detectives from the Salvadoran

National Police and others in the first concentrated gathering of evidence by the Salvadoran authorities. With technical assistance from the FBI, the Medrano working group collected statements of witnesses tying the defendants to the crime, including reports of extrajudicial confessions by Colindres Aleman. This evidence supported the discharge of the accused guardsmen from the National Guard in February, 1982, so that they could be tried in the civilian courts and their remand to the custody of the civilian trial judge. The evidence gathered by the Medrano working group remains the principal evidence against the accused.

The technical support provided the Salvadoran authorities by the FBI has been simply outstanding. Fingerprint and ballistics tests by Bureau personnel provided initial corroboration of the special Embassy evidence and directly linked the defendants to the crime. Beyond technical expertise, however, Bureau agents in the United States thoroughly interviewed relevant witnesses and obtained significant information. By the artful use of the polygraph as an investigative tool, the Bureau obtained a statement from Colindres Aleman's former superior reporting a critical confession by Colindres. The FBI sent polygraph examiners to El Salvador, who interviewed the defendants and other witnesses and, again by using the test as an investigative tool, produced important incriminatory statements.

The question whether Colindres Aleman was ordered to commit this crime by higher-ups is a troubling one. To the extent the Salvadoran authorities have investigated this matter, their inquiry is not nearly as complete as we would have liked. There is some evidence suggesting the involvement of higher-ups: most importantly, two low ranking guardsmen have testified that, in ordering them to participate, Colindres Aleman told them he was acting on higher orders.

On the other hand, there is evidence to the contrary, which we tend to credit. As we set forth in detail below, the circumstances of the crime itself and Colindres Aleman's behavior during its commission are, in our view, inconsistent with an assault on the churchwomen ordered from above. Post-murder statements by Colindres Aleman to his colleagues and his superior, along with the special Embassy evidence, provide what we believe to be additional compelling evidence of lack of higher involvement. Although it is unlikely that a dispositive answer will ever be known, we record here our best judgment: on the basis of the evidence available to us, we believe that Colindres Aleman acted on his own initiative.

Although the evidence of the defendants' guilt is, in our view, substantial, we cannot be certain that the case will be successfully prosecuted. In October, 1983, the case was finally elevated to the plenario, essentially the trial

stage, after over a year and a half in the sumario or investigative stage. This means that, at best, we can expect a trial by the spring of 1984. The newly-assigned senior prosecutor is a veteran attorney and, based on our discussions with him, appears competent to present the prosecution's case.

Nonetheless, the prosecutor must convince a majority of a jury of five, and in El Salvador juries have, understandably, been routinely subject to intimidation. Moreover, we are told that corruption of both juries and judges is an everyday event. Finally, if the system were not already weak enough, we are under the impression that this case is a relatively rare effort to prosecute members of the Salvadoran military in the civilian courts for crimes committed on duty. For these reasons, we view the likelihood of a conviction of the defendants by a jury of Salvadoran citizens to depend substantially on whether the jurors can be assured that they can vote their consciences without fear.

Under current Salvadoran procedures, the jurors must be publicly identified and hear the evidence in public. These procedures are, of course, desirable in a stable society, but hardly leave a jury with any sense of security in the Salvadoran system. We have pressed the Salvadoran authorities to undertake a variety of novel means to protect the jury or guarantee their anonymity. Unfortunately, for

whatever reasons, the authorities have not yet looked with favor upon the introduction of unprecedented methods into their system of jury selection and protection. Thus, we must reluctantly close on a discouraging note: unless the jury can be safeguarded, we would be foolhardy to predict the conviction of these defendants.

I. THE MURDERS

As in any criminal prosecution, the facts of the crime are disputed, at least by the defendants. Although one of the defendants has confessed, the remaining accused killers maintain their innocence and present a joint alibi. In analyzing the facts of the crime, we have weighed all of the information available to us, whether or not admissible under the Salvadoran system and whether or not public. We have rejected the alibis of the non-confessing defendants as self-serving fabrications. We set forth below what we believe actually happened, resolving differences in the testimony by giving greater weight to the witnesses whose reliability we believe to have been proven. Significant differences between the facts stated herein and the testimony of other witnesses are indicated in the footnotes.

In the fall of 1980, El Salvador was suffering through a period of severe political volatility. Increasing violence by both right-wing and left-wing groups had heightened tensions. Terrorist acts were being committed against

government officials, ministry buildings, foreign embassies, universities, churches and factories with growing regularity. Thousands of Salvadorans had been murdered as part of a vicious reign of terror, the majority allegedly by rightist elements.^{4/}

On November 27, 1980, yet another outbreak of political killing occurred. Six leaders of the Salvadoran opposition, the Democratic Revolutionary Front (FDR), were tortured and murdered after their abduction from a school in San Salvador by a band of several hundred men. The bodies of the slain leaders lay in state at the Cathedral in San Salvador for several days, and their funeral was to be held on December 3, 1980.^{5/} Their supporters urged a large turnout for the funeral, and many in the Salvadoran government and military feared an outburst of public violence, possibly as great as that experienced during the funeral of Archbishop Oscar Arnuldo Romero in March, 1980. The country was gripped by palpable tension and fear.

On November 26, 1980, the day before the FDR assassinations, Sisters Ita Ford and Maura Clarke of the Maryknoll Order had traveled from their station at Chalatenango, El Salvador, to an annual gathering of Central American Maryknolls in Managua, Nicaragua.^{6/} Upon their return to El Salvador on December 2, 1980, the day before the FDR funerals, they, along with two other Maryknoll nuns (Sisters Madeline Dorsey and Teresa Alexander), were to be

met at the airport by Sister Dorothy Kazel, an Ursuline nun, and Ms. Jean Donovan, a lay volunteer.^{7/} Sisters Ford and Clarke, returning to El Salvador from Nicaragua in the midst of unprecedented tension throughout El Salvador, never reached their destination; nor did their escorts, Sister Kazel and Ms. Donovan.

From the available evidence, events unfolded on that tragic December 2 as follows. Some time after midday, Sister Kazel and Ms. Donovan drove to the International Airport to meet the four Maryknoll nuns in a white Toyota "Hiace" van.^{8/} They parked in the parking lot in front of, the main passenger terminal at about 2:00 p.m.^{9/} Their arrival was noticed by a Salvadoran National Guardsman patrolling in front of the terminal, Margarito Perez Nieto.^{10/} His attention, he later stated, was attracted by the fact that one of the churchwomen had returned to the vehicle to retrieve a large bag capable of carrying a weapon, and by their apparently watchful attitude toward him. Perez Nieto mentally recorded their arrival and returned to his patrol.

Inside the terminal, the Lanica flight that Sister Kazel and Ms. Donovan were to meet arrived at 2:30 p.m., carrying only two of the four nuns expected, Sisters Madeline Dorsey and Teresa Alexander.^{11/} Sister Kazel and Ms. Donovan determined that they would drive the two nuns to La Libertad and return later to meet the remaining two Maryknoll nuns.^{12/} Guardsman Perez Nieto observed their departure in the white

Toyota van at about 3:15 p.m. He telephoned his detachment commander at the airport, Subsergeant Luis Antonio Colindres Aleman, to report that he suspected the women of having weapons in their travel bags. Colindres Aleman told Perez Nieto to be careful.^{13/}

Sister Kazel and Ms. Donovan returned to the airport to meet Sisters Ford and Clarke, the remaining two Maryknoll nuns, sometime between 4:30 and 6:00 p.m.^{14/} Sisters Ford and Clarke arrived on a COPA (Campania Panamena de Aviacion, the Panamanian Airlines) flight at about 6:30 p.m.,^{15/} and were met by Sister Kazel and Ms. Donovan. At some point, the churchwomen were again observed by Guardsman Perez Nieto, who apparently notified Subsergeant Colindres Aleman again of their activities.^{16/} Perez Nieto's tour of duty ended at 7:00 p.m. and at that time (or earlier) he returned to the National Guard barracks. He reported his observations in greater detail to Colindres Aleman.^{17/}

At this point, we believe, Colindres Aleman decided that he would stop the churchwomen. Although there is no evidence that he knew their identities, he apparently believed, based on his guard's observations, that they were "subversives." Although in our system these observations would usually not be enough even to justify an airport stop for questioning, in El Salvador in 1980, particularly on the eve of the burial of the FDR leaders, these grounds for suspicion were more than adequate. If Colindres Aleman could obtain

evidence that the women were carrying weapons, or even "subversive" literature, his status in the Guard would be enhanced.

There is no reason to believe that Colindres Aleman necessarily had murder on his mind from the outset. At a minimum, however, he knew he was up to no good. He ordered five guardsmen, Carlos Joaquin Contreras Palacios, Francisco Orlando Contreras Recinos, Daniel Canales Ramirez, Jose Roberto Moreno Canjura, and Salvador Rivera Franco, to change out of their uniforms into civilian clothes. He instructed the five men to accompany him with their service rifles and ammunition.^{18/} Shortly after 7:00 p.m., Colindres Aleman, the five guardsmen in civilian attire and Perez Nieto, in uniform, drove in a National Guard jeep to the traffic checkpoint near the airport entrance.^{19/}

At the checkpoint, Colindres Aleman instructed Perez Nieto to stop all traffic at the checkpoint for approximately ten minutes, but to allow the "white van" carrying the churchwomen to pass without hinderance.^{20/} Colindres Aleman left Perez Nieto at the checkpoint, along with the uniformed guardsmen already on duty there, Luis Napoleon Cornejo Cubas, Jose Vidal Cruz Piche, and Jose Luis Monterrosa.^{21/} After rounding a bend in the airport access road, and nearing the first toll station for the as yet unfinished highway between San Salvador and the airport,

Colindres Aleman and the five guardsmen, all in civilian clothes, took up positions on the road and awaited the arrival of the white van.^{22/}

Meanwhile, at the airport, the four churchwomen retrieved the luggage of Sisters Ford and Clarke and left the terminal in their white van. At the airport traffic checkpoint, Guardsman Perez Nieto, following instructions, allowed the van to pass through. He detained all other traffic for about ten minutes,^{23/} and then returned to the National Guard headquarters.

Passing the checkpoint, the churchwomen arrived at Subsergeant Colindres Aleman's position. They were stopped and ordered to vacate the van.^{24/} The guardsmen searched the van and questioned the women. Thereupon, Colindres Aleman ordered them back into the van together with Guardsmen Contreras Recinos, Canales Ramirez and Moreno Canjura.^{25/} Contreras Recinos drove the van and, with Colindres Aleman and Guardsmen Contreras Palacios and Rivera Franco following in the National Guard jeep,^{26/} the small convoy started its journey fifteen miles into the hills of El Salvador.

Shortly thereafter the jeep developed engine trouble. After a brief stop for temporary repair, the two vehicles made it to the National Guard command post at the town of El Rosario La Paz.^{27/} There, Subsergeant Colindres Aleman telephoned the airport and instructed his second in command, Corporal Isabel Aquino Giron, to send another

vehicle to El Rosario to retrieve them.^{28/} The jeep was then left at the Guard post, with Guardsman Rivera Franco to guard it.^{29/}

The five other guardsmen crowded into the small van with the four churchwomen and proceeded in the direction of Zacatecoluca. At the intersection of the road to San Pedro Nonualco, the van left the main road and drove for another six kilometers, finally turning off onto a dirt lane.^{30/} At a deserted site along the lane, Subsergeant Colindres Aleman directed Guardsman Contreras Recinos to bring the van to a halt, and ordered the women out of the van.^{31/} The guardsmen sexually assaulted the women. Then, at Colindres Aleman's orders, they shot the women dead with their service rifles, leaving the bodies along the roadside as they fell.^{32/} The guardsmen, upon completion of their grisly mission, then returned to El Rosario La Paz in the van.

In the interim, Corporal Giron had sought from the commander of the Customs Police at the airport, Juan de Dios Barrera Rivera, a vehicle with which to pick up Colindres Aleman and his men.^{33/} Barrera Rivera assigned Victor Melgar Garay to drive a blue Customs Police pick-up truck^{34/} to El Rosario La Paz, where, accompanied by Guardsman Julio Cesar Valle Espinoza, Melgar Garay found Guardsman Rivera Franco guarding the disabled jeep.^{35/} The three were waiting when Subsergeant Colindres Aleman and the other guardsmen returned without the women at approximately 11:00 p.m.^{36/}

Climbing into the cab of the truck, Subsergeant Colindres Aleman instructed Melgar Garay to drive back onto the highway in the direction of La Libertad.^{37/} Followed by the white Toyota Hiace van, the truck proceeded along the coast road until ordered by Colindres Aleman to stop.^{38/} After the guardsmen had removed several items from the van to the blue Customs pick-up truck,^{39/} Guardsman Contreras Recinos opened the middle door of the van and, with the help of Contreras Palacios and Moreno Canjura, poured aviation fuel on the inside and outside of the van and set it afire.^{40/}

Near midnight, Subsergeant Colindres Aleman and his men returned to the airport in the blue pick-up truck.^{41/} Upon his return, Colindres Aleman took the van's spare tire and jack, and several articles of women's clothing to the barracks.^{42/} Later, several of the guardsmen, with Colindres Aleman, burned this clothing and certain other articles taken from the churchwomen.^{43/} On December 3, Colindres Aleman took the spare tire and jack to a nearby farm camp and left them there with a friend for safekeeping.^{44/}

Early in the morning of December 3, 1980, villagers from Santiago Nonualco, a remote village fifteen miles northeast of the airport, found the bodies of the four churchwomen sprawled along the roadside.^{45/} One of the villagers contacted the local Militia Commander, Jose Dolores Melendez, to report the discovery.^{46/} Shortly thereafter, two National Guardsmen and three Civil Guardsmen

arrived at the scene, and ordered the preparation of a common grave.^{47/} The local Justice of the Peace, Juan Santos Ceron, was summoned by the Militia Commander, and authorized the immediate burial of the women as "unknowns," an unfortunate practice that had become common in El Salvador.^{48/}

When Sister Kazel and Ms. Donovan failed to return to La Libertad, Father Paul Schindler, an American priest working in La Libertad, contacted the United States Consul in San Salvador, Patricia Lasbury (now Patricia Lasbury Hall), on December 3.^{49/} Ms. Lasbury then informed the Chief of National Police of the women's disappearance. Salvadoran Defense Minister Garcia was also notified.^{50/} A nationwide search was promised.

In an attempt to locate the women himself, Father Schindler set out to search along the coastal road leading from La Libertad to the airport. On the evening of December 3, he found the burned-out shell of the churchwomen's van where it had been abandoned along the coastal road.^{51/} Its license plates were missing, and the van could be identified only by the serial numbers on the engine block.^{52/}

Meanwhile, word began to circulate in the community that four female Caucasian "unknowns" had been found dead and buried in Santiago Nonualco. A local parish priest heard the news and informed the Vicar of the San Vicente diocese. In turn, the Vicar notified the United States Embassy that the bodies of the American churchwomen had been found.^{53/}

Upon learning the news, United States Ambassador Robert White went immediately to the murder site, where he found Father Schindler, who also had been notified by the parish priest of the discovery of the bodies.^{54/} The Secretary of the Justice of the Peace arrived and gave permission for the removal of the bodies from the grave.^{55/} All four women had been shot in the head; the face of one had been destroyed.^{56/} The underwear of three of the women was found separately, along with bloody bandanas.^{57/} Brief medical examinations were performed that day, but no autopsies.^{58/} Sisters Ford and Clarke were buried in Chalatenango; Sister Kazel and Ms. Donovan, in the United States.^{59/}

II. THE INVESTIGATIONS

Despite the numbing regularity with which innocents in El Salvador have been subjected to crimes of violence, the rape and murder of the four American churchwomen provoked immediate international outrage. The Salvadoran government responded by publicly promising a full investigation, and the United States pledged its complete assistance. The actions of the United States and its representatives to investigate the crime and to bring the perpetrators to justice have been remarkable. Quite simply, we believe that the killers would never have been identified and the evidence of their guilt never properly assembled had it not been for the efforts, often courageous, of United States personnel.

The efforts of Salvadoran officials, on the other hand, have been mixed. Despite the public promise of a full and complete investigation, the actual initial Salvadoran government response appears to have been to do everything possible to conceal the perpetrators of the crime. The identities of the killers were known to officials of the Salvadoran National Guard within days of the murders. Nonetheless, the official response to this information ranged from indifference to active cover-up. It was only after a year had passed, and the killers had been identified by the United States, that a competent group of Salvadoran officials undertook a thorough investigation of the crime and assembled the evidence that forms the basis for the prosecutions. The men who performed that task, led by Major Medrano, and the judge who inherited the case and completed the investigation, Judge Bernardo Murcia Rauda, performed difficult work under the most dangerous of circumstances. They deserve the praise and gratitude of all those who have sought to see justice done in this case.

A. The Zepeda and Monterrosa Investigations

Within days of the murders, Salvadoran authorities commissioned two investigations, one public and one private, both with apparently the same objective: to create a written record absolving the Salvadoran security forces of responsibility for the murders. The public investigation was in the

form of a commission headed by Colonel Roberto Monterrosa, then director of the Armed Forces Studies Center and later commander of the Salvadoran Navy. The private investigation, commissioned by the National Guard itself, was headed by Major Lizandro Zepeda Velasco. In his interview with us, Colonel Monterrosa was surprisingly candid about his purpose. He stated that his investigatory commission had flatly rejected the possibility that security forces were involved in the murder, not because of the absence of evidence, but because their involvement, if proved, would cause serious consequences for the armed forces "from a political point of view."^{60/}

The failure of either Zepeda or the Monterrosa Commission to pursue a serious investigation is obvious, for the evidence of the defendants' culpability was readily available for gathering. As we will note below, the murderers made no attempt whatever to conceal their culpability from other National Guardsmen. Not only had several guardsmen witnessed the churchwomen's abduction, but the defendants repeatedly conceded their guilt to their colleagues following the killing. For instance, at a meeting called by Colonel Vides Casanova within days of the murders to ask whether any National Guardsmen were responsible, Subsergeant Colindres Aleman approached his immediate supervisor, Sergeant Dagoberto Martinez and reported that, "the problem regarding the nuns is me." Martinez advised Colindres Aleman to be silent

about the crime, but to admit his role if questioned by a National Guard officer.^{61/}

The National Guard officer assigned in December, 1980 to investigate the crime was Major Zepeda.^{62/} Zepeda interviewed Colindres Aleman, as well as other guardsmen on duty at the airport on the night of December 2.^{63/} Although all the witnesses whom Zepeda purportedly interviewed had at least partial knowledge of the facts of the crime--knowledge that they later confessed to Major Medrano--Zepeda blithely reported that no one remembered anything out of the ordinary about that evening. His perfunctory written report, turned over to the United States many months later, concludes "[i]t is not proven in this report that elements of the National Guard had any participation in the death of the four North American religious [sic]."^{64/}

In fact, the written Zepeda report was a sham. Indeed, it made so little an impression on Major Zepeda himself that, when we interviewed him in September, 1983, he insisted that his reporting had been oral only.^{65/} He persisted in this position even when we told him that we had seen copies of written reports. Zepeda may have remembered only an oral report because it was undoubtedly only orally that he would have communicated his true findings: that National Guardsmen led by Colindres Aleman had committed the murders.

Information derived by the United States Embassy from the special Embassy evidence shows unequivocally that Subsergeant Colindres Aleman followed precisely Sergeant Martinez' recommendation. When Major Zepeda questioned Colindres Aleman in the days following the crime, he confessed his role in the murders to the National Guard investigating officer.

Major Zepeda did not betray Subsergeant Colindres Aleman's trust. Rather, he undertook a course of action in the winter and spring of 1981 to protect Colindres Aleman and the other killers. Of course, he issued a written report absolving the guardsmen of blame. Moreover, according to the special Embassy evidence, Major Zepeda caused the murderers to be transferred away from their airport post, thus making it more difficult for outsiders to determine who had been in a position to undertake the killings or to interview military witnesses at the airport. Knowing that the FBI had performed ballistics tests on shells and casings associated with the crime, Major Zepeda also, according to the special Embassy evidence, ordered the killers to switch their rifles with others so as to make detection more difficult. (This effort did not ultimately prevent linking the murder weapons with the defendants. Major Zepeda either failed to, or could not, alter the Salvadoran military's written records identifying which rifles were assigned to the defendants.)

Although we have no direct proof, we think it is quite possible that Major Zepeda informed his superior, then Colonel Vides Casanova, of his activities. Vides Casanova appointed Zepeda, and Zepeda reported directly to him. It seems unlikely that a mid-level officer like Zepeda would have undertaken the obstructive actions he did without approval or encouragement from someone higher. Moreover, when we interviewed now General Vides Casanova, we found him evasive; he professed a disturbing lack of knowledge of Zepeda's investigation, despite evidence that he was aware of and received reports concerning Zepeda's efforts throughout the investigation.^{66/} In his answers to us, General Vides Casanova attempted to distance himself as completely as possible from all investigations of the crime.

We believe it probable that Major Zepeda informed Colonel Monterrosa of his findings. Indeed, in his discussion with us, Colonel Monterrosa asserted that he was responsible for Zepeda's appointment as investigating officer. Certainly the activity undertaken by the Monterrosa Commission--or, more accurately, its inactivity--suggests the absence of any serious interest in identifying the killers. Nonetheless, for the first few weeks of its existence, the commission managed to suggest to the outside world that it was undertaking a serious mission.

The commission's appointment was announced on December 8, 1980.^{67/} On that day the members of the

commission received United States Ambassador Robert White and a team of distinguished Americans sent by President Carter to investigate the crime.^{68/} The commissioners purported to welcome investigative assistance from the United States, including technical expertise and assistance in planning the investigation. The Ambassador willingly agreed. A team of FBI technicians flew to El Salvador and gathered various evidence for laboratory analysis, including fingerprints and debris taken from the white van, and items of clothing found at the gravesite.^{69/}

Over the next few days the commission requested that autopsies be performed on the two churchwomen buried in the United States;^{70/} it visited the murder site and questioned residents of the area;^{71/} it took a statement from a Salvadoran priest, Father Britto,^{72/} who had been stopped at a military checkpoint near the airport on the evening of December 2, 1980; and it requested the assistance of the United States in locating six Canadians who had also been stopped at that checkpoint with Father Britto.^{73/}

Despite its initial show of activity, the Monterrosa Commission soon slowed its pace. On December 20, 1980, the commission adjourned for the traditional three-week Christmas recess,^{74/} and when the commission eventually resumed its "investigation" in January, 1981, its efforts were unimpressive. Consistent with Colonel Monterrosa's statement to us that the commission had no serious interest in connecting

security forces with the crime, the commission obtained and relied upon false exculpatory statements from guardsmen on duty substantially identical to those collected by Major Zepeda.^{75/}

Although the United States was, as requested, providing investigative assistance, that assistance was largely ignored. United States suggestions that the most elementary investigative steps be taken were greeted with distrust or disinterest. Thus, the United States repeatedly requested, to no avail, that guardsmen at the checkpoint and the burial site be fingerprinted; that airport guardsmen be vigorously questioned about the events of December 2; that the weapons of guardsmen at the airport be confiscated for testing; and the like.^{76/} When pressed to explain his reason for failing to fingerprint the potential suspects, Colonel Monterrosa lamely explained, "one must understand the political situation in El Salvador."^{77/} He later claimed that the commission did not have the authority to fingerprint the men in question.^{78/}

Thereafter, in February, 1981, Colonel Monterrosa began the first of his many efforts to conclude the commission's activities.^{79/} One might be tempted to conclude that the Monterrosa Commission's failure to uncover useful information was the result of mere indifference or fear. We conclude that it is more probable that Major Zepeda informed Colonel Monterrosa of Colindres Aleman's guilt and that

Colonel Monterrosa purposely chose to conceal the truth. According to Monterrosa himself in his discussion with us, Zepeda reported everything he knew to him.

More telling than the lines of authority, however, was an event that occurred on February 26, 1981. On that date, after much prodding from the United States, Colonel Monterrosa delivered to an Embassy official fingerprints and palm prints of three of the four guardsmen from whom the commission had taken written statements: Jose Luis Monterrosa, Luis Napoleon Cornejo Cubas, and Vidal Cruz Piche, all guardsmen stationed at the airport checkpoint on the day of the murders.^{80/} Of course, since none of these men was involved in the murders, their fingerprints were essentially meaningless. The significant event of that day, however, was Colonel Monterrosa's pointed failure to produce the fingerprints of the fourth guardsmen who had given a statement: Subsergeant Colindres Aleman.

A month and a half later, after the special Embassy evidence had provided the Embassy an indication of Subsergeant Colindres Aleman's guilt, but before the Embassy had revealed that knowledge to the Salvadorans, an Embassy official asked Colonel Monterrosa why Colindres Aleman had not been fingerprinted.^{81/} Colonel Monterrosa immediately became defensive and claimed he had taken fingerprints only from those persons requested by the Embassy. From all the circumstances, however, we believe that Colonel Monterrosa

did not provide Colindres Aleman's fingerprints because he knew--since Major Zepeda had told him--that Colindres Aleman was responsible for the murders. Monterrosa feared that providing Colindres Aleman's fingerprints would enable him to be identified.

In the period between January and April, 1981, frustrated at the inaction of the Monterrosa Commission, and still uncertain that a purposeful cover-up was underway, Embassy officials continued to apply direct and indirect pressure upon Colonel Monterrosa. They asked the ruling junta to press Monterrosa to conduct a meaningful inquiry.^{82/} President Jose Napoleon Duarte, whom we interviewed and who appeared to have a sincere interest in the prosecution of this case, complied with the various requests of the United States, and repeatedly instructed Colonel Monterrosa to undertake pertinent investigative steps: to identify all security force personnel near the airport; to fingerprint those personnel; and to collect, secure and test their weapons.^{83/} Despite instructions from his civilian superior, Colonel Monterrosa did as little as possible throughout the early spring of 1981. Taken together, the Monterrosa and Zepeda investigations provide distressing evidence of the willingness of the Salvadoran military to protect their own, no matter what the cost. ✕

B. The Cover-Up Is Defeated

Distressed at the apparent inability of the Monterrosa Commission to make substantial progress, and unaware of the cover-up engineered by Major Zepeda, officers of the United States Embassy determined to do what they could to identify the killers. In February, 1981, an Embassy officer developed information that promised eventual discovery of the identity of the killers. Over the next two months, this special Embassy evidence was proven reliable. The Embassy learned the identity of the killers; of other witnesses who could prove the killers' identity in court, most notably Sergeant Dagoberto Martinez; and obtained convincing evidence of the cover-up.

A significant piece of corroboration came from FBI analysis of two cartridge casings and three spent bullets provided to the Embassy by the Salvadoran government on March 2, 1981.^{84/} On March 17, 1981, the FBI laboratories identified the casings and bullets as coming from Heckler and Koch G-3 assault rifles,^{85/} standard issue to the Salvadoran security forces. Other corroborating evidence cannot be set forth here because it would tend to disclose and thus endanger the nature and sources of the special Embassy evidence. In any event, after several months of testing, through the use of corroborating evidence, the Embassy was convinced that the special Embassy evidence was both genuine and sound.

By April, 1981, the Embassy had concluded that only extraordinary pressure would result in the arrest and prosecution of the killers, and it determined to inform the Salvadoran authorities of the information it had learned, but not its source. On April 21, 1981, the Embassy identified Subsergeant Colindres Aleman to President Duarte. Several days later the Embassy named to Defense Minister Garcia five other guardsmen identified by the special Embassy evidence.^{86/} The United States demanded that the killers be arrested. Upon learning this news, Colonel Vides Casanova ordered the arrest of the guardsmen who had been identified. The men were taken into custody on April 29, 1981.^{87/}

The arrest of the guardsmen enabled the FBI to complete the scientific tests it had begun some months before. On April 30, the FBI obtained the defendants' fingerprints and shortly thereafter matched a thumbprint of Subsergeant Colindres Aleman with a print found on the churchwomen's van.^{88/} On May 1, the weapons of the guardsmen were seized,^{89/} and by May 17, the FBI reported that one of the seized weapons, which later was identified as belonging to Guardsman Moreno Canjura, had fired a cartridge found at the murder site.^{90/}

Although the cover-up had been thwarted, and evidence of the defendants' guilt produced, the military apparently remained ambivalent about the extent to which it would cooperate in the prosecution. Major Zepeda remained

in charge of the National Guard's internal "investigation," and the disclosure of the true facts apparently did little to deter him from his course of concealment. In the period following the arrests, Zepeda took two more written statements from Subsergeant Colindres Aleman.^{91/} In the first, Colindres Aleman again denied participation in the murders. In the second, recorded after the FBI had linked his fingerprint to the nuns' van, Colindres Aleman claimed that he might have touched the van in the airport parking lot and again denied his guilt. Major Zepeda also interviewed Guardsman Moreno Canjura, who blandly claimed that his rifle could not have been involved in the murder because he had possessed it continuously and he had not been involved in the murder.^{92/}

On July 1, 1981, Major Zepeda submitted a second report to Colonel Vides Casanova.^{93/} He still concluded that he could not determine the guilt of the guardsmen because of the "difficulty" in resolving a case so "delicate." He concluded that only the civilian courts could make a determination of guilt and that he had exhausted the resources at his disposal. Other than Major Zepeda's meager efforts, Salvadoran attempts to investigate and prosecute the guardsmen were virtually nonexistent throughout the summer and fall of 1981.

C. The Medrano Working Group

By the fall of 1981, the United States Embassy recognized that the Salvadoran authorities were evidently content to let the defendants remain in prison while doing nothing to prosecute the crime. The Embassy determined to press all the harder for a serious investigation, which, for political reasons, would have to come under the aegis of the Monterrosa Commission.

On December 4, 1981, the Commission agreed to the appointment of a working group, composed of professional investigators and backed by technical assistance from the United States, to conduct the investigation.^{94/} On December 7, 1981, the Fiscal General (the chief Salvadoran prosecutor) and his deputy agreed to this concept as well.^{95/} The working group was formally established on December 9 by order of Colonel Vides Casanova.^{96/} National Guard Major Jose Adolfo Medrano was appointed to head the group.

The work of the Medrano working group is one of the encouraging chapters in the Salvadoran handling of the churchwomen murders case. It stands in sharp contrast to the previous two investigations described herein, and was pursued with thoroughness and persistence. The Medrano working group was the first successful attempt by an agency of the Salvadoran government to investigate the murders in a systematic and determined way. In two months time, the working group, under the able leadership of Major Medrano,

was able to question more than a dozen important witnesses, gain a confession, and gather valuable physical evidence.

One of the reasons the Medrano working group was so successful was that, with its establishment, ongoing technical assistance was provided by the FBI at every step. Similarly, Embassy personnel were present for every session of the Medrano working group. Thus, the Medrano working group became an organized, joint effort by Major Medrano of the National Guard, detectives of the National Police, the FBI Regional legal attache and his FBI colleagues who appeared from time to time to carry out special activities such as polygraphing, ballistics, or fingerprint analysis, and representatives from the United States Embassy. Representatives from the office of the Fiscal General also participated in working group sessions.

Within days of his appointment on December 9, 1981, Major Medrano had interviewed two of the airport fuel workers who were on duty on the day of the murders concerning the dispensing of airplane fuel possibly used by the guardsmen in their jeep;^{97/} Jose Vidal Cruz Piche, one of the guardsmen stationed at the airport;^{98/} the four guards of Hector Herrera's estate, who witnessed the van passing back and forth to the murder site that evening^{99/} and Jose Luis Monterrosa, another guardsman stationed at the airport.^{100/} These interviews were crucial to the case. They provided

the first public evidence of the facts surrounding the crime.

The first important break for Major Medrano was his interview on December 11 of Guardsman Cruz Piche.^{101/} Cruz Piche, whom Major Medrano had known previously^{102/} and who apparently felt comfortable with the investigator, confided that on the night of the murders he had seen Colindres Aleman, Contreras Recinos, Moreno Canjura, Canales Ramirez, and two others depart the airport in the post's Toyota jeep shortly after 7:00 p.m., passing through the checkpoint where Cruz Piche was stationed with Guardsmen Luis Monterrosa and Cornejo Cubas. Cruz Piche said that when he returned to the detachment headquarters at the end of his tour, he found that the six who had left earlier were drunk and appeared nervous.^{103/}

Medrano reinterviewed Guardsman Cruz Piche on December 15, 1981.^{104/} Cruz Piche amplified his previous statement, saying that Subsergeant Colindres Aleman ordered Guardsman Perez Nieto to remain at the checkpoint to detain all airport traffic for the next ten minutes, and that Perez Nieto had allowed a white microbus to pass without inspection. Cruz Piche reported that he later overheard Colindres Aleman say "What's done is done," and, "If fate is against us, we will have to pay," or words to that effect. This testimony was the first public revelation that Colindres Aleman had ever acknowledged his guilt.

Guardzman Cruz Piche also testified that three days later he heard a guardsman say that he had been told by guardsmen who had accompanied Colindres Aleman that the victims were "subversive nuns," that "we took subversive propaganda from them," and that another guardsman had somehow obtained 5,000 dollars or colones. He said that eight days later he saw Subsergeant Colindres Aleman selling ladies' watches in the airport area.

Guardzman Jose Luis Monterrosa confirmed Cruz Piche's statement to the Medrano group and named the six guardsmen he saw depart the airport: Colindres Aleman, Jose Elias Sanchez, Francisco Orlando Contreras Recinos, Jose Roberto Moreno Canjura, Adrian Ramirez, and Daniel Canales Ramirez.^{105/} Two days after the murders, Luis Monterrosa saw Colindres Aleman with a large amount of money purchasing a television set, furniture, and other items, as well as selling a tape recorder, watches, rings, and eyeglasses. Luis Monterrosa testified that he overheard guardsmen say that "they were subversive nuns and had subversive propaganda," and that Colindres Aleman said "It happened today: if our turn comes up, we'll have to pay for it."

During this period the Medrano group also took statements of Luis Napoleon Cornejo Cubas, the third guardsman at the airport checkpoint, Corporal Isabel Aquino Giron, the deputy commander of the airport National Guard detachment, and Guardsman Perez Nieto, who had been on patrol at

the terminal and had spotted the nuns. Taken together, the statements significantly tightened the chain of evidence of guilt and provided a fairly complete picture of the events of December 2, 1980.

In his December 17, 1981 statement,^{106/} airport Guardsman Luis Napoleon Cornjeo Cubas confirmed the statements of Guardsman Cruz Piche and Luis Monterrosa, and revealed that he had learned that on the night of the murders Colindres Aleman brought back a spare tire, which a few days later he gave to a friend at the nearby "Macondo" cotton plantation. He also saw Colindres Aleman and his five companions burn women's clothing behind the National Guard command post several days after the killings.

Corporal Giron testified that about 5:30 p.m., he overheard Subsergeant Colindres Aleman talking by telephone with Perez Nieto, who was in the airport terminal.^{107/} Thereafter, Giron swore, Colindres Aleman ordered five guardsmen to dress in civilian clothes, and they departed with him in the detachment jeep at about 7:00 p.m. Giron testified that later that evening he received a telephone call from Colindres Aleman, asking for a replacement vehicle. Giron borrowed a blue pickup truck and a driver from the commander of the airport Customs Police, and directed the driver to proceed to El Rosario La Paz to meet Colindres Aleman.

Giron further stated that he saw the pickup truck return with the guardsmen shortly before midnight, observed the guardsmen remove a tire and several cartons from the truck, and later heard that Subsergeant Colindres Aleman took the tire to a friend at the "Macondo" cotton plantation the next day. Finally, Giron said that on or about December 7, 1980, Colindres Aleman told him that "they were subversive women. I do not think there will be a problem." This implicit acknowledgment of guilt by Colindres Aleman constitutes his third extrajudicial confession in the record.

On December 22, 1981, Margarito Perez Nieto, the guardsman on patrol in front of the airport terminal who had identified the nuns, gave a deceptive statement.^{108/} Although Perez Nieto acknowledged reporting to Subsergeant Colindres Aleman that two "suspicious looking foreign women were in the airport terminal," he claimed that Colindres Aleman only ordered him to go to the checkpoint to search all out-going traffic, which he claimed he did for five or ten minutes without singling out any particular vehicle. He stated that one of the three white vans he remembered seeing may have been driven by one of the women he had seen earlier in the terminal. At this initial interview, Perez Nieto failed to reveal that he had seen Colindres Aleman depart with five other guardsmen in civilian clothes to stop the white van. He likewise only obscurely alluded to Colindres Aleman's instructions to him to hold all traffic except for the white van, and his compliance with those instructions.

On December 23, the Medrano working group interviewed the airport Customs commander.^{109/} He corroborated Corporal Giron's statement that at about 11:00 p.m. on the night of the murders, Giron asked him to loan the Customs Police vehicle in order to pick up Colindres Aleman and the others. He said that he sent his vehicle and driver to get the guardsmen and that his driver later informed him that the guardsmen had put bloodstained women's clothing in the truck. The following day, Christmas Eve, the Medrano group interviewed Mariana Realejeno, the maid at the National Guard airport barracks,^{110/} who testified that in late , December, 1980, a guardsman gave her a woman's skirt as a gift.

Early in January, 1982, the Medrano working group interviewed Victor Melgar Garay, the Customs Police duty driver who had picked up the group of guardsmen in El Rosario La Paz on the night of the murders.^{111/} Melgar Garay described the unloading and burning of the white microbus on the highway to La Libertad, and testified that he had been warned to keep silent about what he had seen. In the same period, the Medrano group began to amass the physical evidence that linked the six guardsmen to the crime. The wheel, tire, and jack stolen from the church-women's van were recovered by the working group from the nearby plantation where they had been taken by Colindres Aleman.^{112/}

The working group interviewed Adrian Ramirez Palacios and Jose Elias Sanchez Guzman, guardsmen detained together with the killers, on January 11 and 12, 1982. Each confirmed that he had seen Subsergeant Colindres Aleman and his group depart from the airport on the night of December 2, 1980, and that Colindres Aleman had later possessed personal articles from the van.^{113/}

Sanchez Guzman added critical incriminating statements he had heard from the defendants during his period of incarceration with them.^{114/} He stated that while in prison Guardsman Moreno Canjura had admitted that after the women were shot, Moreno Canjura saw that one of them was still alive and that he had used his own rifle to kill her. Sanchez Guzman swore as well that he and Ramirez Palacios were threatened by the defendants that they would be killed if they talked about the case after they were released. Finally, Sanchez Guzman provided an important clarification about the culpability of Guardsman Rivera Franco, which later enabled the prosecution to use Rivera Franco as a witness against the killers: although Rivera Franco had participated in the kidnapping of the women, he was not one of the killers; he had stayed behind with the disabled jeep at Rosario La Paz.

The various witnesses' statements had regularly identified one guardsmen not in custody, Carlos Joaquin Contreras Palacios, as among the six men who had abducted

the churchwomen and, at the same time, had generally omitted mention of one guardsmen in custody, Adrian Ramirez Palacios. This evidence, together with the similarity in names, led the working group to conclude by late December that Ramirez Palacios was not involved in the murders.^{115/} During the first week in January, 1982 the Medrano working group had located Contreras Palacios for questioning.^{116/}

On January 14, 1982, the working group received a major break: Contreras Palacios confessed to his participation in the murders.^{117/} Because Contreras Palacios had been belatedly identified and had not been incarcerated with the other five defendants, he apparently had not been subject to group pressure to present a joint alibi. Rather, remorseful over having raped and murdered women who he later learned were nuns, Contreras Palacios, when apprehended, provided the first participant account of the crime.

Under Salvadoran law (common in many civil law countries), the testimony of a participant in the crime cannot be used against the others.^{118/} Thus, Contreras Palacios' confession was, technically, admissible only against him. It was significant nonetheless. First, it provided full corroboration of the evidence initially provided by the special Embassy evidence and thereafter painstakingly developed by the FBI and the Medrano working group. Second, the confession would be admissible against Contreras Palacios at the joint trial of all the defendants.

Thus, although it was technically of limited admissibility, it would still have a significant psychological effect on the jurors, assuring them of the defendants' guilt.

Contreras Palacios swore that he and the others, dressed in civilian clothes, left the airport command post at 7:00 p.m., and stopped and searched the churchwomen's van about a half mile from the airport.^{119/} He said that they then drove with the van towards El Rosario La Paz, but that they had engine trouble with the jeep, forcing them to leave it in El Rosario, with a guardsman (Rivera Franco) to safeguard it. Thereafter, they drove to a deserted spot several miles southwest of San Pedro Nonualco, where Colindres Aleman ordered them to stop and the churchwomen to get out.

The guardsmen proceeded to rape the women and then, at Colindres Aleman's orders, shot and killed them. They then returned to El Rosario, picked up the guardsman left there, and drove down the coastal highway, where they burned the van. Contreras Palacios stated that he did not know of any other orders that the women be killed and that only Colindres Aleman ordered them to kill the "subversive" nuns. (When Contreras Palacios was reinterviewed, partially at our suggestion, in October, 1983, he altered this last testimony and claimed that Colindres Aleman told him he had been ordered to kill the women, but that Colindres regularly used such explanations to justify his orders.)

On the same day that the working group obtained Contreras Palacios' confession, it began the process of administering polygraph examinations to the suspects. Although polygraph evidence is inadmissible in El Salvador, as it is in the United States, the working group recognized, at the urging of United States representatives, that the skilled use of the polygraph can be an important investigative tool. It can provide a basis for evaluating the credibility of witnesses. More importantly, many a witness, confronted with an impending polygraph examination or the fact that he has failed one, decides to tell the truth. This happened three times during the course of the polygraph examinations in this case, all of which were administered by an experienced Spanish speaking FBI polygrapher.

Three of the suspects did not alter their testimony concerning the murders either before or after the polygraph exam: Guardsman Francisco Orlando Contreras Recinos,^{120/} Guardsman Daniel Canales Ramirez^{121/} and Guardsman Jose Roberto Moreno Canjura.^{122/} Nonetheless, the FBI polygrapher concluded that all three--and a fourth, Subsergeant Colindres Aleman^{123/}--were lying when they denied involvement in the crime. During the polygraph examination, Colindres Aleman was also asked whether he had been ordered by anyone to commit the crime. Significantly, the polygrapher concluded that his denial of receiving higher orders was truthful.^{124/}

Although Subsergeant Colindres Aleman did not confess during the course of his polygraph examination, he did alter his previous testimony in an incriminating way.^{125/} Prior to the polygraph examination, Colindres Aleman had consistently claimed that he and his men were on duty at the airport on the night of December 2. During the course of the pre-examination interview, Colindres Aleman altered his testimony to concede significant incriminating details. For the first time, Colindres Aleman admitted receiving a telephone call from Perez Nieto at about 3:00 p.m. on December 2, 1980, reporting two suspicious persons at the airport, thus conceding he was on notice of the churchwomen's presence at the airport.

Subsergeant Colindres Aleman also altered his testimony to link all the suspects together. He admitted that at about 7:00 p.m. he ordered Francisco Orlando Contreras Recinos, Daniel Canales Ramirez, Carlos Joaquin Contreras Palacios, Salvador Rivera Franco and Jose Roberto Moreno Canjura, the remaining suspects, to change into civilian clothes so that they could all drive into El Rosario La Paz. Despite this critical concession, Colindres Aleman claimed that the purpose of the trip was only to get gas for the unit stove, and that they returned at about 10:00 p.m.

Margarito Perez Nieto, the airport guardsman who called Subsergeant Colindres Aleman to report to him the movements of the churchwomen from the airport, had significantly understated his knowledge at his initial interview.

In January, 1982 he took and failed a polygraph, and then elected to tell the truth.^{126/} On January 15, 1982 Perez Nieto confessed that he had been ordered by Subsergeant Colindres Aleman to allow the churchwomen's van to pass through the checkpoint, and that he had done so. He added that he had had no previous instructions to look for the churchwomen at the airport and that he was unaware of any such instructions to anyone in the National Guard unit at the airport.

Salvador Rivera Franco, the guardsman who accompanied Subsergeant Colindres Aleman and the churchwomen, to El Rosario La Paz, where he remained behind to guard the jeep, also provided significant additional information upon being confronted with the polygraph.^{127/} Initially, Rivera Franco had offered no useful evidence in the investigation. At the commencement of the polygraph session, however, Rivera Franco indicated that he wished to make a statement, and did so. Rivera Franco thereupon identified the guardsmen who had accompanied Colindres Aleman and the nuns from the airport access road; described the search of the churchwomen's van on the airport access road; described the return from El Rosario La Paz after the murders along the coastal road to the spot where the van was burned; and stated that several of the suspects had confessed to him that they had killed the women.

Finally, a polygraph examination helped to exonerate another of the earlier accused, Guardsman Jose Elias Sanchez Guzman. Like Ramirez Palacios, he had been imprisoned as one of the original six accused, but then was released upon the development of exonerating evidence, including the confession of Contreras Palacios and the statements of various witnesses excluding Sanchez Guzman from the group of six guardsmen who had abducted the women. As a final test, Sanchez Guzman was submitted to a polygraph examination, which he passed. Thereupon, the working group concluded that his continued denial of participation in the murders was truthful.^{128/}

On February 9, 1982, the Medrano working group having completed its activities, Major Medrano forwarded the investigative file to General Vides Casanova.^{129/} General Vides Casanova, in turn, forwarded the file, with the jack, tire, and skirt seized during the investigation, to the First Penal Judge in Zacatecoluca on February 10. At the same time, he consigned to the court Colindres Aleman, Contreras Recinos, Moreno Canjura, Contreras Palacios, Canales Ramirez and Rivera Franco, stating that they had been discharged from the National Guard and arrested for their participation in the deaths of the four churchwomen.^{130/}

D. The Civil Investigation

The evidence assembled by the Medrano working group remains the principal evidence of the defendants'

guilt. Nonetheless, as the civil authorities created their own record to support the prosecution during the ensuing months, several significant pieces of additional evidence were developed.

Perhaps most important of these was the evidence of Subsergeant Colindres Aleman's confession to his superior, Sergeant Dagoberto Martinez. The special Embassy evidence identified Sergeant Martinez in 1981 as one to whom Colindres Aleman had confided his guilt. By January, 1982, Martinez was living in Los Angeles, having left El Salvador and the National Guard in January, 1981. He was located there and interviewed by the FBI, but he denied any knowledge whatsoever about the events of the murder.^{131/}

When the FBI reported these results back to El Salvador, Embassy officials knowledgeable about the special Embassy evidence were unsatisfied. They suggested that the FBI reinterview Sergeant Martinez with the assistance of a polygraph examination.^{132/} Once again, the threat of the lie detector provoked a change in testimony. Faced with the test, Martinez confessed that, shortly after the killings and during a meeting of the National Guard called by Colonel Vides Casanova to ask whether any guardsmen were responsible, Subsergeant Colindres Aleman approached Martinez and conceded that he was responsible for the "problem regarding the nuns."^{133/} Martinez explained that he had advised Colindres Aleman to keep that information to himself for the moment, but to confess it to

the Director of the National Guard in accord with the Director's request.

Another significant piece of additional evidence was obtained in July, 1983. Judge Rauda had refused, under Salvadoran law, to admit into the trial record evidence obtained outside the territorial boundaries of El Salvador or outside his supervision.^{134/} For this reason, he rejected the admissibility of both the ballistics and fingerprint evidence obtained by the FBI. As the case was readied for trial in the summer of 1983, and in part at our suggestion, the FBI agreed to transport its ballistics equipment to El Salvador and train a Salvadoran national in the testing process.^{135/} When this was done, Judge Rauda was able to produce two more weapons, previously unknown, attributable to the defendants. The ballistics test linked one of these newly discovered weapons, that of Contreras Palacios, to the crime, thereby providing another direct link between the defendants and the murder.^{136/}

Unfortunately, it was impossible to replicate the fingerprint evidence linking Subsergeant Colindres Aleman to the nuns' van. The original fingerprint had been obtained by an FBI technician in December, 1980, shortly after the killings, and processed in Washington.^{137/} According to Judge Rauda, it was inadmissible for two reasons: (1) the fingerprint had been taken from the van without the authority of the investigating judge; and (2) it had been analyzed by a non-Salvadoran.^{138/} In 1983, an effort was made to

duplicate the process in an admissible fashion.^{139/} The Salvadoran authorities had done nothing, however, to preserve the van and, not surprisingly, the fingerprint could no longer be located some two and one-half years later.

During our trip to El Salvador, we attempted to explore ways in which the fingerprint obtained by the FBI could nonetheless be used. Both the prosecutors and private attorneys retained by the Embassy persuaded us that the fingerprint would not be admitted during the investigatory stage of the proceedings.^{140/} It is possible, however, as we shall explain below, that the fingerprint could nonetheless be used in the argument section of the trial, when otherwise inadmissible evidence may be presented to the jury.

III. INVOLVEMENT OF HIGHER AUTHORITIES

Since the day the bodies of the churchwomen were found, there has been a widely held suspicion, at least in the United States, that higher officers in the Salvadoran security forces were involved in the murders. Indeed, at the outset of our mission, we shared that suspicion. We frankly doubted that an enlisted National Guard member would have undertaken on his own initiative the rape and murder of four North American women, even in a society as violent as El Salvador. For this reason, we considered it an important part of our mission to do what we could to help resolve the

question. The Salvadorans had done little to address it directly. It had taken enough American effort simply to persuade the prosecutors to pursue the murders themselves, and we saw little hope that a full-fledged investigation of possible higher involvement would ever be undertaken, at least absent concrete evidence of the sort used to force the investigation of Subsergeant Colindres Aleman and guardsmen under his command.

We resolved, therefore, to do what we could to urge the prosecuting authorities to gather evidence relevant to the question of higher involvement, while at the same, time carefully reviewing the evidence available to us in an attempt to resolve the question for ourselves. In particular, we wished the Salvadorans to reinterview guardsmen Perez Nieto and Contreras Palacios. Perez Nieto had first spotted the churchwomen at the airport and his conversations with Colindres Aleman apparently led to their abduction. We did not believe he had been sufficiently questioned about these subjects. We hoped that new questioning would illuminate Colindres Aleman's specific motivation. Unfortunately, we learned that, after giving his statement to Judge Rauda, Perez Nieto had been reported missing in action since January, 1983. 141/

We asked that Contreras Palacios be reinterviewed because, as the sole confessing guardsman, he was in a

position to shed light about what, if anything, Colindres Aleman had said about his orders, a subject on which we believed Contreras Palacios had been insufficiently questioned earlier. Contreras Palacios did give new testimony in which he expanded, and contradicted, his earlier testimony by stating that Colindres Aleman had indeed claimed, in directing the guardsmen to kill the women, that the orders came from higher up.^{142/} Contreras Palacios added that Colindres Aleman regularly used this sort of justification with his troops. For reasons set out below, we ultimately discounted the significance of this testimony, but it served further to underscore the importance of a resolution of the higher-up question.

We also asked the Salvadoran authorities to investigate links between the killers and security forces in Chalatenango and La Libertad, where the churchwomen had lived and worked. We sought to clarify, to the extent possible, whether any of the defendants had contacts with those cities that would suggest their participation in a conspiracy to murder, or whether officers in those cities had had contacts with the airport that would suggest the same. At the same time, we asked that fingerprints of guardsmen in Chalatenango be obtained so that they could be compared with fingerprints found on documents that threatened the churchwomen in Chalatenango. Although fingerprints have

now been obtained from the security forces commanders at Chalatenango and analyzed without positive results, to the best of our knowledge, other security forces personnel stationed there have yet to be fingerprinted.

Thus, the record from which we have had to work is not as complete as we would have liked, or as would have been assembled for a comparable murder investigation in the United States. Nonetheless, we deem the issue too important to leave without discussion. We have undertaken to weigh the evidence available to us as best we can. We have analyzed the testimony of the witnesses and the circumstances under which the testimony was taken. We have made judgments about the credibility of particular witnesses. We have applied our various experiences as prosecutors and judge to the facts of this case. And, contrary to our initial supposition, we have concluded that, from the evidence now available to us, it is unlikely that Subsergeant Colindres Aleman received higher orders to commit this crime. We believe that he acted on his own initiative.

An analysis of the higher orders question begins with a definition of terms. In the broadest sense, higher orders could simply mean an understanding among the security forces in El Salvador, fostered by their superiors, that crimes of violence, no matter how outrageous or unjustified, would not be prosecuted. We do not believe that is what concerns those who believe Subsergeant Colindres Aleman was ordered to commit this crime. Nonetheless, the existence of

this atmosphere is important in resolving the more particular question, for it is clear to us that in El Salvador in 1980, and perhaps still today, there was a general tolerance of crimes of violence by the military. At the time of this crime, so far as we are aware, few, if any, national guardsmen had ever been civilly prosecuted for murder, even though estimates of murdered civilians ran up to 40,000, many allegedly at the hands of the military. Thus, we conclude that officers of the Salvadoran military forces, whether by direction, inactivity or tolerance, encouraged the notion that their troops were above the law.

This brings us to the more direct higher-up questions. Did some higher officer (or officers) order Subsergeant Colindres Aleman to murder the women he had abducted at the El Salvador airport, either after hearing of Guardsman Perez Nieto's suspicions or because he had previously planned to murder some or all of the women, knowing that they would be at the airport on the night of December 2?

The most direct evidence that some higher officer ordered the killing comes from the statements of Guardsmen Contreras Palacios and Valle Espinosa. Contreras Palacios has testified in his second interview that, in directing the guardsmen to shoot the women, Subsergeant Colindres Aleman said he was doing so because of superior orders.^{143/} In addition, Valle Espinosa has testified that Colindres Aleman said substantially the same in ordering him to participate in the roadblock.^{144/}

In addition to the direct testimony of Contreras Palacios and Valle Espinosa, there is certain circumstantial evidence as well. To some American observers at least, it seems unlikely that Subsergeant Colindres Aleman would abandon his duty post at the airport, together with five of his troops, unless he had authorization to do so. More generally, there is evidence of hostility between the military and the church in El Salvador and, in particular, between the military and church workers in Chalatenango. Our interviews with Salvadoran officers reinforced this conclusion; their animosity towards the church was obvious. Colonel Monterrosa was perhaps most blunt. He openly speculated that the churchwomen were probably subversives, and that the military might well have wished them dead.^{145/}

This hostility manifested itself directly with respect to churchworkers in Chalatenango, where Sisters Ford and Clarke were based. Military personnel stationed there regularly harassed churchworkers by, for example, blocking entry to the church with their cars and haranguing them about their alleged subversive activities.^{146/} By the fall of 1980, this hostility had become even more threatening.

In November, 1980, a sign was posted on the parish door in Chalatenango that could be read to threaten the lives of those working with the church there.^{147/} On December 2, the day of the murders, Father Efrain Lopez, the parish priest in Chalatenango, reportedly received a letter

threatening those working for the church in Chalatenango.^{148/} Later on December 2, the sacristan of the Chalatenango church allegedly was approached and shown a list of people to be killed that included the names of Sisters Ford and Clarke.^{149/}

Moreover, a possible opportunity existed for the military to learn that the churchwomen would be at the airport on December 2. In November, 1980, Maryknoll nun Madeline Dorsey sent a telegram to Sister Ita Ford describing her travel plans to the Managua Conference and suggesting that Sisters Ford and Clarke return with her to El Salvador on December 2.^{150/} If the telegram were intercepted by Salvadoran intelligence officers, the possibility existed for arranging an ambush.

Ominous though the above recital may sound, it is nonetheless quite a ways distant from direct proof of higher involvement. More importantly, upon analysis, we believe some of this evidence is more ambiguous than it may seem, and supports the theory that Subsergeant Colindres Aleman acted on his own initiative as readily as the theory that he received higher orders. The remaining evidence, we believe, is both of dubious probative value and substantially outweighed by the evidence inclining against higher involvement.

First, we believe the testimony of Guardsman Contreras Palacios and Valle Espinosa to be, upon analysis, neutral. Although both have testified that, in the course

of ordering them to participate, Subsergeant Colindres Aleman told them that he had "superior orders" and although we have no reason to disbelieve this testimony, it is not conclusive of anything. It would not be surprising if a non-commissioned guardsman of inferior rank like Colindres Aleman used the guise of "superior orders" to motivate his troops, whether he had such orders or not, particularly when asking his men to commit a blatantly illegal act. Indeed, Contreras Palacios's own statement supports this conclusion. He observed that Colindres Aleman regularly justified his orders on such a basis, and speculated that Colindres Aleman had done so this time so that he would not have to bear the full responsibility for his order. Thus, the testimony of Contreras Palacios and Valle Espinosa does not necessarily support an inference either way.

We also conclude that the general animosity between the church and the military does not necessarily support a conclusion of higher-up involvement. The belief, tolerated and even encouraged by officers of the security forces, that the Church and its workers were subversive could well lead lower-ranking soldiers to believe that church workers were fair game for harassment or worse. Thus, we believe the animosity serves as well to explain Colindres Aleman's own motives for the crimes--and his own belief that his acts were justified--as it does to suggest that his superiors were necessarily involved.

Colindres Aleman's willingness to abandon his airport post also does not support an inference either way. His action was, we believe, consistent with the structure within the National Guard at the time. As we learned in the course of our mission, Subsergeant Colindres Aleman had wide latitude in the daily functions of the unit he commanded.^{151/} His superiors visited his post only occasionally, and this lack of command control was and is a major concern of the Salvadoran high command. Until recently, the number of officers was quite low in proportion to the number of posts and guardsmen to supervise.^{152/} Moreover, transportation and communication facilities were limited, making it difficult for officers to control men in the field.

We also do not accord much weight to Sister Dorsey's telegram as providing an opportunity for the military to learn about the churchwomen's travel plans. As we learned, the intelligence network in El Salvador is quite primitive.^{153/} There is no reason to believe that the telegram was intercepted and, if it had been, we doubt that it would have been read by anyone with a particular interest in Sisters Ford and Clarke. Moreover, even if the telegram were intercepted and routed to a person interested in securing the demise of the nuns, the telegram did no more than suggest that they travel on December 2. It was, it seems to us, an insufficient basis on which to construct a plan to abduct and murder the women.

Finally, we conclude that there is no likely connection between the Chalatenango death threats and the murders. The threats were not directed at Sisters Clarke and Ford in particular, and thus suggest no reason why those nuns would be singled out for detention and murder at the airport, some distance from Chalatenango. Moreover, if the threats were serious, we see no reason why they would not have been implemented in Chalatenango--where they would have the maximum deterrent effect on the local church workers--rather than in another, far-away part of the country. Implementing the threats in a distant military district, would have required a level of coordination and cooperation that we have neither observed nor understood to be present in the Salvadoran security forces. At the same time, if such coordination were arranged, it would have necessarily involved additional guardsmen in the killings and thus needlessly increased the chances that the conspirators would be exposed.

If the threats were causally connected with the killings, Subsergeant Colindres Aleman would necessarily have had to be on the alert for the churchwomen. The evidence of Perez Nieto, which we credit and discuss further below, however, demonstrates that Colindres Aleman was not anticipating the arrival of the churchwomen. Finally, in our experience, death threats rarely lead so directly to murder, at least without their authors leaving sufficient time for the threat to have its desired intimidating effect.

If the authors of the death threats truly intended immediately to kill the churchwomen, there was no reason to issue the threats.

In sum, much of the evidence allegedly supporting higher involvement in the murder is, in our view, actually neutral and supports either conclusion. The remaining evidence is of dubious probative value. More importantly, however, there is substantial evidence that, we believe, points the other way.

First, there is the evidence of Subsergeant Colindres Aleman's behavior during the crime itself. In this regard, the testimony of Perez Nieto, the airport guard, is crucial. As an initial matter, we regard his testimony as truthful because of the manner in which it was given: an initial deception, followed by significant revelations after failing a polygraph examination. If truthful, his testimony is inconsistent with higher orders. Were there a prearranged plan to abduct the women, it is inconceivable to us that Colindres Aleman would not have warned Perez Nieto to be on the alert for them. Not only did Perez Nieto affirmatively deny any such orders, but he also simultaneously provided a plausible and independent explanation for why the churchwomen were stopped: because he believed they were suspicious. Perez Nieto's report to Colindres Aleman of his suspicions is likewise inconsistent with higher orders. If Colindres Aleman in fact were

awaiting the arrival of the women, but for some reason had neglected to warn Perez Nieto of that fact, Perez Nieto's report of their arrival would likely have provoked a more forthcoming response than merely "be careful."

Second, Subsergeant Colindres Aleman's statements to his colleagues after the murder are, in our view, inconsistent with higher involvement. The premise for this conclusion is that, if he had been ordered to commit the crime, Colindres Aleman would have felt secure thereafter that his actions would be protected from prosecution. His statements following the crime show no such security. On December 4, 1980, Colindres Aleman told Cruz Piche that "what's done is done" and "if fate is against us, we will have to pay,"^{154/} or words to that effect. On December 5, 1980, Colindres Aleman told Guardsman Luis Monterrosa "if our turn comes up, we will have to pay for it."^{155/} On December 7, 1980, Colindres Aleman told Corporal Giron that "they were subversive women. I don't believe there will be any problem."^{156/} These are not the words of a felon secure in the protection of his patrons. If he acted at the order of superiors, Colindres Aleman would, we believe, not have been so concerned about "fate," having to "pay," or whether he would have a "problem."

Third, Colindres Aleman's confession to Sergeant Dagoberto Martinez is inconsistent with the view that superiors were involved. If Colindres Aleman were ordered

to kill the women by a superior, there was simply no reason for him apprehensively to confess his guilt to his immediate supervisor, a sergeant. Or, if he had felt the need to confess, we believe it likely that he would have explained that the "problem" he had created was ordered from above. In making this analysis, like our analysis of Perez Nieto's evidence, we necessarily treat as credible Sergeant Dagoberto Martinez's testimony, and for like reasons.

Fourth, the information obtained from the special Embassy evidence is consistent with the information from Sergeant Dagoberto Martinez. According to the special Embassy information, Subsergeant Colindres Aleman confessed his guilt to Major Zepeda without implicating any higher-ups. This, again, does not seem to us to be a likely course of events if Colindres Aleman's superiors were in fact involved. More definitively, the special Embassy evidence also provided direct proof, which unfortunately we are unable to reveal without endangering lives, that Colindres Aleman has conceded acting on his own.

Fifth, the evidence of the Zepeda/Monterrosa cover-up, which we have outlined above, shows, we think, a clear attempt to cover up a crime committed by lower-ranking soldiers, and no effort that we can discern to prevent the identification of higher-ups.

Sixth, we are convinced that, in light of all the evidence, the polygraph results are worth crediting.

Subsergeant Colindres Aleman was asked directly, during his polygraph exam, whether the assault had been ordered from above. The polygraph examiner deemed his denial to be truthful. Some critics have suggested that the question was too narrowly phrased to encompass all possible higher orders. After review of the question and careful questioning of the polygrapher, we conclude this criticism is not well-founded. During the pre-examination interview, Colindres Aleman was clearly informed of the scope of the question and, as we understand it, would have indicated an emotional response to the question if there had been any such orders, even if the question were inartfully put. 157/

Taken as a whole, we think the evidence of lack of higher involvement is persuasive and the evidence to the contrary largely, if not entirely, speculative. As we noted at the outset, the investigation of this question has not been commensurate with its importance, and all the facts are not known. We welcome the development of further information on this important issue, and would view new evidence with an open mind. Nonetheless, we believe it would be a disservice not to record here our view, based on the evidence now available, that Subsergeant Colindres Aleman acted at his own initiative.

Before we leave the subject of the involvement of others, we should note that there is some indication in the special Embassy evidence that Colindres Aleman may have had

communications about the churchwomen with the National Police in La Libertad at some point prior to the murders. This evidence suggested not that higher-ups in La Libertad had ordered the killings, but rather that the police in La Libertad had advised Subsergeant Colindres Aleman of some of the churchwomen's involvement in alleged "subversive" activities.

We have done what we could, with the limited resources available to us, to verify this allegation. We have found nothing to confirm it, and some evidence to refute it. In particular, the special Embassy evidence, contains an unsubstantiated suggestion that the churchwomen might have been previously arrested by the National Police. All those who worked with Ms. Donovan and Sister Kazel in the period prior to their murder, and who would have known of such an arrest, denied to us that any such event had occurred.^{158/} Thus, we record some reason to doubt the allegation, but cannot consider it disproved. Nonetheless, from all the evidence known to us, if such a communication occurred, it would have been in the course of an exchange of intelligence information and would not have amounted to orders--higher or otherwise--to kill the women.

IV. FALSE LEADS

We believe that in the course of the investigations described above a coherent picture has emerged of the

events of the night of December 2, 1980. Even so, in virtually every investigation, and particularly in a well-publicized one such as this, a substantial number of leads, tips, rumors, and apparent facts arise that must be explored, even though the vast majority turn out to be immaterial, incapable of confirmation or refutation, or simply wrong. These are the proverbial "red herrings."

The investigations of the churchwomen's murders have grown their own crop of these issues. Many questions have been resolved by the Salvadoran investigations, with the assistance of the United States Government. Others may be explained by this report. A few undoubtedly will never be explained. In order to reach the conclusions set forth in the preceding sections, we have had to analyze each such false lead as completely as possible. We discuss them below in light of the available evidence.

A. Thomas Bracken

On December 17, 1980, Thomas N. Bracken, a United States citizen, was killed in a shoot-out in the streets of San Salvador. Just one week prior, on December 11, 1980, Bracken had gone to the United States Embassy in San Salvador to offer information about the churchwomen murders. The proximity of the two events has caused some speculation as to whether Bracken's appearance at the Embassy and his subsequent murder were causally connected.

We have found no such connection. Bracken was interviewed at the Embassy prior to his death, and had no specific evidence concerning the crimes.^{159/} He offered the theory that the murders had been committed by a right-wing splinter group, but had no evidence to support the charge. Bracken's stated purpose in coming forward was to trade his vague rumors for dismissal of a criminal warrant outstanding against him in El Paso, Texas. It seems to us clear that his offer of information was merely the act of a desperate man trying to find a way to return to the United States.

An inventory of Bracken's quarters, after his death, revealed twenty-five molotov cocktails, wiretapping equipment, handguns, ammunition and military manuals. He had told the Embassy that he was employed as an instructor for the Salvadoran National Police. It was in this capacity that he appears to have met his death. Bracken accompanied several National Police officers who were chasing armed suspects and, in the process of attempting to make the apprehension, was shot dead by one or more of the suspects. In turn, the National Police shot and killed two of the suspects.^{160/} Based on these facts, we find no connection between Bracken's contact with the Embassy and his death.

B. The Canadians

A group of six Canadians together with a Salvadoran priest, Father Britto, was stopped at a military checkpoint

outside the San Salvador International Airport on December 2, 1980, between about 6:30 p.m. and 7:00 p.m.^{161/} Because they provided the first evidence of military activity around the airport, their testimony and their description of the guardsmen were initially thought to be significant. We conclude that their evidence is of little consequence to an understanding of the facts.

The Canadians came to El Salvador to attend the FDR funerals to be held on December 3. At the airport, they met briefly with Sister Kazel and Ms. Donovan, who were awaiting the arrival of Sisters Ford and Clarke. The Canadians then left the terminal, before the arrival of Sisters Ford and Clarke, with Father Britto and the others from the Archdiocese, and an American, to whom they offered a ride.^{162/}

Down the road from the airport, near a traffic control post, they were stopped by several uniformed, armed guardsmen, who briefly questioned them and searched the vehicles.^{163/} Because the guardsmen were in uniform, it is fairly certain that they were not Subsergeant Colindres Aleman and his civilian-attired accomplices. Likewise, because the stop occurred prior to the arrival of Sisters Ford and Clarke and before Colindres Aleman's orders were issued to stop traffic at the checkpoint (except for the white van) the stop was not connected with the abduction of the churchwomen. Rather, we conclude that the stop was one

undertaken by guardsmen at the traffic control checkpoint, consistent with the heightened tensions in the area on the night prior to the FDR funerals. It otherwise has no significance to this case.

C. The Hacienda Police

Father Paul Schindler, the American priest who worked with Sister Kazel and Ms. Donovan in La Libertad and who found the burned out van, has alleged that the Hacienda Police may have been involved in the crime because (1) the Canadians were stopped at a roadblock near the turnoff for a local Hacienda Police station, and (2) there is evidence that a red pickup truck belonging to the Hacienda Police was used during the abduction.^{164/}

The first point, we conclude, is based on a misapprehension of the facts. The guardsmen have uniformly placed the location of the checkpoint at which traffic was stopped for 10 minutes at a position on the main access road to the airport, near the reinforced concrete guard post (which is permanently maintained in the broad median strip of the access road to provide security for nearby electrical installations). This location is some distance removed from the turnoff to the Hacienda Police station at San Juan Talpa. To verify the guardsmen's testimony, we contacted Patricia Lasbury Hall, at the time of the events in question, United States Consul in El Salvador.^{165/} Together with

Ambassador White, Ms. Hall drove the Canadians to the airport on the day after they were stopped. At that time, Ms. Hall told us, the Canadians identified for her the location of the checkpoint. It was, she said, just as the guardsman had it: near the existing concrete guard post in the median strip of the airport access road.

The claim that a police pickup truck was involved is based on the alleged correlation of a fresh smear of red paint on the burned out van with a red Toyota pickup truck of the same shade at the Hacienda Police station in San Juan Talpa on the day after the murders. Father Schindler noticed the red paint smear on the left front bumper of the van when he found it on the roadside on December 3, 1980. Because he was the person responsible for the maintenance of the church vehicles in La Libertad, he was familiar with the condition of the van and is confident that the smear had not been there before December 2.

In his subsequent search for the women, Father Schindler visited a nearby Hacienda Police station in San Juan Talpa where he saw a red Toyota pickup truck. Although he was unable to inspect the truck thoroughly for paint damage and although none was visible to him, he concluded that the pickup truck and the paint smear were of the same color. As a result, he suggested that the Hacienda Police from that station might have been involved in the church-women murders. We cannot draw that conclusion.

On December 12, 1980, FBI technicians took scrapings of the paint smear.^{166/} These scrapings were analyzed in the FBI Laboratory, which concluded that none of the paint particles were of a kind used for the original paint finish on any motor vehicles.^{167/} Because Father Schindler had identified the pickup truck as a Toyota, the Maryknoll Order sent a copy of the FBI analysis to Toyota. Toyota responded specifically that the paint was not used on their vehicles.^{168/}

Father Schindler told us that he believes the Toyota pickup truck had been repainted, so that it is possible that a non-standard paint was used. Even if that were so, however, it is likely that particles from the underlying original coat of paint would have been present in the red smear as well. None was found.

We find the connection between the red smear and the red pickup truck to be based entirely on supposition. Moreover, it is inconsistent with testimony that we believe to be truthful from several of the participants in the abduction (Guardaman Rivera Franco and Contreras Palacios), and with the testimony of those who witnessed the activities of December 2. We have found no credible evidence that the Hacienda Police were involved in the murders.

D. Money and Valuables

In the days following the murders, several of the accused were seen with money and valuables.^{169/} Guardsman

Cruz Piche reported that another guardsman claimed that Canales Ramirez was seen with 5,000 dollars or colones.^{170/} The allegation, albeit second hand, is of concern because possession of such a large sum of money, in excess of any amounts conceivably taken from the churchwomen, might suggest that the guardsmen had been paid by some unknown party for participation in the murders.

To clarify the allegation, we asked that Guardsman Cruz Piche be reinterviewed on the subject. At the time of writing this report, Cruz Piche cannot be located by Salvadoran authorities. Nonetheless, based on the evidence available to us, we believe that the churchwomen's missing personal property has been satisfactorily traced to Colindres Aleman and the guardsmen, and that it probably accounts for any perceived increase in Colindres Aleman's personal wealth.

When the nuns left the airport, they had with them the personal belongings of Sisters Clarke and Ford, including clothing and books. Sister Ford was carrying some cash (originally thought to be \$900, now apparently only \$175)^{171/} and three checks, two for \$1,800 each (to help buy a new jeep to replace one lost earlier that year) and one for \$243 (to be used to pay local accounts).^{172/}

According to several witnesses, the books were burned by the accused soon after the murders, along with articles of clothing and some jewelry.^{173/} Several witnesses testified that Subsergeant Colindres Aleman was seen

selling women's watches, rings, eyeglasses and a tape recorder, and buying a television set and furniture.^{174/} One of the other accused, Guardsman Contreras Palacios, gave Guardsman Sanchez Guzman eighty dollars to exchange into colones for him, and Canales Ramirez offered to sell Sanchez Guzman a woman's watch.^{175/} The checks were never negotiated and, according to the Embassy's special evidence, were destroyed by Colindres Aleman.

Other than the second hand accounts crediting Guardsman Canales Ramirez with 5,000 dollars or colones, there is no evidence attributing an amount of money to any of the guardsmen in excess of the cash and valuables possessed by the churchwomen. We conclude from this evidence in the record that Colindres Aleman and others of the accused looted the churchwomen's belongings after the murders, taking what they believed to be valuable and burning the rest. There is no credible evidence that Colindres Aleman, Canales Ramirez, or anyone else received payment from an unknown source for his role in the murders.

E. The Moran Letter

Perhaps no red herring has been so patently fabricated as the Moran letter. In the late spring of 1983, the Maryknoll Order received, through an anonymous source, a copy of a letter, purportedly written by Lt. Colonel Antonio Moran, the Chief of the Hacienda Police, to Colonel Vides

Casanova, the Director of the National Guard, on January 5, 1981.^{176/} The letter states that six individuals--not the defendants--had been detained by the police and were being referred to Vides Casanova for the murders of the church-women. If true, the letter would cast immediate doubt on the validity of the entire prosecution.

The letter is, however, a crude forgery, obviously created by unknown third parties--whether of the right or the left--with an interest in disrupting the prosecution. Colonel Moran has testified he never sent the letter,^{177/} and Vides Casanova that he never received it.^{178/} Moreover, the signature and seal are forgeries, according to handwriting experts appointed by Judge Rauda,^{179/} and the letter does not bear either the code numbers or the formal salutation that a genuine piece of Treasury Police correspondence would include.

F. and Cortez)

In September, 1981, an anonymous letter addressed to the United States Congress was received by the State Department.^{180/} The letter, dated July 21, 1981, stated that the writer was a witness to the killings of the church-women, and that if Congress were interested in the identity of the assassins, it should place an advertisement in several Mexican newspapers. The State Department placed the advertisement in late September, which led to a meeting between

two United States Embassy officials and

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said that he had no direct information concerning the murders. He identified the author of the letter to Congress as one Cesar Cortez, allegedly a driver employed by Hans Crist, a suspect in the January, 1981, murders of the American Institute of Free Labor Development workers. He said that Cortez had fled El Salvador several months before, passing through Mexico City on his way to the United States. On October 6,

told the Embassy in Mexico City that Cortez had written to him from Chicago, but that he still had no address for him.

On October 15, 1981, John McAward, Executive Director of the Unitarian-Universalist Service Committee, reported to the State Department that he also had met in Mexico City.^{182/} According to McAward, claimed that a Cesar Cortez had approached him in Mexico City and described the murders. Cortez allegedly told that he had been instructed by his employer to drive a pickup truck from "the Hacienda" with two Hacienda guards to La Libertad, where he was to pick up three guardsmen, and then proceed to the airport "to do a job"--the abduction of the churchwomen.

stated that Cortez denied participation in the rapes and murders, but claimed to have seen what happened.

Thereafter, the State Department and the FBI pursued a number of false leads in attempting to trace the

mysterious Cortez.^{183/} Finally, responding to a suggestion from Representative Mary Rose Oakar, the State Department sought to submit to a polygraph examination concerning Cortez.^{184/} Despite repeated requests and assurances of safety, repeatedly refused to submit to a polygraph examination.^{185/} With 's refusal, the effort to locate Cortez and to verify his story reached a dead end.

We are convinced that the /Cortez episode has no bearing on our understanding of the facts. Cortez' alleged story, as described by through McAward, is inconsistent with the facts outlined above. It may be that fabricated the story in an attempt to gain a visa to the United States.^{186/} Whatever 's motivation, Cortez' alleged story, unsupported even by the existence of Cortez and contradicted by the facts, is of no apparent validity.

G. The Radio Message

In December 1980, it was reported that a witness had overheard a radio transmission at the airport between members of the security forces.^{187/} There is conflicting information about what was said. According to one version, a guardsman was heard stating, "we missed them on this flight."^{188/} According to another version, the conversation focused on the fact that the churchwomen were carrying a large amount of money.^{189/} Any such conversation, if true, would be significant because it could suggest that the

National Guard was awaiting the arrival of the churchwomen, and thus that a prearranged plot was in effect.

Although the source of the information was fairly quickly identified, he resisted several attempts by Embassy officials to persuade him to come forward and make a formal statement. President Duarte finally prevailed upon the witness to submit to an interview, attended by Embassy officials, in mid-March 1982 by Deputy Fiscal General Benjamin Cestoni.^{190/} The witness said that he was in the airport terminal on December 2, 1980, awaiting an incoming flight. While there, he claimed he overheard a telephone--not radio--conversation of a uniformed guardsman speaking from a pay telephone in the lobby. He said that the gist of the conversation was "we missed them on this flight." The witness said that he then saw the arrival of two women he believed to be two churchwomen, who were greeted by two others and who departed at about 4:00-4:30 p.m. in a white van. He averred that he was sure about the time because he himself left shortly after 4:30 p.m.^{191/}

Although Cestoni and the Embassy officials all believed that the witness was not purposely attempting to deceive them, they unanimously concluded that his recollection was nonetheless confused and highly unreliable. Under close questioning, the witness offered varying accounts of what he had heard, at different times claiming that the communication was by radio or by telephone, and

that it concerned either money in the churchwomen's possession or their delayed arrival. Indeed, at one point, in the course of three interviews with Embassy personnel, the witness stated that he had only seen a radio being used and had not heard what was said.^{192/} Moreover, if true, the witness's testimony means that at least Guardsman Perez Nieto and Cruz Piche are lying in giving their accounts of Perez Nieto's telephone conversation with Subsergeant Colindres Aleman. Because of all of this, we discount the report of the witness.

H. Abduction at the Airport

Father Schindler has suggested to us that the churchwomen had been abducted at the airport, not at the roadblock manned by Subsergeant Colindres Aleman and his guardsmen.^{193/} He said he believed this had happened because witnesses to whom he spoke had said they were the last to leave the airport and the white van remained behind. He further told us that Ms. Hall had indicated to him that a secret Embassy source had confirmed that the abduction was actually at the airport.. Ms. Hall denied to us making any such statement.^{194/} Moreover, our review of the Embassy files and our conversations with Embassy officials convinces us that no such source or information exists. Finally, the allegation is completely contrary to all the existing evidence in the case with respect to the location of the abduction.

I. The .22 Magnum

When the bodies of the churchwomen were taken to a local funeral home in San Salvador on December 4, 1980, a Maryknoll priest, Father John Spain, was present to witness the post-mortem examination.^{195/} Father Spain heard the funeral home attendant say that the wounds of at least one of the women were caused by a .22 magnum, allegedly a favorite weapon of the Salvadoran death squads. Father Spain observed that the wounds of Sisters Ford and Clarke were small, did not disturb their facial features and were in other respects different from those of Sister Kazel and Ms. Donovan. The physician and judge present were noncommittal about the wounds, and the subsequent autopsies performed on the churchwomen drew no conclusions about the caliber of the weapons used.

We can give little weight to the opinion of the funeral home attendant. The theory that a small caliber weapon was used does not comport with the confession of Guardsman Contreras Palacios, who testified that he and the others had used their service weapons. It is likewise inconsistent with the ballistics analysis of those shells and casings that were recovered. It is, of course, possible that a guardsman may have had a .22 magnum pistol, and could have used it to kill one or more of the women. Even if such a weapon were used, however, it does not add any evidence one way or the other about the involvement of others in the murders.

J. Sister Maria Rieckelman

On the night of murders, Sister Maria Rieckelman, a Maryknoll nun who attended the Managua conference together with Sisters Ford and Clarke, was questioned by uniformed Salvadorans when her plane landed at the International Airport in El Salvador.^{196/} This event had led some to conclude that some coordinated harassment of churchwomen was underway on the evening of December 2, 1980. We do not share that conclusion.

Without more, the questioning of passengers aboard a plane just arrived from Sandinista Nicaragua, suppliers of the rebels fighting the Salvadoran government, on the night before the FDR funeral, does not seem to us extraordinary. Rather, like the stop of the Canadians, it seems to us simply to be further proof of the heightened tensions of the time, tensions that may have caused Colindres Aleman to believe he could abduct and murder the churchwomen.

K. Sister Maura Clarke and the Nicaraguan Connection

Sisters Maura Clarke and Ita Ford were returning from an annual gathering of Central American Maryknolls in Nicaragua at the time of their murder. During our visit to El Salvador, we heard allegations that the Catholic Church, and specifically the Maryknoll Order, are linked in the minds of the military in El Salvador with support of leftist and revolutionary causes in Central America, especially as

exemplified by Maryknoll links to the Sandinista government in Nicaragua. When we learned that a former Sandinista intelligence officer, Major Miguel Bolonas, had testified to at least one subcommittee of Congress (Senator Jeremiah Denton's Subcommittee on Security and Terrorism of the Senate Judiciary Committee that Sister Maura Clarke had a role in those alleged links, we felt obliged to interview Major Bolonas.^{197/} We did so not because his allegations against a murdered woman could justify such a senseless and wanton act, but to determine whether such charges were likely to have been made known to Subsergeant Colindres, Aleman or his superiors. We found our interview with Major Bolonas largely unhelpful.

Major Bolonas claimed that he met Sister Maura Clarke when she was working in Managua with other Maryknolls and a priest known as Father Miguel in a poor area of the city called "Open Three" in the period 1974-1975. Later in 1979, Bolonas claimed, during his work as an intelligence officer both prior to the revolution in Nicaragua and thereafter for the Sandinistas, he learned from another intelligence officer that Sister Clarke and other Maryknolls, along with Father Miguel, were routinely helpful to the Sandinistas both in their charitable activities and in clandestine activities. Major Bolonas stated that at the time of the murder of the nuns in El Salvador, when news of their deaths and their identities was reported in the Nicaraguan press,

stories appeared pointing out Maura Clarke's role in assisting the Sandinista revolution.

We have not had an opportunity to discuss Major Bolonas' charges with members of the Maryknoll Order, although we have learned from the State Department that the Maryknolls believe Major Bolonas to be mistaken in his information. We have been told that Maryknoll records indicate that Sister Maura Clarke was not in Nicaragua during the period 1976-1980, but rather was in Boston. It is our view, in any event, that the truth or falsity of Major Bolonas' charges is irrelevant for our purposes. What could be relevant is whether these charges were known to and believed by the Salvadoran government, and became such a concern that Salvadoran officials, believing that they knew Sister Maura Clarke to be a Sandinista ally, ordered her execution.

We do not believe that this occurred. First, although Major Bolonas' credibility is apparently high with United States intelligence agencies, we have received no other confirmation of his charges. Second, we have no indication that these alleged activities of Sister Maura Clarke were ever brought to the attention of the Salvadoran government or that they became the kind of common knowledge among the Salvadoran security forces that Major Bolonas claimed existed within the intelligence circles of the Sandinistas in Nicaragua. Third, as described in our "Higher-Ups" section, we have concluded that Subsergeant Colindres

Aleman probably acted on his own initiative. With this in mind, it does not appear likely that he somehow became aware of these allegations and decided to carry out the removal of four churchwomen in order to protect the Republic of El Salvador from infiltration by Sister Maura Clarke.

V. PROSPECTS FOR A SUCCESSFUL PROSECUTION

El Salvador is a civil law state. Virtually every step of a criminal investigation and prosecution is specified in the Salvadoran code, and we found the procedures to be formalistic and largely inflexible.

In an effort to understand how the prosecution is likely to unfold, we held discussions with Judge Rauda, Fiscal General Rivera, Dr. Castillo, the coordinating prosecutor, and former Deputy Fiscal General Benjamin Cestoni. We talked as well with members of the private bar in San Salvador, including the Salvadoran legal advisor to the United States Embassy. Finally, we discussed this matter with representatives of the United States Department of Justice, and with lawyers in the office of the Legal Adviser of the United States Department of State.

As we learned, the trial, or plenario, stage of this case will be quite unlike an American trial. There will be no live witnesses. Rather, the evidence will be read to the jury from the written statements taken from the witnesses during the investigatory, or sumario, stage.

Thereafter, the lawyers will argue their respective sides to the jury based on the written record. During this argument stage, the lawyers may refer to any documents they wish, even if they are not part of the record.

We believe that a successful prosecution of this case must include at least the following elements:

- (1) a carefully prepared record that demonstrates the guilt of the defendants and negates their defenses;
- (2) a capable prosecutor willing to pursue vigorously members of the Salvadoran security forces;
- (3) a courageous and astute judge;
- (4) a jury well insulated from the potential for corruption or intimidation; and
- (5) freedom from efforts by other Salvadorans, whether in or out of government, to interfere with the proceedings of the trial.

A. The Record

In the course of detailing the investigations of this case, we have already catalogued the principal evidence now in the record against Subsergeant Colindres Aleman and the other guardsmen. During the sumario, or investigatory, phase, Judge Rauda took testimony from the five accused and at least twenty-five other witnesses.^{198/} He admitted into

evidence the spare tire and jack taken from the churchwomen's van and the ballistics evidence linking the guardsmen to the shell casings at the murder site. We believe that the evidence is substantial, and sufficient to convict the five accused guardsmen. We will not recount it again here.

Dr. Castillo, the chief prosecutor, advised us that he anticipates the defendants will rely on two principal defenses. First, he believes they will challenge the prosecution's reliance on extra-judicial confessions, rather than those given before a judge. In El Salvador, prosecutions that do not feature a confession by the defendant to the investigating judge are relatively rare. Although this is a sad commentary on the state of justice in El Salvador, it nonetheless presents a reality: Salvadoran juries are unused to balancing conflicting accounts of a crime.

Salvadoran law permits the admission of a defendant's extra-judicial confession, but only if it is corroborated by another witness. As we understand it, the two witness rule does not mean two witnesses to the same confession, but only two witnesses each reporting a confession. The record should adequately meet this requirement. Of course, there is Subsergeant Colindres Aleman's direct confession to Sergeant Dagoberto Martinez. That confession should be adequately supported by Colindres Aleman's implicit confessions to Guardsmen Cruz Piche ("If fate is against us, we will have to pay"), Aquino Giron ("They were subversives.

I do not think there will be a problem."), and Luis Monterrosa ("Today it happened; if our time is up, we will have to pay.").

Second, Dr. Castillo believes the defense will argue that there was excessive American involvement in this prosecution. In essence, the argument will be an appeal to nationalism and a suggestion that there has been undue influence from a foreign power. It was for this reason that the prosecutors were anxious to have Salvadoran witnesses even for evidence actually developed in the United States. It is also for this reason that the prosecutors were hesitant to urge aggressively the admission of the fingerprint and the polygraph evidence, when admission of those tests would not be ordinary under Salvadoran law and would only underscore the influence of the United States on this prosecution. In our discussions with Dr. Castillo, he seemed to be cognizant of the problem and able to deal with it effectively in argument.

A third defense suggested by some is that the defendants were acting on higher orders. As Dr. Castillo advised us, such a defense is not available under the Salvadoran code when the order is to commit an illegal act. The depravity of the crime, amply documented in the record, will provide a basis for a strong argument that no guardsman could have thought such an order was justified. We doubt, in any event, that the argument will be seriously pressed because it will necessarily involve an admission of the

crime and a disavowal of the defendants' prior sworn statements.

No experienced prosecutor can confidently predict that an accused's defenses will necessarily be rejected by the jury. We are convinced, however, that there is sufficient evidence in the record from which the prosecutors can argue that the defenses should be disregarded.

B. The Prosecutors

As the sumario stage of the case neared its conclusion, serious questions were raised about the experience and competence of the prosecutors handling the preparations for trial. In September, 1983, in part at the urging of the United States, an experienced prosecutor, Dr. Juan Geronimo Castillo, was assigned to coordinate the prosecution.

We spoke with Dr. Castillo and were, in general, favorably impressed. Dr. Castillo seemed in command of the case and at ease with the tasks he would have to undertake to complete the preparations for the plenario phase. He responded knowledgably to our questions about tactics and about Salvadoran procedures. We believe that Dr. Castillo is capable of doing a competent job in prosecuting the case.

As we describe below, during our visit to El Salvador, we made a number of suggestions concerning the reinterviews that might be necessary to complete the

investigation of this case and its preparation for trial. Although we have received reports concerning the follow-up on those suggestions by Dr. Castillo and his team, we do not have a complete picture of how thoroughly he has completed his investigation. From the reports we have seen, however, most of the investigatory work appears to be near completion.

We understand as well that the Embassy legal advisor, a professor of law and member of the private criminal bar in San Salvador, will assist Dr. Castillo in the preparation of the case. The Embassy legal advisor has advised the United States Embassy about Salvadoran law and procedures throughout the investigation. We believe this cooperation will provide important support for Dr. Castillo's efforts.

C. The Presiding Judge

Judge Rauda has presided over the sumario phase of the churchwomen murders case for most of its life, and has been reasonably thorough about the collection of evidence. Judge Rauda has thrice referred the case to the plenario stage, to be twice overruled by the appeals court. The two reversals resulted from technical difficulties (the first, a failure to give sufficient notice to the defense attorneys and, the second, a concern about additional evidence in support of the theft charges) and in its ruling on the first appeal, the appeals court specifically indicated that there was sufficient evidence to support the murder charges. The

judge took the opportunity of each reversal to add more evidence into the trial record. There has been an appeal of Judge Rauda's most recent decision to refer the matter to plenario, and we are advised by a variety of local lawyers that the appeal is likely to be decided quickly because the same appellate court has heard the two previous appeals and is familiar with the facts.

Judge Rauda has shown himself to be a man of considerable courage, capable of resisting pressures brought to bear on him from either side of the case. He is also a diligent worker, and during our visit with him, displayed an encyclopedic knowledge of the contents of the trial record.

D. The Jury

The trial will be held before a jury of five, with a majority vote necessary to convict. Whether a jury can be assembled in El Salvador today that will have the courage to convict five former National Guardsmen of murder is an open question, and one that has concerned us greatly.

The selection of the jury does not differ substantially from our system. The trial judge will choose, from a large body of potential jurors, a panel of twelve whose identities he will (or should) keep secret until the day of trial. Under Salvadoran law, we were told the identities of the jurors will then be made public, although their addresses may be kept secret (if they do not leak

out). At the beginning of the trial, defense counsel and the prosecutor may each exercise one peremptory challenge against the panel, and two challenges for cause. Challenges for cause are rarely granted, and there should thus be no difficulty in selecting five jurors from the panel of twelve.

What will be more difficult, we believe, is guaranteeing the jurors security from intimidation or corruption so that they will be able to vote their consciences without fear. We believe that the notoriety of this case will make the jury (as well as the judge and prosecutor) fair game for those who wish to see the prosecution thwarted, whether because they do not believe the guardsmen should be prosecuted for murder or because they wish to demonstrate that the Salvadoran system is incapable of policing itself. For these reasons, we have discussed at length with the Embassy possible mechanisms to protect the jury.

Our recommendations in this regard have been set forth in detail in an earlier memorandum to the Department of State, and need only be summarized here. Our principal recommendation is that the jurors be accorded anonymity, as is sometimes done with notorious prosecutions in this country where a threat of jury intimidation exists. We have also suggested shielding the jurors, but not the trial, from public view; selecting jurors from a remote province for a trial in another province; offering to relocate the jurors,

whether in or out of the country, after trial; providing physical protection to the jurors, and perhaps their families, during the trial and for a reasonable time thereafter; and sequestering the jury during the trial.

This is hardly an exhaustive list of possibilities, but we have not been heartened by the resistance to these ideas by the Salvadoran authorities. The Salvadoran system simply must be flexible enough to adopt novel means when its very integrity is at stake. We must state in the strongest possible terms that we do not believe a successful conviction can occur without the adoption of some adequate means of protecting the jury, and we hope that the Salvadoran authorities continue to consider ways to protect the integrity of the jury system and the physical well being of the jurors themselves.

E. Freedom From Outside Interference

Skeptics have told us that a successful prosecution depends entirely upon the will of the military in El Salvador. In this view, if the military thinks it is to its advantage for the defendants to be convicted, they will be convicted; if the military thinks otherwise, they will be acquitted or never go to trial. Whether that view is correct or not, we must acknowledge that there are many Salvadorans unhappy about this prosecution and, further, that there already have been attempts to influence its outcome.

Major Medrano, we were told, has received multiple threats upon his life for his active role in pressing the investigation. In more recent months, we have learned that a Deputy of the constituent assembly suddenly appeared to observe the proceedings in Judge Rauda's courtroom, an event viewed by Embassy observers as ominous. At the same time, we learned that the Acting President of the Supreme Court may have interceded with Judge Rauda to direct that he not complete his investigation aimed at disproving the bogus Moran letter. To date, Judge Rauda has been remarkably courageous in resisting such efforts at intimidation.

We do not believe that there is much that the United States can do to prevent such internal efforts at disrupting the prosecution. We can only advise the Salvadoran leadership, as others have done, that the ability of its system to prosecute this case will be seen by many as a test of the system's ability to right itself after too many years of lawlessness.

VI. RECOMMENDATIONS

We were asked to determine whether the Salvadoran and United States Governments have done as much as could be done to assure a successful prosecution. If not, we were asked to suggest what might be done. Many of our recommendations have been set forth above. In each case, we have passed them along to the Department of State immediately

without waiting for the completion of this report, so that there would be time for action to be taken. To the extent that our conclusions and recommendations have not already been set forth, we include them in this section.

1. An Accusador Particular. In El Salvador, as in many civil law countries, it is possible for the family of the victim of a crime to hire its own lawyer, an accusador particular, to prosecute the case in addition to the government attorney. The device is obviously a desirable one where, as here, there have been doubts regularly expressed about the competence and willingness of the government prosecutors to pursue the case. Accordingly, we have endorsed the State Department's recommendation that the families hire an accusador particular. We have urged that view in several meetings with the families and their representatives and promised the families that, if they agreed, we would press the State Department to pay for the services of the accusador.

To our regret, the families have consistently refused taking this step. As we understand their reasoning, they are distrustful of participating in the Salvadoran system itself and further doubt that a suitable attorney could be obtained. While we understand their reservations, the device provides a rare opportunity for Americans sincerely interested in the prosecution to have direct influence over the way the case is presented in the courtroom.

Thus, we regret the families' refusal to participate in this proposal.

On the other hand, as matters now stand, we think the loss is less serious than it might have been. As noted above, we are generally impressed with Dr. Castillo and believe him to be more competent than some of his predecessors. Moreover, Dr. Castillo has forged a solid working relationship with the Embassy's legal advisor. Through the legal advisor, American views about the prosecution can readily be transmitted to the prosecutor, even if the families lack a direct voice in court.

2. A Special Prosecutor. Rather than hiring an accusador particular, the families and the Lawyers Committee for International Human Rights under Law have suggested the United States persuade the Salvadoran government to name a special prosecutor to handle the churchwomen murders case. We do not endorse this suggestion. We do not believe that, in the Salvadoran system, the label the prosecutor bears is of any significance to his effectiveness or to his freedom from interference. Moreover, in a real sense, Dr. Castillo is essentially a special prosecutor. He was especially reassigned from his duties as head of a separate section of the prosecutor's office to prosecute this case.

3. An American Prosecutor. None of the American Embassy officials in San Salvador with responsibility for this case is a practicing attorney, much less an experienced

prosecutor. While these officials have been diligent, successful and often courageous in pushing the Salvadorans to prosecute the defendants, as the case approaches trial it is apparent to us that American views could more usefully be presented by an experienced criminal prosecutor. Such a prosecutor could deal more effectively with the Salvadoran attorneys involved in the case in terms of making useful suggestions, understanding the problems of the prosecution and analyzing the tactics used by both sides. We have therefore suggested that a Spanish speaking Justice Department prosecutor be made available to assist the Embassy, during the plenario proceeding.

4. The Fingerprint Evidence. Because the analysis of Colindres Aleman's fingerprint, taken from the churchwomen's van, was done outside of Salvadoran territorial limits and not under the supervision of the trial judge, the Salvadoran code prohibits its introduction into evidence. We were frankly surprised at this result and, because the evidence was so important, sought to explore ways to obtain its admission. Our every suggestion was unavailing, and we ultimately concluded, as Dr. Castillo and the Embassy legal advisor both told us, that we could not expect to achieve formal admission of the fingerprint into the record.

Although the fingerprint will not be part of the trial record, it still may be used at the trial. During the

vista publica, or public presentation, stage of the proceedings, lawyers may display to the jury and rely upon any documentary evidence, even from outside the record. Thus, it is possible for the fingerprint evidence to be used. Because Dr. Castillo expects the defense to be based upon excessive American involvement in the prosecution, he was nonetheless reluctant to use the fingerprint in this way unless absolutely necessary. An argument based upon a fingerprint taken by United States personnel and inadmissible under Salvadoran law will only reinforce the point that Dr. Castillo expects the defense to make. Thus, he will wait until his reply argument to determine whether the defense is indeed attacking American involvement and whether the fingerprint will be useful. We concur in this analysis.

5. Ballistics Evidence. The initial ballistics tests taken by the FBI were inadmissible for the same reasons as the fingerprint evidence. We encouraged the FBI, as recounted above, to transport its equipment to El Salvador and train a Salvadoran national to duplicate the tests. This was done with success, as set forth above. This proof is a substantial link in the chain of evidence against the accused.

6. Sergeant Dagoberto Martinez' Testimony. Although the record of the trial consists entirely of sworn written statements of the witnesses, the sworn statement of Sergeant Dagoberto Martinez, obtained by the FBI in Los Angeles and sworn to in the Salvadoran Consulate office in

that city, was deemed inadmissible by both the judge and the prosecutor. The statement's flaw was that it was not sworn to before the investigating judge. We recommended, as did others, that Sergeant Martinez be flown to El Salvador at American expense so that his statement could be duplicated before Judge Raudá. This was done successfully in July, 1983, and forms another important part of the trial record.

7. Polygraph Evidence. Although the polygraph evidence is inadmissible in both El Salvador and the United States, we believe that such evidence is useful, when taken together with other available evidence and obtained by a skilled examiner. We considered whether an effort should be made to persuade the court to admit the evidence, and ultimately concluded that this was not the case in which to press El Salvador to accept evidence that would be inadmissible in the United States.

We are told that the polygraph examinations could be used in the vista publica in the same manner as the fingerprint evidence. Dr. Castillo has told us that he will await his reply argument before making a decision with respect to whether to use them. We agree with this decision, but would generally be inclined against using this evidence.

8. The Special Embassy Evidence. The special evidence developed by the United States Embassy is directly probative of the defendants' guilt and, as well, extremely important in explaining our conclusions about the cover-up

and the question of higher-up involvement. Accordingly, we believed it desirable, if at all possible, to present this evidence to the court.

At our suggestion, the State Department carefully considered this issue, including contacting those whose lives would be put at risk by disclosure. Based on the information thus collected, both we and the State Department concluded that the risk of loss of life that would result from public release was too great. We also note that the information has already been highly useful to the United States since, without it, we doubt the prosecution would ever have been undertaken.

9. The Cover-up. As we have detailed above, it is clear to us that elements of the Salvadoran military undertook an initial attempt to protect the perpetrators of the crime. In El Salvador such an effort, at least by the active participants, could constitute a separate crime and some have urged that a criminal investigation be initiated. We believe that it would be dangerous to initiate such an investigation prior to a successful resolution of the underlying murder case. The cooperation that the United States has achieved to date with Salvadoran authorities has been hard to win, and could be easily lost. A cover-up investigation would necessarily threaten several high ranking Salvadoran officials. If these officials feel personally threatened, they may well attempt to scuttle the underlying

prosecution on the theory that there could be no cover-up prosecution if the defendants were not found guilty. We believe this poses an unacceptable risk to the success of the murder prosecution, and thus have recommended that any effort to pursue the cover-up be delayed.

10. Additional Interviews. To flush out various gaps or inconsistencies in the record, we recommended last summer that several additional interviews occur:

(a) Margarito Perez Nieto, the National Guardsman who first noticed the nuns at the airport, to obtain more detail about his conversations with Colindres Aleman, and his spotting of the women.

(b) Carlos Joaquin Contreras Palacios, the confessed participant, about details that might reflect or discredit the fact of premeditation.

(c) Salvador Rivera Franco, the guardsman who watched over the malfunctioning jeep, for greater details that might reflect premeditation.

(d) The two guardsmen at the guardpost at El Rosario, La Paz, to determine whether they discussed the women with Subsergeant Colindres and whether he informed them about his plans for the women.

(e) Isabel Aquino Giron, Colindres Aleman's second in command at the airport, for further detail about the substance of his phone conversation late on the evening of December 2.

(f) Jose Luis Monterrosa, who according to the special Embassy evidence, knew more than he had said about the guilt of Colindres Aleman.

In our discussions with the United States Embassy in San Salvador, and with the Department of State, we also agreed that certain other interviews or reinterviews would be appropriate: Colonel Pena Arbaiza, the Army commander in Chalatenango; Second Lieutenant Daniel Mejia Rivas, the officer who was the acting company commander with overall responsibility for the Airport National Guard detachment; and Lieutenant Colonel Oscar Armando Carranza, an officer currently assigned to National Guard Headquarters staff. We also agreed that additional guardsmen who had been on duty at the airport that night, Jose Vidal Cruz Piche, Rafael Antonio Cornejo, Jose Elias Sanchez Guzman, Julio Cesar Valle Espinoza, Adrian Ramirez Palacios, and Orantes Menjivar, should also be interviewed or reinterviewed.

We have been informed that the two guardsmen at the Guard post at El Rosario have been interviewed, but we have not seen their statements. Guardsman Margarito Perez Nieto has been missing in action for almost ten months, and Corporal Isabel Aquino Giron is dead, killed while on active duty. We also understand, for a number of practical reasons, that the Salvadoran prosecutors have determined that they would not at this time reinterview Salvador Rivera Franco.

Colonel Pena Arbaiza, Lieutenant Mejia Rivas and Lieutenant Colonel Armando Carranza have also been interviewed, as have Guardsmen Contreras Palacios and Luis Monterrosa. Their testimony adds very little to the available evidence concerning the murders. Guardsmen Jose Elias Sanchez Guzman and Jose Vidal Cruz Piche have not been reinterviewed, because they cannot be located, and a planned "confrontation" by the Fiscal General between Julio Cesar Valle Espinoza and Adrian Ramirez Palacios to resolve apparent discrepancies in their testimonies has not occurred because of a refusal by Valle Espinoza to cooperate further. Guardsman Orantes Menjivar, whose reinterview had been planned, is dead, and it has been determined that Lieutenant Antonio Cornejo, whose interview had been planned, was not on duty at the airport on the crucial night.

11. Reinterview of Colindres Aleman. Colindres Aleman, more than any other person, knows whether he is protecting higher officers by his silence. Thus, securing his cooperation would be a key step in any possible higher-up investigation. We suggested that efforts be made in that direction when we returned in September, 1983, from our trip to El Salvador. So far as we were aware at the time of our suggestion, no military or civilian authorities involved with the investigation of the case had spoken with Colindres Aleman since his polygraph examination in January, 1982. We suggested that, if Colindres Aleman heard the totality of

the evidence now accumulated against him, he might decide it was in his interest to cooperate.

At first, we were told that Salvadoran procedures do not encourage such reinterviews. The prosecutors agreed, however, that there could be reinterviews for the purpose of clearing up ambiguities in testimony or otherwise explaining previous testimony. On October 11, 1983, Colindres Aleman was reinterviewed and we have reviewed the English language translation of his statement. Unfortunately, we do not find in the reinterview statement the cooperativeness for which we had hoped, nor any further information that would be helpful to us on the issue of the involvement of higher-ups. In his reinterview, however, Colindres Aleman did provide a further indication of his guilt by admitting his discussion with Perez Nieto concerning the churchwomen and by providing a wholly incredible explanation of his whereabouts on the night of the murders.

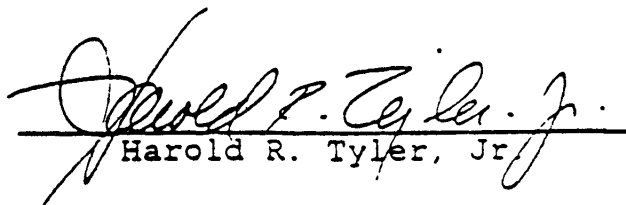
12. Change of Venue. For some time, the prosecutors have been giving serious consideration to requesting a change of venue to San Salvador for the plenario stage of the trial. We have supported a change of venue. Judge Rauda's small and rustic courtroom in Zacatecoluca has struck us as a less than desirable location for a trial involving a substantial risk of jury intimidation. Moreover, the more cosmopolitan San Salvador jury pool, we have thought, presents a far better opportunity for assembling a

jury that could resist such intimidation. If the trial were to be transferred to San Salvador, however, we are told that it would be unlikely, if not impossible, for Judge Rauda to preside over the trial.

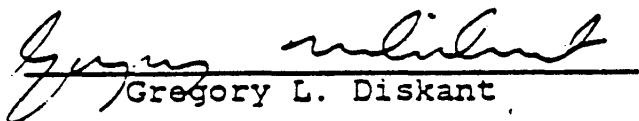
Thus, a transfer to San Salvador would necessitate a change of trial judge, which necessarily presents some risk. We were told by both Dr. Benjamin Cestoni and the Embassy's Salvadoran legal advisor that only three San Salvador judges would be desirable, from the standpoint of experience, competence and sophistication, to preside over the plenario stage. Selection of another, less qualified judge could cause problems for the prosecution, although they might be minimized by the extremely low-profile role that the judge plays in the plenario proceeding. On balance, we would have some concern that the selection of the trial judge might be politicized. The selection would be made by the Salvadoran Supreme Court, at least one member of which, we were told, has already tried to restrict Judge Rauda's investigation.

We have learned most recently that Dr. Castillo is leaning against seeking a change of venue because of a growing belief in El Salvador that the United States is interfering unduly in the internal judicial affairs of the country, a feeling that could result in sympathy for the accused as scapegoats, and thus distract the jury from issues of guilt or innocence. In view of this concern and of the conflicting factors outlined above, we are inclined to rely on

Dr. Castillo's on-the-spot resolution of this sensitive issue of local trial tactics.


Harold R. Tyler, Jr.


Togo D. West, Jr.


Gregory L. Diskant

Dated: December 2, 1983
New York, New York

FOOTNOTES

1/ Letter from George P. Shultz, Secretary of State, to The Honorable Clarence D. Long, Chairman, Foreign Operations Subcommittee, House Committee on Appropriations (April 26, 1983).

2/ Letter from James H. Michel, Deputy Assistant Secretary of State for Inter-American Affairs, to Harold R. Tyler, Jr. (May 23, 1983).

3/ For a discussion of the Salvadoran criminal justice system, see DeWind and Kass, Justice in El Salvador: A Report of a Mission of Inquiry of the Association of the Bar of the City of New York, 38 Rec. A. B. City N.Y. No. 2 (March 1983).

4/ See generally K. Larry Storrs, El Salvador--From 1931 to the March 1982 Elections: A Chronological Study of Politics, Parties, and Conflicts, Congressional Reference Service (March 23, 1982).

5/ Id. at 55.

6/ Cable from Secretary of State to United States Embassy, San Salvador (December 15, 1980) (hereinafter "Bowdler/Rogers Report"). This cable transmitted the text of the report of a special Presidential mission sent to El Salvador to report on the churchwomen's murders, consisting of William D. Rogers, William G. Bowdler, and Luigi R. Einaudi.

7/ Id.

8/ Id.

9/ Letter from Clerk of the Court of Appeals of the Third Central Section, San Vicente, El Salvador to the Presiding Judge of the Criminal Court, Zacatecoluca (March 17, 1983) (forwarding transcript of Court of Appeals' decision) at 29. References are to the translation by Division of Language Services, Department of State (No. 109614) (hereinafter cited as "Appellate Court Decision").

10/ Letter from General Eugenio Vides Casanova, Director, National Guard, to Presiding Judge of the Criminal Court, Zacatecoluca (February 10, 1982), at 43 (statement of Perez Nieto). This letter transmitted a report on the investigation of the murders conducted by Major Jose Adolfo Medrano, including statements by most of the important witnesses. References are to the translation by the Division of Language Services, Department of State (No. 105328)

(hereinafter referred to as "Medrano Report at _____, Statement").

11/ Statement of Sister Madeline Maria Dorsey, M.M. (March 8, 1983).

12/ Bowdler/Rogers Report.

13/ Medrano Report at 43, 44 (Perez Nieto Statement); and 89 (Colindres Aleman Statement).

14/ The exact time of Sister Kazel's and Ms. Donovan's return to the airport is unknown. We estimate their return to be during this period based on the statements of various witnesses at the airport and estimates of others familiar with the events of that day. See, e.g., Letter from Sister Helene O'Sullivan, M.M., to The Honorable William H. Webster, Director, FBI (July 29, 1982), wherein Sister O'Sullivan states that Sister Kazel and Ms. Donovan returned to the airport at about 6:00 p.m. Perez Nieto stated that the women returned at about 5:00 p.m., with two men, in a coffee-colored car, and the van was driven by a man alone. We believe that Perez Nieto was confused by the arrival of Father Britto and his group, who arrived at the airport to meet the Canadian delegation to the FDR funerals in a jeep and a white van. See Medrano Report at 44 (Perez Nieto Statement) and Statement of John C. Hilborn (January 14, 1981).

15/ Bowdler/Rogers Report.

16/ Medrano Report at 38 (Giron Statement). Neither Perez Nieto nor Colindres Aleman have admitted to a second telephone call. In fact, Perez Nieto denied seeing the women return to the airport, see Medrano Report at 44. However, Colindres Aleman's second in command, Aquino Giron, swore that Colindres Aleman received a call from Perez Nieto at about 5:30 p.m. (his subsequent court testimony put the time at between 4:30 p.m. and 5:00 p.m., see Appellate Court Decision at 16) concerning suspicious women in the airport. This suggests that there may have been a second call. If Giron was confused as to the times, of course, there may have been only one call, but we do not regard the number of calls from Perez Nieto to be of critical importance.

17/ Medrano Report at 43, 44 (Perez Nieto Statement). Perez Nieto returned to the barracks at some point prior to or at the end of his scheduled duty (7:00 p.m.). In his recent statement, Colindres Aleman admitted that Perez Nieto returned to the barracks about 6:00 p.m. and discussed the earlier departure of Sister Kazel and Ms. Donovan. While acknowledging this conversation, he again denied his guilt.

However, his admission is a significant addition to the evidence against him. See Testimony of Luis Antonio Colindres Aleman before the Court of First Instance, Quezaltepeque, El Salvador (October 11, 1983). References are to the translation made by the Division of Language Services, Department of State (No. 111213-C).

18/ Id. at 74 (Rivera Franco Statement).

19/ Id. at 44 (Perez Nieto Statement).

20/ Id. at 33 (Cornejo Cubas Statement), and 25 (Cruz Piche Statement).

21/ Id.

22/ Id. at 70 (Contreras Palacios Statement), and 75 (Rivera Franco Statement).

23/ Id. at 25 (Cruz Piche Statement).

24/ Id. at 70 (Contreras Palacios Statement), and 75 (Rivera Franco Statement). Retired Guardsman Julio Cesar Valle Espinoza, in his testimony of August 9, 1982 (see Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (September 22, 1982)), stated that he was part of another checkpoint between the traffic control post (which probably was the Cornejo Cubas/Luis Monterrosa/Cruz Piche checkpoint) and Colindres Aleman's position. He testified that several guardsmen boarded the churchwomen's van at the traffic control post, and then drove to his location, where he and two more guardsmen boarded the van. He said that the van proceeded to Colindres Aleman's site, where he (Valle Espinoza) and the other guardsmen in the van left the churchwomen and returned to the airport on foot.

Although this testimony is consistent with the churchwomen's abduction by Colindres Aleman, its description of the mechanics of the kidnapping is contradicted by statements of the guardsmen at the checkpoint, and by the two guardsmen with Colindres Aleman who have admitted their roles in the abduction and murders. We thus reject this testimony as, whatever Valle Espinoza's motivations, inaccurate.

25/ Id. at 70 (Contreras Palacios Statement).

26/ Id.

27/ Medrano Report at 70 (Contreras Palacios Statement).

28/ Id. at 38-39 (Giron Statement).

29/ Id. at 70 (Contreras Palacios Statement).

- 30/ Appellate Court Decision at 28.
- 31/ Id.
- 32/ Medrano Report at 71 (Contreras Palacios Statement).
- 33/ Id. at 39 (Giron Statement), and 48 (Barrera Rivera Statement).
- 34/ Id. at 48 (Barrera Rivera Statement).
- 35/ Id. at 57-58 (Melgar Garay Statement); and 76 (Rivera Franco Statement).
- 36/ Id. at 76 (Rivera Franco Statement).
- 37/ Id. at 58 (Melgar Garay Statement).
- 38/ Id.
- 39/ Id.
- 40/ Appellate Court Record at 28, 33. We assume that the "Contreras" mentioned on 33 is Contreras Recinos, since he was driving the van, see 27.
- 41/ Medrano Report at 39 (Giron Statement).
- 42/ Id. at 39 (Giron Statement); 49 (Barrera Rivera Statement); and 59 (Melgar Garay Statement). Melgar Garay described them removing a "shovel," which probably was the tire jack.
- 43/ Id. at 36 (Cornejo Cubas Statement); Appellate Court Record at 26.
- 44/ Medrano Report at 53 (Chavez Valiente Statement).
- 45/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D. C. (September 14, 1981) (hereinafter the "Zepeda Valasco Cable").
- 46/ Id.
- 47/ Bowdler/Rogers Report.
- 48/ Id.
- 49/ Id.
- 50/ Id.
- 51/ Id.

52/ Id.

53/ Id.

54/ Id.

55/ Id.

56/ Id.

57/ Id.

58/ Id.

59/ Cable from United States Embassy, San Salvador to Secretary of State, Washington, D.C. (December 11, 1980).

60/ Interview with Colonel Roberto Monterrosa, San Salvador, El Salvador (September 22, 1983).

61/ FBI report from Los Angeles Field Office (February 10, 1982) (hereinafter "Martinez Statement"). Martinez stated to the FBI that he told Colindres Aleman to tell the Director (Vides Casanova) of his crime. However, according to the special Embassy evidence, which we deem more reliable, Martinez actually told Colindres Aleman to tell of his involvement only to a National Guard superior investigating the matter.

62/ Zepeda Velasco Cable.

63/ Id.

64/ Id.

65/ Interview with Lieutenant Colonel Lizandro Zepeda Velasco, San Salvador, El Salvador (September 21, 1983) (hereinafter "Zepeda Velasco Interview").

66/ Interview with General Carlos Eugenio Vides Casanova, San Salvador, El Salvador (September 21, 1983).

67/ Bowdler/Rogers Report.

68/ Id.

69/ Cable from Legal Attache, Panama, to Director, FBI (December 23, 1980); Interview with FBI Agent Washington, D.C. (August 18, 1983); and Memorandum to the President (January 5, 1981).

- 70/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 11, 1980).
- 71/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 12, 1980).
- 72/ Id.
- 73/ Id.
- 74/ Memorandum to the President (January 5, 1981).
- 75/ Compare Zepeda Velasco Cable to Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 17, 1981).
- 76/ Cable from Legal Attache, Panama, to Director, FBI (January 26, 1981).
- 77/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 17, 1981).
- 78/ Id.
- 79/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (February 19, 1981).
- 80/ Memorandum from Legal Attache, Panama, to Director, FBI (February 27, 1981). Two other sets of prints were turned over to the FBI; those of two guardsmen at the burial site, Medina Gaitan and Rodriguez Coreas.
- 81/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (April 14, 1981) (hereinafter "April 14, 1981 Cable").
- 82/ See, e.g., Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 19, 1981).
- 83/ Cable from Legal Attache, Panama, to Director, FBI (April 2, 1981).
- 84/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (March 3, 1981).
- 85/ FBI Memorandum from T. F. Kelleher, Jr., to Mr. Mullen (March 17, 1981).

86/ Cable from Legal Attache, Panama, to Director, FBI (April 22, 1981); and Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (April 30, 1981) (hereinafter "April 30, 1981 Cable"). Two of the guardsmen arrested at this time were released when further investigation showed they were not involved in the murders, Sanchez Guzman and Ramirez Palacios.

87/ Zepeda Velasco Cable; and April 30, 1981 Cable.

88/ April 30, 1981 Cable; and Report of the Latent Fingerprint Section, Identification Division, FBI (May 7, 1981).

89/ Zepeda Velasco Cable. Zepeda Velasco reported to Vides Casanova on May 2, 1981, that the weapons had been seized. We assume that they were taken on May 1.

90/ FBI Laboratory Report No. 10507024 (May 13, 1981).

91/ Zepeda Velasco Cable.

92/ Id.

93/ Id.

94/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 5, 1981).

95/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 7, 1981).

96/ Medrano Report at 3 (Order from General Vides Casanova, December 9, 1981).

97/ Medrano Report at 5 (Pacheco Aragon Statement); and 22 (Mendez Velasquez Statement). The third was interviewed in the United States by the FBI, see Cable from FBI Los Angeles Field Office, to Director, FBI (January 8, 1982).

98/ Interview with Lieutenant Colonel Jose Adolfo Medrano San Salvador, El Salvador (September 22, 1983) (hereinafter "Medrano Interview"); and Medrano Report at 24 (Cruz Piche Statement).

99/ Medrano Report at 13 (Melendez Avalos Statement); 15 (Mejivar Martinez Statement); 17 (Menjivar Merino Statement); and 18 (Realejeno Gonzalez Statement).

100/ Medrano Report at 29 (Luis Monterrosa Statement).

101/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 15, 1981).

- 102/ Medrano Interview.
- 103/ December 15, 1981 Cable.
- 104/ Medrano Report at 24 (Cruz Piche Statement).
- 105/ Id. at 29 (Luis Monterrosa Statement). Although Sanchez Guzman and Ramirez Palacios were named by Luis Monterrosa as accompanying Colindres Aleman, further investigation revealed that they were not involved in the abduction or murders.
- 106/ Id. at 33 (Cornejo Cubas Statement).
- 107/ Id. at 38 (Giron Statement).
- 108/ Id. at 43, 44; and Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 29, 1981).
- 109/ Medrano Report at 48 (Barrera Rivera Statement).
- 110/ Id. at 51 (Marina Realejeno Statement).
- 111/ Id. at 57 (Melgar Garay Statement).
- 112/ Id. at 53 (Chavez Valiente Statement).
- 113/ Id. at 63 (Ramirez Palacios Statement).
- 114/ Id. at 66 (Sanchez Guzman Statement); and Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 15, 1983).
- 115/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (December 29, 1981).
- 116/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 7, 1982).
- 117/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 15, 1982) (hereinafter "Contreras Palacios Cable"); and Medrano Report at 69 (Contreras Palacios Statement).
- 118/ See Memorandum of Law submitted by the Salvadoran Ambassador to the United States to Representative Michael D. Barnes (August 17, 1982). Translated by the Congressional Research Service, The Library of Congress.
- 119/ Contreras Palacios Cable; and Medrano Report at 69 (Contreras Palacios Statement).

120/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 15, 1982).

121/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 19, 1982) (hereinafter January 19, 1982 Cable).

122/ Id.

123/ Id.; and Memorandum from Director, FBI, to Special Agent (February 4, 1982) (hereinafter "Colindres Aleman polygraph"). The polygraph examination worksheet is in Spanish and was translated by Special Agent during his interview on August 17, 1983.

124/ Colindres Aleman polygraph and Interview.

125/ January 19, 1982 Cable.

126/ Interview, and January 16, 1982 Cable.

127/ January 16, 1982 Cable, and Interview.

128/ January 16, 1982 Cable.

129/ Medrano Report at 91.

130/ Medrano Report at 1.

131/ Cable from FBI Field Office, Los Angeles, to Director, FBI (January 8, 1982).

132/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (January 20, 1982).

133/ Martinez Statement.

134/ Interview with Judge Bernardo Rauda Murcia, Zacatecoluca, El Salvador (September 21, 1983) (hereinafter Rauda Interview); and Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (May 24, 1983).

135/ Cable from Legal Attache, Panama, to Director, FBI (July 8, 1983).

136/ Id.

137/ Memorandum to the President (January 5, 1981).

138/ Rauda Interview.

139/ Memorandum to Director, FBI (August 3, 1983).

140/ Interview with Doctor Juan Geronimo Castillo, San Salvador, El Salvador (September 20, 1983); and Interview with United States Embassy Legal Advisor, San Salvador, El Salvador (September 20, 1983).

141/ Letter from Colonel Aristides Napoleon Montes, Director, National Guard of El Salvador, to the Minister of Defense and Public Security (September 13, 1983). References are to the translation by the Division of Language Services, Department of State (No. 110833A).

142/ Statement by Carlos Joaquin Contreras Palacios before the Second Criminal Court, Santa Ana, El Salvador (September 27 1983). References are to the translation by the Division of Language Services, Department of State (No. 1108070-A) (hereinafter "Second Contreras Palacios Statement").

143/ Second Contreras Palacios Statement. We are also aware of a statement from an anonymous political prisoner who claims to have been imprisoned with Colindres Aleman between April 7 and 29, 1982. He said that Colindres Aleman had followed the movements of the churchwomen from the time they left El Salvador, and that Colonel Vides Casanova gave instructions concerning the capture of the churchwomen. We have no means of evaluating the veracity of this statement. It was taken by the Maryknoll Order from a Salvadoran who is a political refugee in Mexico, and whose identity was kept secret from us. According to Michael Posner from the Lawyers' Committee on International Human Rights, it is difficult to judge the veracity of such statements. Given this, the source's apparent bias, and the absence of supporting evidence, we cannot accept this hearsay statement as probative.

144/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (September 22, 1982).

145/ Monterrosa Interview.

146/ Chronology of Death Threats and the Conflict Between the Army (under Colonel Pena Arbaiza) and the Church in Chalatenango (undated). Contained in materials delivered to Harold R. Tyler, Jr., by Sister Helene O'Sullivan, M.M. (July 12, 1983).

147/ Memorandum from Legal Attache, Panama, to Director, FBI (December 23, 1980).

148/ Id., see also Statement of Sister Madeline Maria Dorsey, M.M., entitled "Death Threats Received in Chalatenango" (March 8, 1983), wherein Sister Dorsey gives the date as December 3.

- 165/ Telephone interview with Patricia Lasbury Hall (October 4, 1983) (hereinafter "Lasbury Hall Interview").
- 166/ Cable from Legal Attache, Panama, to Director, FBI (December 23, 1980).
- 167/ FBI Laboratory Report No. 10107002 (January 30, 1981).
- 168/ Interview with Sister Helene O'Sullivan, M.M., New York, New York (September 27, 1983).
- 169/ See, e.g., Medrano Report at 27 (Cruz Piche Statement); 31 (Luis Monterrosa Statement); and 36 (Cornejo Cubas Statement).
- 170/ Medrano Report at 27 (Cruz Piche Statement); see also 31 (Luis Monterrosa Statement).
- 171/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (February 12, 1981), wherein Sister Madeline Dorsey reportedly said that Sister Ita Ford had been given \$900 in cash at the Managua Conference. Subsequent Maryknoll reports indicate that Sister Ford had only \$175.
- 172/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (February 19, 1981).
- 173/ See, e.g., Medrano Report at 36 (Cornejo Cubas Statement) and 66 (Sanchez Guzman Statement).
- 174/ See, e.g., Medrano Report at 36 (Cornejo Cubas Statement) and 31 (Luis Monterrosa Statement).
- 175/ Medrano Report at 66 (Sanchez Guzman Statement).
- 176/ Cable from Secretary of State, Washington, D.C., to United States Embassy, San Salvador (June 29, 1983).
- 177/ Testimony of Colonel Francisco Antonio Moran Reyes before the Second Criminal Court, San Salvador (August 18, 1983). References are to the translation made by the Division of Language Services, Department of State (No. 110870-B) (hereinafter "Moran Statement").
- 178/ Statement of General Carlos Eugenio Vides Casanova (August 19, 1983). References are to the translation made by the Division of Language Services, Department of State (No. 111213-A).

179/ Moran Statement; and testimony of Juan Ramiro Diaz and Jose Edmundo Reyes Castellanos before the First Criminal Court, Zacatecoluca (October 22, 1983). References are to the translation made by the Division of Language Services, Department of State (No. 111213-L).

180/ Cable from Director, FBI, to FBI Field Office, Houston (July 2, 1982) (hereinafter "Houston Cable").

181/ Id.

182/ Cable from Secretary of State, Washington, D.C., to United States Embassy, San Salvador (October 20, 1981).

183/ Houston Cable.

184/ Cable from Secretary of State, Washington, D.C., to United States Embassy, San Salvador (June 19, 1982).

185/ Houston Cable.

186/ Houston Cable.

187/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (February 6, 1982) (hereinafter "February 6, 1982 Cable").

188/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (June 7, 1982) (hereinafter "June 7, 1982 Cable").

189/ February 6, 1982 Cable.

190/ June 7, 1982 Cable.

191/ Id.

192/ Cable from United States Embassy, San Salvador, to Secretary of State, Washington, D.C. (September 23, 1982); see also Interview with Benjamin Cestoni, San Salvador, El Salvador (September 20, 1983).

193/ Schindler Interview.

194/ Lasbury Hall Interview.

195/ Memorandum prepared by Maryknoll Order entitled "Guns and Ballistics Tests," attached to letter from Sister Helene O'Sullivan, M.M. (March 21, 1982).