

the Commando unit.

Despite this, the Major was concerned that no arrests had been made. He was troubled that when the Jesuits were briefed on the case, they were not told about the conversation between Benavides and Rivas. The Major asked Aviles again who in the Salvadoran leadership knew about that conversation, and he was told, again, that Aviles did not know.

On January 2nd, the Major finally told his immediate superior, Colonel William Hunter, about his conversation with Aviles. Hunter immediately told the head of the Military group, Col. Milton Menjivar.

Menjivar immediately went with a political officer from the Embassy to Colonel Ponce's office at the High Command. According to Menjivar, Ponce reacted with disbelief, disappointment and anger. He asked Menjivar the source of the allegation, and Menjivar told him about the conversation between Aviles and the American Major. Ponce said he would want the charges in writing.

The American Major was summoned, and a meeting was held in Ponce's office. At that meeting, Ponce summarized the allegations and asked Aviles to respond. Aviles admitted discussing the case with the Major, but denied telling him about any conversation between Benavides and Rivas. At one point, Aviles said, "if I knew this information, why would I risk my career by telling (the Major)?"

The Major then told his story again, after which Ponce dismissed the meeting. Outside his office, as the group prepared to leave the High Command, Aviles asked one of those present, "How could (the Major) have been so stupid?"

The next day, the American Major wrote a sworn statement that was submitted, along with a cover letter from Col. Menjivar, to Defense Minister Larios and the High Command.

*Some Ministry discussion*

Also on that day, an American Embassy officer informed Lt. Col. Rivas of the American Major's allegations. Rivas denied having any conversation with Col. Benavides in which Benavides admitted guilt, a denial which Rivas subsequently repeated to Members of the Task Force. Col. Lopez y Lopez also denied having a conversation either with Lt. Col. Rivas or with Col. Aviles of the nature described in the American Major's account.

On January 5th, the Major took--and failed to pass--a polygraph exam. At about the same time, Aviles took--and also failed--a polygraph.

On the 6th, the Major left for the United States where he took--and again failed to pass--another polygraph test.

The next day, President Cristiani announced that the investigation had concluded that the Armed Forces were responsible, and Benavides and the others were arrested shortly thereafter.

**Discussion and Findings.** If the story of the American Major is accurate, and if what Col. Aviles said to the American Major is also true, the entire investigation in the Jesuits case appears in a different light.

First, it means that Lt. Col. Rivas, the head of the SIU, was aware from the early stages in the investigation that Col. Benavides and the Atlacatl were guilty.

Second, it means that Col. Benavides had a reason to go to Rivas, soon after the murders, to seek assurance that he would be protected.

Third, it would appear to mean that the investigators, Rivas and Lopez y Lopez, and former investigator Aviles, were not certain whether they had enough support within the armed forces and the Salvadoran government to assign blame to Col. Benavides.

Fourth, it means that notwithstanding these doubts, Lt. Col. Rivas continued to gather evidence that was tending, more and more as the days went by, to implicate the Commando unit of the Atlacatl generally, if not Col. Benavides, personally.

Fifth, Lt. Col. Rivas is perhaps the strongest potential witness in the case against Col. Benavides.

Sixth, the timing of events is such that it is not clear whether the case ever would have broken if the American Major did not come forward.

And seventh, if the American Major's story is true, Rivas, Lopez y Lopez and Aviles are lying.

The Task Force believes that there is a high probability that the American Major is telling the truth. It is simply not credible to imagine that he concocted a story that just coincidentally happened to be true about the identity of those responsible for the murders. This premise is supported by the fact that, in coming forward ten days to two weeks after the event, he was subjecting his own actions to potentially serious criticism. Further, there is nothing in his statements that is contrary to facts otherwise known.

The Task Force believes that it is probable that the account given by Col. Aviles to the American Major concerning his conversation with Lopez y Lopez and the rest of the sequence, is also true. It is again, unlikely, that Col. Aviles would have been able to identify Col. Benavides as the culprit if the account were untrue, nor does there exist any incentive for Aviles to have made such a potentially dangerous allegation if it were not based on fact. Col. Aviles was Jesuit-educated and was the individual selected to help secure cooperation from the Jesuits in the investigation. It seems very possible that his concerns about a possible cover-up, coupled with his own knowledge, led him to share the information with the American Major "for use in an emergency only."

The evidence provided by the polygraphs on the American Major and on Col. Aviles cancel each other out. It is known that Col. Aviles has received threats against himself and his family for allegedly talking to an American about his knowledge of the case. It is worth remembering his comment upon leaving the High Command: "How could the (American Major) have been so stupid?" And it is revealing that Col. Aviles' assignment to the coveted position of Defense Attache to the Salvadoran Embassy in Washington was cancelled as a result of this incident (Aviles was assigned to Taiwan, instead). By punishing Aviles in this way, the Salvadoran High Command is essentially admitting that it believes the American Major is telling the truth.

*Smulson's  
Pymore  
①  
Stamps*

The Task Force is concerned that, despite the obvious importance of this incident, no serious effort beyond the initial polygraphs of the American Major and Aviles has been made to discover the truth. Lt. Col. Rivas told the Task Force that he would not take a polygraph because he is in charge of the investigation and such a test would impugn his honor. No effort has been made to polygraph Col. Lopez y Lopez.

*\* Should be  
something about  
relatives or  
polygraphs*

*to obtain a sworn statement*

There are two final questions, about which the Task Force can reach no firm conclusion, the first of which is why Col. Benavides would admit his guilt to Lt. Col. Rivas if, in fact, he did. The Task Force has been told by sources in El Salvador, but has been unable to confirm, that Benavides was aware very quickly after the murders that his involvement was no secret within the military. According to this account, he sought an assurance that he would nevertheless be protected in any investigation. And the fact is that no accusation was made against the Colonel or his unit until after the American Major came forward.

*sp*

The second, related, question, is whether Col. Benavides and the others would have been arrested if the Benavides' alleged confession had not been raised so directly by American officials with the Salvadoran armed forces.

On the one hand, it is clear that the SIU investigation had

produced some evidence against the Atlacatl unit prior to January 2nd. However, results from the ballistics tests which led to the arrests did not become available until at least January 5th. It is possible, moreover, that the SIU investigation would have concluded with the arrest of the lieutenants and soldiers involved, but not Col. Benavides, if the allegation concerning his confession had not been made. Although this is obviously an extremely important point, the Task Force can reach no conclusion on it. It may be that even those most directly involved, the leaders of the SIU, are not certain how this question would have been answered if the conversation between Col. Aviles and the American Major had not taken place.

#### THE JUDICIAL PHASE

The questioning conducted by the Honor Board produced admissions of involvement in the crimes by the lieutenants and the soldiers who actually did the killing.

On January 16th, the 8 accused of the crime appeared before Judge Ricardo Zamora to give their declarations in the case. Col. Benavides, accompanied by the Director of the National Guard, Col. Juan Carlos Schlenker, testified for more than two hours and reportedly denied all charges.

On the 19th, Judge Zamora released a summary of the statements made to the Honor Board and announced his finding that there is sufficient evidence to hold all the prisoners, under provisional arrest for the next stage in the judicial process. *the investigative phase.* Those arrested include Col. Benavides, Lieutenants Mendoza, Espinosa, and Cerritos, and five soldiers, one of whom, Sierra Ascencio, had deserted. *The proceeding in the Tomb case are currently still in the investigative phase.*

#### Judicial Phase and Timetable

The Jesuit murders occurred on November 16, 1989. Salvadoran President Cristiani immediately ordered the government's Special Investigative Unit (SIU) to investigate the crime. The SIU began

gathering and analyzing physical evidence from the murder site, such as ballistics and fingerprint data. The SIU also began interviewing and polygraphing military personnel who were in the University area the night of the murders. Autopsies were performed on the victims by a government forensic unit.

On January 19, Judge Zamora ruled that the available evidence including the confessions made by the accused in police custody, was sufficient to continue holding the eight detainees and to enter the next stage of judicial proceedings, the investigative phase. The proceedings in the Jesuit case are currently still in the investigative phase.

During the investigative phase, the judge attempts to gather the totality of evidence in order to reach a decision as to whether the evidence justifies a trial. The investigative phase in the Salvadoran judicial process is slated to last a maximum of 120 days after the provisional detention of the suspects begins, which was on January 19. After 120 days, the judge is supposed to decide whether to conduct a trial or release the detainees. In practice, investigative phases often exceed 120 days and detainees are kept in confinement until a decision on holding a trial is reached by the judge. In conclusion, the original May 18 deadline for the decision to go to trial may no longer be valid, and there is no effective deadline when a decision to try must be made.

At the present time, Judge Zamora is directing the investigation into the Jesuits murders. By law, the police and security forces of the country are required to carry out interrogations, technical investigations, and any other services that the judge deems necessary to gather the totality of evidence in the case. Reports indicate that the SIU has cooperated with the few requests Judge Zamora made of it. Judge Zamora told the Task Force that his biggest problems were people failing to show after being issued subpoenas and his heavy caseload, which limited the time he could spend on the Jesuit case.

Judge Zamora has the authority to investigate the possibility of additional people having been involved in the crimes (i.e.

*that might be available to him. Reports have been received in the past*

(4)

higher-ups). Presently, we understand that Judge Zamora is systematically interviewing over 100 military personnel. While it is not known who those personnel are and whether they include possible higher-up suspects, it appears at this point that Judge Zamora is carrying out as capable an investigation as he can with the limited resources of his office.

The appeal now pending with the Salvadoran Supreme Court is a motion from defense attorneys to have the jurisdiction of the case changed to a different court. The defense claims that the current court does not have the jurisdiction for the locality in which the crimes were committed. An American analyst of the Salvadoran judicial system has speculated that the defense may be trying to "shop" for a better judge for their cause.

If the judge determines at the end of the investigative phase that the case should go to trial, the determination of guilty or ~~not guilty~~ <sup>or insane</sup> will be made by a majority vote of 5 jurors. Sentencing is passed by the judge. Both verdict and sentencing can be appealed to the two higher levels of Salvadoran courts.

*Problems in the Present*

Will Benavides Walk Free? -- More Problems with the Judicial System

X On March 21, 1990, as reported in the Washington Post, Salvadoran President Cristiani announced that he is "not confident that (Benavides) is going to be convicted." Cristiani added, "I'd be sad if he is acquitted because I think he is guilty based on the investigation."

*No reason to be confident. skeptical*

While many in the United States were understandably shocked by this announcement, analysts of the Salvadoran judicial system in both the U.S. and El Salvador had already begun to seriously ponder the real problems that exist in convicting Colonel Benavides given the rules of the Salvadoran judicial system and the type of evidence currently implicating Benavides. *him*

One of the rules of evidence in the Salvadoran judicial system is that the testimony of one co-defendant is not admissible as evidence

against another person charged in the same criminal act. This element of the Salvadoran judicial system has played a key role in stopping criminal proceedings in several other prominent human rights cases against military personnel, including <sup>the</sup> Romero and AFL-CIO advisors murder cases. The provision prevents soldiers who may have actually pulled the trigger in murders of civilians from indicating to the jury who ordered them to carry out the deed.

The roots of the provision against co-defendant testimony in Latin American law are in the desire to prevent "biased" testimony in court, i.e., testimony which comes from persons who stand to benefit or lose from the outcome of the trial. Most Latin American legal systems now allow the judge at least some flexibility in determining whether co-defendant testimony should be allowed. However, the Salvador system still firmly prohibits it. The effect of this provision in El Salvador is that the intellectual authors of murder may escape prosecution as long as those who can testify against them have "blood on their hands" from the murder.

The Salvadoran government has altered the co-defendants rule on one occasion. In 1986, criminal proceedings were beginning in a case in which military personnel and right-wing paramilitarists were accused of kidnapping wealthy right-wing civilians for ransom while making the kidnappings appear to be the work of the FMLN. Prosecution of the case had the backing of some of the wealthiest members of Salvadoran society and yet the prosecution was stymied by the rule against co-defendants testifying against each other. An attempt at a solution was provided by the Salvadoran legislature and President which passed a law allowing co-defendant testimony in cases involving extortion, drug trafficking, and kidnapping, only. Cases involving murder or other heinous crimes were not included in the law. The kidnapping-for-profit case has not concluded.

There is no indication at this time that the Salvadoran legislature or President have again considered altering the co-defendant provisions of the penal procedures code in time for the Jesuit case and in order to allow prosecutions in future human rights cases.



The current admissible evidence against Benavides appears to consist solely of evidence that indicates he was the commander of all troops within the sector where the Jesuits were killed and that troops in his sector have admitted carrying out the murders and have physical evidence linking them to the murders. (Since there are no precedents in El Salvador of officers being tried for crimes committed by their troops, it is just not known whether the current admissible evidence could convict Benavides and withstand appeals through the two higher levels of the courts in the country. Logically, it would seem that there is substantial room for Benavides' defense to successfully argue that the colonel cannot be held criminally responsible for crimes committed by troops in his sector when there is no evidence (admissible in court) that he actually directed the troops to carry out the crimes.)

It is, of course, possible that Judge Zamora will try to uncover evidence of "clean" testimony implicating Benavides and that the judge will succeed. However, analysts of the Salvadoran judicial system believe that there are substantial impediments in Judge Zamora's way.

### **Can Anything Be Done to Ensure That All Those Guilty in the Jesuits Murders Are Convicted?**

Some analysts of the Salvadoran judicial system believe that some rarely used provision or "loop hole" in Salvadoran law may be found that Judge Zamora will use to allow co-defendant testimony against Colonel Benavides. Analysts also wonder whether pressure on the Salvadoran government from the United States and elsewhere to bring the guilty to justice will cause the Armed Forces to bring forth the admissible evidence, that it may currently be hiding, that firmly ties Benavides, and possibly other higher-ups, to the Jesuit murders.

In a U.S. court system, a possible option in a case such as the Jesuit murders would be to drop the charges on one of the accused triggermen and then use his testimony to build a strong case against one or more higher-ups. In the U.S., charges might even be dropped against someone at Benavides' level if he presented firm evidence that higher-ups ordered him to carry out the murders. In El Salvador,

though, there is no tradition of this type of plea-bargaining or granting of immunity. And, the Napoleonic nature of Salvadoran law, whereby courts may only do that which is clearly stated in the codes, would seem to prevent such a maneuver from being instituted in this case by the judge. However, it appears that such a tact could be followed if the Salvadoran legislature and President passed a law allowing the granting of immunity or plea-bargaining in exchange for testimony.

X Do we need to do anything else? Antecedent

#### WHO ELSE MAY HAVE BEEN INVOLVED?

From the day the murders occurred, Jesuit leaders and others have expressed doubt that a crime of this gravity could have been committed without the knowledge and consent of high officials within the Salvadoran armed forces. The High Command, on the other hand, has denied ordering, consenting to, or covering up the murders.

The following is a description of the information received by the Task Force that tends to support or refute the notion first, that the crimes were ordered by someone senior to Colonel Benavides; and second, that senior officials withheld evidence after the murders took place.

#### HIGHER ORDERS

##### 1. Nature of the crime.

The murders of the Jesuit fathers were crimes of immense national and international importance. This fact was freely admitted by Col. Ponce and other military officials with whom the Task Force spoke. The possibility that Col. Benavides would personally conceive of and execute an operation of this magnitude and brutality struck virtually everyone we talked to who knew Benavides as extremely remote. Unlike several other senior officers, Col. Benavides did not have a history of political activism; he had not been accused of human rights violations in

the past; he has never made public statements, to our knowledge, critical of the Jesuits or linking them to support for terrorist activity; and he had never before, again to our knowledge, departed from the chain of command in carrying out his military responsibilities.

Col. Benavides is a member of the Tandon, the powerful 1966 graduating class of the Salvadoran Military Academy. He was a classmate of Chief of Staff, Col. Ponce, Deputy Defense Minister, Col. Zepeda and then-Chief of Operations, Col. Cerna Flores, all of whom were above him in the chain of command on the day the crimes took place. These are people with whom he has worked on close terms all his adult life. Even if he had considered ordering troops under his command to murder the Jesuits, why would he not have checked first with his superiors to determine whether their judgment confirmed his own? Why risk his career on an action that seemed likely, at a minimum, to prompt grave suspicion of the armed forces, as an institution?

Neither Col. Ponce nor Col. Zepeda could answer these questions. Instead, they expressed the same puzzlement that Members of the Task Force felt about Col. Benavides's possible motives. They argued, however, that they themselves understood the negative repercussions that murdering the Jesuits would have and said that, for that reason, they would never have ordered or consented to such a crime.

Two theories about Benavides' motivation have been put forward by officials of the U.S. Embassy. The first is that Benavides was experiencing great stress as the result of a serious illness to his son which became evident shortly after the guerrilla offensive began. They suggested that Benavides might have attributed his son's illness in some way to the offensive and felt a personal grievance against the guerrillas as a result.

The second theory, which is not inconsistent with the first, is that Benavides may have erroneously interpreted a general exhortation on the part of his superiors to "strike back hard at

guerrilla command centers" as an order to kill the Jesuits. One military officer told us that although Benavides didn't have any "command centers" in his sector, he did have UCA, and for many in the armed forces, that was the same thing."

Finally, the Task Force was told by one church official that Benavides, who served as head of military intelligence from July of 1988 until June of 1989 might have been hostile to the Jesuits even if he never mentioned this hostility in public. Benavides' intelligence background, said the churchman "explains many things. They never speak in public, but they handle and manage information, and their judgment is that these priests are communists and should be eliminated."

Unfortunately, Col. Benavides has not admitted his involvement in the murders, and has not volunteered any information that would prove or disprove the theories or suspicions thus far put forward.

## **2. Military hostility to the Jesuits**

The longstanding suspicion within the military that the Jesuits were aiding the guerrillas has already been discussed. Col. Zepeda, among others, has made statements to this effect. Threats directed at Father Ellacuria and other Jesuit leaders were broadcast over government-controlled radio soon after the offensive began on November 11th. There was an incident at the UCA that same night during which the armed forces pursued FMLN forces across the campus. Two days later, the military reported that firing was coming from inside the UCA and a search was undertaken. And a large number of military units were deployed close to the UCA throughout the period in question.

By the 15th, the armed forces were, by all accounts, seriously worried that the offensive might succeed. The decision made at the high command meeting that night was to strike back hard at guerrilla command centers with air and artillery power. Some observers have suggested that the anger and desperation of the

armed forces had reached the point where rational political calculations had been superseded by a simple desire to strike back. Thus, an order to kill the Jesuits, politically unthinkable only a week earlier, might have been given in the heat of the moment. Those who experienced the offensive stressed to the Task Force the incredible emotional impact that the fighting in San Salvador had on those involved. Clearly, this could have affected the judgment of the high command. But the Task Force has seen no hard evidence -- other than the fact that murders were committed -- to indicate that it did.

### 3. Conduct of the Operation.

Col. Benavides and his troops made a crude effort to frame the FMLN for the murders. One of the soldiers chosen as a triggerman was given an AK-47, sometimes used by the guerrillas. A fake firefight was staged at the scene of the crime. A sign, purportedly written by the FMLN, was left behind. And Col. Benavides wrote in his operations book that a confrontation with the FMLN had occurred at the UCA at 12:30a.m. on the 16th.

Benavides made little apparent effort, however, to conceal from other military officials what he had decided to do. Instead, he ordered a unit numbering more than four dozen men, commanded by two lieutenants who had been under his own command for only two days, to assemble in an area heavily populated by other military units, murder the Jesuits, fire a flare and then return to headquarters. Whether or not Col. Benavides was acting under orders, he behaved as if he was. He promised his lieutenants that they would be protected and solicited from them no vows of silence or secrecy. He used forces that could be traced directly to him. And his efforts to pin responsibility on the FMLN were so rudimentary that only an all out effort by the military to block a serious investigation could have made it hold up.

It should be noted that the Task Force was asked, during its inquiry, to consider the nature of the operation carried out by the troops under Benavides' command in a light different from

that discussed above. This suggestion, put forward by an official of the U.S. Department of State, was that the relatively open nature of the operation made it less likely, rather than more likely, that Benavides was acting on his own.

The official pointed out that if high officials in the Salvadoran armed forces had really planned to kill the Jesuits, they would not--and need not--have involved so many soldiers in the operation, and they would have gone to greater pains to maintain security. The official suggested, for example, that the armed forces could have always called upon the death squad operated by the Salvadoran Air Force to carry out the murders. That would, he said, have involved only a few, very well trained people who could have gotten in and out in a very short period of time.

#### 4. The Meeting of the High Command

As discussed earlier, a meeting of the Salvadoran High Command, including Col. Benavides, was held beginning at 7:30 p.m. on November 15th.

According to the military officers who attended the meeting and with whom we spoke, the subject of the Jesuits did not come up. The meeting was so large, in any event, that a decision to murder the Jesuits would not likely have been made or announced at such an event. Col. Aviles, who we believe later told an American military officer of Col. Benavides' involvement in the case, was present at the meeting, but his information concerning Benavides did not come from the meeting. Another of those present, Col. Heriberto Hernandez, then-director of the Treasury Police, later took a polygraph test that indicated no knowledge on his part of an order to kill the Jesuits.

For these reasons, the Task Force does not believe that an explicit order to kill the Jesuits was given at the November 15th meeting of the High Command. Obviously, this does not mean that such an order could not have been given earlier or at another,

smaller, meeting that same night. Nor does it preclude the possibility that Benavides undertook an order to attack "guerrilla command centers" as an order to kill the Jesuits.

#### 5. The radio call.

Lt. Espinosa was assigned by Benavides to lead the operation against the UCA. At 10:15 on the night of the murders, according to his own testimony, he received a radio instruction to assemble his troops at the military school. According to our understanding of the chronology of events that night, Col. Benavides would still have been at the meeting of the High Command at that time. If the radio call was received from Benavides, it means that he was putting his plan into motion while still with the High Command. If the call was from someone other than Benavides, it raises in a very direct way the question of whether at least one other individual was involved in preparing or ordering the operation. Lt. Espinosa did not identify the individual who gave him the order. To our knowledge, the question of who gave this order has never been asked.

#### 6. Armed Forces Reaction.

Almost immediately after the bodies were discovered, the Armed Forces released an official communique stating their condemnation of "the treacherous murder committed by the FMLN guerrillas." A similar communique was issued the following day.

This may have been simply a reflexive reaction on the part of military propagandists. It is also possible, however, that it was part of a planned effort, crudely begun at the scene of the crime, both to strike back at the Jesuits and to gain public relations mileage by blaming the FMLN at the same time.

#### 7. The Atlacatl Unit.

The Commando Unit of the Atlacatl Immediate Reaction Infantry Battalion is one of the best-trained, and most experienced, units

in the Salvadoran armed forces. The question is why this elite unit was assigned to the Military School when the remainder of its battalion was engaged in heavy fighting against the FMLN elsewhere in the city. It is worth noting, in this context, that the first action undertaken by the unit after it was assigned to the Military School on the afternoon of November 13th was to search the UCA. The last action it took before rejoining the rest of the Atlacatl about 6:00 a.m. on the 16th was to murder the Jesuits.

Obviously, the movements of the Commando unit do not prove anything. Units were being assigned and re-assigned on a daily basis as a result of the offensive. However, the nature of this particular unit, coupled with the coincidence in timing, would be consistent with a planned operation directed at the Jesuits, even if it does not prove that this is what took place.

#### 8. Treatment of Benavides.

As is discussed elsewhere in this report, Col. Benavides has been very well treated by the armed forces during his incarceration. This may be, as President Cristiani has said, simply the way the system operates in El Salvador. It is also possible, however, that the good treatment is part of an effort to persuade Benavides either that he will not be punished for the crime, or that the punishment he does receive will be bearable. If it were the case that Benavides had acted under higher orders, such treatment would be one way of encouraging him not to talk.

#### 9. Assignment of Col. Lopez y Lopez to the Investigation.

Lt. Col. Rivas of the SIU told the Task Force that the High Command has cooperated fully in his investigation. He cited, as an example, Col. Ponce's decision to assign Col. Lopez y Lopez, an experienced and capable investigator, to assist in the inquiry. If Ponce had ordered the crime, said Rivas, why would he have assigned one of his best people to help us discover the facts? The Task Force agrees that this is a good question.

*to come up?*



## A COVERUP?

1. At least 45 soldiers participated in or provided security for, the murders. The operation occurred in a small area, the size of a few blocks, within which several hundred other members of the security forces were stationed. The troops simulated a firefight, and sent up two flares at the completion of their work.

Virtually all of the troops on duty in the area that night were interviewed, although few were polygraphed, by the SIU. To our knowledge, none came forward with evidence of value.

2. After the murders, the Commando unit of the Atlacatl re-joined the rest of the battalion in the northern part of San Salvador, near the First Brigade. That afternoon, a sound truck from the First Brigade drove by the offices of the Archbishop of San Salvador broadcasting the following message:

"We're going to continue killing communists. Ellacuria and Baro have fallen. Surrender."

Col. Elena Fuentes, Commander of the First Brigade, confirmed to the Task Force that a sound truck from his brigade was operating in the area at the time in question. He denied, however, that the troops operating the truck had authorization to broadcast the threat heard by Archbishop Rivera y Damas and others. The Task Force concludes that it is at least possible that troops from the First Brigade were informed by members of the Commando Unit of the Atlacatl that they had killed the Jesuits and that this prompted the decision to air the unauthorized message that afternoon.

3. The Task Force asked Col. Ponce if, upon learning of the murders, he had asked Col. Benavides, the commander of the sector that included the UCA, what he knew. Ponce said "yes, he was asked and he answered that he didn't know anything." No inquiry was apparently made at the time about an entry in Benavides' operations book indicating that a confrontation with guerrillas

had occurred at the UCA at 12:30 a.m.

4. There is no record of any investigation by the SIU into the possibility that members of the High Command ordered the murders of the Jesuits. The SIU did not ask the Defense Minister (Larios), the Vice-Minister (Zepeda), or the Chief of Staff (Ponce) whether such an order had been given, nor did it request any records or documents that might conceivably have pointed in this direction. Even the fact that there had been a meeting of the High Command on the night before the murders, and that Col. Benavides had been present at that meeting, was apparently not known by the SIU until after reports of the meeting surfaced in February in the Miami Herald, Washington Post and the Baltimore Sun. *Boston Globe*

5. The Task Force has been told that three members of military intelligence (DNI) witnessed the crimes from a nearby building, briefly surveyed the murder scene after the curfew was lifted at 6:00 a.m. and informed their superior officers at DNI upon returning to headquarters. If this account is accurate, it means that military intelligence knew which unit had perpetrated the crimes shortly after the event. This leads, in turn, to the question of whether this knowledge was disseminated within the military, especially at the higher levels, and--if so--how broadly. The head of DNI at the time of the murders was Col. Guzman Aguilar, a member of the Tandon, transferred from the Treasury Police shortly before the murders as a result of corruption, and transferred again shortly after the murders to a position as military attache to Costa Rica, a country which has no army.

It is worth noting that at about 8:00 a.m., on the day after the murders, a meeting of the heads of military intelligence was held at intelligence headquarters in San Salvador, very close to the military school. Col. Guzman Aguilar briefed the others present about the decision to use increased force that had been made at the meeting of the High Command the previous evening. As the meeting broke up, it was announced that Fr. Ellacuria had been

killed. This announcement was greeted with approval, although not the cheering and applause which has been mentioned in some press reports.

### Discussion and Findings.

1. As has been stated, the Task Force is not an investigative body. Rather, it was established to monitor the investigation conducted by Salvadoran authorities.

In our judgment, that investigation has failed to delve in any serious way into the possibility that individuals senior to Col. Benavides may have ordered the murders. This contention is not disputed by the investigators, themselves. They consciously adopted a "from the bottom up" approach to the investigation, beginning with the physical evidence and continuing up to Benavides, whose refusal to talk has stopped them cold.

The Task Force does not question the need to gather evidence before confronting any individual with an accusation of involvement in a crime. However, the nature of these particular crimes, coupled with the nature of the military command structure and Col. Benavides' past history, lead us to believe that higher orders could have been given and that this possibility should have been--and should continue to be--a central focus of the investigation. Individuals in the chain of command above Col. Benavides should be required to answer questions under oath about--

o the reasons for the assignment and reassignment of the Commando Unit of the Atlacatl; —

o the meeting of the High Command on November 15th, and any preceding or subsequent conversations or communications that night between Col. Benavides and members of the High Command;

o the reports that military intelligence was aware at an early date of the identity of the unit that perpetrated the crimes;

o the treatment accorded Col. Benavides during his "imprisonment"; and

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only  
in book*

o any other knowledge they might have regarding the facts in the case.

The Task Force recognizes that it would be risky for those in charge of the investigation in El Salvador to fulfill this recommendation. The man in charge of the investigation, Lt. Col. Rivas, is out-ranked by those in the High Command and his career as an officer depends on their future good will. Judge Zamora is vulnerable to actual or implied threats of force.

Even President Cristiani has reason not to ask tough questions unless hard evidence surfaces that make such questions unavoidable.

Despite these considerations, the Task Force is disappointed that more than five months after the fact, investigators have still not asked certain basic questions regarding the possible involvement of senior military officers in ordering or covering up the murders of the Jesuits.

2. To our knowledge, virtually no one in the Salvadoran armed forces has voluntarily come forward with information that has helped significantly in the investigation.

The only exceptions to this, if the American Major is to be believed, are Col. Aviles, who asked that his information not be shared, and Col. Benavides, himself, who sought to avoid punishment.

We do not know the full extent of knowledge within the military about the identity of the killers prior to their arrest.

We know that more than 200 military personnel were deployed in the area immediately around the UCA on the night of the murders, presumably with instructions to be awake, aware and watchful.

We believe that military intelligence was aware almost immediately of the identity of the unit involved in the crimes.

We know that 45-50 members of the Commando Unit of the Atlacatl participated directly or indirectly in the murders and that it is probable that at least some of them shared the information with others in the Battalion or with the First Brigade.

We know that other officers have come forward, in confidence, with bits and pieces of information, some of which have proven to be true, some of which are unproven, but none of which they will repeat to any official source.

And we know that Lt. Col. Rivas, in charge of the investigation, is a potentially vital witness against Col. Benavides, but that he has refused to give a formal statement or to take a polygraph in response to the allegations of the American Major.

We cannot conclude from this that senior military officials actively directed efforts to obstruct the investigation, as occurred, for example, after the murder of four American churchwomen in December, 1980 and three agrarian reform workers, one Salvadoran and two American, in January, 1981. Instead, we see evidence of a "wait and see" attitude on the part of the armed forces as an institution that allowed the investigation to take its course, encouraged suspicions that the FMLN may have been involved, and volunteered nothing.

#### RELATED ISSUES

During the course of its inquiry into the Jesuits case, the Task Force also examined, in less detail, a number of related issues concerning the judicial system, the military as an institution, human rights and the prospects for a negotiated settlement to the war.

*W. J. [Signature]*  
It is vital, we believe, that the high degree of public concern

about the Jesuits case, both in our own country and around the world, not obscure the need for reforms that go far beyond the success or shortcomings of a single criminal investigation. The purpose of a judicial system is not to ensure justice in one case or a few cases of special notoriety; it is to ensure professional and systematic efforts to provide justice in all cases.

Unfortunately, in the words of U.S. Ambassador to El Salvador, William Walker, the Salvadoran justice system does not currently provide justice either for the guilty or the innocent. After more than a decade of U.S. efforts to encourage and finance reform, the system still just plain does not work.

Although part of the problem resides--as discussed above--in laws such as those which render inadmissible the evidence given by a co-conspirator in a crime, the larger issue concerns political will on the part of those with the power and the resources to achieve change.

If democracy in El Salvador is to make progress, civilian authorities must be empowered to investigate and prosecute crimes without fear of the military. Institutions other than the military must be allowed to gather and give evidence to the Courts. The scope of investigations cannot be limited by the inability or unwillingness of junior military officers to question those above them in rank who may have information about a crime. And the armed forces, from the top down, must be convinced that laws against violations of human rights will be applied to them, and that the punishment will suit the crime.

#### **Background on the Salvadoran Judicial System**

The judicial system of El Salvador is based on traditional Napoleonic code and civil law and, as such, is different in many ways from most judicial systems of the United States. El Salvador's judicial system is also more closely tied to older civil law codes and procedures than most legal systems now in effect in Latin America.

Second File

In El Salvador, judges are responsible for supervising both criminal investigations and trials. When a crime is committed, the judge with proper jurisdiction in the matter supervises the security forces (the National Police, National Guard, and Treasury Police) in the gathering of evidence. The judge then determines whether the evidence is sufficient to warrant a trial of any suspects. The attorney general's office prepares the state's case, but the judge has significant power throughout the judicial process to gather evidence and even present evidence in the judicial proceedings.

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~~The security forces of the country~~ play a key role in investigations in that they are the primary staff that a judge may use in gathering evidence. This gives the security forces an ability to hinder investigations by the degree or type of participation they offer. For example, the National Police originally spent only six weeks investigation the Archbishop Romero murder and their final report was so lacking in basic information that it made no indication of the calibre or type of weapon used to kill <sup>probably</sup> Romero. From the report, it also appears that the police investigators spoke with very few of the dozens of witnesses to the murder.

In the case of the four U.S. church women murdered in 1980, an official U.S. investigation of the case (the Report to the Secretary of State by Judge Harold R. Tyler, Jr.) concluded that the Salvadoran National Guard covered-up knowledge of who committed the murders, including switching weapons to foil ballistics tests and performing phony internal investigations that denied National Guard responsibility. The Tyler Report concluded that the cover-up in the church women murders extended so high into the institutional structure of the Salvadoran security forces that it was "quite possible that Colonel Vides Casanova, then head of the National Guard and later General Minister of Defense, was aware of, and for a time acquiesced in, the cover-up."

~~The security forces can detain persons for up to 72 hours before~~

releasing the person or presenting him or her to a judge. It is during this 72 hour period that many instances of torture and coerced extrajudicial confessions are reported.

Virtually all analysts of the Salvadoran situation believe that the judicial system in El Salvador is seriously flawed and does not often work well in practice.

The State Department's recently released "Country Reports on Human Rights Practices in 1989" characterized the Salvadoran judicial process as "hindered by archaic procedures, inadequate facilities, intimidation of judges, and corruption." Judges are paid very poorly and many are open to bribery. Juries are also vulnerable to corruption and intimidation.

U.S. Ambassador to El Salvador William Walker recently wrote to this Task Force that "El Salvador's criminal justice system has always been seriously flawed. Since 1979, this already fragile system has been further disrupted and weakened by the political and economic upheavals caused by the civil war." Ambassador Walker believes that some progress has recently been made against corrupt judges, but he also provided the Task Force with a long list of problems with the judicial system, including the intimidation of judges and investigations and court proceedings that drag on and cannot reliably prosecute criminals.

The intimidation of judges is often backed up with violence. One of the most recent high-profile judicial killings occurred in May 1988 when Judge Jorge Serrano was killed while presiding over the widely publicized case of a kidnapping-for-profit ring run by rightist forces. Judge Serrano's predecessor had also been assassinated. On March 8, 1990, a death threat was publicly announced in El Salvador against all civilian and religious personnel involved in the Jesuit case. The threat was signed by the anonymous leaders of three notorious right-wing death squads. Judges in many human rights cases have been threatened and many have ceased their investigations because of such threats, including the first judge in the Archbishop Romero case.



Another serious problem with the justice system concerns the issue of amnesties. In 1987, the Salvadoran government passed a wide-ranging amnesty that freed and stopped the prosecution of all who had committed crimes of a political nature, with only a few exceptions such as the Romero case. Military personnel amnestied included the convicted killers of two AFL-CIO land reform advisors and a Salvadoran land reform official and the troops indicted for the 1983 murder of 74 peasants at Las Hojas. In addition, hundreds of alleged FMLN members were freed. The amnesty was a blow to many in the human rights and judicial reform community who began to feel that any attempted prosecution of human rights abusers was futile if they were only to be set free later.

Another amnesty proposal has just been introduced into the Salvadoran National Assembly that would set free the few remaining military prisoners, including the killers of the four U.S. church women and the lieutenant convicted in 1989 of a triple assassination. The conviction of the lieutenant had been highlighted by the State Department in its most recent "Country Reports on Human Rights" as an indication of improvement away from the tradition in El Salvador of putting military officers beyond the law. The President of the Salvadoran Assembly has said that he does not believe that the convicted killers of the Jesuits would be covered by this amnesty because the amnesty law was proposed before the charges were brought in the Jesuit case. It should be noted that President Cristiani has stated his opposition to the proposed new amnesty.

One of the widely cited examples of the ineffectiveness of the Salvadoran judicial system is the investigation of the murder of Archbishop Oscar Romero. Days after beginning his investigation, the first judge in the case was the subject of death threats and an assassination attempt. He quit the case and fled the country. After that National Police abandoned their initial investigation of the case, another round of investigations was conducted in 1984 by the Attorney General's office. However, that investigation was quickly abandoned by the Attorney General, who

*Case study*

was the former personal attorney of Roberto D'Aubuisson -- widely believed to be the intellectual author of the archbishop's murder. In 1988, a man named Antonio Garay was located who claimed to have chauffeured the car that took the assassin to the Romero murder. Garay testified that the assassin he drove was a D'Aubuisson associate, Rafael Saravia. Former President Duarte's Attorney General attempted to extradite Saravia from the United States only to have the Salvadoran Supreme Court -- filled with ARENA appointees -- countermand the extradition request ruling that the testimony of Garay was too old to be admissible against Saravia. Since the Garay incident, there has been little material progress in the Romero investigation.

*Seems to refer to report*

In 1984, the government of El Salvador began a judicial reform program which received much of its funding from the U.S. Agency for International Development. The program proposed to revise outmoded laws, train investigators and judicial personnel, investigate politically sensitive crimes, and provide protection to judges, jurors, and others involved in such cases.

Most aspects of the program appear to have failed to deliver on their promised reforms. The commission formed to revise outmoded laws has presented few proposals to the legislature, and the few presented do not appear to touch on the elements of Salvadoran law most relevant to human rights. The judicial protection unit has been criticized by most observers, including State Department officials and an AID-commissioned study. The AID-commissioned study called the unit "one real design dud." Attempts to redesign the unit seem to have failed amid turf battles over where to put the unit and because it cannot be determined how a police-like protection unit can function in a society where the police forces themselves are seen as part of the problem with judicial security.

One portion of the AID judicial reform program, the Special Investigations Unit (SIU), has produced some positive results mixed with some serious problems. The SIU was created to be under the control of a special Commission on Investigations

*Shade*

(headed-up by the Justice Minister -- who controls the prison system in El Salvador -- and two other civilians). The SIU was to be staffed by detectives who would receive F.B.I. training in police investigation techniques and who would investigate the most sensitive political crimes, such as the murder of Archbishop Romero. However, due to the regulations in Salvadoran law concerning who may produce evidence in the judicial process, the SIU detectives had to be security force personnel so that their evidence could be submitted into court. Thus, the conflict of interest of having security forces personnel investigate other security force personnel ~~(investigate other security force personnel)~~ was not solved with the creation of the SIU. It is most difficult, for example, to imagine the current head of the SIU, a Lt. Colonel, actively pursuing leads that require the ~~interrogation of higher ups in the military -- men who could have a direct impact on his career.~~ In addition, it appears that the Commission on Investigations, which is supposed to determine what cases the SIU will work on, has been unwilling or unable to exercise full control over the casework of the SIU, with the result being that the security force personnel of the SIU pick and choose what cases they will work on. Indeed, while the SIU has provided investigative services concerning some cases of human rights abuses, including the Jesuit case, they have also ignored many other serious human rights cases with apparent military connections and have spent considerable time on non-human rights cases such as car theft rings.

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*Heriberto Hernandez*

The need for reform within the military is obvious and admitted by the civilian leadership of El Salvador. The so-called tanda system, which bears an unfortunate resemblance to the seniority system in Congress, rewards experience, but not merit. Loyalty to classmates overrides questions of competence, integrity and even criminality of behavior. Punishments for abuses are limited to job reassignments which do not affect rank or pay or prospects for a comfortable retirement. Recent examples of this include the reassignment of Col. Carlos Guzman Aguilar, known for corruption, as military attache in Costa Rica; the reassignment of Col. Hector Heriberto Hernandez, known for both brutality and

corruption, to commander of the Sixth Brigade; the continued assignment of Col. Roberto Mauricio Staben, known for corruption, brutality and criminality, as commander of the 7th Detachment; the continued assignment of Major Dennis Moran as military attache in Guatemala, despite his role in the murder of the agrarian reform workers in January, 1981; and the retirement, under honorable conditions, of Col. Elmer Gonzalez Araujo, despite his responsibility for the murder of 74 campesinos in the village of Los Hojas in 1983 and his acceptance of bribes in the sale of defective ammunition to Salvadoran troops in 1985.

Despite a decade of encouragement from the U.S. and from civilian political authorities inside El Salvador, the armed forces are reluctant to change. During the Task Force's visit to El Salvador in February, for example, a ~~refugee~~<sup>village</sup> settlement in Chalatenango was bombed by the Air Force, killing six civilians, following a fight with guerrillas in that same province. Despite abundant physical evidence to the contrary, the armed forces immediately denied responsibility for the bombing and blamed the FMLN. Its version was quickly disproved.

This type of denial and subsequent retraction has been repeated many times, including another case that the Task Force looked into, the murder of two suspected FMLN agents near the village of Tres Ceibas in July, 1989. In that case, the two victims were beaten to death separately, one buried at the scene, the other returned to the headquarters of the First Brigade where he was kept without medical care for a week before being transferred to a hospital, where he died. The initial explanation provided by the military was that the two victims had "fallen off a truck".

In September, 1988, soldiers from the Fifth Brigade murdered ten campesinos near the town of San Sebastian. The military immediately said that the deaths occurred during a "firefight" with guerrillas. After the bodies were exhumed and shown to have been executed at close range, the military argued that the FMLN had dug up the bodies, shot them in the head, and re-buried them to make it look like the Army had done it. Strong pressure from

U.S. Ambassador William Walker, coupled with ballistics evidence, ultimately led the military to admit responsibility.

More recently, Col. Ponce, perhaps the most respected military officer in El Salvador, said that allegations regarding the treatment of Col. Benavides following his arrest were not true. He specifically denied the allegation that Col. Benavides had been permitted to visit an Army-owned facility near the beach. This allegation was confirmed to the Task Force, however, by a senior civilian official of the Salvadoran government.

The Task Force concludes that the problems with respect to human rights and judicial reform in El Salvador are not caused by a few individuals within the armed forces; they reside at the heart of the institution, itself. Decades of power, tempered only by the need to maintain a working alliance with wealthy landowners and businessmen, have created an upper echelon within the armed forces that too often finds deference to civilian authority neither necessary nor desirable. The forces of reform within the military, which do exist, do not currently have the authority or the resources to overcome this unfortunate inheritance, and for that failure, El Salvador continues to pay a terrible price.

#### THE NEED FOR PEACE

The political extremes in El Salvador feed each other while those in the center starve. With each bombing or land mine or offensive or murder, the space for peaceful political debate diminishes and the progress towards democracy slows.

A negotiated settlement to the war in El Salvador is essential because far too many people have already died or been crippled or been driven into exile; because economic and social progress is not possible in the midst of civil war; because neither side can win on the battlefield; because the vast majority of the Salvadoran people are sick of the violence; and because the opportunity for a settlement that meets the minimum conditions of both sides has never been greater.

Peace, if it comes, could-and should--have a profoundly positive effect on some of the problems discussed in this report.

Peace could lead, as President Cristiani told the Task Force, to a restructuring of the military, including the transfer of the security forces (Treasury Police and National Police) to direct civilian control.

It could lead to the removal or retirement of senior officers with less than distinguished records from the armed forces.

It could result in a diminution in the size, and therefore the influence, of the military.

It could help create a political process capable of debating constitutional and legislative questions including those concerning the proper role of the military in a democracy.

It could spur a serious effort at judicial reform.

It could magnify the effectiveness of the foreign assistance provided to El Salvador, and permit a greater portion of that aid to be used for economic, rather than military purposes.

It could reduce or eliminate entirely the physical and economic threats posed by assassination, sabotage and military actions perpetrated by the FMLN.

It could, in short, restore meaning to Salvadoran democracy; opportunity to the Salvadoran economy; hope to the Salvadoran people; and life, itself, to a nation that stopped dead a decade ago, but that dwells today both in a region and a world newly rich with the promise of democratic and peaceful change.

#### APPENDICES