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January 4, 1990

MEMORANDUM

TO: Don Edwards
 Chairman
 Subcommittee on Civil and
 Constitutional Rights

FROM: James X. Dempsey
 Assistant Counsel
 Subcommittee on Civil and
 Constitutional Rights

RE: FBI Treatment of Witnesses to November 16, 1989 El
 Salvador Slayings

On December 21, 1989, I interviewed Lucia Barrera de Cerna and her husband Jorge Cerna Ramirez. My interview lasted 5 hours. It was conducted at the home of Rev. Paul Tipton, president of the Association of Jesuit Colleges and Universities, who was responsible for the family and at whose house they were staying. Rev. Tipton was present during about one-half of the interview. Translation was provided by a bilingual student from the Jesuit college where Rev. Tipton used to be president. I thought the translation was very smooth. I was the only one asking questions. Before the interview, I had read the translation of Lucia's statement to the judge in El Salvador and the report by the Lawyers' Committee. I interviewed the Cernas together.

I found the Cernas to be credible, for several reasons: They have no reason to lie. There is nothing in this for them, except forced exile from their home, where both had decent jobs. They did not seem to embellish their story; in fact, the story has few relevant details. Their description of the FBI interrogation process rang true and they described accurately elements of the polygraph process that one cannot make up.

On the face of it, however, they both have credibility problems. By their own admission, Lucia changed her story under pressure. What is worse for Jorge's credibility, he withheld from

the authorities in El Salvador and flatly denied to questioners in Miami that he had looked out the window and seen something. He says that he had looked out and saw uniformed men with guns, but he told this to no one until after he had been in FBI custody a week.

(1) The events of November 16

The Cernas told the FBI, the Lawyers Committee and others the details of how they fled the fighting in their neighborhood of Soyopango early on the morning of November 15 and sought refuge with the Jesuits, who gave them a room in an empty house, known as Casa #16, on the grounds of the University of Central America. I asked them to start from the point when they woke up on November 16.

Lucia said that her husband woke her up. Jorge said that just before 1 a.m. he heard shooting in the distance, about 60 or 70 meters. As the minutes passed, he heard it getting closer and closer. He woke up his wife so they could take whatever protective action was available.

Lucia said she and her husband sat on the mattress on the floor, where they had been sleeping with their daughter, and listened to a great amount of shooting.

Lucia heard loud knocking, pounding on the doors in the priests' house and shooting inside the house. She heard loud shouting between the sounds of shooting. She told her husband, "My God, they have come to search the house of the priests." She finally got the courage to stand up. She tiptoed into the other room (the whole family was sleeping on a mattress right underneath a window.) and looked out a corner of the window there. She saw five men outside the gate to the priests' house and could tell that two wore camouflage uniforms. The other three were more in the shadows and she could only tell they wore dark clothes. At that moment, she heard the priest she called Father Nacho screaming "This is an injustice, this is an outrage." At that exact moment, the men rushed into the house through the gate.

I probed at some length what she could see from the window. Jorge drew me a diagram, but it was of limited value. Scott Greathead of the Lawyers' Committee has a more detailed map. Jorge said there are some trees between Casa #16 and the priests' residence. There may also be a rise of some sort. Lucia insisted that she could see the gate to the priests' residence. (One side of the gate is attached to the building; the other is attached to a low wall.) At the end of the interview, I viewed with the Cernas a videotape of a network news segment showing the gate, the low wall, and the central corridor of the priests' residence. In my opinion, only on-site inspection will confirm what view is possible from Casa #16.

Jorge said he heard the voice of Father Nacho too, but could not distinguish the words. From the room in which the Cernas were sleeping, one could not see the priests' residence.

Lucia said the five men she saw held rifles. When these men entered the house, the shooting intensified. She did not hear Father Nacho's voice again.

There was a small pause, and she went back to the room where the family had been sleeping. Her legs were shaking. When she returned to the room, she saw her husband standing at the window, looking out.

I asked at this point why she had not told her interrogators that her husband had gone to the window. She replied that she had wanted to say only the things she had seen outside herself.

Jorge said that in El Salvador, the judge's secretary had asked him many questions while Lucia was giving her statement, but he did not tell the judge's secretary that he had looked out the window. It is unclear, but it seems the judge never questioned Jorge and it is also unclear whether the judge's secretary specifically asked Jorge if he had seen anything. Lucia said that they didn't think of the significance of not telling because they were ignorant of the law and those kind of things. She said it was an error for them not to say what Jorge saw. Jorge said he didn't think what he saw was important, and they had agreed that Lucia would do all the talking.

Jorge told me he saw a group of men walking away from the priests' residence. They carried guns and were walking quickly but not running.

Lucia described the caps the men were wearing. They were dark cloth caps with a visor or bill. Later, when we watched the videotape, she pointed out some uniformed members of the national police wearing the caps. She said the national police and the soldiers wear the same type of cap.

Lucia said that at the moment when she looked out the window, she thought the men were soldiers.

After the shooting subsided, the Cernas tried to go back to sleep.

I skipped the events of the rest of the 16th through the 19th.

(2) November 20

On Monday, November 20, Lucia tried to go to work, but the University was closed, so she went to the office of the Jesuit Provincial, where she was also did cleaning work. There Father Jose Tojera, the Provincial for Central America, introduced Lucia to Maria Julia Hernandez, head of the church's human rights office. Lucia recognized Maria Julia from T.V. Maria Julia asked her what happened and Lucia told her. Maria Julia asked her were they soldiers. Lucia said "I don't know, but I assume they were." Maria Julia asked few questions. Their conversation did not last long.

(3) FBI Custody - November 23 - December 3

I skipped the events of the rest of the 19th through the morning of the 23rd. I asked the when they first met an American. They said it was at the airport. The Cernas arrived there first and saw the Americans arrive. The Spanish Ambassador introduced them to Mr. Walker (the American Ambassador), Mr. Richard Chidester (from the U.S. Embassy, and FBI agent Sanchez. The Cernas were told that Mr. Chidester was coming solely to take care of them. The Americans were friendly, they asked no questions and there was no discussion of what had happened.

On the plane, Sanchez approached Jorge and started talking about immigration matters but Jorge objected to the French minister. Thereafter, Jorge spoke with Sanchez but only about personal things. It was a short conversation. A French reporter on the plane tried to interview the Cernas about the war and about the priests' slayings, but Lucia asked the French minister if they had to talk to the reporter. The minister (ambassador) said no and spoke to the reporter, who moved away.

They arrived in Miami at about 10 p.m. Sanchez introduced them to FBI special agent Riviero. The agents told the Cernas they were going to a hotel and not to be scared, they were very well protected. There were three Jesuit Fathers present at one point, but there was no explanation why the Jesuits did not take them, other than the need for protection.

Friday, November 24 - Saturday, November 25

They stayed at the hotel. Early Friday morning, immigration papers were brought to them. The agents said they were there to protect them. The family rested and didn't do anything else. Some Jesuit priests came to visit them on Friday or Saturday. On Friday or Saturday Special Agents Riviero and Sanchez conducted, at the hotel, a very short interview of Lucia only. Chidester was not there during the interview. Riviero and Sanchez did not ask specific questions.

Sunday, November 26

The Cernas were taken to pick up more clothes at the residence of Jesuits who run a high school in Miami. Father Marcelino Garcia, president of the school was there, as was a Father Esquivel and a third priest. (Fr. Tipton gave me Garcia's phone number: (305) 223-8600.) The visit was very short. Most of the conversation was in English. Lucia had expected to get the priest's phone number and was surprised when Chidester took it ("grabbed it") instead. As a consequence, the priest said if you need anything you can get me through Mr. Chidester.

Monday, November 27

Chidester came into their hotel room and said they should eat a good breakfast since they were going to an office, and it would be a long day. Mr. Sanchez accompanied them to what they assumed was the FBI office.

Lucia was interviewed first. SAs Sanchez and Riviero called her into a room and asked her to tell the entire story from the time she left Soyopango on the morning of the 15th. There were no significant interruptions for questions. Then they took her out to where Jorge and their daughter were waiting and called in Jorge.

Jorge said they asked him to start at the beginning from the moment he left Soyopango. He gave the entire story, but did not say he had looked out the window. Sanchez and Riviero asked him some questions. Chidester was there but asked no questions. There was a taperecorder.

On Monday, everyone acted normal. The agents expressed no disbelief.

Tuesday, November 28

Again they went to the office, after breakfast at 7 a.m. This morning, Jorge was questioned first. Col. Rivas of the El Salvadoran Army's Special Investigative Unit was present. He and the two FBI agents asked questions.

Again the agents asked Jorge to tell his story from the beginning. But there were many interruptions for questions. Rivas asked questions first. He interrupted Jorge at a minor point, when Jorge said the family's papers were checked by soldiers when they left Soyopango. Rivas asked, "How can you tell between a lieutenant and a soldier? How do you know they were soldiers?" Rivas kept asking questions "Why did you let your wife stand up and go to the window and you didn't go?" At one point Sanchez stopped Rivas and said "I have to ask questions that he can answer only to me." Sanchez took over the

questioning and started asking forceful questions. There were times when the questioners turned the tape recorders off.

I asked Jorge what did Sanchez focus on. Sanchez asked in a forceful voice, "How did you get that scar on your face?" After Jorge told the story, Sanchez stood up, started pointing at Jorge and said "I can't believe you did not stand up when you heard the shot and I don't believe your wife was the one who got up. How is this lady going to stand up with all the shooting? I cannot conceive this. You have a beard and mustache but you seem to be effeminate." They continued to pressure him on why he didn't stop his wife from going to look.

Riviero asked, "Who is the person, the priest who told you to tell us this?"

Rivas asked the most questions. Col. Rivas showed Jorge some photos of the priests' residence, the chapel, and maybe of the view out of the room Lucia had looked out of. Rivas asked Jorge to indicate on one photo where they slept. Jorge couldn't distinguish the layout. (He had been there only once, the night of Nov. 15)

After Jorge's interrogation, the Cernas were taken to lunch. In the afternoon, the agents and Rivas questioned Lucia. (When Jorge came out of his morning interrogation, he looked scared and that scared her.) They asked her to tell the story again starting from Soyopango, but they did not ask any questions.

Wednesday, November 29

On Tuesday night Lucia talked with her husband about his treatment that day. She was very frightened. On Wednesday, the questioning started with Lucia. During this interrogation, the agents and Rivas were "hard people." When she started, they said "They didn't believe her." They asked, "How much did the priests pay you to say this?" Sanchez asked, "Is that Father Estrada a guerilla?" She said no. She became increasingly frightened. Now she could understand how they had treated her husband. She felt she could not withstand it because of her hypertension.

She then said, "I don't know anything." They said, "Then why did you tell that story?" They said, "It was a priest who told you. Tell us who it was." She said no, but she continued to receive pressure and she remembered one name -- she said it was Maria Julia.

They said, "Then begin again from the time you left Soyopango." So she did up to the time when she invented that Maria Julia told her what to say. Col. Rivas started smiling and said, "Now we are on the right track." They turned on the tape recorder. She told the whole story again, including what she invented about Maria Julia. In the version she invented, she said she had not gone to the window. They let her talk forever

by herself, up to their arrival in Miami. She invented the part about Maria Julia so they would leave her alone.

When she finished they said, "Are you ready for the machine?" She said it is for the good, it is okay. But she thought it was an electric chair. The polygraph operator had questions written down and asked her to answer yes or no. Lucia described to me a series of control questions about her name, her age, where she was born and whether she was in Miami. Then they asked two relevant questions: "Did you approach the window?" No. "Did Maria Julia tell you to say that you had?" Yes. They asked the same questions three times (i.e. they "ran three charts.") Then the operator took the papers and said "I'll be back, we have to evaluate these papers." He was gone about 20 minutes and they (unclear whether it was the operator or the two SAs or Rivas or all of them) came back and said, "Look, Signora, tell me what you saw at the window." She said, "I told you many times and you did not believe me." The agents were very mad. Sanchez said, "We have to do the exam again. The machine indicates you got up and went to the window." According to Lucia, they ran the test again. When they got to the question "Did Maria Julia tell you to say this?" Lucia told me, "I said yes, but my heart was saying no."

Thursday, November 30

The questioning started with Jorge. The first question was, "How many times did you meet with Maria Julia?" And "Did any priests tell you this story?" "Do you have any relatives who are guerillas?" No, nobody in my family. I have two brothers retired from the army. "Are you a political person? Are you a member of a political party?" No.

They told Jorge "It depends on you whether you stay here or go back to El Salvador."

It was clear to Jorge that the purpose of the interrogation was to get him and Lucia to negate their testimony that they saw uniformed men.

They asked him to do a lie detector test. He said fine. The relevant questions were had he gotten up to go to the window, and had his wife gotten up to go to the window. He answered both "No." The operator ran three charts and left to evaluate them. When the operator came back he sat near Jorge and said in a quiet voice "In confidence, tell me what you saw through the window." Jorge said, "I saw nothing, we didn't stand up." The operator said, "You are lying to us."

When they were all together, Rivas said "You are saying this because you wanted to come to the U.S." Lucia said, "No, I was making 1000 colonas and Jorge was making more."

At some point, the operator took Jorge into another room and said, "The machine indicates you saw something."

That afternoon, Lucia asked (it is not clear whom) if they had the Jesuits' phone number. The answer was no. She said she was in great despair. She wanted to get advice.

That night Lucia and Jorge talked among themselves. They agreed that they should tell the truth. Jorge said, "Tomorrow I will tell them the truth, that I saw something."

Friday, December 1

Jorge said to Mr. Chidester, I want to tell the truth. Chidester said fine. Let's go back to the office.

Lucia said nothing that day. The polygrapher asked Jorge what he was going to say. They had control questions like "is it Friday?", "Have you ever lied?" and "Have you ever cheated on your wife?". The relevant questions was "Did you see anything out the window?". Jorge answered yes. The operator ran three charts.

When the operator and the agents came back they said to Jorge, "You have made us waste our time. Rivas said, "Ever since you came from Salvador you have been lying. You embarrass me."

About 6 p.m., the interrogation stopped. Hair samples and fingerprints were taken. The Cernas were told, "This is to make sure you slept in the room you say you slept in."

Conclusions

One interpretation of the events is as follows: The FBI originally obtained custody of the Cernas primarily to protect them. This is what the agents told the Cernas and the Jesuits on Thursday and Friday, November 23-24. Over that weekend, it was decided by the U.S. government to interview the Cernas seriously and at some time it was decided to allow participation by Salvadoran authority. When Rivas arrived on Tuesday, he was already doubtful of Lucia's story and provided the FBI agents with reasons to doubt her credibility. There was some struggle between the FBI agents and Rivas for control of the interrogation. The conflict was never resolved, but the two FBI adopted a hostile tone after Rivas arrived.

The length of time they were questioned does not bother me as much as the incommunicado way the Cernas were held and the inevitable intimidation and confusion that would flow from the presence of a Salvadoran army colonel and the hostile questioning that began on Tuesday morning.