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United States Senate

WASHINGTON, DC 20510

August 1, 1990

The Honorable James A. Baker III
Secretary of State
Department of State
Washington, D.C. 20520

Dear Jim:

I note press reports that El Salvadoran Judge Ricardo Zamora, who is presiding over the investigation and prospective trial of the defendants accused of murdering six Jesuit priests last November, has requested the testimony of two American officials who may have some claim of diplomatic immunity.

I urge you to take whatever action is necessary to make these witnesses available to Judge Zamora.

As a threshold matter, I have substantial doubt that there is any valid claim of diplomatic immunity in this matter.

While I have not researched the specifics of this issue in this context, it appears to me that El Salvadoran officials would have a valid claim to the testimony of the two U.S. military officers under the doctrine announced by the Supreme Court of the United States in U.S. vs. Nixon where the Court held that the prosecutor was entitled to every man's testimony in the investigation and presentation of a criminal case even in the face of Executive privilege asserted by the President personally. Where the President may not assert privilege (closely aligned to the doctrine of immunity) in a grand jury investigation, it would seem that lesser military officials could not validly assert diplomatic immunity where their testimony was sought in a major murder case.

In any event, I believe that the United States Government should not employ any legal stratagem to avoid full cooperation in this important case. Last April, I travelled to El Salvador and discussed the pending investigation with Judge Zamora and the President Judge of the Supreme Court of El Salvador, Justice Gutierrez.

At that time, as noted in my floor statement reported in the Congressional Record on April 19, 1990, I found that Judge Zamora and President Judge Gutierrez were proceeding with diligence and making a good faith effort to see to it that there is a verdict and a conclusion in the case.

CONGRESSMAN JOHN JOSEPH
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As you know, the question of further U.S. aid to El Salvador is highly controversial. A significant factor on further U.S. aid involves the action by the El Salvadoran government in promoting human rights and it is very important that the El Salvadoran government properly handle the investigation and prosecution of the defendants accused of killing the six Jesuit priests.

Since this matter may come within the purview of the Department of Justice, as well as the State Department, I am sending a copy of this letter to Attorney General Dick Thornburgh.

Sincerely,



Arlen Specter

AS/kr

cc: The Honorable Dick Thornburgh
Attorney General of the United States