

**Lawyers Committee** for Human Rights

# THE AMERICAS

**THE JESUIT CASE A YEAR LATER:  
AN INTERIM REPORT**

**Lawyers Committee for Human Rights**

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**CONGRESSMAN JOHN JOSEPH  
MOAKLEY PAPERS  
MS 100**

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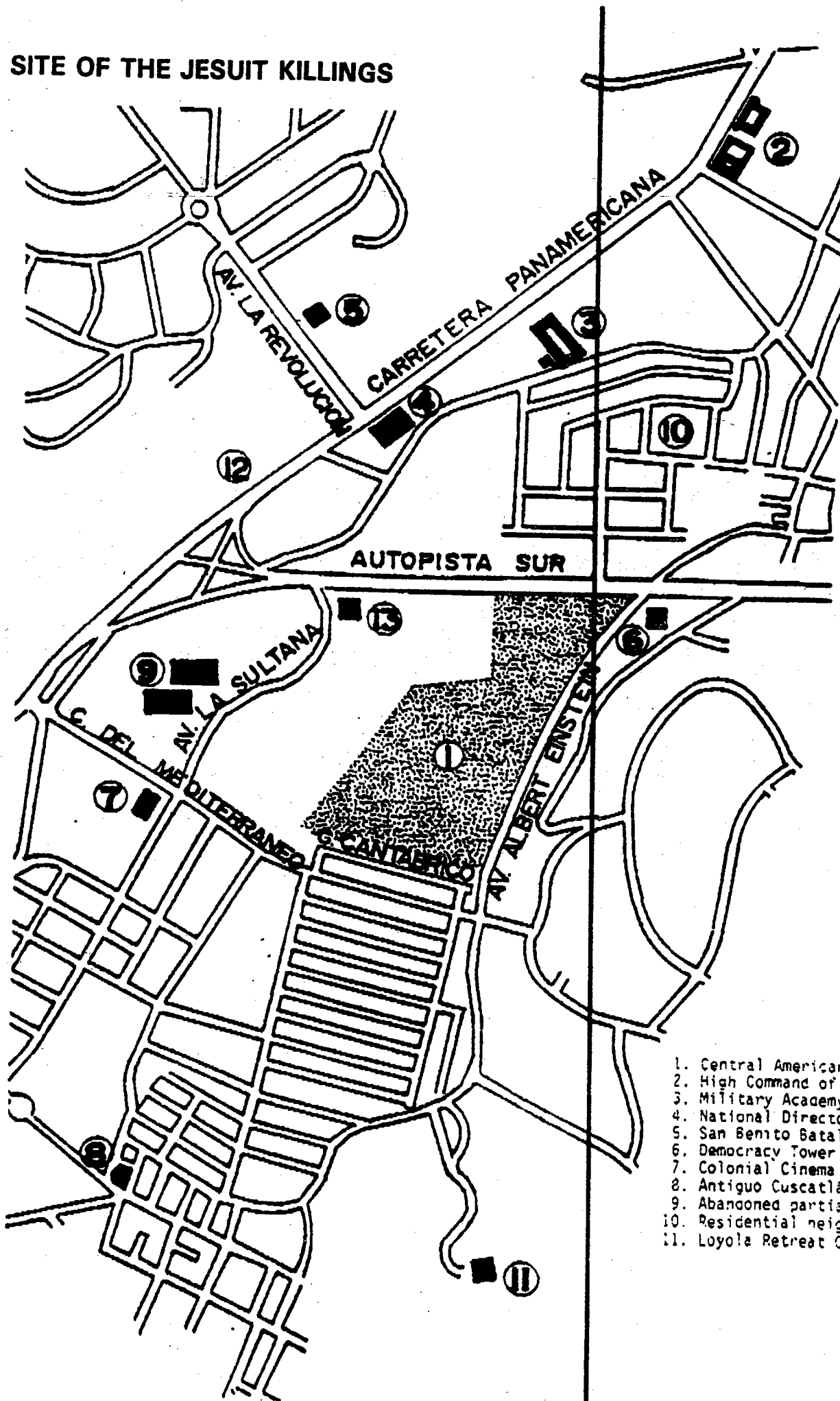
## **PREFACE**

This document is an interim report on the Jesuit case. It is based on information gathered by the Lawyers Committee for Human Rights and IDHUCA, the Institute for Human Rights of the Central American University in San Salvador. A full report will be published next month by the Lawyers Committee.

Since December 1989, the Lawyers Committee has served as legal counsel to the Society of Jesus in both the United States and El Salvador. The Committee's work has been in connection with the efforts by the Jesuits to monitor the investigation of the murders of six Jesuit priests and two women at the UCA on November 16, 1989.

This is the Lawyers Committee's fifth publication pertaining to the Jesuit case. Earlier publications include "The Jesuit Murders: A Report of the Testimony of a Witness" (December 1989) and briefing memoranda issued in April, July and October, 1990.

# SITE OF THE JESUIT KILLINGS



1. Central American University
2. High Command of the Armed Forces
3. Military Academy
4. National Directorate of Intelligence
5. San Benito Battalion, National Police
6. Democracy Tower
7. Colonial Cinema
8. Antiguo Cuscatlán Park
9. Abandoned partially constructed building
10. Residential neighborhoods for military
11. Loyola Retreat Center

## INTRODUCTION

One year ago six Jesuit priests and two women were murdered at the Central American University (UCA) in San Salvador. They were killed by members of the Salvadoran Armed Forces, part of a widespread pattern of state-sponsored and condoned political violence. Such violence has paralyzed the country in recent years, and made the name "El Salvador" almost synonymous with civil strife and human rights violations.

Based on a decade of unpunished official violence, there was little reason to believe that the Jesuit murders would hold the world's attention for more than a few weeks or months. Yet the case continues to demand attention, in part because of the unique role the priests played in El Salvador. The unprecedented attention given to the Jesuit case also stems from the bizarre, vexing and often outrageous way the Salvadoran government has handled the investigation into these murders.

In the pages that follow, we will reconstruct the crime and help place it in the context of more than a decade of harassment and attacks against the Jesuit religious order. We will then examine earlier efforts to cover up the November murders and analyze how official resistance to see justice done in San Salvador, and in some cases, in Washington, has made it extremely difficult for the judge to carry out his investigative duties and bring the case to trial.

From the outset, the handling of the investigation of the Jesuit killings has been almost as great a mystery than the details of the killings themselves. Despite world-wide condemnations of the assassinations, many aspects of the investigation have occurred in fits and starts, with inexplicable timing and an absence of will to bring the perpetrators to justice. Official investigators have neglected to question obvious witnesses, while critical evidence has been revealed in highly unusual ways and from unexpected sources. Throughout the last year, the role of the U.S. government has been critical and contradictory. U.S. officials have at the same time pressed the Salvadorans for a speedy resolution of the case and taken measures to impede such an outcome. At the center of this maze is a major in the U.S. Army, one Eric Buckland.

On October 18, Congressman Joe Moakley (D-Ma) said his congressional task force monitoring the Jesuit murder investigation had learned of secret testimony by a U.S. Army major indicating that both Salvadoran and U.S. military officials had prior knowledge of a plot to kill El Salvador's Jesuits.<sup>1</sup> Equally disturbing was Mr. Moakley's discovery that U.S. officials withheld this evidence from Salvadoran judicial authorities. Playing both judge and jury, U.S. officials reportedly found the testimony "unreliable" and decided "it would be more fruitful to pursue other leads," according to *The New York Times*.<sup>2</sup>

This recent development in the Jesuit murders is only the latest in a series of mixed messages emanating from U.S. officials. At the highest level, Washington has repeatedly stated its commitment to pursue the investigation wherever it may lead. Yet Washington's reluctance to pursue leads involving U.S. personnel calls this commitment into question. Consider the following:

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<sup>1</sup>Statement of Rep. Joe Moakley—Chairman, Speaker's Special Task Force on El Salvador, Oct. 18, 1990.

<sup>2</sup>*N.Y. Times*, Oct. 28, 1990.

- \* Those charged with murdering the Jesuits participated in a training course taught by U.S. Green Berets up until 48 hours before the assassination. Almost one year later, these special forces have not been questioned.
- \* Testifying before the judge on September 7, 1990, President Alfredo Cristiani told of the presence of two or three U.S. military advisers at a briefing he was given at High Command headquarters while the murder operation was in progress. Testifying later that week, a Salvadoran intelligence officer provided the names of two U.S. advisers working with Army intelligence in the days surrounding the Jesuit killings. None of these men has been identified or interviewed.
- \* Despite the stakes, federal agencies petitioned under the Freedom of Information Act have not been forthcoming with information. Most documents released provided nothing useful. The National Security Agency provided copies of 11 articles from daily newspapers. Several agencies approached admit to having documents classified TOP SECRET or SECRET, but are withholding them on "national security grounds."

### **The Continuing Saga of Major Eric Buckland**

*In my country, destruction of evidence is also a crime.*

U.S. Ambassador William Walker  
May 29, 1990

In early January 1990, a U.S. military adviser assigned to work with C-5 (Psychological Operations) at the High Command, told his superiors that he had received information implicating Colonel Guillermo Alfredo Benavides in the assassination. According to Major Buckland, on about December 20, 1989, Colonel Carlos Armando Avilés of the Salvadoran Armed Forces told him that Colonel Benavides had confessed his role in the killings to Lt. Colonel Manuel Antonio Rivas Mejía, who heads the Special Investigative Unit, which has been charged with investigating the case. Buckland's statement says that "Lt. Colonel Rivas was scared and did not know what to do. As a result, the investigation slowed..."

The Moakley task force observed that "[d]espite good police work, those now charged with the crime might not have been arrested if an American military officer [Buckland] had not come forward in early January with information concerning the alleged involvement of Salvadoran Colonel Alfredo Benavides in the case."<sup>3</sup>

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

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<sup>3</sup>The Interim Report of the Speaker's Task Force on El Salvador, at 6 (April 30, 1990) [the "Moakley Report"].

Major Buckland's January 3 statement was officially entered into the court record. On June 29, Colonel Avilés testified before the judge, denying that he made any such statement to Major Buckland.

On September 28, Major Buckland was questioned by Judge Ricardo Zamora in San Salvador. As a member of the U.S. Embassy staff, Major Buckland enjoyed diplomatic immunity and his appearance followed several months of negotiations between the two governments. The veracity of Buckland's account had been called into question when two Salvadoran officers denied their part in the events as described by Major Buckland. In his September 28 testimony, Major Buckland confirmed his account and offered additional details.

### **Major Buckland's Additional Affidavits**

On October 18, 1990, Congressman Joe Moakley issued a statement concerning his discovery of additional affidavits by Buckland which were recorded by the FBI on January 11 and 18. Mr. Moakley said that "[i]f the information is accurate, Salvadoran military authorities should have considered Colonel Benavides the prime suspect immediately after the murders took place." The FBI also recorded a videotape of Major Buckland telling the following story:

At some point in late October or early November 1989, Colonel Carlos Armando Avilés, Major Buckland's Salvadoran colleague in the Psychological Operations section at the High Command, asked him to accompany Avilés to the Military Academy. During their visit Colonel Avilés met with then Academy Commander Colonel Guillermo Alfredo Benavides. Avilés told Buckland that Defense Minister Colonel René Emilio Ponce had sent him there to "solve a problem with Colonel Benavides." After meeting with Colonel Benavides, Colonel Avilés told Major Buckland that Benavides "wanted to do something about the priests and things coming out of the UCA. Benavides told Avilés that "Ella Coria [sic] was a problem." In his affidavit Major Buckland wrote in his own hand that "Avilés told me they wanted to handle it in the old way by killing some of the priests."

Explaining why he did not do something to prevent the killings, Major Buckland wrote that "I felt unconcerned that it would happen because other people were talking along those lines and I didn't feel that the El Salvadoran Armed Forces would do something about it. Also because Chief of Staff Ponce assigned a senior Colonel [Avilés] to address the problem I felt that if there was any validity to this talk it would not happen."

One week later, on January 18, Major Buckland recanted his affidavit to the FBI at Fort Bragg, North Carolina. He said, "I do not recall and am not aware of any specific information regarding any proposed threat to or attack on the University of Central America, including any of the Jesuit priests prior to the incident on November 16, 1989. I wish to specifically retract information or comments or statements made to FBI agents last week to that effect." In this January 18 affidavit, Buckland did, however, tell about visiting the Academy with Colonel Avilés but added, "I do not recall any specific discussion about Colonel Benavides planning to do anything or any discussion by anyone, including Colonel Avilés on any proposed or possible attack or threat to the University of Central America or any persons associated with that university."

These affidavits and the videotape were turned over to Richard Chidester, legal attaché at the U.S. Embassy, by the FBI on January 13. Mr. Chidester as well as his superiors at the U.S. Embassy were briefed by the FBI on the contents of the affidavits. Ranking State Department officials in Washington were also briefed. They apparently decided not to disclose

this information publicly, or to share it with the court. Mr. Moakley called the failure of U.S. officials to share this potentially important testimony with Salvadoran judicial authorities "an unbelievable and inexcusable error in judgement...."

In an article published on October 19, the day after the Moakley task force released its statement, *The Washington Post* quoted a State Department official who said it was "not correct" that the judge had only been provided with the evidence as a result of Mr. Moakley's protests. "When the Embassy came upon [Buckland's second affidavit] again," he said, "they felt it was something worth pursuing" and gave it to the judge.<sup>4</sup> Yet this was not true. Judge Zamora did not get the affidavit until October 22 at 1:30 p.m. when "a series of photocopies was presented to this court...through private channels by two employees of the U.S. Embassy...not by means of appropriate channels," according to the court's statement.<sup>5</sup>

On November 1, the Supreme Court asked the Foreign Ministry to request through diplomatic channels the Buckland videotape as well as "all documents and elements related to the criminal case against Colonel Guillermo Benavides and others."<sup>6</sup>

In withholding this potentially pivotal evidence, U.S. officials denied Salvadoran judicial authorities an opportunity to test Major Buckland's allegations and pursue leads he could provide. If accurate, Major Buckland's testimony proves without a doubt that ranking officers - including Defense Minister Colonel René Emilio Ponce -- launched a cover-up, despite their knowledge that Colonel Benavides had just days earlier indicated his intentions to kill the Jesuits to Colonel Avilés. Major Buckland's testimony means also that Colonel Ponce, knowing of Colonel Benavides' intentions, placed Benavides in charge of a special security zone which included the Jesuit university; placed the elite Atlacatl troops now charged in the crime under his command; and ordered a search of the Jesuit residence two days before the assassination. Further, since Major Buckland is not a defendant in the case, his testimony would be admissible under Salvadoran law against Colonel Benavides, against whom otherwise the criminal case is weak.

We agree with the Moakley task force assessment that the failure of U.S. officials to provide the court immediately with all of Buckland's testimony represents an "unbelievable and inexcusable error in judgement." But regardless of whether the decision by U.S. officials to conceal the evidence was an "error in judgement" or a conscious attempt to thwart the investigatory process thereby protecting certain individuals, the result is the same. The Bush Administration, whose officials have repeatedly stated their commitment to pursue the investigation wherever it may lead, has now implicated itself in the cover-up of the crime. Since 1985, the U.S. government has spent over \$16 million to promote reform of El Salvador's judicial system and to foster respect for the rule of law. By withholding Major Buckland's testimony, the U.S. government has exhibited a shocking disrespect for due process. In denying Salvadoran authorities the opportunity to examine the evidence, Washington also undermined the rule of law in a case where its application would potentially harm U.S. policy.

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<sup>4</sup>*Washington Post*, Oct. 19, 1990.

<sup>5</sup>Comunicado Oficial, Juzgado Cuarto de lo Penal, Oct. 22, 1990.

<sup>6</sup>INTERJUST, Nov. 1, 1990.



## I: HISTORY OF ATTACKS AGAINST THE JESUITS

*The UCA...is a logistical center of Communist subversion. The Jesuits who direct this center of studies are agents of the Marxist conspiracy at the service of the Kremlin.*<sup>7</sup>

*It is proven, and there are documents showing, that Ellacuría is the agent who directs all Marxist-Leninist strategy in Central America.*<sup>8</sup>

*These are the intellectual authors who have directed the guerrillas for a long time.*

Colonel Alfredo Benavides<sup>9</sup>

El Salvador's right-wing has long been obsessed with the Society of Jesus and with Ignacio Ellacuría in particular. Since the early 1970s, El Salvador's Jesuits have been subjected to a vitriolic campaign of public attacks, which at times has erupted into violence. Father Ellacuría and others were regularly referred to in the media as "nefarious," "satanic," "the Basque agitators at the UCA, headed up by Commander Ignacio Ellacuría."<sup>10</sup> An April 18, 1989 headline in *La Prensa Grafica* read, "Jesuit Montes is Immoral, ARENA Affirms." Referring to Father Ellacuría, a *Diario de Hoy* columnist wrote that "shortly after World War II, a sinister person arrived in the country, and it wouldn't be much of a surprise if he turned out to be a KGB agent...."<sup>11</sup> The history of these attacks against El Salvador's Jesuit community offers some explanation of what happened at the Central American University (UCA) on the night of November 15-16, 1989.

### 1976 Attempt at Agrarian Reform

Densely populated, El Salvador has long had one of the region's least equitable patterns of land tenure. Pressure for arable land by the nearly 60% of the population who remained landless in 1979 is often cited among the root causes of the current civil war.<sup>12</sup> One study showed that six families held more land than 133,000 peasants together.<sup>13</sup> On June 29, 1976, El Salvador's Legislative Assembly adopted Decree No. 31, a modest agrarian reform which

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<sup>7</sup>Alvaro Antonio Jeréz Magaña, *La Infiltración Marxista en la Iglesia*, at 27 (Editorial Dignidad, Instituto de Relaciones Internacionales, San Salvador: 1989) [hereinafter Jeréz Magaña].

<sup>8</sup>Ing. José Hernández, president of the Association of Salvadoran Professionals, in *Diario de Hoy*, Aug. 18, 1988.

<sup>9</sup>Col. Benavides, in detention in connection with the Jesuit slayings, is reported by defendant Gonzalo Guevara Cerritos to have said these words when ordering the killings. See "Sentencia interlocutoria para detención provisional," Juzgado Cuarto de lo Penal, San Salvador, Jan. 18, 1990, 3:45 p.m.

<sup>10</sup>See, among others, *Diario de Hoy*, Jan. 25, 1989, Feb. 16, 1989, & March 3, 1989. Father Ellacuría and several other Jesuits in the UCA community were born in the Basque region of Spain.

<sup>11</sup>*Diario de Hoy*, June 13, 1988.

<sup>12</sup>See, among others, T. Barry & D. Preusch, *The Central America Fact Book*, at 216-217 (Grove Press, New York: 1986); M. Gettleman, et al., eds., "Peasants and Oligarchs in the Agrarian Reform," in *El Salvador: Central America in the New Cold War*, at 157-187 (Grove Press, New York: 1981).

<sup>13</sup>See Barry & Preusch, *supra* note 12, at 217.

would have affected only 4% of the country's land. The plan, which had the support of the U.S. Agency for International Development, was to be implemented by the newly created Agrarian Transformation Institute (ISTA), the military, and the centrist peasant organization, the Salvadoran Communal Union (UCS).

The Jesuits publicly and forcefully backed the plan, drawing criticism from the Right as well as from the Left. The UCA campus was bombed six times during 1976. The first bomb detonated about 10 p.m. on January 6 at the offices of the journal of the UCA, the *Estudios Centroamericanos* (ECA). The administration building and ECA's quarters were each attacked twice that year. A death squad known as the White Warriors Union took credit for the December 3 bombing of the administration building. In ECA and elsewhere the UCA community responded, writing in November 1976 that

injustice cannot last long. The social caldron will no longer stand the pressure. The Right can win some battles, but historically they have lost the war. This conviction [that they can win the war] leads them down an erroneous path: bomb the intelligentsia, as if by doing so they could kill adverse ideas.<sup>14</sup>

A special September/October 1976 issue of ECA was devoted to the proposal, which by October was withdrawn by President Molina in the face of vociferous opposition by large landowners. An historical ECA editorial, "A Sus Ordenes, Mi Capitán," attributed the president's about face to a campaign of "lies, slander, threats, all available methods against the country's authorities."<sup>15</sup> The editorial said that the "most reactionary sector of capitalism, the agrarian sector, had won the battle."

### The Campesino Movement in Aguilares

In 1972 a Salvadoran Jesuit named Rutilio Grande returned to the community where he was born to take up work as the parish priest in Aguilares, a rich agricultural area with some 33,000 inhabitants.<sup>16</sup> Much of the land was in the hands of El Salvador's most powerful families who produced sugar, relying on day laborers. Throughout the 1970s, social unrest grew as agricultural workers organized to obtain better wages and working and living conditions. It was in this environment that a team of three Jesuits, headed by Father Grande, and several Jesuit seminarians began their pastoral work. The team quickly developed close working relationships with peasant organizations such as the Christian Federation of Salvadoran Peasants (FECCAS) and the Union of Rural Workers (UTC), which were expanding rapidly.

The early attacks on the Jesuit team in Aguilares expressed the themes that have remained constant over the last 20 years. According to their right-wing critics, foreign Jesuit intellectuals -- described as crafty, nefarious, and power hungry -- have perverted the minds of Salvadoran clergy, peasants or students, who have then organized movements promoting

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<sup>14</sup>"Las derechas ponen bombas," ECA #337, Nov. 1976, at 704. See also, "Por qué nos ponen bombas?" ECA #338, Dec. 1976.

<sup>15</sup>"A sus ordenes, mi capitán," ECA #337, Nov. 1976, at 637.

<sup>16</sup>On this period and the life of Rutilio Grande, see "El Salvador: Los Riesgos del evangelio, Iglesia y violencia política," ECA, #355, May 1978; Rodolfo Cardenal, *Historia de una esperanza: vida de Rutilio Grande* (UCA Editores, San Salvador: 1987).

fundamental social change. "The Jesuits have organized and demagogically directed FECCAS and the UTC," reported the Salvadoran daily *Prensa Grafica* in May 1977.<sup>17</sup>

Many Salvadoran rightists have charged that had there been no Jesuits in the country, the Farabundo Martí Front for National Liberation (FMLN) would never have existed. Jesuit-run schools were the "launching pad for the revolutionary praxis of the Catholic schools," wrote one critic about this period.<sup>18</sup> Since Father Grande was Salvadoran by birth, his deviation was attributed to his having fallen under the influence of foreign Jesuits at the UCA, from whom he in fact often sought counsel.

Everything that happened in Aguilares, as well as the rest of the country, is the direct responsibility of a group of foreign conspirators ensconced in [the UCA]. These Jesuits -- above all Ellacuría and Txobrino<sup>19</sup> [sic] -- have been the real brains who have remained hidden behind all the subversive movements that have been stirred up by the clergy in our country.<sup>20</sup>

In the early months of 1977, two ex-Jesuit seminarians working in Aguilares were deported. Another former Jesuit, Juan José Ramírez, was tortured with electric shock during a 10-day detention. Several foreign Jesuits working in El Salvador were refused entry to the country, among them Ignacio Ellacuría, then a professor of philosophy and theology at the UCA. Born in Spain, Father Ellacuría moved to El Salvador in 1948 and by 1977 had become a Salvadoran citizen. On February 19, the director of immigration, Colonel Santibáñez, suggested to Jesuit Provincial Father César Jérez that all the Jesuits in Aguilares be removed.

Rumors of plans to kill Father Grande circulated in Aguilares in early 1977; apprised of the threats, Grande dismissed them and continued his work. A lay teacher received a letter saying they planned to finish off the priests, and then her, in the same way rats are killed. One week later, on March 12, 1977, Rutilio Grande was assassinated along with two laymen, while en route to say mass in El Paisnal.

In May, four other Jesuits were detained, mistreated, and deported. Flyers appeared on San Salvador streets saying "*Haga patria, mate un Cura*" -- Be a patriot, Kill a Priest. Father Grande's three Jesuit co-workers were all deported after being mistreated in detention. In June, a death squad known as the White Warriors Union (UGB) threatened to kill each of the country's 47 Jesuits unless they left El Salvador within one month. "Our struggle is not against the Church but against Jesuit guerrillism," read the communiqué. As the deadline drew near, an ominous voice on the radio announced repeatedly, "In 12 hours, all Jesuits will be killed."

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<sup>17</sup>*Prensa Grafica*, May 19, 1977, as cited in Secretariado Social Interdiocesano, *Persecución de la Iglesia en El Salvador*, at 24 (San Salvador: June 1977).

<sup>18</sup>Monsignor Freddy Delgado, *La Iglesia Popular Nació en El Salvador: Memorias de 1972 a 1982*, at 42 (no date or publisher appears on the booklet, which circulated in late 1988).

<sup>19</sup>The author is referring to Jesuit theologian Jon Sobrino, a UCA faculty member.

<sup>20</sup>Jérez Magaña, *supra* note 7, at 23.

## The 1980s

Throughout the 1980s, violence against the Jesuits and Jesuit installations increased in tandem with that directed against other sectors of society. Between 1980 to 1982, El Salvador's death toll would reach 800 monthly. Buildings used by Jesuits were sprayed with machine-gun fire in January and February 1980. On February 18, bombs destroyed part of the UCA library and another heavily damaged the printing press on June 29. The priests' home in Jardines de Guadalupe was badly damaged in two bombings on October 24 and 27. In the first attack some 12 bombs were lobbed over a wall that had been installed after the building was machine-gunned in February. Father Segundo Montes narrowly missed death when one explosive left a meter-wide hole in the wall next to the bed where he was sleeping. In late November 1980, Father Ellacuría fled El Salvador when he was tipped off about a military plot against his life. A friend in the military telephoned Ellacuría, who had become the UCA rector a year earlier, to deliver a pre-arranged signal: "the patient is in grave danger." Father Ellacuría asked the caller if it could wait, and was told "No, the patient won't survive the night. He must be moved immediately." That same day, Ellacuría sought refuge in the Spanish Embassy and left the country the next day.

Where there were Jesuits, there was treachery, according to their rightist critics. While run by the Jesuits, El Salvador's seminary, San José de la Montaña, "was converted, lamentably, into a "nursery" of future Marxist priests."<sup>21</sup> After the FMLN was founded in 1980, Father Ellacuría and other Jesuits were regularly referred to as "the intellectual authors of the guerrilla movement," the "ringleaders" or "brains" of the FMLN. In ordering the murders last November, Colonel Benavides reportedly said: "We are going to begin with the ringleaders, inside our sector we have the university and there is Ellacuría."

To the Salvadoran right, the UCA itself continues to be a wound that will not heal. The institution was founded in 1965 as an alternative to the National University, which El Salvador's influential families considered too leftist. The Jesuit-run school was to be the country's elite institution of higher learning, divorced from the political fray. That the UCA's early supporters and donors feel betrayed crops up again and again: "The UCA is the Bulwark of Communist Confabulation," read a 1986 headline.<sup>22</sup> One critic charged the Jesuits with "converting the UCA into an instrument of their political ambitions, the university that was founded with money from the rich, landowners, and industrialists in San Salvador."<sup>23</sup> Ellacuría devoted himself to "the mental deformation of our youth" and the UCA "has been converted into the spokesman for the guerrillas."<sup>24</sup>

### ARENA's Rise in the Late 1980s

In mid-1986 ARENA deputies in the Legislative Assembly launched a campaign to strip Father Ellacuría of his Salvadoran citizenship, arguing that as a foreigner and a clergyman he had violated constitutional provisions barring both from political involvement. On September

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<sup>21</sup>Jeréz Magaña, *supra* note 7, at 13.

<sup>22</sup>*Diario de Hoy*, May 22, 1986.

<sup>23</sup>*Prensa Grafica*, Sept. 24, 1986.

<sup>24</sup>*Diario de Hoy*, Sept. 26, 1986.

10, Dr. Armando Calderón Sol, now the ARENA mayor of San Salvador, introduced a proposal that would establish a "Special Commission to investigate the activities of the Jesuit priest José Ignacio Ellacuría [sic]" ... "to clarify if the priest Ellacuría [sic] is a foreigner and is intervening in Salvadoran politics, in this case he would be an undesirable alien...."<sup>25</sup> ARENA deputy, Major Roberto D'Aubuisson, said that

With [Ellacuría's] declarations it can be confirmed what has always been said: that the real ringleaders of subversive movements like the BPR<sup>26</sup> and the FPL are not in the mountains, but near the UCA.<sup>27</sup>

The rhetoric against the Jesuits increased steadily throughout the late 1980s, taking on new intensity after ARENA won the March 1989 presidential elections. A 1987 campaign attempted to paint Father Ellacuría as a defender of the FMLN's use of land mines because he stated that mines are a weapon of war directed against the Army and their use did not constitute acts of terrorism designed to hurt civilians. A news article which described wounds suffered by two *campesinos* in a mine explosion was entitled "Mines Which the Priest Defends Mutilate More Peasants."<sup>28</sup> The only other reference to Ellacuría was a clause in the last line of the article which mentioned "these infernal artefacts, that a Jesuit justifies." In late 1988, the Armed Forces ran paid ads suggesting that Ellacuría supported the FMLN's use of car bombs.

In April 1989, ARENA conducted a similar campaign against Father Segundo Montes, director of the UCA's human rights institute, for his alleged support for terrorist acts on the part of the FMLN.<sup>29</sup> An ARENA press release accused Montes of supporting FMLN terrorism in "an arrogant and cold manner" during a television interview. "ARENA energetically protests this undescrivable conduct by the Jesuit Segundo Montes, even more because he is a university professor and the director of the Human Rights Commission of the UCA." [sic]

A paid advertisement by the Salvadoran Armed Forces ran a quotation from Father Montes superimposed over a dead body. The headline read: "In El Salvador there are groups and persons who insist on defending the terrorism of the FMLN-FDR and their front groups."<sup>30</sup> In April, after urban commandos of the FMLN had killed the ARENA-appointed Attorney General, Colonel Juan Orlando Zepeda, then commander of the First Infantry Brigade and now Vice-Minister of Defense said that the murder had been planned inside the UCA. The UCA "is a refuge for terrorist leaders, from where they plan the strategy of attack against Salvadorans."<sup>31</sup>

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<sup>25</sup>*El Mundo*, Sept. 11, 1986.

<sup>26</sup>The Popular Revolutionary Bloc (BPR) – founded in the aftermath of the July 30, 1975 student massacre – gathered peasant, union, student, Christian and neighborhood associations in a new kind of grassroots organization. The Popular Liberation Forces (FPL), founded in 1970, is the oldest and largest of the five armed groupings which together make up the FMLN.

<sup>27</sup>*Diario de Hoy*, Sept. 17, 1986.

<sup>28</sup>*Diario de Hoy*, July 6, 1987. See also *Diario de Hoy*, May 23 & 30, 1987.

<sup>29</sup>See *Prensa Grafica*, April 13, 1989; *Diario de Hoy*, April 13, 1989; *Diario Latino*, April 13, 1989; *El Mundo*, April 13, 1989.

<sup>30</sup>*Prensa Grafica*, April 16, 1989.

<sup>31</sup>*Diario de Hoy*, April 20, 1989.

One week later, the UCA printing press was again bombed, the first act of violence directed against the Jesuits since 1983. *Diario de Hoy* downplayed the attack and suggested the dynamite had been placed to "fabricate martyrs and justify later acts of terrorism."<sup>32</sup> On April 28, several explosives were thrown at the complex housing the university's printing press, located in one corner of the campus along the Southern Highway.

On July 19, 1989, Ing. Gabriel Payés, an outspoken rightist and friend of Colonel Zepeda, was shot and died a month later. Though the FMLN never acknowledged the killing, some held guerrilla urban commandos responsible. The next day, the right-wing Committee to Save the University of El Salvador, denounced "communist infiltration" at the UCA.<sup>33</sup> Shortly before 2:00 a.m. on July 22, the university printing press again suffered an attack, the most serious in the last decade. Two bombs exploded outside the building, one in the transformer and another under a parked bus. Two others went off around the computer and photocopier; three more were defused. The damages exceeded \$60,000.

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<sup>32</sup>*Diario de Hoy*, May 4, 1989.

<sup>33</sup>For a summary of recent attacks leading up to the Jesuit murders, see "El Asesinato de los Jesuitas (1)," *El Salvador Proceso*, #409, Nov. 29, 1989. On June 30, another prominent rightist, Edgar Chacón of the Institute of International Relations, was killed by FMLN urban commandos.

## II. CHRONOLOGY OF THE CRIME

Shortly after 8:00 p.m. on November 11, 1989, forces of the FMLN launched what proved to be their strongest urban offensive in the 10-year-old civil war. FMLN combatants struck simultaneously at scores of locations around the capital. Within minutes, fierce gun battles could be heard in many locations as the sky was illuminated with the military's Bengal lights.

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

A number of military and diplomatic analysts contend that the Salvadoran Armed Forces performed poorly and were in essence caught off guard. Though it is still not clear how much or when Salvadoran intelligence officers detected the guerrilla plans, by all accounts they had at least one or two full days warning. According to Colonel René Emilio Ponce, head of the High Command, the Armed Forces learned on November 9 of the scheduled offensive.<sup>34</sup> While Salvadoran military intelligence ultimately uncovered the scheme, the Armed Forces were clearly unprepared for the strength of the FMLN assault and the guerrillas' ability to hold large sections of the capital for days. Salvadoran military sources as well as civilians with knowledge of the inner workings of the military describe it as an institution in disarray during the first days of the FMLN action. Colonel Ponce and other ranking officers were reported to have said that the military seriously considered the possibility that they could lose power, or that San Salvador could become a divided capital, much like Beirut.

### Broadcast Death Threats

In the first few hours, Salvadoran radio stations provided excellent coverage of the war raging around the city. Journalists as well as private citizens phoned in on-the-scene accounts of battles in many neighborhoods. Listeners monitoring the transmissions glimpsed the scope and severity of the guerrilla assault. But at approximately 11:00 p.m., all stations were instructed to tie into a nationwide network, which was actually Radio Cuscatlán, the station of the Salvadoran Armed Forces. Two stations which initially resisted hooking-in later did so under duress.<sup>35</sup>

Once under the control of the Armed Forces, programming changed radically and accurate coverage of the fighting was discontinued. Repeated messages from the governmental Center of National Information (CIN) provided assurances that the fighting was extremely localized and would soon be under control. The nature of the calls coming from private

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<sup>34</sup>Interview with Col. René Emilio Ponce, Estado Mayor (Feb. 14, 1990). Col. Ponce was appointed defense minister on September 1, 1990.

<sup>35</sup>One of those which resisted tying into the network was the Catholic Church's YSAX. The station's announcer reported threatening phone calls from what he described as "fanatics." By Sunday morning, YSAX had joined the network. Testifying in court on September 10, Maj. Mauricio Chávez Caceres, chief of COPREFA, the military press office, said that the network was directed by Radio Cuscatlán and Radio Nacional. He said that Radio Cuscatlán is run by C-5, Psychological Operations of the High Command, which is in charge of "campaigns designed to raise the morale of the soldiers and lower the morale of the FMLN and to give tranquility to the civilian population." C-5 is headed by Col. Carlos Armando Avilés. See *Latino*, Sept. 12, 1990.

citizens also changed fundamentally. Salvadorans were no longer seeking information about relatives' well being, or sending word to family that they were safe. Instead, caller after caller denounced opposition political figures, labor and church leaders, and members of nongovernmental organizations, often labelled "FMLN fronts." The statements were vitriolic and vindictive, often urging violence against those named.

In keeping with the long history of harassment and persecution of the Society of Jesus, Jesuits were also singled out, Father Ignacio Ellacuría, the rector of the Jesuit-run university, was prominently mentioned by several callers. "Ellacuría is a guerrilla, cut off his head!" said one caller. "Ellacuría should be spit to death," said another.<sup>36</sup> Vice-president Francisco Merino of the ruling ARENA party accused Father Ellacuría of "poisoning the minds" of Salvadoran youth while teaching at the Central American University José Simeón Cañas (UCA) and at the Jesuit high school, Externado San José.<sup>37</sup>

### Jardines de Guadalupe from November 11

One of the first places fighting broke out on the evening of November 11 was Democracy Tower, a high-rise glass office building which has never been occupied. The tower is located at the corner of the Southern Highway and Avenida Albert Einstein just outside the UCA campus. Bombed by the FMLN, the building is regularly guarded by the Security Forces and its upper floors are used for surveillance. Military sources report that their position on the *Autopista Sur* at the entrance to the Arce community, a military housing project near the tower, was under guerrilla attack for one hour.

Shortly after the offensive began a group of FMLN combatants fled through the UCA campus, entering through a gate on Avenida Albert Einstein adjacent to the Jesuit residence. They opened the gate by setting off a low-powered explosive.<sup>38</sup> Within 10 minutes the Armed Forces were on the scene and "controlled the situation," according to a chronology prepared by the Jesuits.

The next day, Sunday November 12, at about 9:00 or 10:00 a.m., a military patrol of some 8-10 men asked permission to examine the scene, which they did accompanied by Father Segundo Montes, one of the Jesuits who would be killed three days later. Montes told other Jesuits that the men belonged to the Belloso Battalion. The soldiers took away with them an unexploded device, apparently left behind by the FMLN which the Jesuits had found near the gate. Father Ignacio Martín-Baró, another of the future victims, left in his computer a one-page description of some of these events. "From this moment," he wrote, "a group of soldiers was posted at the entrance to the university complex, checking (*registrando*) everyone who entered or exited, and from Monday November 13, prohibiting the entrance or departure of anyone." Martín-Baró also told a U.S. Jesuit with whom he spoke by phone at 6:15 p.m. on Monday evening that "no one could enter or leave the university."

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<sup>36</sup>"*Ellacuría es un guerrillero. Que le corten la cabeza.*" "*Deberían sacar a Ellacuría para matarlo a escupidas!*"

<sup>37</sup>See *El Salvador Proceso*, Nov. 29, 1989, at 8.

<sup>38</sup>See "Cronología de Acontecimientos Relacionados con el Asesinato de los Seis Jesuitas de El Salvador," Provincia Centroamericana de la Compañía de Jesús, San Salvador, Nov. 17, 1989; Ignacio Martín-Baró, "Cateo de la Universidad Centroamericana y la Comunidad Universitaria Jesuitica," San Salvador, Nov. 14, 1989.



Given its proximity to several military installations, Jardines de Guadalupe, the comfortable middle class neighborhood in which the UCA is located, was heavily occupied by soldiers. UCA neighbors have testified that troops were posted throughout this week on Calle del Cantábrico, which forms one border of the campus, and the adjacent Calle del Mediterráneo. One neighbor told the Lawyers Committee that men of the Belloso Battalion, an elite, U.S.-trained unit, were on Mediterráneo and other locations in Jardines de Guadalupe from Monday to the end of the week. Some members of the Jesuit order and other neighbors say Atlacatl troops were seen in the neighborhood on Wednesday.

### **Sunday November 12: Weapons Found at Loyola Center**

At about 11:30 a.m. on Sunday November 12, 10 Treasury Police agents entered the grounds of the Loyola Center, a Jesuit retreat complex located on the edge of a coffee plantation one and a half kilometers from the UCA campus. The search of the center followed an anonymous phone call which indicated that "delinquent terrorists of the FMLN had abandoned weapons [in said place]," according to the report Colonel Héctor Heriberto Hernández, Director of the Treasury Police, filed in response to the SIU's inquiry. Father Fermín Saíenz, the Jesuit who directs the center, says the soldiers brought along a young man, who was handcuffed, to locate the arms. Buried under a shallow pile of ashes left from burning leaves, the troops found equipment for four guerrilla combatants.<sup>39</sup> Father Saíenz, who was called to the scene by the center staff, says the lieutenant in charge told him, "Don't worry Father, we're finding things like this all over the city." FMLN combatants in flight were abandoning equipment rather than risk getting caught with it.

### **Monday November 13: Atlacatl Commandos Arrive in San Salvador**

On the afternoon of November 13, the High Command decided to create a *Comando de Seguridad*, a special security zone which included the area surrounding the UCA. Located within several blocks of the university are the High Command headquarters, which also houses the Ministry of Defense, the Military Academy, the National Intelligence Directorate (DNI, one of several intelligence bodies), the San Benito Battalion of the National Police, and two military residential neighborhoods, Colonia Arce and Colonia Palermo. Chosen as headquarters for this zone was the Military Academy and its director, Colonel Guillermo Alfredo Benavides, was named commander. Colonel Ponce told the Moakley group that "this military complex... was a permanent objective" for the FMLN, which "launched four attacks against these installations."<sup>40</sup>

Despite optimistic predictions to the contrary, by Monday it was clear that the guerrillas would not be easily routed. Of paramount importance to the Armed Forces was protection of their key command centers. By chance, the UCA fell within those parameters. One outstanding question is why the High Command would have entrusted their most strategically

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<sup>39</sup>The sub-lieutenant in charge of the patrol filed a report with the Treasury Police Director on the day of the search. Among those items found at Loyola were three AK-47s, one M-16, three 45 calibre pistols, three LAW rockets, two radios, four grenades and ammunition for these weapons. Father Saíenz, who also noted what was uncovered, says by contrast that the men found three AK-47s, one M-16, four 45 calibre pistols, four pistols of a smaller calibre, one LAW rocket, one radio, one grenade and ammunition in four cloth bags.

<sup>40</sup>Transcript of Moakley task force meeting with Col. René Emilio Ponce, Estado Mayor (Feb. 12, 1990), at 6.

important zone to Colonel Benavides who was not known as a good commander and never held important combat posts.

Since the Academy does not normally have combat-ready troops, portions of several other units were stationed at the school in the first few days of the offensive. Among those troops who were temporarily assigned to the Military Academy was a 47-man commando unit of the Atlacatl Battalion, an elite U.S.-trained force established in 1981.<sup>41</sup> On November 10, one day before the FMLN launched its offensive, 13 U.S. Special Forces from Fort Bragg, North Carolina, commenced a training course at Atlacatl Headquarters in Sitio del Niño, La Libertad. Among their students were these Atlacatl commandos, six of whom are now in custody in connection with the Jesuit killings. According to information provided by the Pentagon to the Speaker's Task Force on El Salvador, members of the Seventh Special Forces Group (Airborne) Deployment for Training were actually themselves being tested in "the annual evaluation of the Special Forces Detachment in its ability to conduct Foreign Internal Defense training missions."<sup>42</sup>

On arriving in the capital, the Atlacatl commandos reported to the Military Academy to await orders. The lieutenants who led the unit reported directly to the High Command, where they were given an order to search the Jesuit residence (see below). The fact that these lieutenants reported directly to the High Command and that the commanders searched the Jesuits' home within two hours of arriving in the capital suggests that the unit may have been brought to San Salvador specifically for this purpose. In his written statement to the court on September 5, Colonel Ponce said he "deduced that the officers of the Atlacatl immediate reaction battalion went to inform the High Command of their arrival on November 13, 1989 because the High Command ordered their transfer to the Military Academy and their assignment to the security command."

Colonel Joaquín Arnoldo Cerna Flores, chief of C-3 (Operations) in November 1989, told the court on September 21 that he and Colonel Ponce decided it was "appropriate" to send the Atlacatl commandos to conduct the search because of their "age, experience in combat and because they had no other mission assigned at the moment."<sup>43</sup>

### **Father Ellacuría Returns from Spain**

About 5:45 p.m. on November 13, the university rector, Father Ignacio Ellacuría, arrived at the UCA campus accompanied by Father Amando López and Father Francisco

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<sup>41</sup>Forty-seven soldiers comprise the Atlacatl commando unit that is implicated in the crime. At least 88 other members of the Atlacatl also came to the capital and participated in the November 13 search of the Jesuit residence.

<sup>42</sup>This untitled document, which was prepared by the U.S. Military Group at the U.S. Embassy in San Salvador, was transmitted to Congressman Moakley on April 10, 1990 by Carl W. Ford, Jr., Acting Assistant Secretary of Defense for International Security Affairs. The quoted material is on pages two and three in the section responding to "Issue I: U.S. Training relationship with the Immediate Reaction Infantry Battalion (BIRI) Atlacatl and training received by members of the BIRI Atlacatl." There is no consistent pagination within the 25-page document, which appears as Appendix C to the Moakley Report.

<sup>43</sup>*El Mundo*, Sept. 26, 1990.

Estrada,<sup>44</sup> who met him at Comalapa Airport. When the fighting broke out, Father Ellacuría was in Spain, where he accepted an award for the UCA and attended a meeting of the Superior University Council of the Iberoamerican Postgraduate University, of which he was elected president. While in Europe he also addressed the West German parliament. In Barcelona, Father Ellacuría was interviewed by the Catalan newspaper, *Avui*.<sup>45</sup> Asked if he was ever frightened by the death threats he had received, he replied, "Never. I'm not afraid. Fear is not a feeling which normally overcomes me. It would be too irrational to kill me. I've done nothing wrong." During the three weeks that the rector had been gone, the country had changed greatly, and he told his colleagues, "We're returning to 1980," arguably the most violent year in modern Salvadoran history.

The three men made their way from the airport, some 30 miles outside the city, to the campus without incident, arriving shortly before the 6:00 p.m. curfew, which had been imposed on Monday. Entering by the main gate off the Southern Highway, the priests were stopped by soldiers who had been posted there since Sunday. No one had been allowed to enter the campus, and it was only after it was established that the car's driver was the university rector were the priests allowed to proceed up the hill. The Jesuit Provincial for Central America, José María Tojeira, told agents of the Special Investigative Unit on November 28 that the man who appeared to be in charge of the patrol at the gate said, "*Dejenlo entrar que es el Padre.*" (Let him pass. It's the Father.) Though the soldier did not mention Ellacuría's name the priests were left with no doubt that the officer recognized Ignacio Ellacuría, who often appeared on Salvadoran television and in the newspapers. To date, it has still not been established which unit was on duty at the UCA entrance that night.

### The Monday Night Search of the Pastoral Center

At 6:30 p.m., one half hour after the beginning of curfew, some 135 men surrounded the UCA campus with the intention of conducting a search of the Jesuit residence and the Theological Reflection Center housed in the same building. Two patrols, about 20 men altogether, entered the campus by breaking the lock on the back gate on Calle del Cantábrico.<sup>46</sup>

Father Ellacuría asked the officer in charge to identify himself, which he declined to do, and asked the reason for the intrusion. Ellacuría introduced himself, and the officer addressed Fathers Segundo Montes and Ignacio Martín-Baró by name. Lieutenant José Ricardo Espinoza Guerra, the Atlacatl officer in charge, was a student at the Jesuit high school, Externado San José while Father Montes was its rector, though Montes did not recognize his former student. Father Ellacuría challenged the Army's right to examine the building, which he pointed out belonged to the Society of Jesus and not the university. He asked that the Minister of Defense be called. The officer answered that according to the state of siege imposed the previous day, they could do anything they wanted, and added that they had orders to search the entire campus. Father Ellacuría suggested that the men come back in daylight to search the rest of

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<sup>44</sup>Amando López, a Spanish-born Jesuit who once served as rector of El Salvador's seminary and of the Jesuit university in Managua, was at the time of his death teaching philosophy and theology at the UCA, where he chaired the philosophy department. Father Francisco Estrada, a Salvadoran Jesuit, was named to succeed Father Ellacuría as rector of the UCA on November 28, 1989.

<sup>45</sup>*Avui* (Barcelona) Nov. 15, 1989. *Avui* means "today" in Catalan.

<sup>46</sup>This account is based on Lawyers Committee interviews with Jesuits in San Salvador; on Father Martín-Baró's description of the search written on November 14, 1989; and on *El Salvador Proceso*, Nov. 29, 1989, at 8.

the UCA, but they did not return the next day. Segundo Montes later told colleagues that the troops were members of the Atlacatl.

The Jesuits described the search as "correct" and said the soldiers were well-behaved. Martín-Baró observed that the officer in charge "at all times conducted himself respectfully toward the professors...."<sup>47</sup> In contrast to earlier searches, no questions were asked and they did not seem interested in papers or books. On previous visits soldiers had spent hours examining written materials to determine if they were "subversive." Nothing about the intrusion led the Jesuits to believe that this was anything more than a routine search. Father Tojeira told the SIU on November 28 that his colleagues believed that the search was conducted "because of the arrival of Father Ellacuría."

Salvadoran military officers have repeatedly said that neither weapons nor guerrillas were found during the search. Yet President Alfredo Cristiani told reporters on July 12, 1990 that the soldiers did encounter some arms. Further, a November 13, 1989 cable by U.S. military intelligence agents to the Defense Intelligence Agency, which was released to the Lawyers Committee under the Freedom of Information Act, states "...initial reports indicate that the following equipment was captured by the [Salvadoran Armed Forces]...in the Jesuit priests' dormitory at the Catholic University." The equipment listed was:

- 3 AK-47 (Soviet) rifles
- 3 RPG-18s (rocket propelled grenade)
- 2 M-16 rifles
- 4 .45 pistols
- 3 YAESU radios

### Atlacatl at the Loyola Center on November 15

At mid-morning on Wednesday, November 15, an Army officer posted in Jardines de Guadalupe commented to a Jesuit that there was going to be a lot of "movement" in the afternoon or evening.<sup>48</sup>

About 3:00 p.m., some 120-130 members of the Atlacatl moved into the Loyola Center.<sup>49</sup> Father Fermín Saíenz, the director, immediately went to the center when he was informed of the soldiers' presence. A housekeeper unlocked doors for the troops who rapidly examined the center's 45-odd rooms. One soldier asked, "This also belongs to the UCA, right? Here they are planning the offensive." The men occupied the center all afternoon; most just sat around resting and awaiting orders. Loyola's housekeeper served coffee and pastry to many of soldiers. At about 6:30 p.m. -- after the start of curfew -- an officer ordered the men to move out, and they headed down toward the UCA campus. Before he left the center, Father Saíenz saw the officers looking at a large piece of paper which he took to be a map, as they pointed at the campus below. A lieutenant later commented that "it's possible to talk with this priest, but the ones down below just get furious." The officer was presumably referring to the

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<sup>47</sup>See Martín-Baró, "Cateo a la Universidad Centroamericana y la Comunidad Universitaria Jesuitica," Nov. 14, 1989. Father Ellacuría asked Martín-Baró to write a brief description of the search, which was found in his computer after his death.

<sup>48</sup>See "Cronologia de Acontecimientos," at 2.

<sup>49</sup>See F. Saíenz, "El Martirio en la Iglesia Universal, Martirios Actuales: Padres Jesuitas," Feb. 1990 (unpublished manuscript); Lawyers Committee interviews with Father Fermín Saíenz, Feb. and Sept. 1990.

behavior of Father Ellacuría and the others when they challenged the soldiers' right to search the Jesuit residence on the UCA campus on Monday night. For this reason, Father Saínz believes that these Atlacatl men may have been the same unit now charged with the murders.

Before leaving Loyola, one officer said to someone present, "Yes, we're going to look for Ellacuría and all these Jesuits. We don't want foreigners. This has got to end!" Another soldier warned the staff that "tonight there is going to be a big uproar around here. Stay inside and keep your heads down!" Still another said that "we're going to look for Ellacuría, and if we find him we're going to give him a prize!"

### Meeting at High Command Headquarters on the Night of November 15

In an attempt to establish when the decision was made to kill the Jesuits -- or perhaps when to implement longstanding contingency plans -- attention has focused on a series of meetings held on November 15 at the *Estado Mayor*, the High Command headquarters. Top officers were known to be living at the military complex during the offensive, and President Cristiani reportedly spent several nights there as well. According to Colonel Ponce, some 20 top officers convened at about 7:30 p.m. on the evening of Wednesday, November 15, in order "to analyze the positions we had lost since November 11.... We analyzed what we needed to do to regain them. We understood that we needed to take stronger measures."<sup>50</sup> Those who gathered that night included the Minister of Defense, the two vice-ministers of defense, commanders of all the units in the metropolitan area, the commanders of special security zones set up during the offensive, Security Force chiefs, the head of the military press office, COPREFA, members of the High Command and its chief, Colonel Ponce.

By their own account, top officers were in a state of near panic in the face of their inability to rout the FMLN decisively from the capital. Some observers believe that these officers have in retrospect exaggerated the severity of the FMLN challenge as well as their despair at the time in an attempt to explain the Jesuit murders and extensive aerial bombardment. Self-serving or not, they describe an anguished mood that had gripped military ranks as the FMLN offensive entered its fifth day and showed no signs of abating. One participant told the *San Francisco Examiner* that the meeting on the evening of November 15 was "the most tense and desperate gathering of the country's top military commanders since the war against leftist insurgents began a decade ago."<sup>51</sup> There was early speculation that a decision to kill the Jesuits had been taken at this meeting, or that discussion of going after the "ringleaders" or "command posts" of the FMLN could have been misunderstood by Colonel Benavides.

In early September, Judge Zamora submitted a list of questions to Defense Minister Larios and Colonel Ponce.<sup>52</sup> The officers' written responses provided a few details, but no

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<sup>50</sup>Interview with Col. René Emilio Ponce, *Estado Mayor*, Feb. 14, 1990. Other participants in the meeting have said it started at 6:30 p.m.

<sup>51</sup>*San Francisco Examiner*, Feb. 5, 1990. On the meeting at the High Command headquarters on November 15, see also *Boston Sunday Globe*, Feb. 4, 1990; *Christian Science Monitor*, Feb. 7, 1990; *Baltimore Sun*, Feb. 4, 1990; *Miami Herald*, Feb. 5, 1990.

<sup>52</sup>Gen. Larios, a compromise candidate who had been considered a caretaker defense minister, was removed from the post on September 1 and named military attaché at El Salvador's Embassy in Washington. Col. Ponce, a U.S. favorite long poised to assume the job, took over as defense minister.

substantive information that could clarify how and when the murder scheme was launched. General Larios said that 24 commanders gathered at 6:00 p.m. and met non-stop until 10:00 p.m. Larios told the court that the meeting dealt with "nothing related to the priest Ignacio Ellacuría, other Jesuits or the installations of the José Simeón Cañas University nor about a meeting of union leaders inside said university."<sup>53</sup> The general added that "it was decided to expel the members of the FMLN from the areas in which aggression persisted, determining the methods of defense that would be employed to carry this out."

After the meeting, Larios says he called President Cristiani, who arrived at High Command headquarters at 11:00 p.m. and remained until about 2:00 a.m. on November 16. If accurate, this means that President Cristiani was present at High Command headquarters while the Jesuit murder operation was in progress about one mile away. Further, virtually the entire top military leadership of the country, Minister of Defense Larios, Vice-Ministers Zepeda and Montano, and Chief-of-Staff Ponce -- who by this account were all meeting from 11:00 p.m. to 2:00 a.m. with President Cristiani -- have a joint alibi in the face of suggestions that they may have been involved in the implementation of the operation.

On September 7, President Cristiani provided oral testimony concerning what occurred that night, appearing personally before Judge Zamora in what was termed "unprecedented in the contemporary history of the Salvadoran court system."<sup>54</sup> Waiving his right to submit a written statement, the President said he went to the High Command when called by General Larios, accompanied by his personal secretary, Arturo Tona, in whose home Cristiani was staying at the time. President Cristiani also said that the Jesuits were not mentioned at any point during the meeting, during which he was asked to approve the use of heavier weaponry,

given that it was the first time that the use of armored vehicles and artillery was proposed, it was necessary to consult [with the President about altering] the decision made by the High Command in the first few days of the offensive not to use this type of arms in order to protect the civilian population.<sup>55</sup>

President Cristiani told Judge Zamora that at 12:30 a.m. he and Arturo Tona went to the Center of Tactical Operations to receive a briefing on the military situation in the capital. In the center at the time were "two or three North American military advisors," with whom the president said he did not converse.<sup>56</sup>

### Other Meetings on November 15

Given the improbability that an order as explosive as the murder of six Jesuit priests would have been given in the presence of 24 officers, questions have been raised about other gatherings of top officers which may have occurred in the hours preceding the assassination. One lead was provided by retired Colonel Sigifredo Ochoa Pérez, once regarded as one of the

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<sup>53</sup>INTERJUST, Sistema Informativo de la Corte Suprema de Justicia, Sept. 4, 1990.

<sup>54</sup>*Diario de Hoy*, Sept. 10, 1990.

<sup>55</sup>*Id.*

<sup>56</sup>Declaración de Testigo, Juzgado Cuarto de lo Penal, Sept. 7, 1990, 3:30 p.m.

Army's most effective field commanders and now a leading member of the ARENA party.<sup>57</sup> Early on, Colonel Ochoa, who heads the state-owned electrical company, made public statements suggesting that Colonel Benavides had been acting on higher orders when ordering the Jesuit killings. In January, *Agence France Presse* quoted Ochoa saying, "This action involved much higher officers, and even if a general or colonel is involved [the culprits] must be punished."<sup>58</sup>

Ochoa's comment foreshadowed a much more explicit charge he subsequently made during an interview with *60 Minutes* on April 22. According to Ochoa, a smaller group of officers gathered after the expanded High Command meeting on the evening of November 15. At this meeting, Ochoa said Colonel Benavides was given a direct order to kill the Jesuits. Ochoa said:

A group of commanders stayed behind. It seems each was responsible for a zone in San Salvador. They gave an order to kill leftists, just as Colonel Benavides did. I'll say it again. Benavides obeyed, it wasn't his decision.<sup>59</sup>

Colonel Ochoa's assertion received support from some unexpected quarters when a group of young military officers calling themselves "Domingo Monterrosa Vive"<sup>60</sup> issued a five-page communiqué on May 3, including, among other issues, their views on the course of the Jesuit case.<sup>61</sup> The anonymous group said that

The Ochoa case should be considered more carefully; his position is supported by many young officers, and also by some of our superiors. He has said something which many of us cannot express because we would be punished.<sup>62</sup>

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<sup>57</sup>In January 1983, Ochoa, then commander of Detachment #2 in Cabañas, led a rebellion against Defense Minister José Guillermo García when he attempted to send Ochoa into diplomatic exile in Uruguay. Known as a skillful commander trained in Israel and Taiwan, Ochoa has historically been resentful of U.S. advice and pressures on the Armed Forces. In the aftermath of the rebellion, Ochoa spent 18 months in Washington, before returning to head the strategic El Paraíso base in Chalatenango. García was ultimately removed as defense minister. See *Washington Post*, Jan. 8, 1983; *N.Y. Times*, Jan. 13, 1983; *Financial Times* (London) Feb. 13, 1985.

<sup>58</sup>Paris AFP in Spanish 2112 GMT, Jan. 12, 1990, as reported in Foreign Broadcast Information Service, *Daily Report* (Latin America), Jan. 16, 1990.

<sup>59</sup>*60 Minutes*, (CBS News, April 22, 1990) (transcript on file at Lawyers Committee for Human Rights). Asked if Col. Benavides would be capable of ordering such a murder, Col. Ochoa responded: "No, I don't think so. Knowing him, he's a man who could never take or even conceive of making a move as big as assassinating the Jesuits. Benavides acted under orders. He didn't act alone."

<sup>60</sup>Lt. Col. Domingo Monterrosa and other senior eastern front officers died in October 1984 in a helicopter crash caused by sabotage. Though the FMLN assumed responsibility, speculation persists over who was responsible for sabotaging his helicopter, which went down over Cacaopera in northern Morazán province. Various versions circulated at the time suggesting that the FMLN, the military itself, or even the Duarte government could have been responsible, allegedly because Monterrosa was said to oppose peace talks with the guerrilla movement. He was known as an extremely effective field commander who was well liked by his men. See *N.Y. Times*, Oct. 25 & Nov. 28, 1984; *Christian Science Monitor*, Nov. 30, 1984.

<sup>61</sup>On the young officers' communiqués, see Lawyers Committee memorandum to U.S. Jesuit Conference of July 27, 1990, at 4-6.

<sup>62</sup>See Open Letter from the Movement of Young Officers "Domingo Monterrosa Vive" to the President of the Republic and Commander in Chief of the Armed Forces; to our Chiefs of the High Command; to Members of the Legislative Assembly and Cabinet Ministers; to the domestic and international press and to the Salvadoran people, May 3, 1990, as printed in *Diario Latino*, May 4, 1990.

The men also asked what "happened at meetings that were held at 3:00 p.m. and 5:00 p.m. in the office of Colonel Zepeda?"<sup>65</sup> Not only Colonel Benavides attended, but also junior officers. All this is known by the High Command." To our knowledge, no serious attempt has been made to investigate these leads.

### November 16 Meeting at DNI Headquarters

The second meeting that has been repeatedly mentioned as a clue to the case is the daily meeting of the National Intelligence Directorate (DNI), an intelligence agency located along the same corridor as the High Command headquarters and the Military Academy. The Central Intelligence Agency (CIA) shares office space with DNI. U.S. Embassy officials in San Salvador confirm that CIA agents generally attend DNI meetings. One DNI agent told the Lawyers Committee that the unit's daily 8:00 a.m. meeting was moved back to 7:30 a.m. during the first week of the guerrilla putsch. On the morning of November 16, DNI gathered for their daily meeting, and among other items were to receive a report from their commander, Colonel Carlos Mauricio Guzmán Aguilar, about decisions taken at the meeting the previous night at High Command headquarters.

The first version of the story that emerged placed the start of the meeting at 5:00 a.m. After the meeting was underway an officer, later identified as Captain Carlos Fernando Herrera Carranza, interrupted the proceedings to announce that Father Ellacuría had been killed resisting arrest.<sup>64</sup> Captain Herrera's source was the radio, he said. Later, the time of the meeting was amended to 8:00 a.m. The later hour does not seem credible, since the Jesuits were notified of the killings shortly after curfew and were on the scene well before 7:00 a.m. Journalists arrived around 7:00 a.m. as well.

One participant in the meeting told the Lawyers Committee that the session began at 7:30 a.m. and that only senior officers were present by the time Captain Herrera entered the room around 8:00 a.m. This explains, he said, why no CIA agents were present when the announcement was made. When asked if the CIA was represented at the November 16 meeting, Ambassador Walker told a group of U.S. Jesuits: "I have asked the question and they tell me no." *The San Francisco Examiner* reported in February that several contradictory accounts of the meeting had circulated.<sup>65</sup> One source told the *Examiner* that the CIA was present, while "another source close to the CIA denied its agent had been there, although what transpires at DNI meetings is nonetheless routinely passed on."

According to several accounts in the U.S. press, the officers present "cheered and clapped" when Herrera announced that Father Ellacuría had died.<sup>66</sup> One officer, who defensively denied that the men had reacted in this fashion, said he "couldn't see why the clapping would

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<sup>65</sup>Col. Juan Orlando Zepeda, a leading member of the clique which dominates the Armed Forces known as the *tandona*, is currently the vice-minister of defense. According to the State Department, Col. Benavides would have reported either to Col. Zepeda or to Col. Cerna Flores, the head of Operations (C-3), on the night the Jesuits were murdered. In April 1989, Col. Zepeda said that an attack carried out by FMLN urban commandos had been planned inside the UCA.

<sup>66</sup>Capt. Herrera is also the DNI agent who ordered Lt. Cuenca Ocampo to join the Atlacatl commando unit on the search of the Jesuit residence on Monday, November 13.

<sup>65</sup>*San Francisco Examiner*, Feb. 5, 1990.

<sup>66</sup>*Boston Sunday Globe*, Feb. 4, 1990; *San Francisco Examiner*, Feb. 5, 1990.



be relevant to who" murdered the priests. He added, however, that he "would not want to leave the impression that we were sorry [about Ellacuría's death] either." While nothing was made explicit, he said he was left with the distinct impression that the military could be responsible for the murders.

### III: THE SPECIAL INVESTIGATIVE UNIT INVESTIGATION

From the moment they learned of the crime, Salvadoran police investigators, court authorities, and the Attorney General's office were all legally responsible for investigating the killing of the Jesuits. The investigation has actually been carried out by the Special Investigative Unit (SIU) of the Commission on Investigations, the Third Justice of the Peace and the Fourth Penal Court. A special military Honor Commission was formed to look further into the case in January 1990.

A careful examination of the investigation to date shows that the Special Investigative Unit's performance has lacked in competence, zeal and good faith. The court, in contrast, has to date carried out an extensive, and, to the extent possible, thorough investigation, despite a pronounced absence of cooperation from the military.

Salvadoran and United States government officials have lavishly praised the SIU's investigation, crediting their unit with "good police work." However, the grave, obvious, and at times apparently intentional flaws in the SIU's conduct of the case demonstrate that an independent, professional police investigatory body is still sorely lacking in El Salvador.

Under Salvadoran law, an official murder investigation begins when a judge or justice of the peace is called on to inspect the body. If a justice of the peace initiates the investigation, he or she has 12 days to notify the appropriate judge of the first instance.<sup>67</sup>

On November 16, María Julía Hernández, director of the Archbishopric's Legal Aid Office, informed the Third Justice of the Peace for San Salvador that the murders had taken place at the Central American University. Justice of the Peace Rosario Góchez de Paz supervised the first stages of the investigation, examining the bodies and inspecting the scene of the crime. She delivered the results to the Fourth Penal Court on December 7, 1989.

Salvadoran law assigns criminal investigations to the "auxiliary organs" of the judicial administration, the National Police, the National Guard, and the Treasury Police, collectively known as the Security Forces. The three are all under the jurisdiction of the Ministry of Defense and directly responsible to the Vice Minister of Defense and Public Security, currently Colonel Manuel Inocente Montano. All three forces also have full combat units, further blurring the distinction between them and the regular Armed Forces.

On November 16, upon learning of the Jesuit murders, President Alfredo Cristiani assigned the case to the Commission on Investigations. This commission and its two branches, the SIU and Forensic Unit (FU), were created in 1985 for the express purpose of investigating human rights cases in which the military is implicated. When it takes on a case, the Security Forces are required to cede any involvement in it, even if one of them has begun its own investigation. In the Jesuit case, National Police detectives who had carried out a few investigative steps turned their records over to the SIU. (Some Salvadoran political figures, including Roberto D'Aubuisson of the ARENA party, have challenged the legal standing of the SIU, and at least one appellate court has refused evidence obtained by the SIU.)

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<sup>67</sup>Under El Salvador's Civil Law system, responsibility for investigating a crime lies with a judge of first instance, the second in a four-tiered court system. In El Salvador, the first instance judge also presides over the trial and sentencing stage of the proceedings.

The SIU's performance in the Jesuit case has received a lot of attention, in part because it has received \$1.5 million a year in U.S. funding (this funding was frozen by the U.S. Congress in September 1990). SIU and forensic laboratory detectives have also received extensive U.S. training, at times circumventing congressional prohibitions on police training.

A 1988 U.S. Agency for International Development evaluation team reported that the Commission on Investigations was established as a "separate unit" from the military and the Security Forces "at U.S. insistence," both to satisfy U.S. statutes and to encourage "independence [that] might help insulate investigations from military pressure."<sup>68</sup> The creators of the Commission hoped to further encourage this independence by placing it under the directorship of a civilian committee made up of the Minister of Justice, the Vice-Minister of the Interior, and a representative of the President.

The Commission's -- and the SIU's -- independence from the Salvadoran military has been illusory, however. No civilian committee is functioning at this time, and the SIU and FU are effectively run by Lt. Colonel Manuel Antonio Rivas. Further, the U.S. Embassy liaison officer, legal attaché Richard Chidester, has taken a hands-on role in the day-to-day running of the SIU. The SIU consists of 25 to 30 detectives who are active-duty members of the Security Forces, which makes them subject to military discipline and dependent on the military for career advancement and retirement benefits.

Article 138 of the Criminal Procedure Code spells out the obligations of the auxiliary organs in a criminal investigation, which in this case would fall to the SIU. These include: preserving evidence at the scene of the crime until a judge has an opportunity to inspect it; detaining those presumed to be responsible; collecting evidence at the crime site and performing necessary steps such as taking photographs and conducting laboratory examinations; and questioning victims, neighbors and witnesses.

The investigators are required to produce written records of every step of the investigation, including witnesses' statements. The original copy of these records must be sent to the appropriate judicial authority, while a copy is to remain with the investigating organization. In the Jesuit case, the SIU was required to document its actions and present the entire record of its investigation to the Fourth Penal Court.

There is persuasive evidence that while the SIU carried out several required steps in the Jesuit case, it failed to do so in a thorough and timely fashion, allowing evidence to be disturbed, removed, and even destroyed. The SIU's lapses gave military witnesses the opportunity to organize an extensive cover-up. Furthermore, the SIU did not provide the court with a complete record of its investigation, omitting records of crucial visits and interrogations. SIU personnel willfully ignored significant early leads implicating the Atlacatl Battalion (failed to investigate promptly the officer responsible for the military zone which included the UCA), and devoted a prolonged effort to trying to discredit the only witness then willing to testify that uniformed troops were at the UCA, the Jesuits' housekeeper, Lucía Barrera de Cerna.

The SIU's investigation was flawed from the start, when its detectives neglected to seal off the scene of the crime before evidence could be disturbed.

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<sup>68</sup>A. Mudge (Team Leader), S. Flanders, M. Sanches, A. Saenz, & G. Trujillo, Evaluation of the Judicial Reform Project, No. 519-0296, USAID/El Salvador, Final Report, at 48-49 (March 1988).

According to the unit's records, two SIU detectives arrived on the murder scene at 9:10 a.m. on November 16 -- some eight hours after the killings took place. They proceeded to take photographs and to gather physical evidence: cartridges, shell fragments and fingerprints. They also began preparing maps and interviewing potential witnesses. They were joined at the site by technicians from the Forensic Unit, members of the National Police's Explosives Unit, the Third Justice of the Peace of San Salvador, her secretary, a forensic pathologist, the Second Penal Judge of Santa Tecla, his secretary, and a prosecutor.

Although the U.S. State Department has reported that the SIU sealed the scene of the crime as soon as the agents arrived that morning, the scene was in fact not sealed until sometime during a memorial service on Saturday morning, November 18. As a result, evidence was disturbed and removed by a variety of visitors.

The SIU's next misstep was its failure to take statements from likely military witnesses and to act on important leads provided by its own investigators and the court. The SIU officers supervising the investigation knew from the start that the military had surrounded the UCA the night of the killings. In late November and early December, six Jesuits who had been staying in another residence the night of the killings gave statements that Atlacatl troops had searched the Jesuit residence the evening of November 13. Nor did the SIU obtain records from the Academy which might have documented troop movements, weapon assignments or visitors during the period surrounding the assassinations.

On November 17, SIU investigators conducted key interviews with two National Police agents who had spent the night of November 15-16 stationed at the Democracy Tower office building just east of the UCA. Both men reported that at around midnight they "saw tanks and troops from the Atlacatl Battalion pass by," and added that they had heard bomb explosions and firearms around 2:00 a.m. Inexplicably, these initial interviews were not included in SIU's own summary of the case and not pursued.

It was not until December 11 and 12, almost a month later, that the SIU took a formal statement from the two police agents. By that time, one "did not remember" seeing either military vehicles or troops, and the other recalled hearing vehicles but "saw nothing." The references to the Atlacatl Battalion had pointedly disappeared, strongly suggesting that between November 17 and December 11 the police were induced to "forget" the presence of Atlacatl troops. Interviews with Treasury Police stationed at the same building took a similar course.

The SIU also failed to conduct a formal interview with the commander of the zone that included the UCA, Colonel Guillermo Alfredo Benavides, who headed the Military Academy.<sup>69</sup> The Lawyers Committee has learned that Lt. Colonel Rivas, accompanied by U.S. Embassy officers, did visit the Military Academy in early December, and obtained information about the location of troops in the UCA area the night of the murders. However, Lt. Colonel Rivas and the SIU did not include this visit in their official investigation record, despite their legal obligation to do so. Testifying in court on October 19, Lt. Colonel Rivas denied having visited the Academy in early December.

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<sup>69</sup>Benavides was named director of the Security Command of the military complex on the afternoon of November 13. The military complex is the area surrounding the High Command, the Military Academy, the National Intelligence Directorate (DNI), the San Benito Battalion of the National Police, and two military residential neighborhoods. The UCA falls within its perimeter.

Despite the preponderance of clues placing the military, and specifically, members of the Atlacatl Battalion, in the vicinity of the killings the night they took place, the SIU made no effort to question anyone from the Atlacatl Battalion for almost a month. This lapse could represent ineptitude, an intention to conceal the truth, or uncertainty whether the SIU had the authority to pursue actively military suspects. Whatever the cause, the delay gave the military ample time to identify and warn military witnesses in the area the night of the killings.

The SIU's initial interviews with the Jesuits and neighbors from Calle Cantábrico indicated that at approximately 2:00 a.m. they heard shots and explosions, but no one claimed to have seen those responsible or to have heard voices. Some reported having seen flares.

SIU agents also interviewed UCA watchmen who had spent the night in a small building 100 yards from the Jesuit residence; they, along with Lucía Barrera de Cerna and the husband of the murdered cook, were among the first to arrive on the murder scene after curfew lifted on the morning of November 16, and passed soldiers leaving the campus. The SIU failed to identify or interview these soldiers.

On November 22, Lucía Barrera de Cerna gave a statement to the court in the Spanish Embassy. She recalled that Father Ignacio Martín-Baró had offered to let her family stay in an UCA residence on November 15 because the fighting had caused them to flee their home in Soyapango. Awakened by the sounds of shooting and the opening and closing of the doors of the Jesuit residence, she looked out a window towards the residence. She said she had seen five persons, two of them in camouflage and three in dark uniforms.

Although SIU investigators sought other neighbors who could provide information about the killings, Mrs. Cerna was the only witness to come forward. But instead of actively pursuing the lead she provided -- that military personnel were present at the killing -- the SIU devoted its efforts to discrediting her.

Mrs. Cerna's initial testimony had been provided directly to the court. A week after the killings, she was taken to Miami for a week of questioning by the FBI. Also present were U.S. Embassy official and SIU program director Richard Chidester, and SIU chief Lt. Colonel Manuel Rivas Mejía. Cerna was kept in Miami for a week. She was pressured and intimidated, notably by the involvement of an officer from the same Army she was implicating in the murders, and by the end of the week Cerna recanted and said she had seen nothing at all. (The Moakley Report gave credence to Cerna's original testimony.)

Cerna's Miami interrogation involved a number of serious irregularities, both on the part of the SIU and its U.S. colleagues.<sup>70</sup> Despite Rivas' participation in the interrogation, the SIU included no record of these interviews in its case record provided to the Fourth Penal Court. In a week when Rivas should have been supervising the crucial early stages of the investigation, he was in Miami personally interviewing a witness who had already given a full statement to the judge.

At the same time the SIU was going through the initial state of the investigation (from the date of the killings on November 16, 1989 until the current defendants were publicly named on January 13, 1990), the court was carrying out its own, independent inquiry. The court's role was limited during this period and there was no coordination with the SIU. On November

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<sup>70</sup>See Lawyers Committee for Human Rights, "The Jesuit Murders: A Report on the Testimony of a Witness" (Dec. 15, 1989).

28, after recording the testimony of two Jesuits, the prosecutors requested the judge to solicit information from Colonel René Emilio Ponce, head of the joint chiefs of staff. They specifically asked which military personnel were in charge of security for the area surrounding the UCA at the time of the killings; the exact location of these troops; and the names of their officers, non-commissioned officers, and soldiers.<sup>71</sup>

In a December 5 letter to Colonel Ponce, the court expanded this request to include the troops involved in the November 13 search of the Jesuit residence and the troops who searched the Loyola Center on November 15. The court also asked the High Command to report whether there had been any combat in the UCA area on November 15-16.

Ponce's certified sworn statement, dated December 8, was entered into the court record on December 11. It was not until December 16 that Lt. Colonel Rivas requested Colonel Ponce to provide him with a copy of the declaration provided to the court.

Ponce's declaration listed the troops assigned to the university area between 6:00 p.m. on November 15 and 7:00 a.m. on November 16. He included two Army battalions and agents from the National Police and the Treasury Police; the Atlacatl Battalion did not appear in his list of units providing security in the area that night.

Ponce's statement included a mysterious entry from the High Command's log concerning an incident that supposedly took place at the building where the Jesuits were killed, at the approximate time of their death:

- 1) at 12:30 a.m. on the sixteenth, delinquent terrorists using grenade launchers from the San Felipe Sand Ravine near the southeast side of the University in question damaged the theology building of this center of studies, without any casualties reported.

There is no record of any effort on the part of SIU investigators to discover the origin of the annotation once they received a copy of the statement and to date the court's efforts to establish its origin have been unsuccessful.

The SIU finally presented its own round of formal requests for information from the High Command, primarily between December 4 and December 15 -- starting an entire week later than the court. Furthermore, the SIU showed a consistent inability or unwillingness to follow up on the leads revealed by the information it received.

On December 4 the SIU asked Colonel Ponce to provide information about incidents that had occurred around the UCA starting on November 11; a reply came back on December 18. In the section called "Enemy Activity Registered" for the area of the UCA, marked confidential, the following entry appeared for 12:30 a.m., November 16:

D/T (delinquent terrorists) using machine guns (various kinds of rifles) assassinated the "JESUIT fathers", IGNACIO ELLACURÍA (rector of the UCA), ARMANDO LOPEZ, [sic] IGNACIO MARTIN BARO, SEGUNDO MONTES, JUAN RAMON MORENO, JOAQUIN LOPEZ Y LOPEZ, Sra. ELBA JULIA RAMOS (employee) and her minor daughter CELINA RAMOS, inside the

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<sup>71</sup>The SIU made a similar request on December 16, 1989.

installations of the CENTRAL AMERICAN UNIVERSITY "JOSE SIMEON CANAS" (U.C.A.), SAN SALVADOR.

Again, the SIU left no record of any attempt to determine the origin of this entry, or even to identify who recorded it. Seeking to blame the FMLN with notations is a routine practice of the military, but tracing it could have provided valuable information as to when and how the High Command first confirmed that the attack had taken place. The entry has never been explained; it should have prompted SIU investigators to pose a series of questions about its source and its timing.

On December 5, the SIU officially requested the High Command to provide a list of the troops that carried out the search of the Jesuit residence and other parts of the UCA on November 13. (Several Jesuits had told the court that those murdered had identified the Atlacatl Battalion as the unit that carried out the search.)

The reply came back on December 10, consisting of a list of 35 names provided by Lt. Colonel León Linares, then Commander of the Atlacatl Battalion -- although all accounts indicate that these troops were not under his command at the time they carried out the search. Colonel Linares said the order for the search came at 8:50 p.m., in response to a report of an undetermined number of FMLN forces penetrating the UCA campus and firing on an Armed Forces unit. Nothing was found in the search and the troops returned to the Military Academy.

This brief report did not explain who actually ordered the search, nor to whom the troops reported. Furthermore, it presents a significant inconsistency, stating that the search order was given at 8:50 p.m. while Father Martín-Baró had called Jesuits living nearby to tell them that a search had taken place between 6:30 and 8:00 p.m. (Father Martín-Baró also left an account of the search in this computer fixing the time at 6:30 p.m.). The SIU again made no effort to clear up this inconsistency.

Once the Atlacatl commando unit was officially identified as the unit that carried out the November 13 search, the SIU called in the two lieutenants in charge of the unit for questioning. On December 13, a full month after the search, both men gave statements; other members of the commando unit were questioned later.

The statements of the Atlacatl commandos were riddled with contradictions. They could not agree on their manner of entry into the campus on the night of the search; whether they had conducted other missions between November 13 and 16; whether the officers had participated in other missions; whether the electric power was functioning on November 13 when they conducted the search; whether soldiers from the Atlacatl had accompanied them; and whether they had gone on foot or by vehicle to the UCA. Some claimed to have entered the campus by crawling under the main entrance gate, a physically impossible feat.

While inconsistencies in testimony are not uncommon, the sheer number of significant differences in the commandos' stories suggest that they had something to hide. The soldiers were almost unanimous, however, in claiming that they did not learn of the Jesuit killings until days afterward, while soldiers from other units generally said they learned of the killings through newspapers and radio reports within hours.

On December 22, Lt. Colonel Rivas gave a briefing on the investigation's progress to Jesuit Fathers Tojeira and Estrada. The meeting was arranged by Colonel Carlos Avilés, head of Army Psychological Operations (C-5) and a graduate of the Jesuit high school, the Externado San Jose, who had taken a personal interest in the case. The investigation was clearly focusing

on the Atlacatl troops by this point, but Lt. Colonel Rivas chose to tell the Jesuits that suspicion was still divided between the Army and the FMLN. Neither Colonel Benavides nor the Atlacatl troops were mentioned as prime suspects. A U.S. Embassy chronology of the investigation called it a "full and detailed briefing."

In late December, the SIU selected some of the Atlacatl commandos to participate in a reconstruction of the November 13 search. The commandos not only contradicted each other, but several also contradicted their own prior statements.

The SIU did not request ballistics information from the High Command until nearly four weeks after the killings, and it was almost another month before the evidence was in hand. On December 7 the SIU asked Colonel Ponce whether the ammunition used to kill the Jesuits belonged to the Armed Forces, and if so, to which units. The initial reply of December 16 indicated that at least some of the shells and cartridges came from lots received by the Armed Forces. On December 11 the SIU requested Colonel Ponce to permit ballistics tests for all soldiers who guarded the Military Complex between November 13 and December 6. Curiously, these tests were not begun by the SIU until December 21, and the first series, using single shots, yielded no positive results.

A second series used automatic firing mechanisms, and this time, the tests were conducted in the presence of an expert from the FBI. On January 3, the SIU noted that the second series determined that 53 shells from the site of the killing had been fired by the M-16 rifle assigned to Private Victor Antonio Delgado Pérez, one of the Atlacatl commandos.

The next day ballistics experts reported that 41 shells matched the M-16 assigned to Atlacatl commando Neftaly Ruíz Ramires. An AK-47 rifle reportedly assigned to the Military Academy was subsequently identified as the weapon used to kill Fathers Ellacuría, Martín-Baró, and Montes. (This left 32 shells unidentified, and no ballistics match was made of the rifles used to kill the other victims.)

Over the first week in January, a number of other significant developments in the case took place. On January 2, U.S. Embassy officials went to the Salvadoran High Command with Major Buckland's story linking Colonel Benavides to the crime (see Introduction). On January 5, Defense Minister Rafael Humberto Larios appointed a group of military officers to a "Special Honor Commission" on the case.

From the beginning, the purpose and the actions of the Honor Commission were unclear; the names of its members were even obscured from the investigating judge until March 1990. The Commission was made up of six high-ranking officers and two civilian legal advisors. It met with some 30 soldiers, most of them members of the Atlacatl commando unit; the closest any member of the Commission has come to describing its actions was to report that "the object of those interviews was to try to exalt patriotic values, human rights, and military values, making those involved in the act see that they had to tell the truth because the interests of the Fatherland were in danger...."<sup>72</sup>

The military Honor Commission concluded its work on January 12, when it presented a report to President Cristiani. He publicly announced the names of nine defendants on January

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<sup>72</sup>Testimony of Dr. Antonio Augusto Gómez Zarate.



13.<sup>73</sup> How and when these names were actually obtained remains obscure; the Honor Commission claims to have received them from the SIU, while the SIU denies having selected them. Moreover, the names of the officers from the Military Academy had not surfaced in the investigation prior to January 5, yet both were detained on January 8. Records provided by the SIU do not indicate that the defendants confessed their involvement in the killings, nor do they mention the Military Academy officers prior to their extrajudicial confessions on January 13 and 14. This confusion leaves open the question of whether the defendants actually confessed their participation earlier than reported or whether the SIU received information from other sources not set forth in the record.

The absence of these statements from the official case record is inexplicable and fuels doubt that the SIU wants to investigate every suspect unearthed by the evidence.

Somehow, between January 3 and 13, there was a "black hole" in the investigatory process that has still never been explained. Not only were the names of the defendants mysteriously produced by some branch of the military, there was also a tacit agreement between military and civilian officials that the investigation would be confined to these individuals. The SIU made no further serious effort to continue its investigation, despite its legal obligation to do so. Members of the military Honor Commission deny having produced the names of the defendants through any investigatory process of their own, describing their role as merely "exhorting" the suspects to tell the truth. Nowhere is there any clear suggestion of how the names were produced, and by whom, or why this information should not be public knowledge.

The Moakley Report states that the arrests might not have been made if it were not for the information provided by U.S. Major Eric Buckland in early January. While Major Buckland's information may have been crucial, it does not explain how the process worked in the case, and it is not adequate to explain the presentation of this group of suspects as a *fait accompli*, especially in a period of a little over a week.

### The Court's Investigation

With the January 19 provisional detention of nine military suspects, the primary responsibility for the investigation fell to the court and, specifically, to Judge Ricardo A. Zamora.

When the defendants were consigned to the court, several attorneys promptly appeared to represent them. Several of them had long represented the interests of the Security Forces. The first attorney to volunteer, José Oscar Caballero (who had previously represented an accused assassin of Archbishop Romero) subsequently withdrew, leaving a defense team of Dr. Carlos Alfredo Méndez Flores as head of the defense team, with three assistants. Méndez Flores is not known as a specialist in criminal law, but reportedly has close ties to the Security Forces.

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<sup>73</sup>The defendants included Colonel Guillermo Alfredo Benavides, head of the Military Academy and Lieutenant Yushy René Mendoza Vallecillos, who was also assigned to the academy. The seven other persons charged were members of the Atlacatl Battalion: Private Jorge Alberto Sierra Ascencio, Lieutenant José Ricardo Espinoza Guerra, First Lieutenant Gonzalo Guevara Cerritos, Sergeant Antonio Ramiro Avalos Vargas, Sergeant Thomas Zarpate Castillo, Corporal Angel Pérez Vásquez and Private Oscar Mariano Amaya Grimaldi. The SIU has no recorded statements whatsoever from the members of the Atlacatl Battalion for the period when the confessions supposedly took place.

Many critics, notably from the U.S. State Department, took Judge Zamora to task for not pursuing the investigation aggressively, and the Moakley report described the investigation and preparations for prosecuting the case as at "a virtual standstill" as of the date of the report's release in April 1990.

The Lawyers Committee never shared the view that Judge Zamora was responsible for the lack of progress in the case, and believes that he encountered enormous institutional obstacles in his pursuit of the investigation. The military took a number of steps to control his access to military witnesses (over 300 soldiers surrounded the UCA campus on the night of the killings, while over 50 entered the walled complex). Members of the Honor Commission were not forthcoming about presenting evidence or at describing their own work. High-ranking officers, including then-Head of Joint Chiefs of Staff Colonel René Emilio Ponce, took advantage of the privilege of his position by declining to give live testimony or submit to cross-examination. (In September, other high-ranking officials, following President Alfredo Cristiani's example, waived their right to exemption; however, officers asked to testify in recent weeks have declined to do so.)

Military witnesses have often failed to answer the judge's summons, and when they appear, tend to be highly uncooperative. Despite the efforts of the court, virtually no progress has been made in determining whether Colonel Benavides -- implicated by Major Buckland's statements and by three of his co-defendants -- was acting alone or on higher orders, or in gathering evidence against the nine currently charged.

Other members of the military have been implicated in the crimes in the course of Judge Zamora's investigation. On May 29, 1990, it was reported that all the logbooks kept at the Military Academy for 1989 were burned at the order of Lt. Colonel Carlos Camilo Hernandez, who was acting deputy director of the Academy. The destruction of this evidence reportedly took place between December 1 and 15, 1989, when the SIU was in charge of the investigation. Hernandez has been charged with the destruction of evidence.

Judge Zamora has also charged three other Atlacatl soldiers with perjury after they contradicted their prior statements and denied any knowledge of events related to the crime. The behavior of one of those charged illustrates the impunity the military apparently feel they enjoy: when Sergeant Oscar Armando Solórzano Esquivel appeared before the judge for the second time, he contradicted key aspects of earlier testimony. Judge Zamora ordered his immediate detention on the grounds of perjury. Solórzano fled the courtroom into a waiting vehicle with its motor running, in full view of the press. Embarrassed by the publicity, the military apprehended Solórzano and returned him to the judge four days later.

### **The Role of the Attorney General's Office**

Since November 20, 1989, a series of prosecutors representing the Attorney General's Office have been involved with the case. Lic. José Eduardo Piñeda Valenzuela, head of the Human Rights Section, currently coordinates the prosecution, while the lawyers who most frequently participate in court proceedings are Alvaro Henry Campos Solórzano and Edward Sidney Blanco Reyes. Four additional lawyers, comprising virtually the entire Human Rights Section, are also officially on the case.

The prosecution's early role was minimal. When the killings occurred, then-Attorney General Mauricio Colorado seemed far more interested in confronting church authorities than in pursuing the killers. The prosecutors assigned to the case did not necessarily share

Colorado's views, but their independence was limited. Moreover, the SIU denied them access to its proceedings.

The Legislative Assembly bypassed Colorado for reappointment, naming Roberto Mendoza as the new Attorney General. Mendoza has little experience in criminal law, and has neither played a role in the case himself nor delegated additional resources to its prosecution. For a time, the two young prosecutors, Campos Solórzano and Blanco Reyes, were more assertive in pursuing leads and in making public statements.

However, in recent weeks, higher authorities in the Attorney General's Office have demonstrated that they prefer a lower profile. After the two prosecutors criticized the SIU in newspaper interviews in early October, they suddenly became less visible on the case, and Campos recently stated that he was not authorized to make statements to the press.

### **The Role of President Alfredo Cristiani**

While it is not difficult to catalogue the failures of the SIU in pursuing its investigation of the Jesuits' case, it must be noted that other branches of the Salvadoran government also failed to exert pressure or furnish oversight that might have led the SIU to carry out a thorough and credible investigation.

President Alfredo Cristiani, as the country's highest ranking civilian official, was in an obvious position to provide leadership in this regard. Although he made several public statements that indicated his intention to do so, many of his actions prejudiced the investigation instead, including the following:

- 1) Facing overwhelming circumstantial evidence implicating the Salvadoran Armed Forces, prominent members of Cristiani's government continued to assert that the FMLN was responsible for the murders, right up to Cristiani's January 7 announcement that "elements of the Armed Forces" were involved. At no previous point did President Cristiani publicly contradict their assertions or criticize the impropriety of their pronouncements.
- 2) On December 9, 1989, President Cristiani announced at a news conference that Lucía Barrera de Cerna -- the Jesuit housekeeper who provided crucial testimony placing soldiers on the scene at the time of the killings -- was lying, an unjustifiable executive intervention in the judicial process. In fact, her testimony has been corroborated by evidence subsequently presented to the court.
- 3) President Cristiani delayed five months before providing the court with the written report of the military Honor Commission that recommended that charges be brought against nine members of the Armed Forces. Despite public speculation about the Commission's deliberations, President Cristiani did not inform the judge that he possessed a written report; the judge learned of it from a witness, and had to ask the President to provide it to the court.
- 4) On July 12, President Cristiani admitted publicly for the first time that he personally authorized the search of the Jesuit residence two days before the priests were killed. According to the Moakley task force, his authorization was not given until after the fact.

- 5) At the same July 12 news conference, President Cristiani told reporters that guerrilla weapons were found at the UCA in that November 13 search. The military never asserted that arms were found, and President Cristiani did not respond when the Jesuit Provincial sought an explanation. Mr. Cristiani has still not retracted this false and damaging charge.
- 6) On September 7, testifying in person before the court, President Cristiani said that he was at High Command headquarters from 11:00 p.m. to 2:00 a.m. the night of November 15-16. This was precisely the time when the Jesuit murder operation was in progress. Mr. Cristiani said that at this time he was conferring with El Salvador's top military leadership: the Defense Minister, the head of the Joint Chiefs of Staff, and the two Vice-Ministers of Defense. Furthermore, Mr. Cristiani reported that he was briefed at 12:30 a.m. in the Tactical Operations Center, where two or three U.S. advisors were also present. President Cristiani waited ten months to admit that he was at the High Command on the night of November 15-16, and has yet to give substantive testimony on the meeting.

#### **IV. THE SALVADORAN LEGAL PROCEDURE FOR MURDER INVESTIGATIONS**

Salvadoran law prescribes an elaborate procedure for investigating and prosecuting murders, although of the tens of thousands of assassinations and extrajudicial killings that have taken place in El Salvador, very few have been prosecuted to the full extent of the law. In cases of extreme political sensitivity, such as the Jesuits' assassination, the government brings special investigatory mechanisms into play. However, these mechanisms do not guarantee a more aggressive inquiry, nor do they insure that even the legally mandated perfunctory steps of an investigation will be followed.

The official procedure to investigate a murder in El Salvador begins when a judge or justice of the peace is called upon to identify and inspect the body and undertake the first stage of the investigation. If a justice of the peace opens an investigation, he has 12 days to notify the appropriate judge of the first instance.

##### **The Auxiliary Organs, or Security Forces**

Criminal cases are investigated by the three "auxiliary organs" of the judicial administration: the National Police, the National Guard, and the Treasury Police, collectively known as the Security Forces. These forces fall under the jurisdiction of the Ministry of Defense, and answer directly to the Vice Minister of Defense and Public Security (currently Colonel Manuel Inocente Montano). Officers in the Security Forces follow the same career path as those in other military divisions, and all three Security Forces also have full combat units, further blurring any distinction with the regular Armed Forces.

The auxiliary organs are mandated to investigate crimes, both on their own initiative and at the request of the court, and to identify suspects who are turned over to the court along with collected evidence. A conflict of interest can obviously arise when the suspects are themselves members of the Armed Forces.

In 1985, U.S. pressure prompted the Salvadoran government to form the Commission on Investigations and its subordinate branch, the Special Investigative Unit (SIU), for the purpose of investigating human rights cases in which the military was implicated. Its legal status has been questioned (by Roberto D'Aubuisson of the ARENA party and defense attorneys in the Jesuit case among others), but for the time being it is understood that when the Commission takes on a case, it functions with the full range of powers and obligations of one of the auxiliary organs. (The Commission also supplants any other auxiliary organ once it takes on an investigation.)

Investigatory powers and obligations are set out in Article 138 of the Criminal Procedure Code. Investigators are expected to: preserve evidence at the site of crime until the judge has inspected it; detain suspects; collect evidence; and conduct interrogations of suspects and witnesses. They are required to put every step of the investigation into writing and deliver the original of the records to the appropriate judicial authority, retaining a copy with the originating auxiliary organ.

## **The Role of the Armed Forces**

The regular Armed Forces usually have no role in the investigation of criminal acts. Military courts try military personnel for specifically military offenses, such as desertion and insubordination, and civilians accused of certain "political" crimes are consigned to military courts when constitutional guarantees have been suspended under a state of siege.

The assassinations at the UCA were deemed a common crime of homicide, to be handled by civilian courts. The military became tangentially involved, however, when the Minister of Defense appointed a Military Honor Commission to collaborate on the case. The proceedings of the Honor Commission have not been made public, but members have testified that their role was not investigative: they said they reviewed evidence and "exhorted" members of the military to tell the truth.

## **The Judge and the Court**

Under Salvadoran law, extensive investigative responsibilities rest with the judge in criminal cases. In reality, however, until defendants have been identified by the Security Forces, the court's role is usually limited. Before defendants are consigned to the court, other investigative bodies can act independently to develop evidence; once a formal accusation has been made and the defendant has been consigned to the court, all evidence collected must be submitted to the court. This step does not, however, end police responsibility to investigate the crime.

Once suspects are consigned to the court, the judge must order their detention for an "inquiry period" of 72 hours, during which time the court must determine whether there is sufficient evidence to detain them provisionally.

The judge is obligated to take a suspect's declaration no later than 24 hours after he is turned over to the court. After establishing the suspect's identity, the judge interrogates him about his participation in the crime, requiring him to specify where he was on the day and hour it occurred, as well as with whom and in what circumstances and conditions.

The defendant cannot be required to swear to the truth of this statement, nor is he to be coerced or deceived. Suspects can decline to testify when first brought to court, but will be brought back subsequently to make their statements. Thus the defendant does not have the right to remain silent, but cannot be legally required to tell the truth.

Only the judge can direct questions to the defendant. If other parties wish to formulate questions they must present them through the judge, who will pose them if he finds them appropriate. If there is more than one defendant, their declarations are taken separately without allowing them to hear each other or communicate among themselves. There is no limit on the number of times a defendant can testify; however, if later declarations depart from previous statements, the defendant is interrogated about the motive for the contradictions.

For the judge to decree the defendant's provisional detention, the existence of the crime must be sufficiently established, and there must be sufficient evidence of the defendant's participation. A fugitive from justice (such as Private Jorge Alberto Sierra Ascencio in the Jesuit case) can be tried in absentia when co-defendants are in custody.

Once the court has decreed provisional detention, the case enters the investigative (*instrucción*) phase.

### **Military Detention Conditions**

In most cases the judge determines where defendants will be held; usually a nearby prison. However, Salvadoran law allows the Armed Forces to designate the place in which military personnel will be held for both the inquiry period and provisional detention. The judge must be consulted on any plans to move defendants under his orders, and is always to be apprised of their location. In the Jesuit case, the Ministry of Defense has chosen to maintain the defendants in security force headquarters. In practice, this serves to restrict the court's access to the defendants -- thus allowing the military to function more effectively as a unified institution in the defense -- and creates obstacles for the court to locate the defendants quickly. In the Jesuit case, the court has not always been informed of the whereabouts of the defendants.

The Salvadoran Armed Forces can only determine where defendants will be held so long as they are not dismissed from the military. In certain crimes, including kidnapping, extortion, and drug-related offenses, military defendants must be dismissed from service when provisional detention is decreed. For other crimes, including murder, dismissal from the military remains optional until the case is brought to trial. The Armed Forces of course have the option of dismissing military personnel implicated in crimes at any time, and in cases in which the military as an institution is not necessarily implicated, military suspects are routinely dismissed at the time they are turned over to the investigating Security Forces.

Maintaining the defendants on active military duty and thus controlling the place and conditions of their detention has important consequences. In the Jesuit case, the possibility that any of the defendants might choose to cooperate with the investigation was virtually eliminated by the military's ongoing control of their day-to-day circumstances.

### **The Investigative or *Instrucción* Phase**

The goal of the investigative phase is for the court to carry out the necessary steps to prove the existence of the crime and establish the identity of those responsible, as well as the circumstances which could exclude, attenuate, or aggravate their responsibility.

Additional charges and defendants may be added during this period. (So far in the Jesuit case, four new defendants have been charged with collateral offenses: one with destroying evidence, and three with giving false testimony.)

Because admissible evidence must be developed in this phase and must be obtained under court order, the judge must repeat much of the police investigation, as well as pursue additional leads. Article 123 of the Criminal Procedure Code establishes a limit (rarely observed) of 90 to 120 days for the investigative period; however, in a case of the magnitude of the Jesuits', this period can be expected to lengthen considerably. The Fourth Penal Court in San Salvador has one of the heaviest caseloads in the country. While the Supreme Court has made some effort to reduce its number of cases, Judge Zamora must still dedicate a great deal of time to other matters.

## **Witnesses**

The judge must summon all persons named by the investigating security force as having knowledge of the crime or the circumstances preceding it to testify; the persons whom the defendant or his attorney designate as useful for the defense; and any person who can provide data useful to establish the truth. The judge may use his discretion to limit the number of witnesses to those necessary to clarify what happened.

In the Jesuit case, most witnesses have been selected by the court, although the prosecutors and, to a lesser extent, the defense attorneys, have also requested certain individuals.

No witness may hear another witness testify. Cramped courthouses only permit court staff to take one statement at a time, further slowing down the process.

Certain persons are excused from appearing before the court because of their position. These include: the President and Vice-President, government ministers, members of the legislature, magistrates of the Supreme Court and the appellate courts, the Attorney General, the Archbishop and other bishops, heads of diplomatic missions, and Generals and (full) Colonels with command positions in the Armed Forces. All of these may instead provide sworn statements in writing. This cumbersome procedure requires the judge to send a questionnaire to the witness, who then sends back a reply -- often after a delay of days or even weeks. If the answers raise additional questions or if other issues have surfaced in the interim, the judge must again direct a petition to the witness. This procedure also denies the prosecution and defense counsel any opportunity for cross examination.

In court, witnesses are asked to give sworn testimony. When a witness appears to have given false testimony, Article 214 authorizes the judge to order his provisional detention and have him tried separately. While many witnesses appear to have committed this crime in the Jesuit case, so far only three soldiers have been so charged.

When two witnesses give conflicting testimony, they may be recalled for a "confrontation" in which they will be asked to testify again about the essential points on which they differ. The judge may also allow the two witnesses to question each other. The Jesuit case has presented many as yet unused opportunities for this provision.

## **Rules of Evidence**

In common crimes, as the Jesuit murders have been defined, extrajudicial confessions can be considered adequate proof if the following requisites are met:

- 1) there are two reliable witnesses to the confession, even if they heard the confession at different times and in different places;
- 2) if the confession is consistent with other elements of proof in the same case.

Extrajudicial confessions given in police custody must also:

- 1) have been rendered within 72 hours of detention;



- 2) be signed by two adult witnesses who heard the confession, who also say that the defendant was not subject to physical force or intimidation.

In cases of common crime, an extrajudicial confession which meets all of the above requirements may be considered sufficient evidence to justify provisional detention and to take the case to the jury. Seven of the defendants in the Jesuit case gave extrajudicial confessions to the SIU in January which were found to meet these standards.

Co-defendant testimony is specifically excluded except in cases of kidnapping, extortion, and certain drug-related crimes. (Those exceptions were introduced in 1986 to try to assure the conviction of former military officers and associates accused of participating in a kidnapping-for-profit ring. Because these exceptions do not extend to murder cases, the extrajudicial testimony of lieutenants in the Jesuit case that they received orders from Colonel Benavides is not admissible against Benavides.)

Proof is to be evaluated under the rules of "sound judgement," or *sana critica*, using a rational system of deductions in accordance with the other evidence in the case. Scientific evidence from ballistics testing, handwriting analysis, etc., is also admissible.

### **Plea Bargaining**

Salvadoran courts do not use the practice of plea bargaining as it is known in the United States. Nonetheless, the Criminal Code does provide for a reduction in criminal responsibility in certain cases, including a judicial confession of participation in the crime, when the confession is made before the case is elevated to the plenary, or trial stage.

In the Jesuit case, the joint military defense of active duty troops and officers makes it particularly unlikely that any of them will provide additional information against co-defendants.

### **The Plenary or Trial Stage**

Upon completion of the investigation phase, the judge may dismiss the charges or elevate the case to the plenary stage. This decision is appealable. Once the time period for filing an appeal has passed, or the superior tribunal has confirmed the judge's order, the judge opens a standard eight-day period for the presentation of evidence. From this point on, the presence of prosecutors, the defendants, and their counsel is mandatory, and the proceedings must be in public.

After the evidentiary period has ended, the judge gives three days each to the prosecution and the defense to present their written arguments. The judge then formulates the index of the case, starting with evidence of the existence of the crime, followed by evidence of the defendants' participation, and ending with evidence relevant to mitigating or aggravating circumstances.

### **The Jury**

A jury is made up of five persons. Jurors must be Salvadoran, at least 21 years old, enjoy their full civil and political rights, know how to read and write, be of good conduct, and be engaged in a known occupation, profession, artistic endeavor, or job. Jury lists, based on

town records, have been notoriously inadequate because of the mobility -- and displacement -- of the population. Recent reforms, which use voter registration lists, are designed to improve the jury selection process. Once judges receive jury lists from the Supreme Court, each judge is to elaborate lists of 15 jurors that include both men and women, as well as a variety of occupations and places of residence.

The list of jurors for a particular case is chosen by lot in the presence of the prosecution and the defense. The names of the jurors are held in reserve until the time of the trial. No more than 15 days can elapse between choosing the jury list and the actual trial.

### **The Role of the Attorney General's Office**

The Public Ministry that includes the Attorney General's office, the *Fiscalía General de la República*, is mandated to prosecute all penal and civil actions in the public domain. The *Fiscalía* is not an auxiliary organ, nor does it have resources for investigation. Instead, the prosecutors must ask the competent judge to perform the necessary investigative steps and turn over the results. The *Fiscalía* may be present when witnesses give their declarations, and present questions which the judge will pose to the witness. The absence of the prosecutor, however, does not prevent the court from taking a witness's statement.<sup>74</sup>

### **The Supreme Court**

The Supreme Court is responsible for naming all lower court judges and for insuring that justice is administered "promptly and fully." The 14 members of the Supreme Court are appointed for a five-year term by the Legislative Assembly. The current Court was appointed in June 1989 by an ARENA-dominated Assembly and has come under heavy criticism for its partisan actions.

Nonetheless, the President of the Court, Dr. Mauricio Gutiérrez Castro has given strong public support to Judge Zamora in his pursuit of the Jesuits' case, which has no doubt facilitated the investigation. Requests for information about the case have been channelled through the Supreme Court, which now issues frequent press releases about developments in the case.

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<sup>74</sup>Defense counsel can also suggest investigatory steps to the judge, and likewise has the right to be present during witness's testimony and other investigatory steps. The victim only has a right to intervene in the process through a private prosecutor or a civil action.