



U.S. Department of Justice

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182-4142

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Washington, D.C. 20530

JUL 2 1991

Mr. Andre Surena
Assistant Legal Adviser
Law Enforcement & Intelligence
Room 5419-A
Department of State
Washington, D.C. 20520

Re: Letters Rogatory From El Salvador Pertaining to the
Jesuit Murders

On Friday June 28, 1991, Julie Oettinger of your office sent us a copy of a draft letter which the Department of State and the Department of Defense ("DOD") want to send to the DOD and State Department employees who are subject to the above-referenced letters rogatory request. The following are this office's comments on the draft:

1. Paragraph 2. The explanation of how the Department of Justice executes letters rogatory is not completely accurate. The deponents' answers are not certified by a judge. Rather, a United States District judge commissions an Assistant United States attorney ("AUSA") to execute the letters rogatory. As part of his duties as commissioner, the AUSA, not the judge, will certify the responses of the affiants/deponents.
2. Paragraph 2. The letter indicates that attorneys from both DOD and State will be present during the depositions. Shouldn't the deponents be told at this point that these attorneys will not be representing them but rather will be representing DOD or State?
3. Paragraph 2. We should be able to execute the letters rogatory here in Washington if all the DOD and State Department employees agree to respond without the use of compulsory process, and if they are brought here at either DOD or State Department's expense.
4. Paragraph 2. DOD states that it will review responses to determine if any information was acquired in the performance of the individuals' official duties and thus cannot be released. It is not clear to us what sort of information this encompasses. Given the next sentence,

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it would appear that more than simply classified information is contemplated.

5. Paragraph 3. Since there is no "second" you probably do not need to begin the letter with "first."
6. Paragraph 3. The letter should inform the addressees that should they choose not to answer the questions, it is possible that DOJ will seek to compel their responses by issuing subpoenas pursuant to 28 U.S.C. §1782.
7. Paragraph 3. It is possible that the interests of the deponents may not exactly coincide with the interests of their employing agencies. You may wish to point this out to the addressees, and suggest that they are free to retain private counsel should they so desire.

If you have any questions concerning the above you can contact me at 202-514-0005.

Very truly yours,

Drew C. Arena
Director
Office of International Affairs

Lystra Blake

By: Lystra G. Blake
Trial Attorney